



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Transportation and
Public Facilities

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Ryan Anderson, Commissioner

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May 10, 2022

Sandra Garcia-Aline
Division Administrator
Federal Highway Administration, Alaska Division
P.O. Box 21648
Juneau, Alaska 99802-1648

RE: NEPA Assignment Renewal Package for the State of Alaska

Dear Ms. Garcia-Aline:

The Alaska Department of Transportation and Public Facilities (DOT&PF) seeks to continue its successful implementation of the Surface Transportation Project Delivery Program authorized under 23 USC §327. Consistent with the existing Memorandum of Understanding (MOU) between DOT&PF and the Federal Highway Administration (FHWA), 23 USC §327 and 23 CFR §773.115, DOT&PF has satisfied the necessary prerequisites for renewal and by this transmittal provides its formal Renewal Package to continue assumption of the FHWA's responsibilities for compliance with the National Environmental Policy Act (NEPA) for all classes of highway projects.

As part of its pre-renewal activities, DOT&PF notified FHWA of its intent to renew its participation in the NEPA Assignment Program on October 5, 2021, and further coordinated with FHWA to confirm there were no significant changes to its Program and that no new operating administration responsibilities were being sought. On April 28, 2022, FHWA confirmed that public notice of renewal was not required prior to submittal of the renewal package.

As required by 23 CFR §773.1 15(c), the DOT&PF's Renewal Package contains the following:

1. Description of changes to DOT&PF's Program since filing the initial application {Appendix A),
2. Confirmation of certifications regarding the state's waiver of sovereign immunity and a state equivalent public records law (Appendix B),
3. Correspondence recognizing that the DOT&PF is not seeking any new administration responsibilities or making significant changes to its Program (Appendix C), and
4. Signature of State's top-ranking transportation official approving the renewal package (included in this transmittal letter).

The initial MOU was fully executed and became effective on November 17th, 2017, for a term of five years and in accordance with subpart 13.5.1 (D) of the MOU and 23 CFR §773.115(d), the DOT&PF is submitting its Renewal Package not later than 180 days prior to expiration of the MOU. A draft MOU is also provided in Appendix D.

DOT&PF values its relationship with FHWA and looks forward to continuing its participation in the NEPA assignment program. If supplemental information is needed or any questions arise, please contact DOT&PF's Statewide Environmental Program Manager, Douglas Kolwaite, at douglas.kolwaite@alaska.gov or (907) 465-8413.

By my signature below, I am approving the State of Alaska Department of Transportation and Public Facilities NEPA Assignment Renewal Package in conformance with 23 CFR §773.115(c)(4).

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Anderson", with a long horizontal flourish extending to the right.

Ryan Anderson, P.E.
Commissioner

Enclosure

Cc: Douglas Kolwaite, Environmental Program Manager, Statewide Design and Engineering Services
Carolyn Morehouse, Director, Statewide Design and Engineering Services

**Appendix A. Description of Changes to DOT&PF's Program Since
Filing the Initial Application**



Alaska Department of Transportation and Public Facilities

**Application to Assume
FHWA's NEPA Responsibilities
Pursuant to 23 USC 327**

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List of Acronyms

ACHP	Advisory Council on Historic Preservation
AHPA	Alaska Historic Preservation Act
ANILCA	Alaska National Interest Lands Conservation Act
CE	Categorical Exclusion
CEQ	Council for Environmental Quality
CERCLA	Comprehensive Environmental Response and Liability Act
CAAA	Clean Air Act and Amendments
CFR	Code of Federal Regulations
CGP	Construction General Permit
DEC	Alaska Department of Environmental Conservation
DEIS	Draft Environmental Impact Statement
DOL	Alaska Department of Law
DOT&PF	Alaska Department of Transportation and Public Facilities
EA	Environmental Assessment
ECATTS	Environmental Compliance Assessment, Training and Tracking System
EIS	Environmental Impact Statement
E.O.	Executive Order
ESA	Endangered Species Act
FAQ	Frequently Asked Questions
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FPPA	Farmland Protection and Policy Act
ICAP	Indirect Cost Allocation Charges
LWCF	Land and Water Conservation Fund
MMPA	Marine Mammal Protection Act
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organizations
NAGPRA	Native American Grave Protection and Repatriation Act
NEPA	National Environmental Policy Act
NHI	National Highway Institute
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
PA	Programmatic Agreement
PQI	Professionally Qualified Individual
QA	Quality Assurance
QC	Quality Control
RD&T2	Research, Development and Technology Transfer
REM	Regional Environmental Manager

*Alaska DOT&PF NEPA Assignment Program Application Proposed
Changes 2/25/2022*

RCRA	Resource Conservation and Recovery Act
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act
SDWA	Safe Drinking Water Act
SEO	Statewide Environmental Office
SHPO	State Historic Preservation Office, or Officer
STIP	State Transportation Improvement Program
USACE	United States Army Corps of Engineers
USEPA	United States Environmental Protection Agency
USC	United States Code
USFWS	United States Fish and Wildlife Service

Changes to the information submitted in DOT&PF's initial application to assume FHWA's NEPA responsibilities pursuant to 23 U.S.C. 327

Consistent with the renewal provisions in the Initial MOU (Part 13.5) and 23 CFR §773.115(c)(1), DOT&PF is required to “describe changes to the information submitted in the initial Program application.” The initial two-part application contained information relating to DOT&PF's then existing pre-assignment process and structure, as well as its proposed post-assignment process and structure. Following execution of the NEPA Assignment MOU, DOT&PF successfully transitioned to its new role and implemented its program as described. The current program remains largely as portrayed in the initial application, e.g., staffing, funding, consent to federal jurisdiction, etc. However, based on experience, best practices and Self-Assessments, DOT&PF has made process and program improvements. As documented in the FHWA's audits of Alaska's program during the first four years of NEPA Assignment, DOT&PF not only successfully implemented its program, but continuously found ways to improve and refine its processes, organization, and programs. Updates and refinements to the initial application are reflected in highlight and text as appropriate. To provide transparency, these updates are shown on a section-by-section basis within the initial application, so changes are in context. The attached version of the application indicates whether the information remains valid as submitted or reflects updates to the information. The following legend is intended to assist in understanding changes to the initial application.

Black text is from the original NEPA Assignment Application.

Red text is new explanatory information created for the renewal application per 23 CFR §773.115(c)(1), which indicates the continued accuracy of the information or describes changes to the information initially submitted.

Highlighted portions throughout the document denote affected information and specific updates are included in the section or paragraph updates.

Green text throughout the document confirms the information (usually a process diagram or figure) remains as originally submitted in the 2016 NEPA Assignment Application

Paragraph Update: Updated information added to address a specific paragraph.

Section Update: Indicates section status and describes whether there are any updates.

Figure Update: Identifies Figure specific updates. **NOTE:** The inclusion of status updates to the initial application may result in page numbering differences between this renewal application and the initial NEPA Assignment Application from 2016.

Introduction

The Alaska Department of Transportation and Public Facilities (DOT&PF) appreciates the opportunity afforded by Congress to allow states to assume the responsibilities of the Federal Highway Administration (FHWA) for the National Environmental Policy Act (NEPA) and related laws through this application to participate in the Surface Transportation Project Delivery Assignment Program (NEPA Assignment Program) pursuant to 23 USC 327. The DOT&PF hereby submits the enclosed application to assume all of FHWA's responsibilities under NEPA and other federal environmental laws for environmental review, resource agency consultation, and other environmental regulatory compliance-related actions pertaining to the review or approval of Federal-aid Highway Program funded projects in Alaska, and Federal Land Access Program projects that DOT&PF designs and constructs. In submitting its application, the DOT&PF expresses its strong commitment to successful implementation of the responsibilities requested, should they be assigned by the FHWA. This application follows the requirements established in 23 CFR 773.

NEPA directs each federal agency to consider the environmental effects of its actions, using a systematic, interdisciplinary approach. As required by NEPA and the FHWA's NEPA regulations at 23 CFR 771, and in compliance with the DOT&PF's policies and procedures, the DOT&PF: examines and discloses the environmental effects of its proposed activities; identifies the ways that environmental impacts can be avoided or minimized; prevents significant, avoidable environmental impacts by modifying its projects and/or implementing mitigation when appropriate; and publicly discloses the impacts of its projects and its project decisions, emphasizing balanced decision-making.

As part of this process, the DOT&PF integrates environmental considerations into its activities to achieve compliance with applicable laws, regulations, and standards. In addition, the DOT&PF undertakes timely and consistent outreach with the public, local jurisdictions, metropolitan planning organizations, resource and regulatory agencies, and Tribal Governments. The DOT&PF is focused on delivering safe, efficient transportation projects and making sound decisions based on a balanced consideration of transportation needs and the social, economic, and environmental impacts of proposed transportation improvements. The DOT&PF will continue to work cooperatively with its agency partners, communities, and the public under the NEPA Assignment Program.

Since September 2009, the FHWA has assigned, and the DOT&PF has assumed, responsibility for determining whether a project is categorically excluded from preparation of an environmental assessment or an environmental impact statement. Through a Memorandum of Understanding (MOU) authorized under 23 USC 326 (the CE Assignment Program) MOU, the State of Alaska assumed responsibilities for determining categorical exclusions (CEs). In Alaska, the CE Assignment Program is known as the 6004 Program. Under this program the DOT&PF has assumed most of FHWA's responsibilities for environmental review, resource agency consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects.

The DOT&PF has consistently worked cooperatively with FHWA, other federal and state agency partners, and with Tribal Governments to meet NEPA requirements. The DOT&PF underwent

organizational and procedural changes when the CE Assignment Program was implemented, and will make some additional changes in anticipation of the NEPA Assignment Program, as described in this application.

Under the NEPA Assignment Program, the DOT&PF will comply with all applicable federal environmental laws and with FHWA environmental regulations, policies and guidance. To ensure the success of the NEPA Assignment Program, the DOT&PF will regularly conduct self-assessments to gauge the effectiveness of its environmental procedures under the program and to identify the need for program corrections. As required in 23 USC 327, FHWA will audit the DOT&PF's NEPA Assignment Program to ensure that the DOT&PF is meeting federal environmental requirements and ensure that the DOT&PF's work is consistent with FHWA's goals of environmental stewardship and streamlining.

Should FHWA and the DOT&PF execute an MOU which assigns NEPA responsibilities, the DOT&PF will be solely responsible and liable for NEPA decisions on assigned highway projects and programs in the state. On September 18, 2015, DOT&PF and FHWA executed the CE Assignment Program Assignment MOU to assume responsibility for categorically excluded projects under 23 USC 326. Submittal of this application constitutes notice of the State's intent to terminate its current MOU for categorically excluded projects as provided in Stipulation X(A)(1) of that MOU, contingent upon the execution of an MOU between DOT&PF and FHWA under 23 USC 327.

Section Update: Historic description remains valid and program implemented as described

This application contains the following components, as required by 23 CFR 773:

§773.107: Pre-application requirements

- §773.107 (a): Coordination meeting;
- §773.107 (b): Public comment;
- §773.107 (c): Sovereign immunity waiver;
- §773.107 (d): Comparable state laws;

§773.109: Application requirements

- §773.109 (a)(1): Classes of highway projects for which DOT&PF requests NEPA responsibility;
- §773.109 (a)(2): Federal environmental laws other than NEPA for which DOT&PF requests responsibility;
- §773.109 (a)(3)(i): Existing organization and procedures;
- §773.109 (a)(3)(ii): Changes to be made for assumption of responsibilities;
- §773.109 (a)(3)(iii): Legal sufficiency;
- §773.109 (a)(3)(iv): Prior concurrence;
- §773.109 (a)(3)(v): Project delivery methods;
- §773.109 (a)(4)(i): Additional staff and training required;
- §773.109 (a)(4)(ii): Changes to the organizational structure;
- §773.109 (a)(4)(iii): Use of outside consultants for the NEPA Assignment Program;

- §773.109 (a)(5): Financial resources under the NEPA Assignment Program;
- §773.109 (a)(6): Certification of consent to exclusive federal court jurisdiction and waiver of immunity;
- §773.109 (a)(7): Certification that the State of Alaska's Public Records Act is comparable to the Federal Freedom of Information Act;
- §773.109 (a) (8): Public comments received on the NEPA Assignment Program application;
- §773.109 (a)(9): Point of contact;
- §773.109 (a)(10): Director's signature.

This application also contains the following appendices:

- A. Projects and Programs for Which DOT&PF Does Not Request NEPA Responsibility
- B. List of FHWA's Environmental Review Responsibilities for Which DOT&PF Requests to be Assigned under 23 USC 327
- C. Certification of Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and that the State of Alaska's Public Records Act is Comparable to the Federal Freedom of Information Act
- D. Copies of Comments Received on the NEPA Assignment Program Application and Responses Provided to the Commenters.

§773.107: Pre-application requirements

Section Update: This heading will reference 773.115: Renewal requirements

§773.107(a): Coordination meeting

As required by rule (§773.107 (a): Coordination meeting), on January 22nd and 23rd, 2015, the DOT&PF met with the FHWA (AK Division and Headquarters) staff to participate in a pre-application coordination meeting. The DOT&PF and the FHWA staff formed an interagency workgroup that has been meeting approximately monthly since that time to discuss matters relating to the NEPA Assignment Program in Alaska.

Section Update: This section will reference 773.115(b): Coordination meeting

§773.107(b): Public comment

Per rule (§773.107 (b): Public comment), the DOT&PF's draft application was publicly noticed during May 2016 for a 30-day comment period. Comments were due by the close of business on May 31, 2016. A notice of the draft application's availability was published in the newspaper with the largest circulation in the following cities: Juneau, Anchorage, and Fairbanks. A notice was also posted on the State of Alaska electronic public notice system. The DOT&PF also sent notice of the application with a request for comment to federal and state resource agencies and all federally recognized Native Alaskan Tribes. Lastly, the DOT&PF posted the application and instructions on how to provide comments on DOT&PF's website. Appendix D is reserved to include all comments received and the DOT&PF responses to each. Summaries of all comments received and of changes made to the application in response to these comments are provided in Appendix D.

Section Update: This section will reference 773.115(c)(3): Public comment

§773.107(c) & (d): Sovereign immunity waiver and Comparable State laws

Per rule (§773.107 (c): Sovereign immunity waiver and §773.107 (d): Comparable State laws), Appendix C is reserved for Alaska’s Waiver of Sovereign Immunity and certification that the Alaska Public Records Act is comparable to the Federal Freedom of Information Act.

Section Update: This section will reference 773.115(c)(2): Certifications

§773.109: Application requirements

Section Update: This heading will reference 773.115(c)(1): Changes to Application information

§773.109 (a)(1): Classes of highway projects for which DOT&PF requests NEPA responsibility

The DOT&PF is requesting to assume FHWA’s responsibilities under NEPA for the following classes of highway projects upon execution of the NEPA Assignment Program MOU. In general, this includes all highway and roadway projects in Alaska whose source of federal funding comes from FHWA or requires FHWA approvals. Appendix A lists projects and programs for which DOT&PF does not request the FHWA’s NEPA responsibilities. The assigned projects may include funding from other federal sources; for these projects the DOT&PF requests to assume only FHWA’s NEPA responsibilities and not the NEPA responsibilities of other federal agencies.

1. All Class I, or Environmental Impact Statement (EIS), projects that are funded by FHWA or require FHWA approvals. **The following projects will not be assigned. This list is subject to change until the NEPA Assignment Program MOU is signed (see Appendix A for more information on the projects listed below):**
 - 67698 & 67877 / 0922005 & 0922008 Gravina Access
 - 71100 / 000S131 Juneau Access Improvements
 - 53014 / 0212015 Sterling Highway: MP 45-60

2. All Class II, or Categorically Excluded, projects that are funded by FHWA or require FHWA approvals. Upon execution of the NEPA Assignment Program MOU, the CE Assignment Program MOU will be terminated and Class II projects included under that MOU will be assumed under the NEPA Assignment Program. The following projects will not be assigned. This list is subject to change until the NEPA Assignment Program MOU is signed (see Appendix A for more information on the projects listed below):
 - None

3. All Class III, or Environmental Assessment (EA), projects that are funded by FHWA or require FHWA approvals, except for the following projects. This list is subject to change until the NEPA Assignment Program MOU is signed (see Appendix A for more information on the projects listed below):
 - 68606 / 0956028 Haines Highway Improvements

Section Update: The excluded project list was superseded by the executed NEPA Assignment Program MOU and amended MOU 8/20/2020. The 8/20/2020 MOU was amended to exclude projects designed and constructed by FHWA pursuant to 23 U.S.C. 308.

§773.109 (a)(2): Federal environmental laws other than NEPA for which DOT&PF requests responsibility

The DOT&PF requests to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other regulatory compliance actions pertaining to the review or approval of project forr which the DOT&PF is requesting assumption of responsibilities under NEPA. The DOT&PF requests to assume these responsibilities under all applicable federal environmental laws and Executive Orders including, but not limited to federal laws, regulations, and Executive Orders listed in Appendix A of 23 CFR 773 (also listed in Appendix B of the application). The DOT&PF requests immediate assumption of these responsibilities upon execution of the NEPA Assignment Program MOU. These responsibilities are not planned to be phased in. The DOT&PF's approach and practice in working with federal resource agencies and their regulations are described in further detail within this application. Appendix A lists projects and programs for which DOT&PF does not request the FHWA's NEPA responsibilities.

Section Update: No updates to this section.

§773.109 (a)(3)(i): Existing organization and procedures

Organization

The DOT&PF is the legally authorized transportation department for the State of Alaska with responsibility for roadways and public transportation projects in Alaska. The DOT&PF is overseen by the Commissioner of the Alaska Department of Transportation and Public Facilities who is appointed by the Governor with the advice and consent of the Alaska Senate. The DOT&PF is empowered to discharge the duties required by 23 USC 302 and 23 CFR 1.3.

The DOT&PF is comprised of three regional offices and a headquarters office, each of which are divided into divisions and sections (see Figure 1). Most DOT&PF divisions and sections report to executive-level organizational units (deputy commissioners). The regional offices report to a respective regional director.

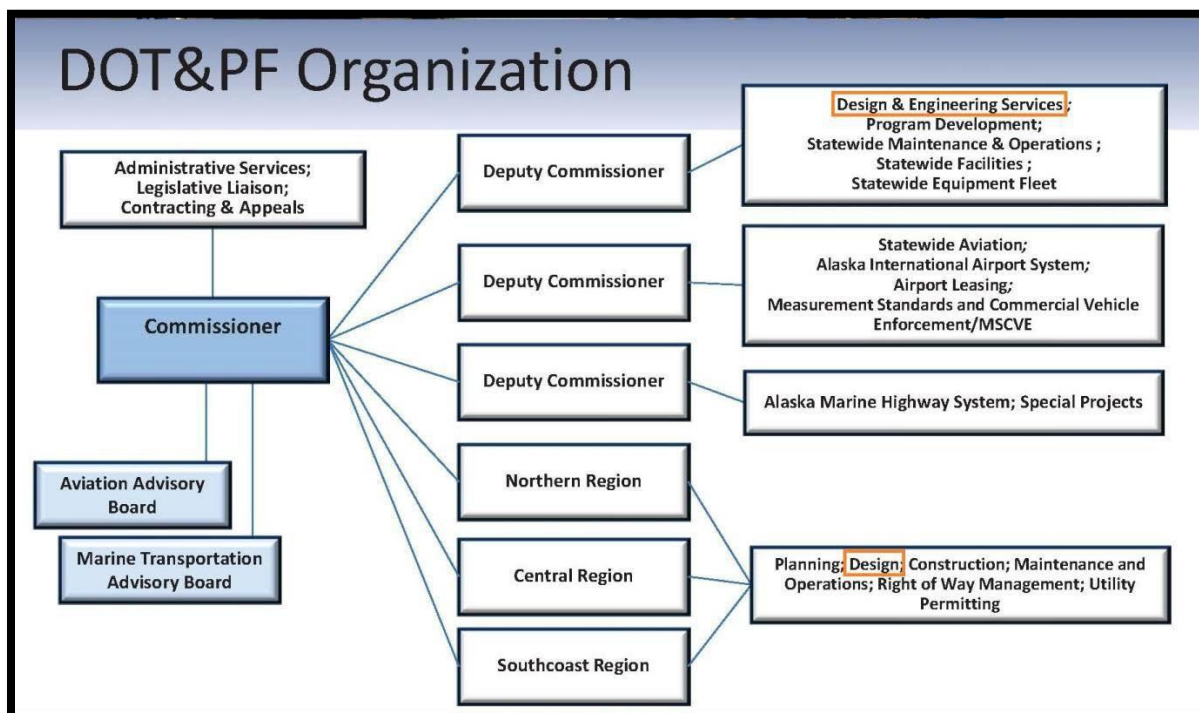


Figure 1. DOT&PF Organization Chart. The Statewide Environmental Office is a section of the Design and Engineering Services Division within the Headquarters Statewide Design and Engineering Services Division, and ultimately reports to the Commissioner through a deputy commissioner (see Figure 2 for more detail). Regional environmental staff are in the regional Design Sections and ultimately report to the Commissioner through a regional director (see Figure 4 for more detail).

Existing Environmental Staff

The DOT&PF currently has a talented staff of approximately 42 full-time employees across the state assigned to environmental functions, working in the three regions and the SEO. The capability of the DOT&PF environmental personnel to provide the expertise required to meet the responsibilities to be assumed under this application has been demonstrated in the DOT&PF's successful implementation of the CE Assignment Program, through which many of FHWA's responsibilities have already been assumed by the DOT&PF. The DOT&PF's existing organization and reporting structure has demonstrated sustainability in staffing quality and quantity. The DOT&PF is not planning changes to this structure under the NEPA Assignment Program.

The DOT&PF environmental staff is augmented by the discretionary use of environmental consultants, who may be contracted to support the preparation of environmental documents including environmental technical services for analysis of wetland, habitat, wildlife, noise, air, historic/cultural, or other resources, as well as for assistance with public involvement efforts.

The DOT&PF environmental staff requests legal advice including legal sufficiency reviews from attorneys in the Department of Law (DOL) experienced with federal environmental laws and NEPA, who provide advice on an as-needed basis. The DOL has the authority to retain outside counsel as needed.

Current DOT&PF Statewide Environmental Office Organization

The DOT&PF Statewide Environmental Office (SEO), within the Headquarters Statewide Design and Engineering Services Division, is responsible for developing and implementing the environmental program for the department as a whole. In this capacity the SEO develops, administers, and distributes the DOT&PF's environmental policies, procedures, manuals, and guidance. The SEO also provides training and technical support to the regional offices. In addition, the SEO provides project-specific technical expertise, facilitates DOT&PF inter-regional communication, and develops inter-agency agreements. The SEO also reviews and comments, as appropriate, on proposed state and federal legislation and regulations, and the SEO monitors trends and changes in federal and state policy and guidance.

As shown in the office organizational chart (Figure 2), the SEO is headed by the Statewide Environmental Program Manager, who has a staff of full time employees organized in three functional groups: NEPA Program Managers, Cultural Resources, and Stormwater Compliance. Each of the teams in the SEO is responsible for developing policy, procedures, training, and guidance relating to technical issues in coordination with the regional offices. Once policies, procedures, and guidance are developed, the SEO distributes this information throughout the DOT&PF regions, conducts training, and provides technical assistance for implementation.

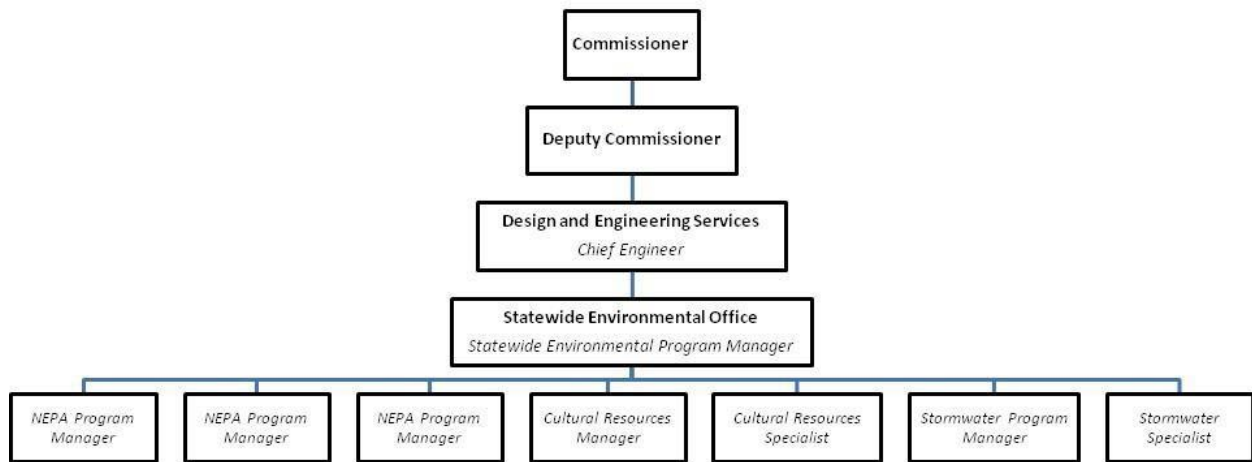


Figure 2. Statewide Environmental Office Organization Chart, including reporting structure to the Commissioner.

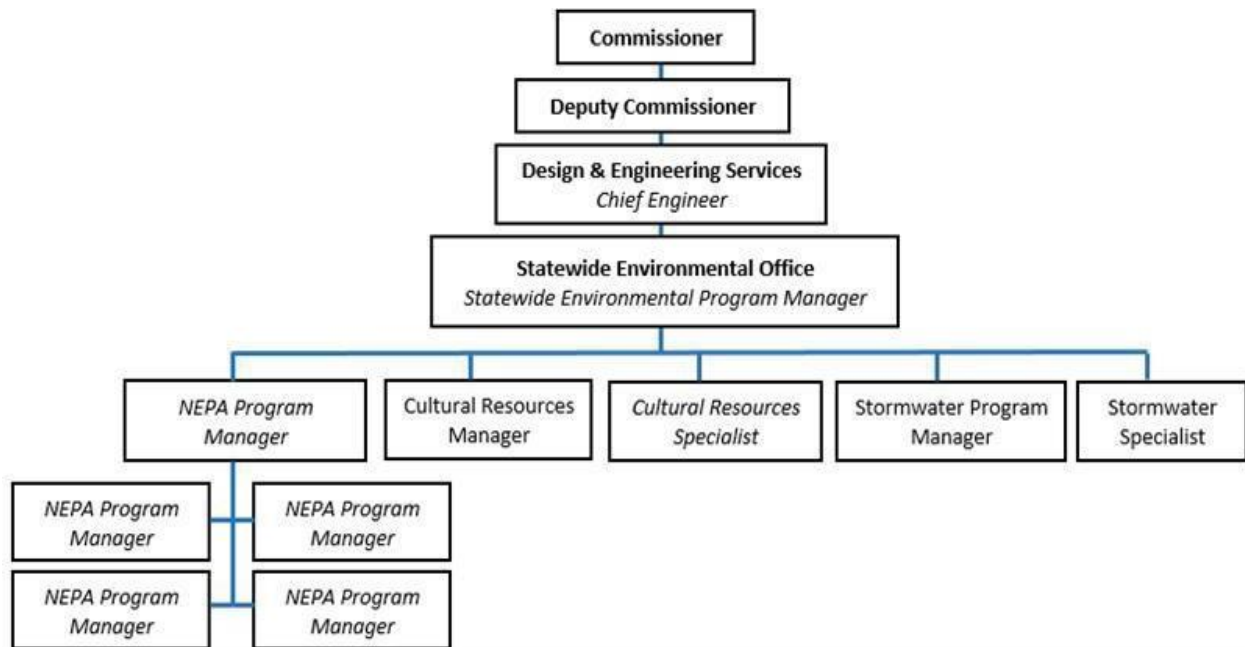


Figure 2. Statewide Environmental Office Organization Chart (2022), including reporting structure to the Commissioner.

Paragraph Update: While historically accurate, Figure 2 has been updated to current conditions with additional staffing at the NEPA Program Manager level and a new supervisory level position between the NEPA Program Managers and Statewide Environmental Program Manager. DOT&PF is currently in the process of on-boarding a fifth NEPA Manager in anticipation of increased workload.

The NEPA Program Managers are responsible for administration and oversight of the CE Assignment Program authorized by an MOU executed under 23 USC 326. The NEPA Program Managers' responsibilities include making certain project-specific approvals (Class of Action, Section 4(f), and CE),

conducting quality assurance and quality control (QA/QC) and program review activities, conducting the reporting tasks required by the CE Assignment Program MOU, and communicating with FHWA Alaska Division and Headquarters staff on CE Assignment Program matters. The NEPA Program Managers work with the regions' staff to ensure the environmental documentation for projects are complete, accurate, and comply with the terms of the CE Assignment Program MOU. The NEPA Program Managers' roles in the CE Assignment Program are discussed further in the *Approach to Environmental Document Preparation* and the *Quality Assurance and Quality Control Procedures* subsections.

Under the CE Assignment Program, the SEO currently performs quality assurance reviews and internal audits of assigned actions (see QA/QC section below). The SEO develops environmental compliance quality assurance standards and defines quality control requirements for environmental document approval.

For projects not assigned to the State of Alaska under the CE Assignment Program, the FHWA retains the authority for most project-specific approvals. The Regional Environmental Manager (REM) may approve CEs not assigned to the State that meet the conditions of a FHWA Programmatic Categorical Exclusion Agreement, but the FHWA retains the approval authority for classes of action, non-programmatic CEs, EAs, and EISs. The regions transmit preliminary EAs and preliminary draft EISs (DEISs) to the Statewide Environmental Program Manager as part of the intradepartmental review process.

The Cultural Resources Program staff manage and implement program-level activities for compliance with the National Historic Preservation Act (NHPA) and the Alaska Historic Preservation Act (AHPA). The SEO's cultural resource management staff meet the Secretary of Interior's standards as professionally qualified individuals (PQI). These staff members manage the implementation, reporting, interagency coordination, and QA/QC for Section 106 of the NHPA and similar AHPA provisions. They provide guidance and technical assistance to regional PQIs and environmental staff on all Section 106 and AHPA matters. SEO's cultural resource management staff review all Section 106 agreement documents and provide project-level assistance as needed.

The Stormwater Program staff manage and implement program-level activities for compliance with Section 402 of the Clean Water Act, specifically the Construction General Permit (CGP). The SEO stormwater program staff provides project-specific reviews of stormwater inspection reports, organizes and delivers training to regions, and develops guidance and procedures for stormwater compliance matters.

Regional Organization

The DOT&PF has three regional offices throughout the state: Northern, Central, and Southcoast. Regional boundaries are shown in Figure 3. The regional offices develop and construct projects, and maintain and operate the state-operated transportation network within their respective regional boundaries. Regional environmental staff are organized within the Preliminary Design and Environmental Sections in each respective region (Figure 4).

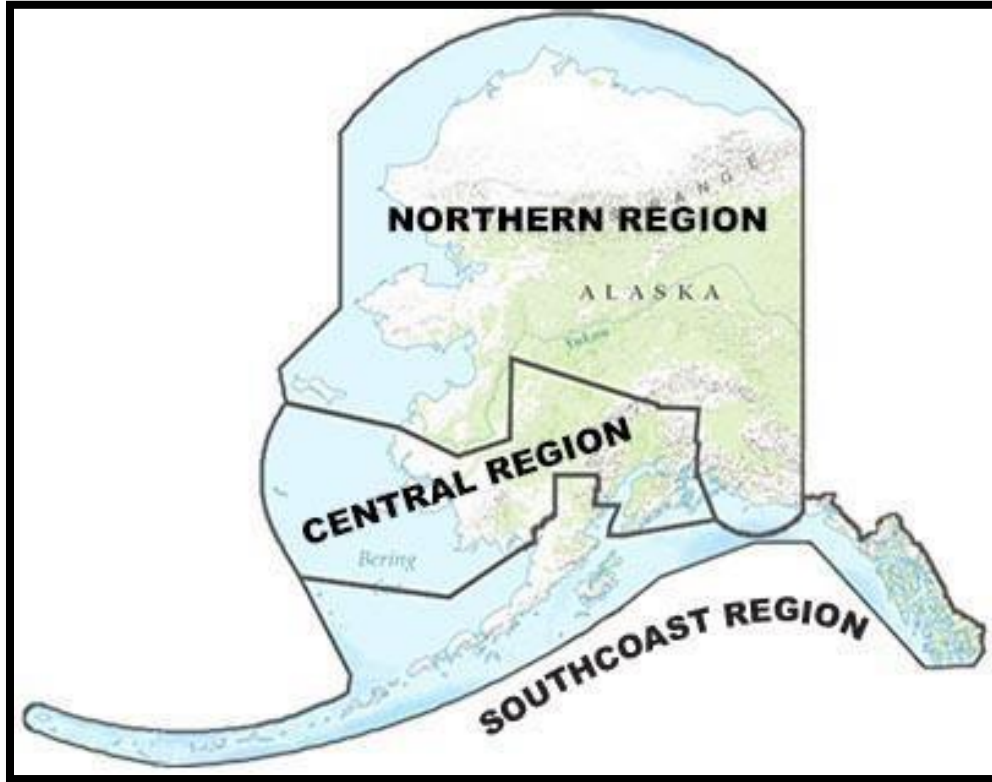


Figure 3. DOT&PF Regional Boundaries Map

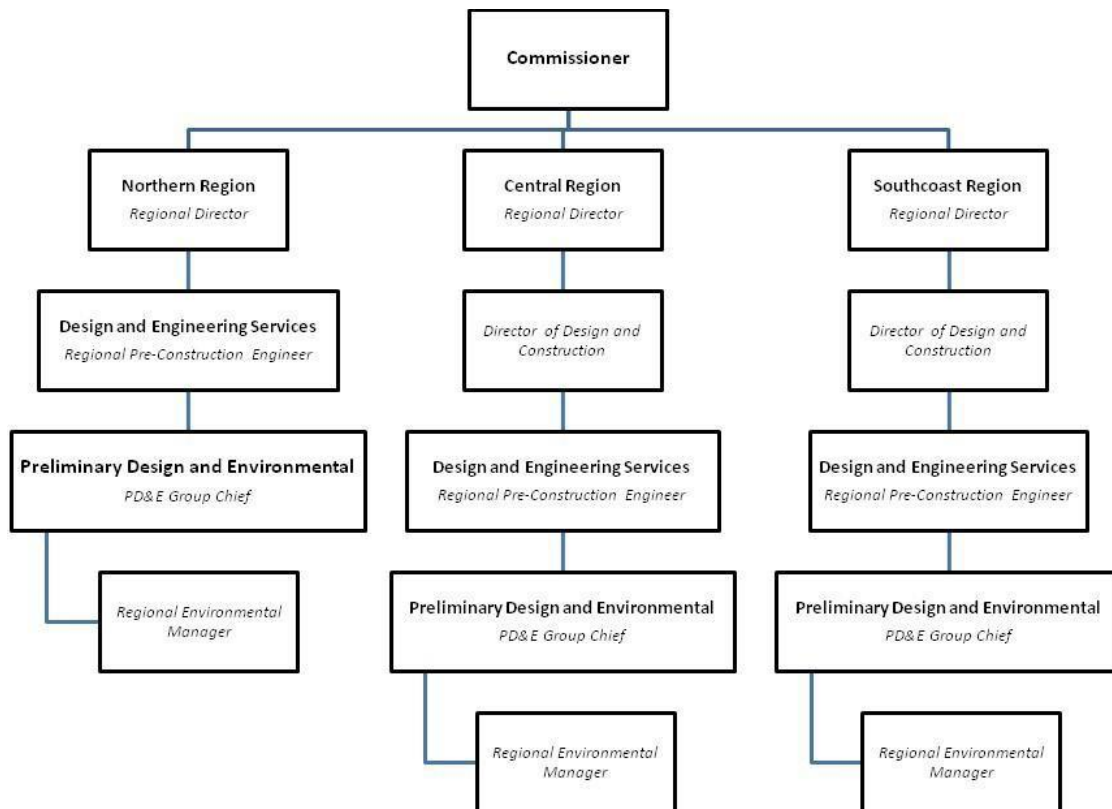


Figure 4. DOT&PF Regional Organization simplified to show only the direct reporting structure from the Regional Environmental Manager to the Commissioner.

Each region has a REM who is the environmental lead responsible for reviewing and preparing environmental studies, completing environmental documents, approving programmatic CEs, implementing agency and public involvement, ensuring environmental commitment compliance, as well as other activities related to NEPA compliance. In addition, the regions have a staff of Environmental Impact Analysts (Analysts) responsible for NEPA compliance, environmental document development, environmental studies, and permitting. Each region also has at least one position serving as the PQI responsible for Section 106 of the NHPA and AHPA compliance.

The REM and the regional environmental staff often have a variety of responsibilities including conducting and reviewing technical studies such as noise analyses, cultural resource studies, habitat assessments, and wetland delineations. For each project, regional environmental staff work with regional design engineers throughout the project design and development processes. This close coordination supports consideration of environmental resources, avoidance and minimization of environmental impacts, and environmental compliance. Regions also use consultant contracts, either as part of design contracts on individual projects to prepare environmental documents or to provide specific technical resource studies, such as archeological surveys, wetland delineations, air quality studies, and traffic noise studies.

Regions also collaborate with Metropolitan Planning Organizations (MPOs), local governments, and other political subdivisions to identify, develop, and design transportation projects. The primary point of contact for local government projects is the local DOT&PF Regional Office. MPOs may occasionally perform environmental analyses for projects sponsored by the MPO; however, regional environmental staff review all work produced by MPO staff, prepare the environmental document and DOT&PF makes all environmental approvals. The MPO-produced environmental documents must conform to the DOT&PF Environmental Procedures Manual; this will continue under the NEPA Assignment Program.

Each DOT&PF region has a planning and programming section that studies and plans for the needs of the region's highway system. Local governments work with DOT&PF regional staff to identify and prioritize funding for projects. The regional environmental or design staff may coordinate with the regional planning staff regarding fiscal constraint, design concept and scope.

Approach to Environmental Document Preparation

Actions that meet the provisions of the CE Assignment Program MOU are assignable to the DOT&PF. The FHWA currently retains CE approval authority for projects not meeting the conditions of the CE Assignment Program MOU as well as authority for EAs and EISs. Other responsibilities reserved by FHWA under the CE Assignment Program MOU include all government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m) and review and approval of Individual Section 4(f) Evaluations. The CE Assignment Program MOU can be accessed online at: <http://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>

Paragraph Update: While historically accurate, current approval authorities under NEPA assignment are described in §773.109 (a)(3)(ii)

Procedures for processing projects under the CE Assignment Program are described in the Alaska 6004 Program Environmental Procedures Manual. Projects that do not fall under the provisions of the CE Assignment Program are processed as described in the Alaska FHWA Program Environmental Procedures Manual. Both Manuals and associated forms can be found online at: <http://dot.alaska.gov/stwddes/desenviron/resources/enviromanual.shtml>

Paragraph Update: While historically accurate, current procedures for processing environmental documentation are described in the Environmental Procedures Manual (June 2020) which can be found at the above website location.

Categorical Exclusion Documentation Preparation in the CE Assignment Program

Under the CE Assignment Program, the environmental documentation process begins with an assignment determination and class of action consultation. Since the assignment determination is directly related to the class of action, these activities occur concurrently. Assignability is determined in accordance with the CE Assignment Program MOU and proposed actions are reviewed for possible inclusion in the classes of action listed as "c" or "d" activities in accordance with 23 CFR 771.117. The NEPA Program Managers make the assignment determination and the class of action determination for all assigned projects. The class of action and assignability process is described in more detail in the

Alaska 6004 Program Environmental Procedures Manual, Chapter 2.

The appropriate documentation and approval of a project under the CE Assignment Program is determined based upon the type of action and the impact of the project. The DOT&PF Chief Engineer issued a Programmatic Approval transmittal delegating three categories of projects that may qualify for the REM's issuance of a CE; each type of project conforms to the

771.117. Projects that qualify as an assigned CE but do not meet the specifications of the Chief Engineer's transmittal are approved by a NEPA Program Manager. The CE documentation and approval process is described in more detail in the Alaska 6004 Program Environmental Procedures Manual, Chapter 3.

Documentation for Projects Not Assigned under the CE Assignment Program

FHWA retains approval authority and NEPA compliance responsibilities for CEs that do not meet the terms of the CE Assignment Program MOU, all EAs, and all EISs. The environmental documentation process for non-assigned projects begins with class of action consultation and with FHWA Environmental Program Manager and Area Engineers making the class of action determination as described in Chapter 2 of the Alaska FHWA Program Environmental Procedures Manual.

Non-assigned CEs are developed and approved as described in Chapter 3 of the Alaska FHWA Program Environmental Procedures Manual. For non-assigned CEs, the DOT&PF and FHWA have four separate programmatic CE agreements that allow the REMs to approve certain CEs on behalf of FHWA. Those projects eligible for CE that do not meet the terms and conditions of one of the four agreements must be approved by the FHWA Area Engineer.

In general, EAs and EISs, including required Federal Register notices, are prepared in the regions by the Analysts or consultants and are reviewed by the REMs. FHWA Alaska Division Office staff review these documents at key milestones for approval, including approving the release of the EA and DEIS for public/agency review and approval of the Revised EA and Finding of No Significant Impact (FONSI) and Final EIS (FEIS) and Record of Decision (ROD).

The requirements for processing EAs and EISs are described in the Alaska **FHWA Program** Environmental Procedures Manual, available on the DOT&PF website:

<http://dot.alaska.gov/stwddes/desenviron/resources/enviromanual.shtml>.

Paragraph update: Alaska FHWA Program Environmental Procedures Manual is now the Alaska Environmental Procedures Manual at the same website location.

Quality Assurance and Quality Control Procedures

DOT&PF ensures both quality assurance (QA) and quality control (QC) processes are built into the environmental analysis and approval process. QA is devoted to preventing problems, whereas QC is devoted to identifying and correcting problems.

CE Assignment Program

Each CE is prepared by an Analyst or with a consultant and must be reviewed by the Project Manager

and the REM. Thus, when the REM is approving a CE at least two reviews occur prior to approval. Where the CE cannot be approved by the REM, a third review is conducted by the NEPA Program Manager prior to approval.

Additionally, the SEO tracks and reviews assigned CEs per Stipulation IV(E) of the CE Assignment Program MOU, which requires the state to carry out regular quality control activities through the SEO and take corrective action as needed. In compliance with this stipulation, the SEO conducts a variety of QA/QC activities. SEO reviews individual project CE documents for certain assigned CEs and provides a summary of the QA/QC data to FHWA as part of the DOT&PF's 6004 Program 15- and 30- month reports required per Stipulation IV(F). Currently, the QA/QC data for assigned CE determinations approved by the regions under a programmatic agreement is provided to the REMs on a quarterly basis.

In addition to reviewing individual project documents, the SEO also conducts an internal process review (audit) of assigned projects per Stipulation IV(E)(2), which requires the state to "monitor its process relating to project determination, environmental analysis, and project file documentation." The audit process has evolved, and become more focused, as the SEO has become more effective in implementing its program oversight responsibilities.

FHWA-led compliance reviews required per 23 USC 326 and MOU Stipulation IV(F)(5) are also undertaken to evaluate the state's performance in carrying out the procedures established for the CE Assignment Program and to evaluate the effectiveness of those procedures in achieving compliance. Since 2009, FHWA has conducted four compliance reviews. As shown in FHWA's compliance review reports and DOT&PF's corrective action plans, the DOT&PF has resolved all of FHWA's findings from the four compliance reviews conducted. This demonstrates that the DOT&PF is administering a quality CE Assignment Program in compliance with the requirements of NEPA, 23 USC 326, and the CE Assignment Program MOU.

All of the FHWA's compliance review reports, the DOT&PF's corrective action plans, and the DOT&PF's Program Reports can be found on the DOT&PF's website:

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

Non-Assigned CEs

The FHWA reviews the DOT&PF regions' environmental documentation and makes CE determinations for non-assigned projects. The SEO may provide a review of these projects when requested by the region. In general, non-assigned CEs undergo the same reviews as assigned CEs prior to approval, except FHWA Alaska Division Office staff provide review, oversight, and certain approval functions for these CEs.

Legal Review

In addition to the technical review described above, a legal review is completed by the DOL when requested by DOT&PF. Legal reviews are always requested for EISs, regularly requested for EAs, and may be requested for any other issue or associated documents. The primary goal of this review is to assess the document or issue for compliance with legal requirements. The DOT&PF receives legal review of all DEISs, FEISs, and most EAs, prior to recommending those documents for approval for public notice. The

DOT&PF often receives an additional review of these same documents after incorporating modifications through the public comment process. The DOL legal reviews are in addition to FHWA's legal sufficiency review, when required. Additional DOL review may occur as requested by DOT&PF. DOL may obtain assistance from outside counsel as deemed necessary.

Environmental Commitments

Environmental commitments are developed during the pre-construction phases. They are conveyed to staff and contractors through the environmental and construction contract documents, and reviewed in detail at the contractor pre-construction meeting. The public, as well as state and federal agencies, are informed of the commitments through agency consultations, public meetings, DOT&PF project webpages (if applicable), permitting processes (as required), and the environmental document.

Tools and Guidance

Through programmatic agreements, the DOT&PF has been entrusted with the authority to act on behalf of FHWA for certain non-assigned CEs. In addition, the CE Assignment Program MOU allows DOT&PF to assume the FHWA's responsibilities and act as the federal agency for certain environmental review, consultation and other related actions required under federal laws and Executive Orders applicable to CE projects, such as Endangered Species Act Section 7 consultations and all NHPA Section 106 consultations.

To implement NEPA effectively, the DOT&PF has developed a broad assortment of policy and guidance materials that guide environmental document development and provide specific requirements for individual technical subject areas. These tools and guidance, and SEO project and program-level reviews, ensure that environmental documents and technical reports meet quality standards and are consistent with federal and state requirements. Guidance documents, policies, procedures and other related items are available on the DOT&PF SEO website at: <http://dot.alaska.gov/stwddes/desenviron/index.shtml>

The website contains environmental procedures, methodologies, documentation standards, review standards, handbooks, and guidance covering technical aspects of each resource category including but not limited to air quality, environmental justice, indirect and cumulative impacts, public involvement, Sections 4(f) and 6(f), hazardous materials, archeology, ecological resources, community impacts, historical studies, and traffic noise.

The state regulations for public involvement mirror federal regulations (17 AAC 12). The DOT&PF implements its public involvement program based on 23 CFR 771.111 and 23 USC 139(g), state regulations, and as described in the Alaska Highway Preconstruction Manual, Chapter 5 (<http://www.dot.state.ak.us/stwddes/dcsprecon/preconmanual.shtml>). The program encourages opportunities for public input and provides guidance for interagency coordination and public participation throughout the various stages of project development.

Additional Guidance

In addition to DOT&PF guidance, the DOT&PF and its consultants use the wealth of FHWA NEPA guidance in developing environmental documents and studies. FHWA provides an online set of guidance (<http://www.fhwa.dot.gov/environment/> and <http://environment.fhwa.dot.gov/guidebook/index.asp>) covering a comprehensive listing of environmental topics. Each topic is covered in depth with direction

and methodologies for performance of studies and assessments ranging from community impact assessments to air quality analyses. FHWA's Environmental Review Toolkit (<http://environment.fhwa.dot.gov/index.asp>) includes comprehensive guidance on a wide variety of topics such as historic preservation, environmental justice, water quality, wetlands, wildlife, Section 4(f), noise and air quality to name a few.

DOT&PF's Training Program

The SEO has developed an Environmental Training Program Plan that details the DOT&PF's approach to training environmental staff. This plan is on SEO's website at: <http://dot.alaska.gov/stwddes/desenviron/resources/training.shtml>

The DOT&PF regional offices and the SEO both offer regular internal training opportunities. Internal training often occurs in regular meetings and internal conferences/summits. These events provide DOT&PF environmental staff the opportunity to interact and learn from each other. The SEO holds monthly teleconferences with the REMs and their staff to discuss policies, procedures, and regulation changes. The REMs also hold monthly environmental staff meetings to discuss updates to policies, procedures and regulations. In addition, the SEO staff attend design status meetings in order to provide time to discuss project specific or overall process questions and concerns in-person. The SEO hosts environmental summits attended by DOT&PF environmental staff from all regions, the SEO staff, FHWA Alaska Division, and invited state and federal resource agencies. The SEO also delivers webinars, which are recorded and posted onto the website for future training opportunities. The SEO offers online training for wetland permitting and stormwater compliance through the Environmental Compliance Assessment, Training, and Tracking System (ECATTs).

The SEO works with the Department's Research, Development and Technology Transfer (RD&T2) personnel to identify and provide appropriate classroom and online delivered training to environmental staff. The DOT&PF aims to request certain core National Highway Institute (NHI) and other trainings on a regular basis. These core trainings typically cover basic NEPA concepts, and Section 106 and Section 4(f) compliance. Other training is provided as need arises and funding allows. DOT&PF has offered classroom, video-conference, and web-based trainings that have covered topics such as air quality, noise impacts, environmental justice, public involvement, Section 106, and wetland delineation. In addition to providing classroom training, the DOT&PF encourages environmental staff to take advantage of trainings provided by other agencies and organizations, including online training opportunities, conferences and workshops.

The SEO provides details regarding any training offered to or attended by the DOT&PF's environmental staff in the 6004 Program 15- and 30- month reports to FHWA, accessible online at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>

Programmatic Agreements

Permit Process Accord (1992)

The DOT&PF, the FHWA, and the U.S. Army Corps of Engineers (USACE) currently follow a streamlined NEPA and permit review process outlined in the 1992 Permit Process Accord. The DOT&PF intends on entering into a similar agreement with USACE following the execution of the NEPA Assignment Program

MOU.

Section 106 Programmatic Agreement

Under an October 2014 Section 106 Programmatic Agreement (106 PA) with the Alaska State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), and FHWA, the DOT&PF is currently entrusted with responsibility for consultation with the SHPO on Section 106 issues. The 106 PA provides for internal approval by the DOT&PF regional PQI of projects not involving adverse effects to eligible resources under Section 106. For projects involving adverse effects to eligible resources, the DOT&PF SEO PQI participates in reviews of findings of adverse effects and consultations with the SHPO and other consulting parties to resolve adverse effect through the development of Memoranda of Agreement. The 106 PA also provides for streamlined project review for certain types of projects. The DOT&PF plans to update the 106 PA within six months of signing the NEPA Assignment Program MOU.

The 106 PA provides for FHWA and ACHP participation at the request of the public, consulting parties as defined in 36 CFR 800.2, and at the request of FHWA or the ACHP. DOT&PF is currently entrusted with responsibility for Section 106 consultation with Tribal Governments under the Section 106 PA. If, at any time, a Tribe requests government-to-government consultation, then FHWA will honor that request. The PA has been in effect since October 2014, and is available online

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

Section Update: No changes to this section, which details what was in place at the time of the initial application submission. Changes to be made for Assumption of Responsibilities are found at Section §773.109 (a)(3)(ii) of this application.

§773.109 (a)(3)(ii): Changes to be made for assumption of responsibilities

This section describes how the DOT&PF's existing environmental compliance program will be modified to implement its new NEPA Assignment Program responsibilities. In general, the DOT&PF will use a similar organizational structure and personnel duty descriptions to implement NEPA Assignment Program as currently exist under the CE Assignment Program, as described in §773.109 (a)(3)(i): *Existing organization and procedures*. The primary change that will occur with the NEPA Assignment Program is the DOT&PF's assumption of the FHWA's role as environmental decision-maker on EISs, EAs, and the CEs that are currently not assignable under the CE Assignment Program. The DOT&PF will use procedures manuals, guidance and policies to implement the NEPA Assignment Program. **The DOT&PF anticipates that the Alaska NEPA Assignment Program Environmental Procedures Manual will be completed within three months of the execution of the NEPA Assignment Program MOU and, at that time, the Alaska FHWA Program Environmental Procedures Manual will be rescinded.**

Paragraph Update: DOT&PF Alaska Environmental Procedures Manual (EPM) was implemented prior to assumption of responsibilities under the NEPA assignment Program and was last updated in June 2020. The EPM is available at:

<https://dot.alaska.gov/stwddes/desenviron/resources/enviromanual.shtml>

In addition to those described in this application, changes are expected to occur as staff gain experience in using the new procedures and identify the need for clarification, adjustment, or additional procedures. The DOT&PF's self-assessments and FHWA audit reports will provide further opportunities for standards and procedural improvements. The program will rely on the professional judgment of the

DOT&PF's environmental staff in determining the necessary environmental analyses for specific projects, supported by the established standards for environmental documents and technical studies, and NEPA Assignment Program QA/QC activities. The DOT&PF environmental staff, combined with consultant resources, will provide the expertise for assignment of the FHWA's environmental responsibilities to the DOT&PF.

Organization and Procedures under the NEPA Assignment Program

Under the NEPA Assignment Program, the DOT&PF's overall organizational structure will not change from the current CE Assignment Program organizational structure. The DOT&PF Statewide Environmental Program Manager will oversee implementation of the NEPA Assignment Program, and will be responsible for day-to-day management of the program. The Statewide Environmental Program Manager will serve as liaison to the FHWA for matters concerning the NEPA Assignment Program, including FHWA audits and any MOU-required reporting.

The DOT&PF will establish new positions within the SEO to implement the NEPA Assignment Program. These positions will be supervised by the Statewide Environmental Program Manager as members of the SEO. The DOL will employ a full time attorney who will provide legal expertise related to NEPA compliance, environmental law and regulatory compliance. Other DOL attorneys or outside counsel may also be used. DOL duties will include assisting the DOT&PF in litigation, performing legal sufficiency reviews of FEISs and Final Individual Section 4(f) Evaluations, overseeing any outside counsel's work, and providing legal review of memoranda of understanding, programmatic agreements, and administrative records.

Paragraph Update: Changes proposed as part of NEPA Assignment have been implemented. Figure 2 has been updated. Two additional NEPA Managers positions and a supervisory position has been added to supervise the current four NEPA Managers.

The anticipated staffing and resource changes are based in part on past project workloads and the anticipated increased workload. Based on Class of Action/Assignability determination data, the DOT&PF has assumed responsibility for 95 percent of the Federal-aid Highway Program projects in Alaska under the CE Assignment Program over the last five years (Figure 5). The recent increase in the percentage of assigned projects has been the result of changes in the CE regulations in 23 CFR 771.117 as well as changes in the terms of the CE Assignment Program MOU, which has broadened the range of project types that can be assigned to the State. While DOT&PF has not maintained as detailed environmental processing data on non-assigned projects, the majority of non-assigned projects are CEs. Over the last five years, there have been five EA/FONSIs and no EIS/RODs approved by FHWA for Federal-aid Highway Program projects in Alaska.

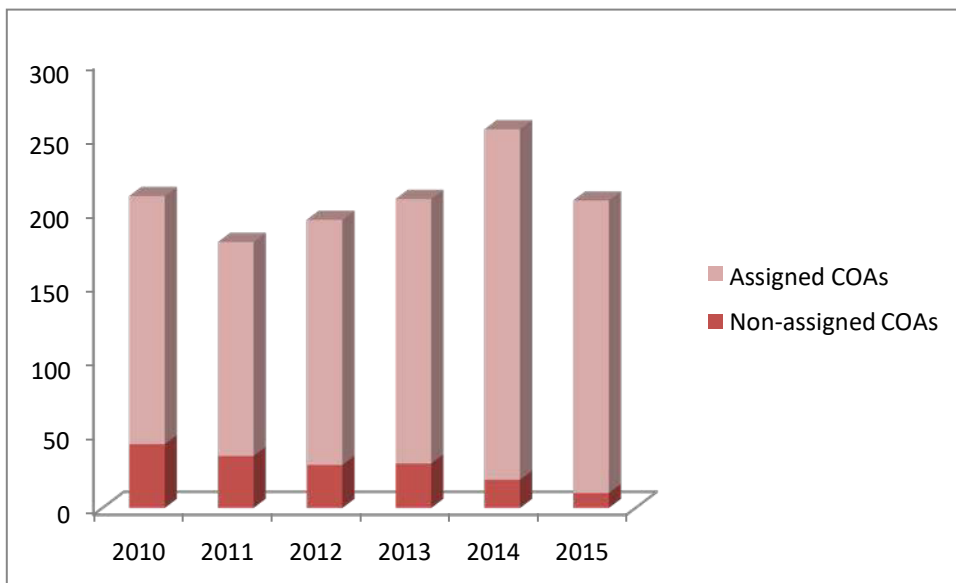


Figure 5. Number of assigned and non-assigned COA determinations processed by the SEO each year between 2010 and 2015.

With the NEPA Assignment Program, DOT&PF anticipates that the regions will maintain their current role and level of involvement in projects, and that any increase in workload will be taken on by the SEO. The regions will retain the responsibility for preparing all NEPA documentation, overseeing consultant environmental analyses and approving the majority of CEs. However, the SEO will have an increase in project workload, becoming responsible for overseeing the development and approval of EAs and EISs, as well as an increase in administrative responsibilities (e.g., QA/QC and reporting) under the NEPA Assignment Program.

To implement the NEPA Assignment Program, the DOT&PF is actively updating its environmental procedures to support appropriate environmental analyses, decision-making, and approvals. The DOT&PF will use the existing CE Assignment Program procedures as the basis for developing procedures for the NEPA Assignment Program. New procedures will be developed and implemented for EISs and EAs prior to the implementation date of the NEPA Assignment Program.

Paragraph Update: DOT&PF Alaska Environmental Procedures Manual (EPM) was implemented prior to assumption of responsibilities under the NEPA assignment Program and was last updated in May 2020. The EPM is available at:

<https://dot.alaska.gov/stwddes/desenviron/resources/enviromanual.shtml>

The NEPA Program Managers will continue to make the class of action determinations for assigned projects based on information provided by the regional environmental staff. This will include determining whether a project requires an EA or EIS.

Under the CE Assignment Program, the REMs have been delegated authority by the DOT&PF Chief Engineer to make project-level CE determinations for those certain projects which meet the criteria of the delegation. The REMs have been approving 90 percent of the assigned CEs. The authority for REM

approval for certain CE determinations is also expected to be delegated by the DOT&PF Chief Engineer under the NEPA Assignment Program. All CE determination decisions that are not delegated will be made by a NEPA Program Manager in the SEO. In addition, the regions will retain the responsibility for preparing all NEPA documentation. Under the NEPA Assignment Program, Environmental Analysts in the regions will conduct analyses and create CEs, EAs, and EISs; they may also oversee consultants that create these documents. The REM will review all NEPA documents prior to approval.

Paragraph Update: REM were delegated approval authority for certain Categorical Exclusions by Chief Engineer's directive (November 2017)

The process for environmental compliance for EA and EIS documents under the NEPA Assignment Program will be similar to the process that currently exists, with SEO staff replacing FHWA staff in managing the development of documents and in the review and approval role. An EA or EIS (Draft and Final) would be prepared and reviewed at the regional office level, and then submitted to the SEO for review. The document will go through a detailed review by both the regional design and environmental staff and SEO to ensure that the environmental document is:

- compliant with NEPA, as well as federal and state environmental statutes, regulations, Executive Orders, Administrative Orders, and policies; and
- consistent with the project design concept and scope as described in the local or statewide plan, and supporting technical studies.

At the discretion of the Statewide Environmental Program Manager, DEISs and EAs may receive legal review. The Statewide Environmental Program Manager will send all Final EISs to the DOL for legal sufficiency review after the regional environmental staff and SEO staff have completed their reviews. Once legal review has been completed, any required issues have been addressed, and necessary participating agency coordination has occurred, after any required determination of legal sufficiency, and after the conclusion of participating agency coordination, the Statewide Environmental Program Manager may approve the environmental document.

Paragraph Updates: DOT&PF EPM requires all EAs and DEISs to undergo a legal review.

Regional environmental staff and SEO staff will have access to the DOL to ask questions about state or federal environmental requirements or to review drafts of environmental documents. The Statewide Environmental Program Manager will likewise have access to the DOL and may seek advice on any topic or document encountered in the implementation of the program.

The Statewide Environmental Program Manager will approve EAs, FONSI, DEISs, FEISs, and RODs. The DOT&PF Statewide Environmental Program Manager may delegate signature authority for EAs and FONSI to the NEPA Program Managers. Signatory authority for DEISs, FEISs, and RODs will not be delegated.

Expanded Quality Assurance/Quality Control Procedures

The existing CE Assignment Program QA/QC procedures outlined in the CE Assignment MOU Monitoring Plan

http://www.dot.state.ak.us/stwddes/desenviron/assets/pdf/resources/6004_monitoring_plan_013111

.pdf) will be modified to accommodate reviews of CEs, EAs, and EISs under the NEPA Assignment Program. QA is achieved through implementing procedures and guidance established in the Environmental Procedures Manuals to meet quality requirements. QC is implemented to identify whether quality requirements were met and to determine the measures necessary to address any deficiencies. The SEO will continue both project and program-level reviews to ensure the success of the NEPA Assignment Program. Within three months of the execution of the NEPA Assignment MOU, DOT&PF will update, modify, and expand its QA/QC procedures as necessary for the successful implementation of the program.

Paragraph Update: While historically accurate, current Quality Assurance and Quality control procedures are described in detail at:

<https://dot.alaska.gov/stwddes/desenviron/resources/docprep.shtml>

Paragraph Update: While historically accurate, changes proposed as part of NEPA Assignment have been implemented.

The DOT&PF will conduct regular self-assessments to determine the effectiveness of its guidance and procedures under the NEPA Assignment Program as well as DOT&PF staff's adherence to the provisions of the NEPA Assignment Program MOU. In addition to problem identification, self-assessments will be used to assess whether specific problems are systemic, confined to specific areas of the state, or to specific individuals. The DOT&PF will use self-assessments to:

- identify areas that are working well, as well as areas that need improvement;
- make specific recommendations to improve adherence to standards and procedures;
- evaluate areas of concern previously identified in FHWA audits
- assess the need for corrective action;
- evaluate improvements from previous corrective actions; and
- evaluate previous program areas where corrective actions have been implemented.

It is anticipated that each self-assessment will be focused on select NEPA Assignment Program components. Selection of the components will be based on input from the following groups: DOT&PF management, SEO staff, REMs, and DOT&PF project managers.

Independent Environmental Decision-Making

The DOT&PF's organization supports environmental decision-making independent of administrative, political, or performance-based pressure. Approval for all environmental documents prepared under the NEPA Assignment Program will be independent from project design decisions; however, the staff that develop the environmental document will collaborate with project managers throughout the project development process to avoid and minimize impacts to environmental resources of concern.

The region environmental staff and the SEO report to the DOT&PF Commissioner through different chains of command (see organizational charts in Figures 1, 2 and 4). The regional environmental staff ultimately report to a respective Regional Director, while the SEO ultimately reports to a Deputy Commissioner. Project design decisions are the responsibility of the regions under the authority of the Regional Director. NEPA documents will be produced by the regions, with SEO staff providing QA throughout the environmental document development process and retaining approval authority for certain CEs, EAs, and EISs. SEO staff will continue to perform regular QC activities on CEs that are

approved by the REMs, including project compliance reviews. Under the NEPA Assignment Program, all EA/FONSI and EIS/ROD decisions will be made by a SEO staff; the preparation of these documents will be managed by regional office staff. This organizational structure allows for the environmental document to be approved in a separate reporting chain from the staff that developed the environmental document.

Independent legal advice and legal sufficiency reviews will be provided by the DOL. The DOT&PF's legal counsel is located in a separate department and under a wholly separate chain of command, which allows for independent advice and legal sufficiency reviews.

Consultation, Coordination, and Conflict Resolution with Resource Agencies

Coordination with resource agencies plays a vital role in project planning and environmental development of proposed projects. Under the CE Assignment Program, the DOT&PF has assumed the FHWA's responsibilities for resource agency consultation for most CE projects. This includes federal and state agencies such as U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, State Historic Preservation Office, Alaska Department of Fish and Game, to name a few. The DOT&PF's responsibilities will expand under the NEPA Assignment Program to include agency consultation for all classes of projects. The DOT&PF's authorities will also include formal consultation with applicable federal agencies for actions subject to the Alaska National Interest Lands Conservation Act (ANILCA) requiring a Title XI application, subsistence consultation under ANILCA Section 810, and, if appropriate, lead agency responsibility for EIS preparation.

The DOT&PF maintains a multi-disciplinary staff that works effectively and proactively with state and federal environmental resource and regulatory agencies. The DOT&PF is committed to continue its positive and collaborative work with federal and state resource agency partners. Regional environmental staff members typically work as the primary point-of-contact for project specific agency consultation. SEO staff may be involved with certain interagency consultations regarding particularly sensitive resources or matters that may have statewide precedential value. The following sections describe some of the common consultation and coordination processes.

Endangered Species Act/Marine Mammal Protection Act/Magnuson-Stevens Act

The DOT&PF regional environmental staff perform informal consultations with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and Magnuson-Stevens Fishery Conservation and Management Act as appropriate.

Currently under the CE Assignment Program MOU, the DOT&PF environmental staff or consultants supervised by the DOT&PF prepare Section 7 ESA Biological Assessments and Essential Fish Habitat Assessments. Consultants do not lead consultations and may only contact agency staff as part of their support role at the discretion of DOT&PF. Formal consultation correspondence and documentation prepared under the CE Assignment Program is reviewed by the SEO prior to submittal to the agency by regional environmental staff. Under the NEPA Assignment Program, the DOT&PF will continue this approach.

Under the NEPA Assignment Program, the DOT&PF will continue to work collaboratively with the USFWS and NMFS to develop conservation strategies to ensure that projects will not jeopardize the continued

existence of any listed species or result in the destruction or adverse modification of critical habitat. The DOT&PF will continue to work with NMFS to ensure projects minimize impacts to essential fish habitat. The DOT&PF will consult with the USFWS on projects which require review under the Fish and Wildlife Coordination Act (FWCA).

Section 106 of the National Historic Preservation Act

Under the September 2014 Section 106 PA with the SHPO, ACHP, and FHWA, the DOT&PF is currently entrusted with satisfying the requirements of Section 106 for all FHWA Federal-aid Highway Program projects in Alaska. Under the NEPA Assignment Program, the DOT&PF will continue to ensure compliance with Section 106 and will continue to coordinate with the SHPO and ACHP regarding cultural resource issues. The DOT&PF will also continue to coordinate with Tribes during the Section 106 process by sending consultation letters to Tribes that may be affected by a project or have an interest in a project. This would be considered informal coordination, not government-to-government consultation.

The FHWA cannot assign its government-to-government tribal consultation responsibilities to the DOT&PF under the NEPA Assignment Program. Any time a Tribe requests FHWA government-to-government consultation, that request will be honored and DOT&PF will request that FHWA actively participate in consultations. In the past, requests for government-to-government consultations have been rare occurrences. It is FHWA's responsibility to carry out formal government-to-government consultations with federally recognized Tribes to the greatest extent permitted by law when they may be impacted by potential Federal-aid Highway Program projects.

The Section 106 PA outlines formal procedures for conflict resolution, including elevation procedures within each agency and procedures for elevating an issue for consultation with ACHP. The Section 106 PA also outlines formal procedures for emergency situations and discoveries made during construction.

The DOT&PF anticipates updating the Section 106 PA within six months following the execution of the NEPA Assignment Program MOU. When the Section 106 PA is updated it will reflect the change in DOT&PF's and FHWA's roles under the NEPA Assignment Program. Once it has been updated, it will be made available on SEO's website. The current Section 106 PA is available online at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/historicproperties.shtml>

Paragraph Update: The Section 106 PA has been updated (November 2017) to reflect the change in DOT&PF's and FHWA's roles under the NEPA Assignment Program. The Section 106 PA is available online at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/historicproperties.shtml>

Section 404 of the Clean Water Act / Rivers and Harbors Act Permitting

A streamlined NEPA and permit review process followed cooperatively by the DOT&PF, the FHWA, and the USACE is outlined in the 1992 Permit Process Accord. The DOT&PF intends on entering into a similar agreement with USACE following the execution of the NEPA Assignment Program MOU.

The Statewide Environmental Program Manager position is identified as DOT&PF's "Environmental Compliance Coordinator", which is the primary point of contact with the USACE concerning Section 404 permitting. The REMs manage permit submittals when Section 10 and Section 404 permits are required. Projects requiring an individual Section 404 permit are required to comply with the Section

404(b)(1) guidelines (40 CFR 230). DOT&PF will continue to follow Section 404(b)(1) guidelines for analyzing project alternatives and determining the least environmentally damaging practicable alternative while working with USACE and USEPA to obtain individual permits. Under the NEPA Assignment Program, DOT&PF will assume FHWA's responsibility as the lead federal agency to coordinate with USACE and USEPA and will continue to perform these coordination and permitting functions.

The DOT&PF intends to comply with the terms of the January 14, 2014 MOU between the U.S. Department of Transportation (USDOT) and the US Coast Guard (USCG) on the coordination with the USCG for projects needing bridge permits. The DOT&PF has also reviewed the 2014 MOA between FHWA and the USCG and understands that by accepting FHWA's NEPA responsibilities it also agrees to perform FHWA's obligations set forth in the MOA between FHWA and the USCG.

Air Quality Conformity

State Transportation Improvement Program (STIP) projects proposed for construction within air quality nonattainment and maintenance areas will continue to undergo regional and project-level analyses to make sure they conform with the Clean Air Act and Amendments, federal regulations, and state regulations. Although the DOT&PF will review and approve each project specific air quality analysis, FHWA would retain responsibility for project level transportation air quality conformity determinations on NEPA Assignment Program projects. If a PM_{2.5} hotspot analysis is required, DOT&PF initiates interagency consultation with USEPA, Alaska Department of Environmental Conservation (DEC), and FHWA regarding the details and requirements of the hotspot analysis and works with the agencies to conduct the required public involvement and achieve a project level conformity determination.

Section 4(f) of the USDOT Act of 1966

Currently, under the CE Assignment Program, DOT&PF is responsible for determining whether a proposed project may be approved as a *de minimis* impact or under one of FHWA's Nationwide Programmatic Section 4(f) Evaluations. Under the NEPA Assignment Program, DOT&PF will assume responsibility for all Section 4(f) approvals, including Individual Section 4(f) Evaluations. Procedures for this authority will be modeled off of existing procedures. Final Individual Section 4(f) Evaluations will be submitted to the DOL for legal sufficiency review. The Statewide Environmental Program Manager will be authorized to make final decisions on Individual Section 4(f) Evaluations, and that approval authority will not be further delegated. The DOT&PF will continue to actively coordinate with local, state, and federal agencies on Section 4(f) issues as required under 23 CFR 774.

Under the NEPA Assignment Program, DOT&PF will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under 49 USC 303/ 23 USC 138 (Section 4(f)) without first consulting with FHWA and obtaining FHWA's approval of such determination.

Project Scoping

Under the NEPA Assignment Program, the DOT&PF will assume responsibility for NEPA scoping on EIS projects. The DOT&PF will meet the NEPA scoping requirements of the Council for Environmental Quality (CEQ) NEPA regulations (40 CFR 1501.7) and of the FHWA regulations (23 CFR 771.123(b)), as well as the early consultation and coordination plan requirements (23 USC 139). To implement these requirements, the DOT&PF will incorporate procedures for scoping into the NEPA Assignment Program

Environmental Procedures Manual. DOT&PF anticipates that scoping procedures will be developed within three months following the execution of the NEPA Assignment Program MOU.

The DOT&PF will request agencies, as appropriate, to become cooperating agencies and will identify agencies to serve as participating agencies. All federal, state, tribal, regional, and local government agencies that may have an interest in the project will be invited to be participating agencies. Participating agencies and the public will be given an opportunity for input on the purpose and need for a project and the range of alternatives to be considered in the environmental review process. The DOT&PF will also collaborate with the cooperating and participating agencies during the environmental study process regarding chosen methodologies used and the level of detail required for the analysis of project alternatives.

Similarly, for all projects that will not require an EIS, DOT&PF will continue its practice of coordinating early and often with communities and the public regarding the purpose and need for proposed projects and regarding the identification of potential issues that need to be considered in the planning and development of proposed projects.

Conflict Resolution Procedures with External Agencies

The DOT&PF has a long history of proactively engaging with its resource agency partners. The DOT&PF strives for transparency in identifying project impacts, working with agencies on appropriate mitigation to offset impacts, and implementing environmental commitments. The DOT&PF seeks to understand the basis for resource agency requirements and to diligently meet those requirements. Following this forthright approach, the DOT&PF is largely successful in avoiding conflicts with external agencies. The DOT&PF expects to continue using this approach under the NEPA Assignment Program, and will assume FHWA's role in resolving conflicts with resource agencies. Should a conflict arise, the DOT&PF will be committed to transparent conflict resolution and good faith efforts to address the concerns of the other party. The DOT&PF will incorporate procedures for conflict resolution in the Alaska NEPA Assignment Environmental Procedures Manual. DOT&PF anticipates that conflict resolution procedures will be developed within three months following the execution of the NEPA Assignment Program MOU.

Paragraph Update: Procedures for conflict resolution are incorporated into the Environmental Procedures Manual, with the Statewide Environmental Program Manager assigned the responsibility to facilitate conflict resolution with the resource agencies.

The DOT&PF will assume FHWA's role in implementing the issue identification and resolution process under 23 USC 139(h). The law provides a formal process for resolving issues that may delay, or result in denial of, a required approval or permit for a project. This process may be invoked by the project sponsor or a governor and requires that the FHWA Division Administrator, heads of the lead agencies, affected participating agencies, and the project sponsor meet to resolve issues. Under the NEPA Assignment Program, the DOT&PF Commissioner or delegatee would assume the FHWA Division Administrator role. Issues identified for resolution or elevation through 23 USC 139(h) would be logistically coordinated with the Office of the Secretary of Transportation at the U.S. Department of Transportation.

Record Keeping and Retention

The record retention and disposition schedules for the SEO and regional environmental offices are

established by the DOT&PF Statewide Design & Engineering Services Division schedules (SOA Schedule No. 25-539.2; issued June 6, 2014). These schedules will be followed in DOT&PF's discharge of responsibilities under the NEPA Assignment Program. These schedules also conform with the requirements of FHWA Records Disposition Manual (Field Offices) Chapter 4, FHWA Order No. 1324.1B, issued July 29, 2013. The DOT&PF will maintain its project and administrative files pertaining to its NEPA Assignment Program responsibilities as required by the NEPA Assignment Program MOU. Draft documents will be kept until a final version is approved. Once a document is made final, all earlier versions or drafts are considered to have no administrative value and will be discarded. Attorney-client privileged communications will be kept in a separate file and, at the request of FHWA, will be transferred to FHWA's counsel for protection of all privileges in the agencies' common interest of the program.

The DOT&PF intends to create and implement an electronic NEPA document approval and storage system as the environmental file system of record for NEPA Assignment Program projects. Until such a system is deployed, the DOT&PF will continue to utilize a combination of electronic and physical files.

Paragraph Update: DOT&PF has deployed an Electronic Environmental Compliance Business Process Management system (February 2020) for document development and file system of record for NEPA Assignment Projects

§773.109 (a)(3)(iii): Legal sufficiency

The DOL provides ongoing support and assistance with DOT&PF project-related environmental issues and will continue to provide support and counsel to fulfill DOT&PF's responsibilities under the NEPA Assignment Program. DOL and FHWA attorneys have a well-developed working relationship and periodically meet to discuss environmental legal issues of concern. Legal sufficiency review by DOL will serve as the legal sufficiency for FEISs and Final Individual Section 4(f) evaluations required under the NEPA Assignment Program (23 CFR 771.125(b) and 23 CFR 774.7(d)). DOL will also conduct a legal sufficiency review of any statute of limitation notice prepared for publication in the Federal Register pursuant to 23 USC 139. DOL will retain legal staff to adequately meet the needs of DOT&PF's environmental program and to fulfill DOT&PF's obligations under the NEPA Assignment Program.

Section Update: No changes to this section

§773.109 (a)(3)(iv): Prior concurrence

For selected projects, "prior concurrence" pursuant to 23 CFR 771.125(c), will be obtained before proceeding with key approvals under NEPA. The prior concurrence decision will be made by the DOT&PF Chief Engineer, advised by DOL, and will ensure that the project and document in question are acceptable from a policy and program perspective. Prior concurrence may apply to DOT&PF approvals of

draft and final EISs; on rare occasions prior concurrence may apply to EAs and revised EAs. Projects requiring prior concurrence will be identified on a case-by-case basis by the Statewide Environmental Program Manager, based on input and recommendations from the SEO NEPA Program Managers, Regional Environmental Managers, and DOL attorneys and may include projects meeting one or more of the following criteria:

- impacts of unusual magnitude,
- high level of controversy,
- major unresolved issues,
- emerging or national policy issues,
- issues for which a Region or Headquarters seek policy assistance.

In completing the prior concurrence review, the DOT&PF Chief Engineer will personally examine the elements of the EIS at issue and seek advice and input, as appropriate, from technical subject matter experts. The DOT&PF Chief Engineer will make the prior concurrence decision before the document is approved by the Statewide Environmental Program Manager. The DOT&PF will incorporate procedures for prior concurrence as part of the Alaska NEPA Assignment Program Environmental Procedures Manual. The DOT&PF anticipates that prior concurrence procedures will be developed within three months following the execution of the NEPA Assignment Program MOU.

Paragraph Update: Prior Concurrence procedures are incorporated into the EPM Chapter 11-2

§773.109 (a)(3)(v): Project delivery methods

The DOT&PF may consider using a variety of project delivery mechanisms, provided all NEPA and permit elements are fully addressed for the project. The DOT&PF's project delivery methods for federal-aid and state-funded highway capital improvement projects including the process for deciding the project-specific delivery method are outlined in the Alaska Highway Preconstruction Manual, Chapter 4 (<http://www.dot.state.ak.us/stwddes/dcsprecon/assets/pdf/preconhwy/chapters/chapter4.pdf>). Most federal-aid projects follow the typical process shown in Figures 400-1 and 400-2 in Chapter 4 of the Alaska Highway Preconstruction Manual. Federal-aid Highway Program projects may be developed through the following alternative project delivery methods described in the Alaska Highway Preconstruction Manual: Design-Build, Construction Manager/General Contractor, and Local Agency Agreements.

- Design-Build is utilized after a screening process has determined that this method will expedite project delivery, will not pose a risk to DOT&PF or the design-builder, and where funding is available for the entire project from the outset. The Design-Build process is detailed further in the Guidebook for Design-Build Highway Project Development (http://www.dot.state.ak.us/comm/design_build.shtml).
- Construction Manager/General Contractor is an alternative project delivery method in which the contractor is hired before the project moves to the construction phase. The contractor, designer and construction staff then work as a team throughout the design, environmental, and construction phases. The DOT&PF uses this delivery method to allow the contractor to provide input on constructability; incorporate

innovations into the work and approach; transfer knowledge between the contractor, department and other key stakeholders; and also manage and minimize risk. The process allows the project team to work through issues before funding is committed and helped build strong relationships with agencies.

- Local Agency Agreements and associated procedures are utilized when a local agency commits resources to a federal-aid project. Local agency procedures are detailed further in the Draft Local Agency Procedures Manual (http://www.dot.state.ak.us/stwddes/dcslocalagency/pop_localagencyman.shtml).

In addition, the DOT&PF has project development procedures for state-funded projects and projects funded through the Denali Commission outlined in Chapter 4 of the Alaska Highway Preconstruction Manual. When a state-funded project is anticipated to become a federally-funded project at a later time, the engineering manager has the authority to require steps from the federal-aid process as appropriate to ensure federal participation, such as additional environmental analysis and alternatives development. The DOT&PF may elect to use state funds to advance to final design or to acquire Right-of-Way on projects prior to approval of a NEPA decision document. Under the NEPA Assignment Program, the SEO will be consulted by the region offices to ensure that these activities are disclosed in the project NEPA documents and to ensure that these activities will not bias the NEPA process for the project.

Environmental review and permitting are built into each of these project delivery methods and will be required to follow the Alaska NEPA Assignment Environmental Procedures Manual. Approval authority for all environmental decisions and documents will remain with the DOT&PF.

If DOT&PF decides to pursue an alternative project delivery method, DOT&PF will ensure the NEPA regulatory requirements imposed to protect the objectivity and integrity of the NEPA process outlined in 23 CFR 636, 23 CFR 771, and 40 CFR 1506 will be met. This includes ensuring that the NEPA document includes a complete analysis of each proposed alternative that is carried forward in the NEPA document.

Section Update: No changes to this section

§773.109 (a)(4)(i) & (ii): Additional staff and training required; and Changes to the organizational structure

The DOT&PF currently has approximately 42 full-time employees responsible for implementing the CE Assignment Program and ensuring environmental compliance for all DOT&PF projects. The DOT&PF will establish new positions within the SEO to implement the NEPA Assignment Program. These positions will be supervised by the Statewide Environmental Program Manager as members of the SEO. The DOL will employ a full time attorney who will provide legal expertise related to NEPA compliance, environmental law and regulatory compliance. The attorney's duties will include assisting the DOT&PF in litigation, performing legal sufficiency reviews of FEISs and Final Individual Section 4(f) Evaluations, overseeing any outside counsel's work, and providing legal review of memoranda of understanding, programmatic agreements, and administrative records. The Statewide Environmental Program

Manager will approve EAs, FONSI, DEISs, FEISs, and RODs. Signatory authority for EAs and FONSI may be delegated to the NEPA Program Managers. Signatory authority for DEISs, FEISs, and RODs will not be delegated.

DOT&PF will retain sufficient environmental staff, and will fill any vacancies as expeditiously as possible, to effectively administer the responsibilities of the NEPA Assignment Program. DOT&PF will continue to use consultants as needed.

DOT&PF is coordinating with FHWA to provide additional training in preparation for the NEPA

Assignment Program. In October and November of 2015, DOT&PF participated in “Purpose and Need”, and “Alternatives Analysis” webinars presented by the FHWA Resource Center. DOT&PF has requested FHWA make other training opportunities available prior to execution of the NEPA Assignment Program MOU, including training related to:

- complying with Section 7 of the Endangered Species Act (ESA);
- complying with the Marine Mammal Protection Act (MMPA);
- maintaining an Administrative Record;
- conducting QA/QC;
- conducting an audit;
- conducting a Legal Sufficiency review;
- re-evaluations of NEPA documents; and
- determining class of action (COA), Unusual Circumstances, and Significant Impacts.

The DOT&PF has also requested that FHWA provide the following training opportunities prior to 2018:

- Advanced NEPA including NEPA requirements under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU);
- Indirect and Cumulative Effects;
- Section 4(f); and
- Planning and Environmental Linkages.

The DOT&PF acknowledges that it will be required to develop an annual training plan as part of the NEPA Assignment Program MOU. DOT&PF anticipates that the training plan will be developed within three months following the execution of the NEPA Assignment Program MOU.

Paragraph Update: DOT&PF continues to work with FHWA on staff training and provides an update Training Plan to FHWA annually.

As previously detailed in sections (a)(3)(i) and (a)(3)(ii), the DOT&PF’s current overall organizational structure will not change under the NEPA Assignment Program. The DOT&PF Statewide Environmental Program Manager will oversee implementation of the NEPA Assignment Program, will be responsible for day-to-day management of the program, and will serve as liaison to the FHWA for matters concerning the NEPA Assignment Program, including FHWA audits and any reporting required under the NEPA Assignment Program MOU.

§773.109 (a)(4)(iii): Use of outside consultants for the NEPA Assignment Program

There will be no change in DOT&PF's general approach to using consultants as a result of the NEPA Assignment Program. The regions and the SEO have the authority to employ consultants. Consultants may be used for environmental analysis, technical studies, NEPA document preparation support, review services, administrative record development, and general staff support. The REMs are responsible for reviewing environmental documents (*e.g.*, CEs, EAs, EISs) prepared by consultants under contract to DOT&PF. Following completion of review, the REM either approves these documents or recommends them for approval to a NEPA Program Manager when SEO signature is required.

Currently, the need for consultant services fluctuates in proportion to the annual DOT&PF workload. The level of consultant services used to augment DOT&PF's project development staff is based on annual appropriation funding levels and project delivery needs, which vary from year to year. The regions use consultant assistance on an as-needed basis through environmental specialty term contracts and project-specific contracts. In addition to providing support in balancing workloads, consultants currently provide services in certain areas of expertise that cannot be provided in-house (*e.g.*, botanists, noise specialists, marine mammal and fisheries biologists, professional wetland scientists). Under the NEPA Assignment Program, consultants will continue to be placed under contract in this manner. Consultants will not make NEPA determinations under the NEPA Assignment Program.

The DOL also has the authority to employ outside counsel. While there will be an attorney at DOL dedicated to the NEPA Assignment Program, outside counsel or other DOL attorneys may be used to assist in legal sufficiency reviews of FEISs and Final Individual Section 4(f) Evaluations, and to provide legal review of memoranda of understanding, programmatic agreements, and administrative records. The DOL will oversee and ensure final compliance on any legal matters, even if outside counsel is used for support work.

Section Update: No changes to this section

§773.109 (a)(5): Financial resources under the NEPA Assignment Program

The DOT&PF has been allocated funding to cover the costs of applying for and administering the NEPA Assignment Program including funding for additional staff positions. The primary expenses for operating the NEPA Assignment Program will come from the Statewide Design and Engineering Services budget, including the additional staff positions. The 2016 DES operating budget is \$12.8 million allocated by state Legislature; SEO staff funding is included in this budget. Additional workload for regional environmental staff under NEPA Assignment Program is not anticipated; project chargeable work will continue to be done to develop CE, EA and EIS documents. The new SEO staff that will be employed for NEPA Assignment Program will conduct both project-related and program-related work. Additional project-related work will be necessary for SEO staff to review and approve NEPA documents; this work will be project chargeable and staff time will be billed to the associated Federal-aid Highway Program project. The additional program-level work required of SEO staff, such as guidance development and internal program reviews, will be paid out of the Statewide Design and Engineering Services budget; this has been accounted for in the current operating budget, which includes additional NEPA Assignment Program staff positions. The DOT&PF will commit adequate financial and staff resources to successfully

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execute the responsibilities it is assuming. The DOT&PF will regularly assess financial and staffing

resources available for the NEPA Assignment Program as part of its self-assessments.

Section Update: No changes to this section

§773.109 (a)(6): Certification of consent to exclusive federal court jurisdiction and waiver of immunity

Refer to Appendix C

Section Update: No changes to this section

§773.109 (a)(7): Certification that the State of Alaska's Public Records Act is comparable to the Federal Freedom of Information Act

Refer to Appendix D

Section Update: No changes to this section

§773.109 (a)(8): Public comments received on the NEPA Assignment Program application

The FHWA Alaska Division and the DOT&PF collaboratively developed a schedule outlining the public and agency outreach to be performed to help build awareness of the DOT&PF's intent to apply for the NEPA Assignment Program. At the Alaska Tribal Conference on Environmental Management in Anchorage on October 27-29, 2015, the DOT&PF and the FHWA staff provided outreach materials and answered questions about the NEPA Assignment Program at an exhibitor table. On November 5th, 2015, the DOT&PF and the FHWA jointly hosted an outreach meeting to inform the resource agencies of the DOT&PF's intent to apply for the NEPA Assignment Program and to solicit resource agency comments. At that time, the DOT&PF and the FHWA offered individual follow up meetings with each agency, at their request. During February 2016, the DOT&PF published a public notice of an opportunity for a public meeting in March in the Anchorage newspaper and in the State of Alaska Online Public Notices; no requests for a public meeting were received and no meeting was held. On March 22-24, 2016, the DOT&PF and the FHWA made a presentation, provided outreach materials and answered questions at an exhibitor table at the Alaska Tribal Transportation Symposium in Anchorage.

The DOT&PF has also developed a Frequently Asked Questions (FAQ) sheet regarding the NEPA Assignment Program, which has been distributed at various venues, including those mentioned above. The FAQ sheet and other information regarding the NEPA Assignment Program are available on the Statewide Environmental Office website. The DOT&PF will continue communication and outreach efforts with external agencies, local governments, and other interested parties during the implementation of the NEPA Assignment Program.

Notice of Draft Application

The notice of availability of DOT&PF's draft NEPA Assignment Program application was published May 1, 2016. The notice provided a 30-day comment period and invited those with comments to submit them to the DOT&PF. Comments were due by the close of business on May 31, 2016. Notices were published May 1 and 8, 2016 in the newspapers with the largest circulation in the state: Juneau Empire, Alaska Dispatch News, and Fairbanks Daily News-Miner. A notice was also posted weekly both on the State of Alaska Online Public Notice system and within the weekly e-newsletter What's Up, by Peg Tileston, on behalf of the Alaska Center for the Environment (ACE) and Alaska Women's Environmental Network (AWEN). The DOT&PF also sent printed copies of the draft application to all federally recognized native Alaskan tribal governments and email notifications to state and federal resource agencies informing the entities of the NEPA Assignment Program application and their opportunity to submit formal comments. The notice was also posted on the DOT&PF Statewide Environmental Office webpage.

The name and contact information of the Statewide Environmental Program Manager was provided for those wishing to comment, ask questions, or request additional information. The notices also directed interested parties to the DOT&PF Statewide Environmental Office website, where they are able to access the application and submit comments.

Summary of Changes Made to the Application

Since the draft application was made available for public review and comment, the application has been updated to reflect the change from draft to final application, including updating draft application public notice dates. The following sections of the application have also been updated for the final application:

- §773.109(a)(8) Public comments received on the NEPA Assignment Program application to reflect application outreach efforts, comments and responses.
- Appendix C. Certification of Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and that the State of Alaska's Public Records Act is Comparable to the Federal Freedom of Information Act
- Appendix D. Copies of Comments Received on the NEPA Assignment Program Application and Responses Provided to the Commenters

Summary of Comments Received

The DOT&PF outreach activities involved tribal, agency and public entities as summarized below, with detailed information located in Appendix D.

Tribal Outreach and Comments

The DOT&PF's 327 Application outreach efforts included participating jointly with the FHWA at two Anchorage tribal meeting events: the Alaska Tribal Conference on Environmental Management on October 27-29, 2015, and the Alaska Tribal Transportation Symposium March 22-24, 2016. At both events the DOT&PF and the FHWA staff provided outreach materials and answered questions about the NEPA Assignment Program at an exhibitor table. At the March 22-24, 2016 meetings, the DOT&PF and the FHWA also provided a NEPA assignment overview presentation. Presentation material and notes are attached. The DOT&PF mailed the draft application and letters to 438 federally recognized tribes, village corporations, regional native organizations on April 25, 2016. One comment in support of DOT&PF's application to assume FHWA's NEPA responsibilities was received from Kawerak, Inc. No other comments were received. The cover letter and mailing list are attached.

Agency Outreach and Comments

The DOT&PF and the FHWA jointly hosted an outreach meeting on November 5, 2015 in Anchorage to inform the resource agencies of the DOT&PF's intent to apply for the NEPA Assignment Program and to solicit resource agency comments. Nineteen representatives of eight agencies participated in the meeting. At that time, the DOT&PF and the FHWA offered individual follow up meetings with each agency, at their request. None were requested. Meeting notes, sign in sheet, and presentation materials are attached.

DOT&PF emailed resource agencies of the availability of the draft application, and the opportunity to comment on April 26, 2016. Comments were received from the US Coast Guard, US Fish and Wildlife Service and US National Park Service. Complete agency comments and the DOT&PF responses are attached.

The US Coast Guard comment referred to the "Coast Guard-FHWA MOA dated January 14, 2014" and that "the Coast Guard's bridge authorities are not environmental laws as indicated in Appendix B to the Application."

The US Fish and Wildlife Service requested and received a two week time extension in order to provide comments including: Concerns regarding NEPA Analysis / competency; Procedure should be implemented before MOU; Add Migratory Bird E.O.; Develop AK migratory bird plan; Early coordination with USFWS on FLAP, EIS; Cooperating status if project is in NWR; Review draft MOU and USFWS related procedures.

The US National Park Service concerns included: FLAP funded projects; Ambler Mining District Industrial Access Project; ANILCA; 4(f) and LCWF monies; Fast Act - Nationally Significant Freight and Highway Projects Program, and Nationally Significant Federal Lands and Tribal Projects Program; and stewardship agreements.

A follow-up teleconference meeting with the US Forest Service was held on July 7, 2014. Questions from the Forest Service included: TAP projects; Government to Government consultations; potential change in the number of projects with Forest Service involvement; National Forest Management Act; and APRA and FOIA equivalency. Meeting notes are attached.

Public Outreach and Comments

During February 2016, the DOT&PF published a public notice of an opportunity for a public meeting in March in the Anchorage newspaper and in the State of Alaska Online Public Notices; no requests for a public meeting were received and no meeting was held. The DOT&PF developed a Frequently Asked Questions (FAQ) sheet regarding the NEPA Assignment Program, which was distributed at various venues, including those mentioned above. The FAQ sheet and other information regarding the NEPA Assignment Program are available on the Statewide Environmental Office website. The DOT&PF will

continue communication and outreach efforts with external agencies, local governments, and other interested parties during the implementation of the NEPA Assignment Program.

The comments received on the draft application notice are summarized below. Complete comments and the DOT&PF responses are located in Appendix D.

Thirty-six comments were received, including comments from two environmental organizations (Earthjustice/Sierra Club, et al; The Wilderness Society); one native organization (Kawerak); and three federal agencies (USCG, USF&WS, and USNPS) .

In general, the comment topics received included:

- Juneau Access Improvements project (9 comments)
- AMHS & state budget cuts and program expense (6 comments)
- FHWA/outside oversight necessary – DOT not transparent/trustworthy, honest/fair/accurate, experienced (25 comments)
- AK Public Records Act not comparable to FOIA (4 comments)
- In favor of assignment (2 comments)
- Incomplete application (2 comments)

Environmental Group concerns in addition to the generalized comments above:

- Sierra Club concerns: ANILCA authority
- Wilderness Society concerns: Ambler Mining District; Government to Government consultations; EIS projects

Section Update: No changes to this section

§773.109 (a)(9): Point of contact

For questions on this Application or to submit any comments, please contact:

Taylor C. Horne

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Section Update: Point of contact update Douglas Kolwaite, 907 465-8413. Douglas.Kolwaite@alaska.gov

Additional information on DOT&PF's NEPA Assignment Program can be found at:

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

Appendix A. Projects and Programs for Which DOT&PF Does Not Request NEPA Responsibility

The on-going projects below are identified for exclusion from assumption under the NEPA Assignment Program. This list is subject to change until the NEPA Assignment Program MOU is signed:

Categorical Exclusions: None

Environmental Assessments:

- **Haines Highway Improvements**

State/Federal Project Numbers: 68606/0956028

Project overview and status: Upgrade the Haines Highway to current standards from Milepost (MP) 3.5 to 25.3. A Draft Revised Environmental Assessment was released for public review and comment in October 2015.

Environmental Impact Statements:

- **Gravina Access**

State/Federal Project Numbers: 67698 & 67877/0922005 & 0922008

Project overview and status: Design and construct improved access to Gravina Island. The Final Environmental Impact Statement is currently in progress.

- **Juneau Access Improvements**

State/Federal Project Numbers: 71100/000S131

Project overview and status: Provide improved transportation to and from Juneau within the Lynn Canal corridor that will reduce travel times, state and user costs while providing capacity to meet demand and improved opportunity to travel. The Draft Supplemental Environmental Impact Statement was circulated for public comment in 2015; the Final Supplemental Environmental Impact Statement is currently in progress.

- **Sterling Highway MP 45-60**

State/Federal Project Numbers: 53014/0212015

Project overview and status: Construct a new two-lane highway with 12-foot driving lanes, paved shoulders and passing and climbing lanes where necessary from MP 45 to MP 60. The Draft Supplemental Environmental Impact Statement was circulated for public comment in 2015; the Final Supplemental Environmental Impact Statement is currently in progress.

Other projects meeting the following criteria will be excluded from the NEPA Assignment Program:

- Federal Lands Access projects, unless designed and constructed by DOT&PF.
- Projects that are adjacent to or that cross international boundaries which require a permit from the U.S. Department of State.

Appendix A Update: The excluded project list was superseded by the executed NEPA Assignment Program MOU and amended MOU 8/20/2020. The 8/20/2020 MOU was amended to exclude projects designed and constructed by FHWA pursuant to 23 U.S.C. 308.

- Programs and projects advanced by direct recipients of Federal-aid Highway Program funds other than the DOT&PF, including but not limited to:
 - Recreational Trails program
 - TIGER Discretionary grants
 - Direct recipient Tribal projects
 - Shakwak program

FHWA approvals meeting the following criteria will be excluded from the NEPA Assignment Program:

- Privately-funded or other agency funded projects requiring Interstate access approvals
- Private requests for changes in controlled access

Appendix B. List of FHWA's Environmental Review Responsibilities for Which DOT&PF Requests to be Assigned under 23 USC 327

DOT&PF is requesting to assume all of FHWA's responsibilities for environmental review, interagency consultation, and other environmental-related actions pertaining to the review or approval of projects assumed under the Program under all applicable federal environmental laws and Executive Orders, including, but not limited to, those listed below. DOT&PF will be responsible for complying with the requirements of any applicable federal environmental law regardless of its inclusion on this list (this list is derived from Appendix A of 23 CFR 773):

Air Quality

- Clean Air Act (CAA), 42 USC 7401-7671q., with the exception of any project level conformity determinations.

Alaska Specific

- Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96-487

Executive Orders Relating to Highway Projects

- E.O. 11593, Protection and Enhancement of the Cultural Environment
- E.O. 11988, Floodplain Management
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13007, Indian Sacred Sites¹
- E.O. 13007, Indian Sacred Sites¹
- E.O. 13112, Invasive Species
- E.O. 13175, Consultation and Coordination with Indian Tribal Governments¹
- E.O. 13690, Federal Flood Risk Management Standard (FFRMS)

FHWA-Specific

- Efficient Project Reviews for Environmental Decision Making, 23 USC 139
- Linking the Transportation Planning and NEPA Processes, 23 CFR 450 Appendix A
- Planning and Environmental Linkages, 23 USC 168, with the exception of those FHWA responsibilities associated with 23 USC 134 and 135.
- Programmatic Mitigation Plans, 23 USC 169 with the exception of those FHWA responsibilities associated with 23 USC 134 and 135

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675
- Resource Conservation and Recovery Act (RCRA), 42 USC 6901 -6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 USC 9671-9675

Historic and Cultural Resources

- Archeological and Historic Preservation Act of 1974, as amended, 54 USC 312501-312508
- Archeological Resources Protection Act of 1979, 16 USC 470aa-470mm
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 USC 3001-30131; 18 USC 1170
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 USC 306101 et seq¹.

Land

Landscaping and Scenic Enhancement (Wildflowers), 23 USC 319

Noise

- Compliance with the noise regulations at 23 CFR part 772
- Noise Control Act of 1972, 42 USC 4901-4918

Parklands

- Section 4(f) of the Department of Transportation Act of 1966, 23 USC 138, 49 USC 303 and implementing rules at 23 CFR 774.
- Land and Water Conservation Fund (LWCF) Act, 54 USC 200302 - 200310

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 USC 19961
- Farmland Protection Policy Act (FPPA), 7 USC 4201-4209

Water Resources and Wetlands

- Clean Water Act, 33 USC 1251-1387
 - o Section 319, 33 USC 1329
 - o Section 401 , 33 USC 1341
 - o Section 404, 33 USC 1344
- Coastal Barrier Resources Act, 16 USC 3501-3510
- Coastal Zone Management Act, 16 USC 1451-1466
- Emergency Wetlands Resources Act, 16 USC 3901 and 3921
- Flood Disaster Protection Act, 42 USC 4001-4130
- General Bridge Act of 1946, 33 USC 525 - 533
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR part 777
- Rivers and Harbors Act of 1899, 33 USC 401-406
- Safe Drinking Water Act (SDWA), 42 USC 300f - 300j-26
- Wetlands Mitigation, 23 U.S.C 119(g) and 133(b)(11)
- Wild and Scenic Rivers Act, 16 USC 1271-1287

Wildlife

- Anadromous Fish Conservation Act, 16 USC 757a-757f
- Bald and Golden Eagle Protection Act, as amended, 16 USC 668-668c
- Section 7 of the Endangered Species Act of 1973, 16 USC 153 1-1544
- Fish and Wildlife Coordination Act, 16 USC 66 1-667d

- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 USC 1801-1891d
- Marine Mammal Protection Act, 16 USC 136 1-1423h
- Migratory bird Treaty Act, 16 USC 703-712

Note:

¹ Under these laws and Executive Orders, FHWA will retain responsibility for conducting formal government-to-government consultations with federally recognized Indian tribes. The State will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA upon request. The State may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA remains responsible that this consultation occurs. FHWA's retention of formal consultation responsibilities under NAGPRA will not limit State's existing activities under this law.

Section Update: List will be updated in consultation with FHWA.

Appendix C. Certification of Consent to Exclusive Federal Court Jurisdiction and Waiver of Immunity and that the State of Alaska's Public Records Act is Comparable to the Federal Freedom of Information Act

Section Update: No changes to this section



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

Office of the Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-5903
Main: 907-269-5100
Fax: 907-269-5110

June 30, 2016

Mr. Gregory Nadeau
Administrator
Federal Highway Administration
1200 New Jersey Ave., S.E.
Washington, DC 20590-9898

RE: Application to Assume FHWA's NEPA Responsibilities (23 USC 327)
Certifications from State Attorney General

Dear Mr. Nadeau:

The Alaska Department of Transportation and Public Facilities (DOT&PF) is submitting an application to assume Federal Highway Administration's (FHWA) responsibilities for National Environmental Policy Act (NEPA) decision making. FHWA regulations, at 23 C.F.R. §773.109(a)(6)&(7), require that a State's application for assignment of NEPA responsibilities include certain certifications by the State's Attorney General. The purpose of this letter is to provide the required certifications.

The Alaska Legislature expressly authorized DOT&PF to assume all responsibilities eligible to be assigned under 23 U.S.C. 327 for making FHWA's decisions with respect to NEPA compliance and environmental permitting of DOT&PF's highway programs and projects. *See*, AS 44.42.300. That legislative authorization includes the express authority for DOT&PF to enter into one or more memoranda of understanding (MOU) with FHWA to carry out the assigned responsibilities. Federal regulations require that the MOU and any renewals address all assignment program requirements including the State's consent to exclusive Federal court jurisdiction with respect to the responsibilities assumed. *See*, 23 C.F.R. 773.111(d) and 773.115(c)(2).

The Alaska Legislature expressly authorized the State Attorney General to waive the State's immunity under the Eleventh Amendment of the United States Constitution in federal court litigation involving compliance, discharge, or enforcement of responsibilities assumed by the DOT&PF pursuant to 23 U.S.C. 327. *See*, AS 44.23.020(g). Alaska's waiver of immunity, and Alaska's consent to exclusive

Gregory Nadeau
Application to Assume

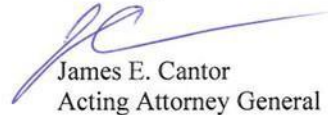
June 30, 2016
Page 2

Federal court jurisdiction with respect to the assumed responsibilities, will be detailed in the MOU and any renewals. A MOU signed by DOT&PF's Commissioner and the Attorney General constitutes a valid and legally binding obligation upon the State. Likewise, the State's consent to exclusive Federal court jurisdiction in the MOU, with respect to the assumed responsibilities, constitutes an Eleventh Amendment waiver that is valid, enforceable, and legally binding upon the State of Alaska.

Lastly, the State of Alaska's Public Records Act (PRA) is a comparable law to the Federal Freedom of Information Act (FOIA), in that both laws require public agencies to produce publically available documents and both laws allow denial of request for records to be judicially reviewed. Under the Alaska PRA a person may appeal a denial of a public records request pursuant to AS 40.25.124, and that person also has the right to seek injunctive relief under AS 42.25.125.

We believe this letter meets the certification requirements necessary for the NEPA assignment to the State of Alaska. We appreciate the opportunity to work together on this matter.

Sincerely,



James E. Cantor
Acting Attorney General

Appendix D. Copies of Comments Received on the NEPA Assignment Program Application and Responses Provided to the Commenters

Agency Meetings

US National Park Service 7/7/16

DOT/FHWA 327 Agency Meeting 11/4/15

From: [Horne, Taylor C \(DOT\)](mailto:Horne.Taylor.C@DOT)
To: kpost@fs.fed.us
Cc: ["Haugh, Tim \(FHWA\)"; Heck, Linda K \(DOT\)](mailto:Haugh.Tim@FHWA)
Subject: Follow up and contact request RE: 327 Meeting with USFS
Date: Friday, July 08, 2016 9:46:31 AM
Attachments: [APRA-FOIA chart 7.1.16.pdf](#)
[image001.png](#)

Ken,

Thank you very much for joining us yesterday to discuss the NEPA Assignment Program application. I've attached the APRA-FOIAA comparison chart that was developed by state attorneys for your reference. Please share this with the rest of the FS group, as I don't have their names or email addresses.

Could you please provide a list of FS attendees from the meeting? I wasn't able to catch everyone's name and positions. Thank you.

I'd like to reiterate that if anyone in your office has additional questions or concerns, Tim and I are always available to speak about the NEPA Assignment Program.

Thanks,
Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

-----Original Appointment-----

From: Haugh, Tim (FHWA) [mailto:Tim.Haugh@dot.gov]
Sent: Wednesday, June 22, 2016 8:45 AM
To: Haugh, Tim (FHWA); Horne, Taylor C (DOT); Heck, Linda K (DOT); kpost@fs.fed.us
Subject: 327 Meeting with USFS
When: Thursday, July 07, 2016 1:30 PM-2:30 PM (UTC-09:00) Alaska.
Where: FHWA Conf Room, room 851

Call in number: 877-873-8017
Code in: 5438825

7/7/16 Telecon - FHWA/DOT&PF/US Forest Service Meeting Notes

Agency 327 meeting led by Tim Haugh, FHWA and Taylor Horne, DOT&PF

Attendees: FHWA, DOT&PF and US Forest Service staff

* denote action items.

This meeting was held as an “additional agency meeting” to 11/4/15.

Taylor - Presented updated 11/4/15 PowerPoint presentation. Referenced 327 FAQ on our website

Tim – In general Federal Land Highway Program projects do not fall under NEPA assignment; a very small portion of FLHP projects fall under 327

Tim – Other FHWA roles do not change under 327, such as approving preliminary engineering, ROW

Taylor – DOT has a consultant on board for environmental procedures manual that will be reviewed by FHWA prior to MOU signature

Taylor – Restated excluded projects as listed in the draft application

Tim –The Federal-aid Highway Program office (AK Division FHWA) oversees funds to state DOTs. Federal lands program is a different funding category. Only FLAP designed and constructed by DOT can be assigned to DOT. Funding process does not change. FHWA authorizes funding. Only inherently environmental activities will be assigned. DOT&PF cannot assume responsibility for any other federal agency than FHWA.

Questions –

- What about TAP projects? Will FHWA retain the lead? [Nobody at the meeting had an answer for TAP projects]
 - Christy – NEPA responsibility determined during initial planning/funding phase for USFS
- What about tribal Government to Government consultation?
 - Taylor – DOT interacts with Tribes during Section 106 Process and other NEPA tribal consultation processes; there is a provision in MOU for FHWA to take over a project for Government to Government consultation.
- Will this change the number of forest service involved projects?
 - Taylor: It should not affect the total number of projects, since DOT is already consulting with FS on projects, regardless of assignment
- *Forest Service: National Forest Management Act - Should it be included in list of assigned laws?
 - *Taylor: We will discuss with FHWA at next 327 meeting. FHWA must have an environmental role in a law to hand it over. Will discuss with FHWA lawyers.
- *APRA v FOIA – Is it equivalent?

- It is comparable. Taylor will share the DOT SEO APRA and FOIA matrix
- Why NEPA Assignment now?
 - Taylor – DOT has demonstrated time and money savings through the CE assignment program; DOT sees additional benefit with Full NEPA Assignment. DOT has more staff to perform the oversight duties. Administrative costs comes from the federally funded project. Goal is shorter delivery timelines. California has time statistics before and after assignment showing time savings.

DOT/FHWA 327 Agency Meeting
November 4, 2015
DOT&PF Annex, Anchorage, AK

FHWA & DOT&PF representatives:

FHWA: Tim Haugh

DOT&PF: Taylor Horne, Linda Heck, Hilary Lindh, Brett Nelson, Brian Elliott, Melissa Goldstein, Laurie Mulcahy

Dept of Law: Sean Lynch

Attendees: See sign in list

Handouts: presentation slides, 327 FAQ sheet

Presenters: Taylor Horne, Statewide Environmental Program Manager, DOT&PF; Tim Haugh, Environment Program Manager, FHWA AK Division

Notes:

- DOT introductions
- Agency introductions
- Slideshow presentation
- Meeting Q&A
 - Tim and Taylor - This is first agency meeting. We are able to meet individually with agencies on request, especially to resolve programmatic agreements for NEPA assignment.
 - SHPO – In FHWA reviews of other states, is the program working ok, or not?
 - Tim - States generally had stumbles at the start of assignment regarding procedure adherence. FHWA will help to develop procedures, and will follow up to see if DOT is following the procedures. The trend is always toward improvement. AK DOT line of approval authority changed for 326 assignment (CE assignment). Before Categorical Exclusion (CE) assignment, the region developed a CE and sent it to FHWA. FHWA wanted the states to mirror FHWA. DOT originally had to hire and train staff to implement 326. Final audit reports state findings, and suggest corrective action. The State provided corrective action plans (CAP), which following audits verified corrections occurred. FHWA AK Division is comfortable advancing assignment because of past performance and AK DOT doing so well.
 - USFWS - What is next step above 327 basics, especially since DOT will have resources at fingertips, to protect resources?
 - Tim – DOT track record is that they have looked to improve on processes that were developed prior to assignment.
 - Taylor – Electronic filing – DOT is still scanning documents. We are moving forward to develop an electronic approval system, including resource agency access into system. Assignment allows the ability to directly communicate and develop agreements with resource agencies. Program roll-out requires authoring new procedures. DOT would like to have agencies involved in procedure development (i.e. ESA). Earlier coordination with resource agencies during project development
 - USFWS – Does FHWA recognize innovations and provide incentives?
 - Taylor – FHWA has incentives. We can consult with FHWA regarding innovative processes.
 - Tim – State DOT is looking for opportunity to branch out and be creative. FHWA wants the program to benefit. If the State presents an item out of the box with the potential to be better stewards of the environment, FHWA would like be open to anything that would make the process better and more beneficial to the public. A high profile program like this increases the potential to tap into funding to develop innovative solutions.

DOT/FHWA 327 Agency Meeting
November 4, 2015
DOT&PF Annex, Anchorage, AK

- Procedure clarification – Will new procedures include Endangered Species Act (ESA)?
 - Tim – It is likely that there will be a chapter in the environmental manual with the steps and pieces of the environmental document development including ESA. It is a great opportunity to figure out parts and pieces and integrate different environmental processes.
 - Taylor - Agreed. It gives us the opportunity for DOT to look other state's processes. DOT&PF SEO intends involving agencies in developing new procedures and agreement documents, it's an opportunity to work together as stewards for environment and development of transportation.
- Tim – 3 environmental impact statements and 3 environmental assessments currently in development.

Taylor - FAQ sheet review – Contacts on last page, including the website address.

- Sarah Conn, USFWS - Is FAA part of the assignment program?
 - Taylor – No, it is not possible under current law. Only FHWA.
 - Sean – When State re-does the environmental manual, the same people are preparing FAA documents as are preparing FHWA documents. The interaction is the same for working with either funding agency.
 - Sarah Conn, USFWS – The benefit of updating the FHWA environmental manual could benefit FAA procedural documentation.
- USFWS – Will the FAQ sheet be sent to the email distribution list?
 - Taylor, - Yes, we will send this out.
- NMFS ESA – already dealing with State for FHWA. Will post-assignment consultation letters refer to 327 law?
 - Tim – Yes. It is likely the same folks will be consulting with each other.

Taylor – We want to engage resource agencies in process development. We want to establish a dispute resolution process.

Post meeting discussion(s) comment and concerns:

- Hilary (DOT) - voiced her noted absence of Juneau agency staff she usually coordinates with on projects. It was suggested that it may be advantageous to hold another agency meeting in Juneau.
- Hilary (DOT) – Barbara Mahoney from NMFS indicated she had thought the meeting was going to be about upcoming DOT projects; her supervisor Greg Balogh likely did not attend for that reason. She was happy to discover what the actual topic of the meeting was. She mentioned a geographic approach to marine mammal takes that NMFS is developing for Cook Inlet as having some potential for other geographic areas of the state; ie., Southeast, or Aleutians/Alaska Peninsula, etc.
- Taylor (DOT) - Melissa Burns, USFWS Regional Conservation Planning Assistance Coordinator, introduced herself after the presentations. She said that she is a good point of contact and can help facilitate discussions with other groups within USFWS. Also, we discussed USFWS involvement in the upcoming Section 7 training.

DOT&PF/FHWA NEPA ASSIGNMENT AGENCY OUTREACH SIGN-IN SHEET

Date/Time: November 4, 2015 (2:00-4:30 pm)

Name	Organization	E-Mail
Linda Heck	DOT&PF SEO	linda.heck@alaska.gov
Kari Marchowsky	Chugach NF	kmarchowsky@fs.fed.us
Jennie Spegan	FWS	jennifer-j-spegan@fws.gov
Laurie Mulcahy	DOT&PF	laurie.mulcahy@alaska.gov
Melissa Burns	FWS	melissa-burns@fws.gov
Peter Blake	ARRC	BlakeP@ARRC.com
RACHEL MADDY	ARRC	MADDYR@ARRC.com
SARAH CANN	FWS	Sarah-Cann@fws.gov
Jeanette Greenbaum	ARRC	greenbaumj@arrc.com
Lynnda Stephens	ARRC	StephensL@arrc.com
TAMI FORDHAM	EPA	fordham.tami@epa.gov
Mark Rollins	SHPO	Mark.rollins@alaska.gov
David Morton	USFS	dmorton@fs.fed.us
Cheryl Sankel	ARRC	SankelC@ARRC.com

Name	Organization	E-Mail
Shawnessy Leon	AACE	Leon.S@aknr.com
Blake Adkins	ARRC	ADULFAE8@ARRC.com
Jennifer Curtis	EPA	curtis.jennifer@epa.gov
Brian Elliott	DOT	brian.elliott@alaska.gov
Melissa Goldstein	DOT + PF SEO	melissa.goldstein@alaska.gov
ED Soro	DNR-DOF	
Barbara Mahoney	DOT NMFS	barbara.mahoney@noaa.gov
Shannon Morgan	USACE	shannon.r.morgan@usace.army.mil
Hilary Lindh	DOT + PF SR	hilary.lindh@alaska.gov
Brooke Merrell	NPS	Brooke.Merrell@nps.gov
Sean Lyach	DOL	
Taylor Horne	DOT	
Brett Nelson	DOT	
Tim Haugh	FHWA	

Invited	RSVP	Attended	Agency	First	Last	Title	Address	City	State	Zip	Email
1	1	1	U.S. Fish and Wildlife Service	Melissa	Burns	Regional Conservation Planning Assistance Coordinator					melissa_burns@fws.gov
1	1	1	U.S. Fish and Wildlife Service - Fairbanks Field Office	Sarah	Conn	Field Supervisor	101 12th Ave. Rm #110	Fairbanks	AK	99701	sarah_conn@fws.gov
1	1	1	U.S. Environmental Protection Agency - Region 10	Jennifer	Curtis	NEPA Reviewer	Federal Bldg. Rm 537, 222 W. 7th	Anchorage	AK	99513-7588	Soderlund.dianne@epa.gov
1	1	1	U.S. Environmental Protection Agency - Region 10	Tami	Fordham						fordham.tami@epa.gov
1	1	1	NOAA National Marine Fisheries Service - Alaska Region	Barbara	Mahoney						barbara.mahoney@noaa.gov
1	1	1	U.S. Forest Service - Chugach National Forest	Kori	Marchowsky						KMarchowsky@fs.fed.us
1	1	1	U.S. Dept. of Interior, National Park Service - Alaska Region	Brooke	Merrell						brooke_merrell@nps.gov
1	1	1	U.S. Army Corps of Engineers - Alaska District, Regulatory Division	Shannon	Morgan	South Branch Chief	PO Box 6898	JBER	AK	99506-0898	Shannon.R.Morgan@usace.army.mil
1	1	1	U.S. Forest Service - Tongass National Forest	David	Morton						dlmorton@fs.fed.us
1	1	1	U.S. Fish and Wildlife Service	Jennie	Spegon	Ecological Services					jennifer_spegon@fws.gov

	RSVP Count	Attendee
State	9	9
Federal	8	10
Total	17	19

From: [Horne, Taylor C \(DOT\)](#)
To: "[melissa_burns@fws.gov](#)"; "[sarah_conn@fws.gov](#)"; "[Soderlund.dianne@epa.gov](#)"; "[fordham.tami@epa.gov](#)"; "[barbara_mahoney@noaa.gov](#)"; "[Kmarchowsky@fs.fed.us](#)"; "[brooke.merrell@nps.gov](#)"; "[Shannon.R.Morgan@usace.army.mil](#)"; "[dlmorton@fs.fed.us](#)"; "[jennifer_j_spegan@fws.gov](#)"; [Soto, Edward M \(DNR\)](#); [Rollins, Mark W \(DNR\)](#); "[blakep@akrr.com](#)"; "[maddy@akrr.com](#)"; "[greenbaumj@akrr.com](#)"; "[adolfaeb@akrr.com](#)"; "[stephensl@akrr.com](#)"; "[leons@akrr.com](#)"; "[soutelc@akrr.com](#)"
Cc: [Healy, Roger K \(DOT\)](#); [Hatter, Steve D \(DOT\)](#); "[Tim.Haugh@dot.gov](#)"; [Mulcahy, Laurie A \(DOT\)](#); [Elliott, Brian A \(DOT\)](#); [Nelson, Brett D \(DOT\)](#); [Goldstein, Melissa L \(DOT\)](#); [Heck, Linda K \(DOT\)](#); [Sumner, Amy L \(DOT\)](#); [Lindh, Hilary K \(DOT\)](#)
Subject: Thank You + Information RE: DOT&PF & FHWA Agency Outreach Meeting - NEPA Assignment Program under 23 USC 327 - Anchorage November 4th, 2:00-4:30PM
Date: Thursday, November 05, 2015 4:50:14 PM
Attachments: [faq_327.pdf](#)
[327_Update.Agencies.11.4.15.v3.pdf](#)
[image002.png](#)

Hello,

Thank you for attending the DOT&PF NEPA Assignment Program Overview meeting yesterday in Anchorage. I appreciate you taking time out of your day to participate in the meeting. The discussions and ideas that were generated during are valuable to us. I want to reiterate Tim Haugh and my offer to meet with you, together or separately, to discuss the NEPA Assignment Program further.

Attached are the presentation slides and the FAQ sheet that we distributed at the meeting. Additionally, we will be updating our webpage as the 327 effort progresses:

<http://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>

We will also email you occasional updates as the NEPA Assignment Program effort nears key milestones, such as the state public notice period (anticipated May 2016). Please let me know if anyone else should be added to the update email list.

Thank you again,
Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 230-5055

From: Horne, Taylor C (DOT)
Sent: Thursday, October 01, 2015 3:19 PM
To: 'pete_probasco@fws.gov'; 'eric_taylor@fws.gov'; 'ak_refuges@fws.gov'; 'mary_colligan@fws.gov'; 'Sonja_Jahrsdoerfer@fws.gov'; 'socheata_lor@fws.gov'; 'sarah_conn@fws.gov'; 'jeffrey_anderson@fws.gov'; 'jordan_muir@fws.gov'; 'jon.kurland@noaa.gov'; 'jeanne.hanson@noaa.gov'; 'David.S.Hobbie@usace.army.mil'; 'Soderlund.dianne@epa.gov'; 'Reichgott.christine@epa.gov'; 'Soderlund.dianne@epa.gov'; 'bcribley@blm.gov'; 'Bert_Frost@nps.gov'; 'tmarceron@fs.fed.us'; 'estewart@fs.fed.us'; 'james.n.helfinstine@uscg.mil'; 'stuart.hartford@bia.gov'; 'Ott, Alvin G (DFG)'; 'michael.daigneault@alaska.gov'; Winters, Jack F (DFG); Timothy, Jackie L (DFG); Hale, Michelle M (DEC); Strickland, Wade K (DEC); Rypkema, James (DEC); Leclair, Claire H (DNR); Ashton, William S

(DEC); Koch, Denise (DEC); Heil, Cynthia L (DEC); Ryan, Kristin J (DEC); Roberts, Jennifer L (DEC); Ellis, Ben (DNR); Ayers, Jean M (DNR); Bittner, Judith E (DNR); Maisch, John C (DNR); 'CarrB@akrr.com'
Cc: Healy, Roger K (DOT); Hatter, Steve D (DOT); 'Tim.Haugh@dot.gov'; Mulcahy, Laurie A (DOT); Norberg, Erik C (DOT); Parks, Jess L (DOT); Price, Katherine E (DOT); Elliott, Brian A (DOT); Gendron, Jane D (DOT); Nelson, Brett D (DOT); Goldstein, Melissa L (DOT); Heck, Linda K (DOT); Horne, Taylor C (DOT); Sumner, Amy L (DOT)

Subject: DOT&PF & FHWA Agency Outreach Meeting - NEPA Assignment Program under 23 USC 327 - Anchorage November 4th, 2:00-4:30PM

Event: DOT&PF & FHWA Agency Outreach Meeting - NEPA Assignment Program under 23 USC 327

Date & Time: November 4th, 2:00-4:30PM

Location: Anchorage – DOT&PF Annex/Civil Rights Office, Main Conference Room, 2200 E. 42nd Avenue, Anchorage, AK 99519

Contact: Taylor Horne, 465-6957 taylor.horne@alaska.gov

Greetings,

The Alaska Department of Transportation and Public Facilities (DOT&PF) and the Federal Highway Administration Alaska Division (FHWA) invite you to join us in Anchorage from 2:00 to 4:30 on November 4th for a presentation on the DOT&PF's intent to apply for full assignment of FHWA's NEPA authorities and responsibilities under 23 U.S.C. 327. The presentation will include overviews of the DOT&PF's proposed National Environmental Policy Act (NEPA) Assignment Program and the application process, and there will be an opportunity for agency representatives to ask questions of, and provide comments to, DOT&PF Statewide Environmental Office staff and FHWA staff.

Since 2009, the DOT&PF has been assigned the FHWA's NEPA authorities and responsibilities for certain activities that qualify as NEPA Categorical Exclusions (CE) under Memoranda of Understanding authorized under 23 U.S.C. 326; the Full NEPA Assignment Program (23 U.S.C. 327) is proposed to include all NEPA classes of action: CEs, Environmental Assessments, and Environmental Impact Statements. Additional information about the NEPA Assignment Program can be found on [FHWA's website](#). The [DOT&PF's website](#) includes information about the existing CE Assignment program, known as the 6004 Program, and will soon feature information about the Full NEPA Assignment Program.

Your agency's participation would be greatly valued. Please email taylor.horne@alaska.gov indicating whether you will be able to attend the November 4th meeting or have questions.

Thank you,

Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 230-5055



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

NEPA Assignment Program Frequently Asked Questions

What is NEPA Assignment?

- Official Name: Surface Transportation Project Delivery Program (23 U.S.C. 327)
- Assignment of the Federal Highway Administration's (FHWA) National Environmental Policy Act (NEPA) responsibilities to a State who would assume responsibilities for:
 - All NEPA classes of action: Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)
 - All environmental laws, regulations and orders
- Under this program, the Department of Transportation and Public Facilities (DOT&PF) is deemed to be a Federal Agency for environmental matters on all assigned projects.

About the NEPA Assignment program

- DOT&PF assumes legal responsibility and liability to ensure compliance with all environmental requirements
 - The State of Alaska waives its sovereign immunity (AS 44.23.020(g))
 - DOT&PF agrees to be sued in Federal court
- NEPA Assignment does not reduce any current legal requirements
 - All environmental laws, regulations and orders remain in effect

Why is DOT&PF participating in the NEPA Assignment program?

- The program allows for more efficient delivery of projects and flexibility in DOT&PF procedures
- DOT&PF will be able to build stronger relationships with stakeholders and agencies through direct engagement and ownership of decision-making

Is DOT&PF accountable to maintain high environmental standards?

- DOT&PF will continue to maintain current high standards for environmental reviews and collaboration with partner agencies
- DOT&PF will continue to follow the same federal environmental laws, regulations, and Executive Orders
- DOT&PF Statewide Environmental Office will conduct regular program reviews
- FHWA will regularly conduct in-depth audits of DOT&PF's performance and adherence to environmental laws, regulations and Executive Orders
- FHWA retains final project funding authority and may revoke the program if DOT&PF does not perform to the required standards
- DOT&PF will be held liable for all environmental responsibilities and will be required to defend any claims brought in a Federal court
- This program increases the State's accountability as DOT&PF assumes more risk along with more responsibility for the quality and outcomes of their environmental documents and decisions.

Where has this been done before?

- Alaska has exercised FHWA NEPA responsibility for most CEs, under the 6004 Program (23 U.S.C. 326), since September 2009
- California and Texas assumed full FHWA NEPA responsibilities. Ohio applied for full NEPA Assignment. Utah has CE assignment and will apply for full NEPA assignment.

Scope of the NEPA Assignment Program

- A Memorandum of Understanding (MOU) will define the range of project actions and environmental responsibilities the State assumes
- The NEPA Assignment Program includes assigning FHWA's responsibilities and consultation obligations for environmental laws under the "NEPA umbrella", such as:
 - Endangered Species Act
 - Marine Mammal Protection Act
 - National Historic Preservation Act
 - Magnusson-Stevens Fishery Conservation and Management Act (EFH)
 - Alaska National Interest Lands Conservation Act (ANILCA)
- FHWA retains the following:
 - Federal-aid funding decisions
 - Project-level air quality conformity determinations
 - Government-to-Government Tribal consultation
 - USDOT responsibilities for statewide and metropolitan planning
 - Projects that cross state lines; and projects adjacent to, or that cross, international boundaries

How will this affect Government-to-Government consultation requirements?

- FHWA retains Government-to-Government consultation responsibility
- Upon request of a Tribe, FHWA will enter into consultation with Tribe regarding project
 - If concerns are resolved, the project may remain assigned to DOT&PF
 - If concerns persist, FHWA may elect to take over environmental processing of project
- DOT&PF remains committed to regular outreach and communications with Tribes regarding transportation projects in Alaska.

How will NEPA Assignment change the DOT&PF environmental process?

- Resource Agencies may not see much change
 - DOT&PF already handles the program on a day to day basis, and has exercised authority for most CEs since 2009
- With this program, DOT&PF becomes solely responsible and legally liable for their decisions for all CEs, EAs, and EISs.
- DOT&PF internal procedures will be changed to reflect that DOT&PF assumed additional FHWA responsibilities for all CEs, EAs and EISs.

How will this impact DOT&PF?

- DOT&PF must comply with its MOU commitments in assuming FHWA's environmental responsibilities, just as it has for those CEs processed under the 6004 program MOU since September 2009

How will this impact DOT&PF? (continued)

- DOT&PF will continue to:
 - Maintain detailed files and records, and make them available to FHWA
 - Develop and maintain updated procedures on all environmental processes
 - Provide continuous Quality Assurance/Quality Control (QA/QC) on all actions
 - Dedicate sufficient funding and staff to implement NEPA assignment
 - Maintain the necessary professional and experienced staff to carry out the required environmental analyses
 - Institute and maintain a progressive training plan for environmental staff
 - Conduct regular self-assessments
 - Report all NEPA decisions to FHWA

The Path to NEPA Assignment

- Draft Application currently being developed in coordination with FHWA
- The Application identifies:
 - Scope of Assignment
 - Current & Proposed Organization
 - Current & Proposed Procedures, Tools
 - Roles and Responsibilities
 - Additional Staff and Training
- State public notice for comment on draft Application anticipated May 2016
- Revise Application, based on comments received, and submit formal Application to FHWA expected July 2016
- If the Application is accepted by FHWA, MOU negotiations during Summer 2016
- Federal Register notice of draft MOU anticipated January 2017
- Projected effective date of NEPA Assignment Program: March 2017
- DOT&PF will work with Agencies to update existing agreements
- Internal environmental procedures and guidance will be updated
- DOT&PF staff training will cover:
 - NEPA process and DOT&PF environmental procedures
 - Public involvement and Agency consultation
 - Environmental regulation-specific content (e.g. Endangered Species Act, Marine Mammal Protection Act, wetlands permitting)

What can you do?


- Let us know of any concerns you may have, so that we can address them
- Prepare letters of support to DOT&PF for submittal with the NEPA Assignment application
- Would you like to meet individually with the DOT&PF and the FHWA?
 - DOT&PF contact: Taylor Horne, Statewide Environmental Program Manager, taylor.horne@alaska.gov, (907)465-6957
 - FHWA contact: Tim Haugh, Alaska Division Environmental Program Manager, tim.haugh@dot.gov, (907)526-7430

DOT&PF NEPA Assignment Web Site

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



NEPA Assignment Program Overview
November 4, 2015




NEPA Assignment

Overview

- What is it?
- Why do it now?
- What will/won't change?
- Timeline and FAQ Handouts
- Questions and Discussion


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NEPA Assignment – What is it?

- 23 USC 326 – Categorical Exclusion (CE) assignment
 - ♦ AK, UT*, CA*
- 23 USC 327 – Full NEPA assignment (CE, EA, EIS)
 - ♦ CA, TX
 - ♦ Pending - OH, UT
 - ♦ Looking - ID, FL, MN


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NEPA Assignment – What is it?

- Formal Assignment of FHWA's NEPA responsibilities to a State who would assume:
 - All NEPA classes of action: CEs, EAs and EISs
 - All environmental laws, rules and orders
- Under this program, DOT&PF would be deemed to be a Federal Agency on all projects for environmental matters.


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NEPA Assignment – What is it?

- DOT&PF assumes legal responsibility and liabilities to ensure compliance with all environmental requirements
- DOT&PF agrees to be sued in Federal court
- MOU defines the range of project actions and environmental responsibilities the State assumes


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NEPA Assignment – What is it?

- By law, FHWA retains the following:
 - Federal-aid eligibility decisions
 - Government to Government Tribal consultation
 - FHWA responsibilities for statewide and metropolitan planning (STIP certification)
 - Projects that cross state lines; or are adjacent to, or that cross, international boundaries
 - Project level air quality conformity determinations* (CE assignment differs)

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NEPA Assignment – What is it?

All environmental laws, regulations, and policies remain the same

Faster project delivery comes from:

- Eliminating FHWA review and approval steps
- Allowing for environmental process innovation
- Easier communication and consultation


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NEPA Assignment – Why now?

- 326 CE assignment (6004 Program) since 2009
 - Organizational change established HQ environmental oversight and project-level approval authority
 - Innovations in procedures, forms, processes resulted in time savings
- 327 Full NEPA assignment – The time is right
 - CA, TX, OH paved the way
 - FHWA supports DOT&PF in gaining full assignment
 - Permanent law and application regulations established
 - Governor and legislature support

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NEPA Assignment – Why do it?

Benefits –Expertise, Communication, Control

- Builds environmental expertise within DOT&PF
 - Professional development in EA/EIS, laws, regs
- SEO staff dedicated to each region
 - DOT to DOT conversations are easier and faster
- Control over procedures
 - Ability to innovate and respond to changes

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NEPA Assignment – Why do it?

Benefits – Big picture

- Autonomy and control over environmental decision making
 - State ownership of decisions
- Faster environmental consultations, decisions
 - Direct consultation with Federal Agencies
- Innovation
- Time = \$


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What will change under 327?

- DOT&PF will **approve** EA/FONSI and EIS/ROD
 - DOT&PF will be lead agency for NEPA
- DOT&PF will conduct all project-specific consultations with Agencies
- Additional staff working on assigned projects


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How will this impact DOT&PF?

- DOT&PF must comply with its MOU commitments in assuming FHWA's environmental responsibilities:
 - Maintain detailed files, records and make them available to FHWA
 - Conduct regular self assessments and continuous QA/QC on all actions
 - Maintain the professional and experienced staff to carry out the necessary scope
 - Report all NEPA decisions to FHWA


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How will this impact FHWA?

- FHWA retains oversight responsibilities, and will provide:
 - Training
 - Program Technical assistance and policy interpretation
 - But no project-specific assistance
 - Audits of DOT&PF processing and decision making
 - Process and Program reviews
 - Reports back to Congress


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FHWA Audits

- Twice yearly for first 2 years, once a year afterward for 2 years
- FHWA may invite any state or Federal agency to participate in audit of DOT&PF's 327 Program
- Audits may include interviews with agency staff
- Results of audit published in Federal Register

14



FHWA Communications

- Any state or Federal agency may contact FHWA at any time for:
 - Concern with how DOT&PF is fulfilling assigned environmental responsibilities
 - Non project-specific matters
 - Need additional information about assignment program

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NEPA Assignment Timeline

2016	Winter	Develop Application
	April	Alaska Tribal Transportation Symposium
	May	State Public Notice of Draft Application
	June	Respond to Comments
	July	Submit Final Application to FHWA
	Fall	Negotiate MOU Language
2017	Jan	Federal Register Notice of Draft 327 MOU
	Feb	Respond to Comments
	March	327 MOU signed

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Tribal Meetings

14th Annual Alaska Tribal Transportation (Plus) Symposium, Anchorage, AK, March 22-24, 2016

Alaska Tribal Conference on Environmental Management, Anchorage, AK, October 27-29, 2015

Tribal 327 application outreach notes for the 14th Annual Alaska Tribal Transportation (Plus) Symposium

EVENT: 14th Annual Alaska Tribal Transportation (Plus) Symposium

LOCATION: Anchorage Hilton Hotel, Anchorage, AK

DATE: March 22-24, 2016

DOT&PF and FHWA representatives: Tim Haugh, Environment Program Manager, FHWA
Taylor Horne, Statewide Environmental Program Manager, DOT&PF

FHWA and DOT&PF representatives presented (presentation attached), as well as staffed an exhibition table at the 14th Annual Alaska Tribal Transportation (Plus) Symposium.

Several conference attendees inquired about highway or aviation projects of interest to their community. If answers were unknown by the FHWA or DOT&PF staff present, visitors' information was provided to the DOT&PF planner for their region to make contact after the Symposium. Visitors were encouraged to review the FAQ sheet provided (attached) at the table, and to contact either Tim or Taylor with questions or concerns.

14th Annual Alaska Tribal Transportation (Plus) Symposium
March 22-24, 2016
Anchorage Hilton Hotel

Agenda

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act) was signed into law becoming P.L. 114-94. This law is the authorization for the Highway, Safety, and Public Transportation. This includes the Tribal Transportation Program and the Tribal Transit Program. There are changes in the FAST Act that will require revisions to the IRR Regulations 25 CFR 170, and other Highway and Transit Regulations and Policies.

Tuesday, March 22, 2016

7:30 to 2:00 pm – Registration; 7:30 to 8:30 Light Breakfast

8:30 a.m. to Noon General Session:

Opening Prayer and Welcome - Gerry Hope, Sitka Tribe of Alaska and Vice President Alaska Tribal Transportation Workgroup

1. Alaska Region BIA Update, Stuart Hartford, Alaska Region Roads Engineer
Note: Includes Bridge Inspection Update for Tribal Bridges
2. FHWA Tribal Transportation Program (TTP) Update - Danny Capri, TTP Engineer
3. FTA Tribal Transit Program Update – Kristy McGuill, Transportation Program Specialist/Amy Changchien; Director Planning and Program Development (via phone)
4. State Perspective on the FAST-Act –Mike Vigue – DOT&PF Director, Division of Program Development
5. Tribal Perspective on the FAST Act - ATTWG Board of Directors; James Glaze, Sonosky, Chambers, Sachse, Endreson & Perry, LLP

Lunch on Own

Tuesday Afternoon

1:30 p.m. to 4:30/5:00 p.m. General Session:

Transportation Planning (BIA – FHWA)

1. Defining Tribal Priority Projects, Andrew White, BIA TTP Supervisory Engineer
2. National Tribal Transportation Facility Inventory (NTTFI) (BIA, Tribal) Sheldon Kipp, Chief, BIA Branch of Engineering and Operations- invited
 - i. How to evaluate your NTTFI
 - ii. When do you need to update your NTTFI?
3. What is on your Tribal Transportation Improvement Program (TTIP)? How do you update it?
 - a. TTIP-(Danny Capri, FHWA and Nathan Cornilles, BIA)
 - b. STIP – Mike Vigue, DOT&PF Director, Division of Program Development DOT&PF
4. Coordination: when, what, where, and why – Julianne Baltar, Director Bristol Bay Native Association, Department of Transportation and Infrastructure Coordination
5. FAST Act Tribal Transportation Program Reporting (Danny Capri, FHWA)

14th Annual Alaska Tribal Transportation (Plus) Symposium
March 22-24, 2016
Anchorage Hilton Hotel

Agenda

Wednesday, March 23, 2016

7:30 to noon Registration; 7:30 to 8:30 Light Breakfast

8:30 a.m. to Noon General Session:

- 1) Tribal-State Transportation Task Force – State and tribal discussion - David Kemp, DOT&PF Region X Director; Paulette Schuerch, Special Advisor to the Governor on Tribal Affairs; ATTWG Board of Directors
- 2) NEPA State Assignment Program –Taylor Horne, DOT&PF Environmental Impact Analysis Manager and Tim Haugh, FHWA Environment Program Manager
- 3) Complex Projects:
 - i) Point Hope Project -Leonard Barger, Transportation Director; Todd Macalady, consultant; Michael Caine, FHWA Engineer
 - ii) Ekwok Klutuk Road and Landfill Project Coordination – Lorraine King
 - iii) Managing Complex Projects – Dawna Pearson, BIA TTP Engineer
- 4) Coordination Panel – What is coordination? Coordination between Tribal, State, Federal, and Local Entities, doing more with less. Opening remarks - Commissioner Marc Luiken DOT&PF; Moderator – Julianne Baltar, ATTWG
 - i) AK Community and Public Transportation Advisory Board Heidi Frost and Jennifer Beckman
 - ii) DOT&PF Transit - Mike Vigue –Director, Division of Program Development;
 - iii) FTA – Amy Changchien (via phone)
 - iv) FHWA/BIA –Danny Capri; David (Jeff) Harman, BIA TTP Supervisory Engineer
 - v) State DOT&PF - Commissioner Marc Luiken; David Kemp, Region X Director; Paulette Schuerch, Special Advisor to the Governor on Tribal Affairs
 - vi) Tribes: Leonard Barger, Transportation Director Point Hope and Lorraine King, Ekwok
 - vii) Coast Guard, Jim Helfinstine, District Bridge Program Administrator, Seventeenth Coast Guard District
 - viii) USACE- Invited

Please note, if the morning session goes long, we will break for lunch and move any missed agenda items to after lunch.

Lunch on Own

Wednesday Afternoon

1:30 pm to 5:00 pm General Session (Cont)

- 5) Tribal Programs and Opportunities – USDA Greg Stuckey, Director, Single Family Housing and Community Programs
- 6) US Army Corp of Engineers –Roberta “Birdie” Budnik, Sheila Newman, and Timm Kennedy
- 7) Wetlands Mitigation Project Options
- 8) Permitting process – Nationwide Permit
- 9) Compensatory Mitigation
- 10) Nationwide Renewal
- 11) U.S. Coast Guard Bridge Administration Permit Program - James Helfinstine, District Bridge Program Administrator, Seventeenth Coast Guard District

**14th Annual Alaska Tribal Transportation (Plus) Symposium
March 22-24, 2016
Anchorage Hilton Hotel**

Agenda

Thursday, March 24, 2016

7:30 to 8:30 Light Breakfast

8:30 am to noon General Session:

- 1) USDOT Negotiated Rulemaking for Self-Governance – ATTWG Board; Mattew Jaffe
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
- 2) Grant and Other funding Opportunities:
 - i) FHWA – Danny Capri
 - ii) FEMA – Ramona VanCleve
 - iii) USDA – Gregory Stuckey
 - iv) State OMB– Pat Pitney, Director
 - v) CAPSIS – Legislative Rob Carpenter- invited
 - vi) Private Foundations – Rasmuson Foundation-invited
- 3) US Coast Guard
 - i) Port Access Route Study Update, Hector Cintron, Chief, USCS Sector Anchorage
 - ii) Coast Guard Missions in Alaska, Hector Cintron
 - iii) Arctic Waterway Safety Committee, Hector Cintron

Lunch on Own

Thursday Afternoon

1:30 pm to 4:30 pm General Session:

- 1) FEMA Ken Murphy, Regional Administrator
- 2) FEMA Draft Guidance Tribal Disaster Declarations - Mini Consultation
- 3) FEMA Training Opportunities- Ramona VanCleve, Alaska Tribal Liaison
 - i) Emergency Management
 - ii) Emergency Operations
 - iii) Hazard Mitigation
- 4) Flood Risk Management Standard EO 13690 relates to old executive order (addition of 3' to base flood level requirements) – John Graves, Floodplain Management and Insurance Branch Chief
- 5) Climate Change – The Alaska Tribal Experience – Audience Discussion
 - a) Villages in Peril
 - b) What are you experiencing in your community
- 6) Adjourn


The Alaska Tribal Transportation Workgroup (ATTWG) is a small non-profit that initially formed in 2001 as a byproduct of the Negotiated Rulemaking of the Indian Reservation Roads (IRR) Program Regulations. A number of the tribal representatives who were involved in the development of the Regulations wanted to aid tribes in Alaska in understanding the opportunities presented by the IRR Program. Our efforts have expanded beyond the IRR Program.

All work to put on the annual Alaska Tribal Transportation Symposium is done by volunteers. The ATTWG Board of Directors works with State and Federal Agencies to develop the agenda and identify presenters for the Annual Symposium.

The Symposium is a unique forum that allows what we, the ATTWG Board of Directors hope is honest and open dialog of opportunities available to Tribes. For more information on the ATTWG, please visit our website at www.attwg.org.




NEPA Assignment Overview
AK Tribal Transportation Symposium
March 23, 2016




NEPA – What is it?

The National Environmental Policy Act (NEPA) requires federal agencies assess environmental effects of actions prior to making decisions.

Using the NEPA process, agencies evaluate environmental, social, & economic effects of their actions. They also provide opportunities for public and agency input.

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NEPA – What is it?

The 3 NEPA “classes of action”

- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

Since 2009, DOT&PF has had responsibility for CE determinations


3



NEPA Assignment – What is it?

- Formal assignment to a State of FHWA’s responsibilities for:
 - All NEPA classes of action: CEs, EAs and EISs
 - All environmental laws, rules and orders
- Under this program, DOT&PF would be deemed a Federal Agency on all FHWA projects for environmental matters.


4



NEPA Assignment – What is it?

- DOT&PF assumes legal responsibility and liability to ensure compliance with all environmental requirements
- DOT&PF agrees to be sued in Federal court
- Memorandum of Understanding (MOU) defines the range of project actions and environmental responsibilities the State assumes


5



NEPA Assignment – What is it?

- By law, FHWA retains:
 - Government to Government Tribal consultation
 - Federal-aid eligibility & other project decisions
 - Projects that cross state lines; or are adjacent to, or that cross, international boundaries
 - Project level air quality conformity determinations

6




NEPA Assignment – What is it?

All environmental laws, regulations, and policies remain the same

Potential for faster project delivery comes from:

- Eliminating FHWA review and approval steps
- Increased environmental process innovation
- Easier communication and consultation


7



How will this impact DOT&PF?

- DOT&PF must comply with MOU in assuming FHWA's environmental responsibilities:
 - Maintain detailed files, records and make them available to FHWA
 - Conduct regular self assessments
 - Maintain professional and experienced staff
 - Report all NEPA decisions to FHWA


8



FHWA Audits

- Once a year for 4 years
- FHWA may invite any state or Federal agency to participate in audit of DOT&PF's Program
- Audits may include interviews with agency staff
- Results of audit published in Federal Register


9



Alaska Tribal Communications

- Any Tribe, state or Federal agency may contact FHWA at any time for:
 - Concern with how DOT&PF is fulfilling assigned environmental responsibilities
 - Additional information about NEPA Assignment program
 - Other project-specific matters

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Alaska Tribal Communications

- Under NEPA Assignment, Alaska DOT&PF will remain committed to:
 - Listening to Tribes early and throughout the environmental process
 - Responding quickly to Tribal concerns to find solutions together
 - Maintaining the integrity of the NEPA process and compliance with environmental laws

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NEPA Assignment Timeline

2016	Winter	Develop Application	
	March	Alaska Tribal Transportation Symposium	
	May	State Public Notice of Draft Application	
	June	Respond to Comments	<div style="border: 1px solid #336699; padding: 5px; display: inline-block;"> Comment Opportunities </div>
	July	Submit Final Application to FHWA	
	Fall	Negotiate MOU Language	
2017	Jan	Federal Register Notice of Draft 327 MOU	
	Feb	Respond to Comments	
	March	327 MOU signed	

12



Contacts

DOT&PF Taylor Horne, Statewide Environmental Program Manager
taylor.horne@alaska.gov 465-6957

FHWA Tim Haugh, Environmental Program Manager
tim.haugh@dot.gov 586-7430

<http://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>
DOT&PF NEPA Assignment Webpage



**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES**

**NEPA Assignment Program
Frequently Asked Questions**

What is NEPA Assignment?

- Official Name: Surface Transportation Project Delivery Program (23 U.S.C. 327)
- Assignment of the Federal Highway Administration's (FHWA) National Environmental Policy Act (NEPA) responsibilities to a State who would assume responsibilities for:
 - All NEPA classes of action: Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)
 - All environmental laws, regulations and orders
- Under this program, the Department of Transportation and Public Facilities (DOT&PF) is deemed to be a Federal Agency for environmental matters on all assigned projects.

About the NEPA Assignment program

- DOT&PF assumes legal responsibility and liability to ensure compliance with all environmental requirements
 - The State of Alaska waives its sovereign immunity (AS 44.23.020(g))
 - DOT&PF agrees to be sued in Federal court
- NEPA Assignment does not reduce any current legal requirements
 - All environmental laws, regulations and orders remain in effect

Why is DOT&PF participating in the NEPA Assignment program?

- The program allows for more efficient delivery of projects and flexibility in DOT&PF procedures
- DOT&PF will be able to build stronger relationships with stakeholders and agencies through direct engagement and ownership of decision-making

Is DOT&PF accountable to maintain high environmental standards?

- DOT&PF will continue to maintain current high standards for environmental reviews and collaboration with partner agencies
- DOT&PF will continue to follow the same federal environmental laws, regulations, and Executive Orders
- DOT&PF Statewide Environmental Office will conduct regular program reviews
- FHWA will regularly conduct in-depth audits of DOT&PF's performance and adherence to environmental laws, regulations and Executive Orders
- FHWA retains final project funding authority and may revoke the program if DOT&PF does not perform to the required standards
- DOT&PF will be held liable for all environmental responsibilities and will be required to defend any claims brought in a Federal court
- This program increases the State's accountability as DOT&PF assumes more risk along with more responsibility for the quality and outcomes of their environmental documents and decisions.

Where has this been done before?

- Alaska has exercised FHWA NEPA responsibility for most CEs, under the 6004 Program (23 U.S.C. 326), since September 2009
- California and Texas assumed full FHWA NEPA responsibilities. Ohio applied for full NEPA Assignment. Utah has CE assignment and will apply for full NEPA assignment.

Scope of the NEPA Assignment Program

- A Memorandum of Understanding (MOU) will define the range of project actions and environmental responsibilities the State assumes
- The NEPA Assignment Program includes assigning FHWA's responsibilities and consultation obligations for environmental laws under the "NEPA umbrella", such as:
 - Endangered Species Act
 - Marine Mammal Protection Act
 - National Historic Preservation Act
 - Magnusson-Stevens Fishery Conservation and Management Act (EFH)
 - Alaska National Interest Lands Conservation Act (ANILCA)
- FHWA retains the following:
 - Federal-aid funding decisions
 - Project-level air quality conformity determinations
 - Government-to-Government Tribal consultation
 - USDOT responsibilities for statewide and metropolitan planning
 - Projects that cross state lines; and projects adjacent to, or that cross, international boundaries

How will this affect Government-to-Government consultation requirements?

- FHWA retains Government-to-Government consultation responsibility
- Upon request of a Tribe, FHWA will enter into consultation with Tribe regarding project
 - If concerns are resolved, the project may remain assigned to DOT&PF
 - If concerns persist, FHWA may elect to take over environmental processing of project
- DOT&PF remains committed to regular outreach and communications with Tribes regarding transportation projects in Alaska.

How will NEPA Assignment change the DOT&PF environmental process?

- Resource Agencies may not see much change
 - DOT&PF already handles the program on a day to day basis, and has exercised authority for most CEs since 2009
- With this program, DOT&PF becomes solely responsible and legally liable for their decisions for all CEs, EAs, and EISs.
- DOT&PF internal procedures will be changed to reflect that DOT&PF assumed additional FHWA responsibilities for all CEs, EAs and EISs.

How will this impact DOT&PF?

- DOT&PF must comply with its MOU commitments in assuming FHWA's environmental responsibilities, just as it has for those CEs processed under the 6004 program MOU since September 2009

How will this impact DOT&PF? (continued)

- DOT&PF will continue to:
 - Maintain detailed files and records, and make them available to FHWA
 - Develop and maintain updated procedures on all environmental processes
 - Provide continuous Quality Assurance/Quality Control (QA/QC) on all actions
 - Dedicate sufficient funding and staff to implement NEPA assignment
 - Maintain the necessary professional and experienced staff to carry out the required environmental analyses
 - Institute and maintain a progressive training plan for environmental staff
 - Conduct regular self-assessments
 - Report all NEPA decisions to FHWA

The Path to NEPA Assignment

- Draft Application currently being developed in coordination with FHWA
- The Application identifies:
 - Scope of Assignment
 - Current & Proposed Organization
 - Current & Proposed Procedures, Tools
 - Roles and Responsibilities
 - Additional Staff and Training
- State public notice for comment on draft Application anticipated May 2016
- Revise Application, based on comments received, and submit formal Application to FHWA expected July 2016
- If the Application is accepted by FHWA, MOU negotiations during Summer 2016
- Federal Register notice of draft MOU anticipated January 2017
- Projected effective date of NEPA Assignment Program: March 2017
- DOT&PF will work with Agencies to update existing agreements
- Internal environmental procedures and guidance will be updated
- DOT&PF staff training will cover:
 - NEPA process and DOT&PF environmental procedures
 - Public involvement and Agency consultation
 - Environmental regulation-specific content (e.g. Endangered Species Act, Marine Mammal Protection Act, wetlands permitting)

What can you do?

- Let us know of any concerns you may have, so that we can address them
- Prepare letters of support to DOT&PF for submittal with the NEPA Assignment application
- Would you like to meet individually with the DOT&PF and the FHWA?
 - DOT&PF contact: Taylor Horne, Statewide Environmental Program Manager, taylor.horne@alaska.gov, (907)465-6957
 - FHWA contact: Tim Haugh, Alaska Division Environmental Program Manager, tim.haugh@dot.gov, (907)526-7430

DOT&PF NEPA Assignment Web Site

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

From: [Heck, Linda K \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#)
Subject: 10-27-15 ATCEM 327 outreach notes
Date: Thursday, November 05, 2015 1:27:10 PM
Attachments: [faq_327.pdf](#)
[image001.png](#)

EVENT: Alaska Tribal Conference on Environmental Management

LOCATION: Downtown Hilton, Anchorage, AK

DATE: October 27-29, 2015

DOT&PF and FHWA representatives: Tim Haugh, Environment Program Manager, FHWA
Taylor Horne, Statewide Environmental Program Manager,

DOT&PF

Linda Heck, NEPA Program Manager, DOT&PF

FHWA and DOT&PF representatives staffed an exhibition table at the 2015 Alaska Tribal Conference on Environmental Management.

Several conference attendees inquired about highway or aviation projects of interest to their community. If answers were unknown by the FHWA or DOT&PF staff present, visitors were provided contact information for the DOT&PF Planner for their area of interest. Some interest was expressed in the NEPA process, but no specific questions or concerns were presented. Visitors were encouraged to review the FAQ sheet provided (attached) at the table, and to contact either Tim or Taylor with questions or concerns.

Linda Heck
NEPA Program Manager
Alaska Department of Transportation and Public Facilities
2301 Peger Road
Fairbanks, Alaska 99709
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From: Horne, Taylor C (DOT)
Sent: Tuesday, October 27, 2015 1:19 PM
Subject: Table



Taylor C. Horne

Statewide Environmental Program Manager

Alaska Department of Transportation and Public Facilities

[3132 Channel Drive, P.O. Box 112500](#)

[Juneau, Alaska 99811-2500](#)

Phone: [\(907\) 465-6957](#) Cell: [\(907\) 230-5055](#)



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

NEPA Assignment Program Frequently Asked Questions

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 - All NEPA classes of action: Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)
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 - The State of Alaska waives its sovereign immunity (AS 44.23.020(g))
 - DOT&PF agrees to be sued in Federal court
- NEPA Assignment does not reduce any current legal requirements
 - All environmental laws, regulations and orders remain in effect

Why is DOT&PF participating in the NEPA Assignment program?

- The program allows for more efficient delivery of projects and flexibility in DOT&PF procedures
- DOT&PF will be able to build stronger relationships with stakeholders and agencies through direct engagement and ownership of decision-making

Is DOT&PF accountable to maintain high environmental standards?

- DOT&PF will continue to maintain current high standards for environmental reviews and collaboration with partner agencies
- DOT&PF will continue to follow the same federal environmental laws, regulations, and Executive Orders
- DOT&PF Statewide Environmental Office will conduct regular program reviews
- FHWA will regularly conduct in-depth audits of DOT&PF's performance and adherence to environmental laws, regulations and Executive Orders
- FHWA retains final project funding authority and may revoke the program if DOT&PF does not perform to the required standards
- DOT&PF will be held liable for all environmental responsibilities and will be required to defend any claims brought in a Federal court
- This program increases the State's accountability as DOT&PF assumes more risk along with more responsibility for the quality and outcomes of their environmental documents and decisions.

Where has this been done before?

- Alaska has exercised FHWA NEPA responsibility for most CEs, under the 6004 Program (23 U.S.C. 326), since September 2009
- California and Texas assumed full FHWA NEPA responsibilities. Ohio applied for full NEPA Assignment. Utah has CE assignment and will apply for full NEPA assignment.

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- A Memorandum of Understanding (MOU) will define the range of project actions and environmental responsibilities the State assumes
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How will this affect Government-to-Government consultation requirements?

- FHWA retains Government-to-Government consultation responsibility
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 - If concerns are resolved, the project may remain assigned to DOT&PF
 - If concerns persist, FHWA may elect to take over environmental processing of project
- DOT&PF remains committed to regular outreach and communications with Tribes regarding transportation projects in Alaska.

How will NEPA Assignment change the DOT&PF environmental process?

- Resource Agencies may not see much change
 - DOT&PF already handles the program on a day to day basis, and has exercised authority for most CEs since 2009
- With this program, DOT&PF becomes solely responsible and legally liable for their decisions for all CEs, EAs, and EISs.
- DOT&PF internal procedures will be changed to reflect that DOT&PF assumed additional FHWA responsibilities for all CEs, EAs and EISs.

How will this impact DOT&PF?

- DOT&PF must comply with its MOU commitments in assuming FHWA's environmental responsibilities, just as it has for those CEs processed under the 6004 program MOU since September 2009

How will this impact DOT&PF? (continued)

- DOT&PF will continue to:
 - Maintain detailed files and records, and make them available to FHWA
 - Develop and maintain updated procedures on all environmental processes
 - Provide continuous Quality Assurance/Quality Control (QA/QC) on all actions
 - Dedicate sufficient funding and staff to implement NEPA assignment
 - Maintain the necessary professional and experienced staff to carry out the required environmental analyses
 - Institute and maintain a progressive training plan for environmental staff
 - Conduct regular self-assessments
 - Report all NEPA decisions to FHWA

The Path to NEPA Assignment

- Draft Application currently being developed in coordination with FHWA
- The Application identifies:
 - Scope of Assignment
 - Current & Proposed Organization
 - Current & Proposed Procedures, Tools
 - Roles and Responsibilities
 - Additional Staff and Training
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- Revise Application, based on comments received, and submit formal Application to FHWA expected July 2016
- If the Application is accepted by FHWA, MOU negotiations during Summer 2016
- Federal Register notice of draft MOU anticipated January 2017
- Projected effective date of NEPA Assignment Program: March 2017
- DOT&PF will work with Agencies to update existing agreements
- Internal environmental procedures and guidance will be updated
- DOT&PF staff training will cover:
 - NEPA process and DOT&PF environmental procedures
 - Public involvement and Agency consultation
 - Environmental regulation-specific content (e.g. Endangered Species Act, Marine Mammal Protection Act, wetlands permitting)

What can you do?

- Let us know of any concerns you may have, so that we can address them
- Prepare letters of support to DOT&PF for submittal with the NEPA Assignment application
- Would you like to meet individually with the DOT&PF and the FHWA?
 - DOT&PF contact: Taylor Horne, Statewide Environmental Program Manager, taylor.horne@alaska.gov, (907)465-6957
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DOT&PF NEPA Assignment Web Site

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

Opportunity for Public Meeting

Public Notice

In addition to posting on the State of Alaska, DOT&PF, Statewide Environmental Office website,
the notice was also published as follows:

Alaska Dispatch News, Anchorage AK, February 21 & 28, 2016

State of Alaska Online Public Notice

What's Up e-Newsletter February 24, 2015

Opportunity for Public Meeting for Proposed Application of Assignment of Environmental Responsibilities to the State of Alaska, Department of Transportation and Public Facilities

National Environmental Policy Act (NEPA) Assignment

Pursuant to 23 U.S.C. 327, the Alaska Department of Transportation and Public Facilities (DOT&PF) is preparing to apply to the Federal Highway Administration (FHWA) to participate in the FHWA's Surface Transportation Project Delivery Program which allows the Secretary of the United States Department of Transportation to assign to the State of Alaska responsibilities for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects. Through this program DOT&PF would assume FHWA's responsibilities for preparing Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, and all other related environmental responsibilities performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities are subject to the same procedural and substantive requirements as apply to FHWA.

Information regarding the NEPA Assignment Program is available online at:

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

DOT&PF is providing the opportunity to request a public meeting to present and discuss the NEPA Assignment Program in Anchorage, Alaska during the week of March 21, 2015.

To request this meeting be held, please contact: Taylor C. Horne, Statewide Environmental Program Manager, DOT&PF, at taylor.horne@alaska.gov, or (907)465-6957, by March 2, 2015.

The State of Alaska DOT&PF complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to respond and/or attend can contact Alaska Relay at 711 or <http://www.alaskarelay.com/> to make arrangement to contact Taylor C. Horne at (907)465-6957.

[Attachments, History, Details](#)

Attachments

None

Revision History

Created 2/18/2016 9:18:32 AM by SHWhistler

Details

Department: Transportation and Public Facilities
Category: Public Notices
Sub-Category:
Location(s): Statewide
Project/Regulation #:

Publish Date: 2/19/2016
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Events/Deadlines:

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AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath
deposes and says that he is
a representative of the
Alaska Dispatch News, a
daily newspaper. That said
newspaper has been approved
by the Third Judicial Court,
Anchorage, Alaska, and it now
and has been published in the
English language continually as a
daily newspaper in Anchorage,
Alaska, and it is now and during
all said time was printed in an
office maintained at the aforesaid
place of publication of said
newspaper. That the annexed is
a copy of an advertisement as it
was published in regular issues
(and not in supplemental form)
of said newspaper on

February 21 & 28, 2016

and that such newspaper was
regularly distributed to its
subscribers during all of said
period. That the full amount of
the fee charged for the foregoing
publication is not in excess of
the rate charged private individuals.

Signed Emma Dunlap

Subscribed and sworn to before

me this 14 day of March

20 16
Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

PUBLIC NOTICE

**Opportunity for Public Meeting for
Proposed Application of
Assignment of Environmental Responsibilities to the State of
Alaska, Department of Transportation and Public Facilities**

National Environmental Policy Act (NEPA) Assignment

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Information regarding the NEPA Assignment Program is available online at:
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To request this meeting be held, please contact: Taylor C. Horne, Statewide Environmental Program Manager, DOT&PF, at taylor.horne@alaska.gov, or (907)465-6957, by March 2, 2016.

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Published: February 21 & 28, 2016

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

From: whatsup@npogroups.org on behalf of [Peg Tileston](#)
To: [What's Up](#)
Subject: [whatsup] What's Up 2/25/16 Email Version
Date: Friday, February 26, 2016 12:29:46 AM

**Marks new items in this issue.

February 25 2016 Compiled weekly by Peg Tileston
On behalf of the Alaska Center for the Environment (ACE) and Alaska
Women's Environmental Network (AWEN)

CONFERENCES, WORKSHOPS, SEMINARS, SPECIAL EVENTS

SUSTAINABLE ENERGY COURSES that will be held in Palmer this SPRING are:
UAA/Mat-Su College
Mar. 30-Apr. 27 INTRO to SOLAR PHOTOVOLTAIC SYSTEMS (RE A110) – 1
credit, 5 weeks

February 29 & March 1

ANCHORAGE - INSTITUTE of the NORTH'S SPRING ANILCA TRAINING will be held
from 8am to 4:30pm each day at the BLM Campbell Creek Science Center.
This two-day ANILCA Training brings together numerous subject matter
experts to provide an overview of the Alaska National Interest Lands
Conservation Act of 1980 (ANILCA), including: •Summary of Alaska's land
history from Territorial days through ANILCA to present, •Context of
ANILCA's passage – including major constituents, issues of the day, and
the "Great Compromise," •Overview of ANILCA statutory provisions by
Title or Section, •Key access provisions of ANILCA, including access for
traditional activities, subsistence, inholdings, and transportation &
utility systems, •Subsistence on federal lands, •Wilderness reviews and
management, •ANILCA implementation, including federal land planning, and
•Case studies. Presenters: Federal agency representatives and others
with extensive ANILCA experience. Materials included: Copy of ANILCA &
Amendments; presentation documents; Alaska in Maps - A Thematic Atlas;
and portable USB drive with relevant laws, regulations and other
supporting documents. Discussion sessions on ANILCA issues take place
both days during lunch – lunch, coffee, and continental breakfast
provided. Recommended for: Federal agencies with ANILCA implementation
responsibilities, state and local land and resource managers, Native
corporations, rural residents and inholders, as well as community
leaders, policy makers, consultants, the academic community and the
interested public. Objective: Upon completion of the training, attendees
have a greater understanding of this sweeping legislation and its
influence on conservation policy, business opportunities, resource
development, and public land management in Alaska. Registration closes
one week in advance, unless already full. 35 participants minimum; 55
participants maximum. Department of Interior Employees Register [HERE](#):
Other Federal Employees Register [HERE](#): All others (non-federal) Register
[HERE](#). The registration options through the Institute of the North are
not applicable to federal employees. Course questions? Contact Roger
Pearson, ANILCA Training organizer and moderator. Registration and
logistical questions? Contact Penny Gage at Institute of the North.

March 1 – June 1

GREAT AMERICAN ARCTIC BIRDING CHALLENGE STARTS - Birds from six

they work to understand and adapt to our regions changing climate and/or other landscape-scale stressors. Project proposals should be developed in coordination with end-users and decision-relevant needs/outcomes must be clearly identified. For more information, go to <http://www.grants.gov/web/grants/view-opportunity.html?oppId=281069>.

March 15

Deadline for submission for the 2016 ALASKA JUNIOR DUCK STAMP CONTEST from K-12 students. Participants select a species of North American waterfowl, do research on this species and its habitat, and then depict their findings through art and writing. Prizes, cash awards, and national recognition await the winners. Get to know North America's waterfowl and enter the contest! For more information contact Tamara_Zeller@fws.gov or go to <http://alaska.fws.gov/jrduck>.

March 31

Deadline for applications for the COOK INLET REGIONAL CITIZENS ADVISORY COUNCIL (CIRCAC) for SCHOLARSHIPS for students who are pursuing a college or vocational school course of study focused on, or related to, ENVIRONMENTAL SCIENCES, MARITIME STUDIES or SPILL PREVENTION/RESPONSE. To learn if you qualify or to download an application, visit <http://www.circac.org/outreach/scholarship-program/>.

April 6

Deadline for applications for the NOAA FISHERIES COMMUNITY-BASED RESTORATION PROGRAM funding FOR COASTAL AND MARINE HABITAT RESTORATION awards in 2016. Through this funding opportunity, NOAA is seeking project proposals from non-federal partners to implement habitat restoration actions that will restore coastal ecosystems and improve coastal resiliency. NOAA will not accept proposals with a federal funding request of less than \$100,000 or more than \$5 million over a three year project period. Information can be found online at <http://www.habitat.noaa.gov/funding/coastalrestoration.html>. Contact Erika Ammann (907)271-5118, erika.ammann@noaa.gov.

DEADLINES

March 1

WRANGELL – Comments are due on the ANAN BAY MOORING FLOAT PROPOSAL for an improved anchored moorage float for public and commercial guide use to better address the need for safe moorage of planes and boats at the Anan Wildlife Observatory. The proposed facility would accommodate up to two planes and four boats moored with a ramp to accommodate a small shore boat. Use of the facility would be available for visitors to Anan on a first come-first serve basis. The proposed mooring float would be located in the bight along the north shore of Anan Bay, near the current seasonal location of the USFS administrative floathouse and the Anan Bay Recreation Cabin. For more information on the proposal go to <http://www.fs.usda.gov/goto/R10/Tongass/AnanProjects>. For more information on the Anan Wildlife Observatory go to <http://www.fs.usda.gov/goto/R10/Tongass/Anan>. To submit comments call the Wrangell Ranger District at 907-874-2323 or e-mail Outdoor Recreation Planner Dee Galla at dgalla@fs.fed.us.

**March 2

Deadline for requesting a public hearing on the proposal to allow the Secretary of the U.S. Dept. of Transportation to ASSIGN to the STATE of

ALASKA RESPONSIBILITIES for COMPLYING with the NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) on FEDERAL-AID HIGHWAY PROJECTS. Through this program DOT&PF would assume FHWA's responsibilities for preparing Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, and all other related environmental responsibilities performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities are subject to the same procedural and substantive requirements as apply to FHWA. Information regarding the NEPA Assignment Program is available online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>. DOT&PF is providing the opportunity to request a public meeting to present and discuss the NEPA Assignment Program in Anchorage during the week of March 21. To request this meeting be held, please contact: Taylor C. Horne, Statewide Environmental Program Manager, DOT&PF, at taylor.horne@alaska.gov, or (907)465-6957.

March 3

Deadline for comments on the proposal by the AK Dept of Fish & Game to adopt WATERS IMPORTANT FOR THE SPAWNING, REARING, OR MIGRATION OF ANADROMOUS FISH. Several revisions are proposed to be made to the Atlas and Catalog. The list of rivers, lakes, and streams, will be updated, including additions, deletions, and changes to the legal descriptions of many of these waters. Minor revisions will be made to the introduction of the Catalog and Atlas. Species-specific information will be used in place of undifferentiated species information wherever possible. To see the information packet documents, go to <https://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=pn.home> . You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Michael Daigneault, by email to michael.daigneault@alaska.gov.

March 4

Comments are due on the PROPOSED CHANGES in the REGULATIONS of the ALASKA BOARD OF GAME to adopt, amend, or repeal regulations which implement, interpret or make specific the provisions of Title 16 including: •Statewide seasons and bag limits for Dall sheep including youth hunts; statewide bag limit for brown bear; caribou in Units 9, 17, 18, 19, and 22; moose in Unit 16; goat in Unit 14; wolves in Unit 20; and all seasons for snowy owl and cormorants; •Unlawful methods of taking big game and game including restrictions on archery, black powder, sling bow, and crossbow weapons; artificial or enhanced light; infrared devices; certain sizes of caliber including calibers for high-power air rifles; use of felt soles; hunting with dogs; use of aircraft including same-day-airborne requirements; and taking big game and game within highway/road right-of-ways. Also in the section, unlawful methods of taking furbearers including trap check requirements; taking within highway/road right-of-ways; taking with underwater traps; and restrictions on trapping near communities, public places, and residences; •Evidence of sex and identity; salvage and retrieval of wounded game; salvage of game meat; furs, and hides including bear hide and skull; sale of brown bear parts; and restrictions to bag limit including wounded game and bag limits for nonresident hunters hunting with resident relatives; •Discretionary and required hunting permit conditions and procedures; special provisions for drawing hunts for

Draft 327 Application Notice of Availability

In addition to posting on the State of Alaska, DOT&PF, Statewide Environmental Office website, the notice was also published as follows:

All federally recognized native Alaskan tribal governments were sent printed copies of the draft application (April 25, 2016)

State and federal resource agencies were emailed notifications informing the entities of the NEPA Assignment Program application and their opportunity to submit formal comments. (April 26, 2016)

Juneau Empire, Alaska Dispatch News, and Fairbanks Daily News-Miner newspapers, May 1 & 8, 2016.

Weekly both on the State of Alaska Online Public Notice system and within the weekly e-newsletter What's Up, by Peg Tileston, on behalf of the Alaska Center for the Environment (ACE) and Alaska Women's Environmental Network (AWEN).



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and Public Facilities

OFFICE OF THE COMMISSIONER
Marc Luiken, Commissioner

3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500
Main: 907.465.3900
dot.state.ak.us

April 25, 2016

Dear Alaskan Tribal Leader:

In order to better communicate with Tribes in Alaska we are sharing this information with you. We would also appreciate it if you shared this information with your member tribes as well.

Pursuant to 23 U.S.C. 327, the Alaska Department of Transportation and Public Facilities (DOT&PF) is preparing to apply to the Federal Highway Administration (FHWA) to participate in the FHWA's Surface Transportation Project Delivery Program which allows the Secretary of the United States Department of Transportation to assign to the State of Alaska responsibilities for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects; this is known as the NEPA Assignment Program. Through this program DOT&PF would assume FHWA's responsibilities for preparing Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, and all other related environmental responsibilities performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities will be subject to the same procedural and substantive requirements that apply to FHWA.

Of note to Alaskan Tribes, the FHWA cannot assign its government-to-government tribal consultation responsibilities to the DOT&PF under the NEPA Assignment Program. Any time a Tribe requests FHWA government-to-government consultation, that request will be honored and DOT&PF will request that FHWA actively participate in consultations. Under the NEPA Assignment Program, DOT&PF will remain committed to listening to Tribes early and throughout the environmental process, responding quickly to Tribal concerns to find solutions together, and maintaining the integrity of the NEPA process and compliance with environmental laws.

We respectfully request your comments on the enclosed draft NEPA Assignment Program application. The deadline for public comment to be considered in the final application is May 31, 2016; however, we will continue to accept your comments at any time. The DOT&PF intends on submitting the final application to FHWA in July 2016. Additional information on the NEPA Assignment program and a digital copy of the draft application can be accessed at: <http://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>

If you have questions or comments, please contact Taylor C. Horne, DOT&PF Statewide Environmental Program Manager, at taylor.horne@alaska.gov or (907) 465-6957.

Respectfully,

Handwritten signature of Marc Luiken in black ink.

Marc Luiken
Commissioner

Enclosure: *Draft DOT&PF Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327*

"Keep Alaska Moving through service and infrastructure."



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and Public Facilities

OFFICE OF THE COMMISSIONER
Marc Luiken, Commissioner

3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500
Main: 907.465.3900
dot.state.ak.us

April 25, 2016

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We respectfully request your comments on the enclosed draft NEPA Assignment Program application. The deadline for public comment is May 31, 2016. The DOT&PF intends on submitting the final application to FHWA in July 2016. Additional information on the NEPA Assignment program and a digital copy of the draft application can be accessed at:

<http://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>

If you have questions or comments, please contact Taylor C. Horne, DOT&PF Statewide Environmental Program Manager, at taylor.horne@alaska.gov or (907) 465-6957.

Respectfully,

Handwritten signature of Marc Luiken in black ink.

Marc Luiken
Commissioner

Enclosure: *Draft DOT&PF Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327*

AK Draft 327 Application Notice
Tribal Mailing List

Afognak Native Corporation
Agdaagux Tribe of King Cove
Ahtna, Incorporated
Akhiok-Kaguyak, Incorporated
Akiachak Native Community
Akiachak, Limited
Akiak Native Community
Akutan Corporation
Alakanuk Native Corporation
Alaska Peninsula Corporation
Alatna Village
Aleknagik Natives Limited
Aleut Corporation
Aleutian Pribilof Island Association
Alexander Creek, Incorporated
Algaaciq Native Village
Allakaket Village
Angoon Community Association
Anvik Village
Arctic Slope Native Association
Arctic Slope Regional Corporation
Arviq Incorporated
Asa'carsarmiut Tribe
Askinuk Corporation
Association of Village Council President
Atmautluak Limited
Atqasuk Corporation
Atqasuk Village
Atxam Corporation
Ayakulik, Incorporated
Azachorok Incorporated
Baan O Yeel Kon Corporation
Bay View, Incorporated
Bean Ridge Corporation
Beaver Kwit'chin Corporation
Beaver Village
Becharof Corporation
Belkofski Corporation
Bering Straits Native Corporation
Bethel Native Corporation
Birch Creek Tribe
Brevig Mission Native Corporation
Bristol Bay Health Corporation
Bristol Bay Native Association
Bristol Bay Native Corporation
Calista Corporation
Cape Fox Corporation
Caswell Native Association
Central Council of the Tlingit and Haida Indian Tribes
Chalkyitsik Native Corporation
Chalkyitsik Village
Chaluka Corporation
Cheesh-Na Tribe
Chefarnrmute, Incorporated
Chevak Company
Chevak Native Village
Chickaloon Native Village
Chickaloon-Moose Creek Native Association, Incorporated
Chignik Bay Tribal Council
Chignik Lagoon Native Corporation
Chignik Lake Village
Chignik River Limited
Chilkat Indian Village
Chilkoot Indian Association
Chinik Eskimo Community
Chinuruk Incorporated
Chitina Native Corporation
Choggiung Limited
Chugach Alaska Corporation
Chugachmiut
Chuloonawick Corporation
Chuloonawick Native Village
Circle Native Community
Cook Inlet Region, Incorporated
Cook Inlet Tribal Council
Copper River Native Association
Council Native Corporation
Council of Athabascan Tribal Governments
Craig Tribal Association
Cully Corporation Incorporated
Curyung Tribal Council
Danzhit Hanlaih Corporation
Deloy ges Corporation
Deloycheet, Incorporated
Dineega Corporation
Dinyea Corporation
Dot Lake Native Corporation
Douglas Indian Association
Doyon, Limited
Eastern Aleutian Tribes
Egegik Village
Eklutna Native Village
Eklutna, Incorporated
Ekwook Natives Limited

AK Draft 327 Application Notice
Tribal Mailing List

Elim Native Corporation	Klawock Cooperative Association
Emmonak Corporation	Klawock Heenya Corporation
Emmonak Village	Klukwan, Incorporated
Evansville Village	Knik Tribal Council
Evansville, Incorporated	Knik Tribe
Far West, Incorporated	Knikatnu, Incorporated
Galena Village	Kodiak Area Native Association
Gana-A'Yoo, Limited	Kokarmuit Corporation
Goldbelt, Incorporated	Kokhanok Village
Golovin Native Corporation	Koliganek Natives Limited
Gulkana Village	Kongnikilnomuit Yuita Corporation
Gwitchyaa Zhee Corporation	Koniag, Incorporated
Haida Corporation	Kootznoowoo, Incorporated
Healy Lake Trade Village Corporation	Kotlik Yupik Corporation
Healy Lake Village	K'oyitl'ots'ina, Limited
Hee-Yea-Lingde Corporation	Koyuk Native Corporation
Holy Cross Village	Koyukuk Native Village
Hoonah Indian Association	Kugkaktlik, Limited
Hughes Village	Kuitsarak, Incorporated
Huna Totem Corporation	Kukulget, Incorporated
Hungwitchin Corporation	Kuukpik Corporation
Huslia Village	Kwethluk Incorporated
Hydaburg Cooperative Association	Kwik Incorporated
Igiugig Native Corporation	Leisnoi, Incorporated
Igiugig Village	Levelock Natives Limited
Iliamna Natives Limited	Levelock Village
Inalik Native Corporation	Lime Village Company
Inupiat Community of the Arctic Slope	Litnik, Incorporated
Iqfijouaq Company	Maniilaq Association
Iqurmiut Traditional Council	Manley Hot Springs Village
Isanotski Corporation	Manokotak Natives Limited
Ivanof Bay Village	Manokotak Village
Kaguyak Village	Mary's Igloo Native Corporation
Kake Tribal Corporation	Maserculiq, Incorporated
Kaktovik Inupiat Corporation	McGrath Native Village
Kaktovik Village	Mendas Cha-ag Native Corporation
Kasigluk Traditional Elders Council	Mentasta Traditional Council
Kasigluk, Incorporated	Metlakatla Indian Community
Kavilco Incorporated	Montana Creek Native Association
Kawerak, Inc.	Mt. Sanford Tribal Consortium
Kenai Natives Association, Incorporated	MTNT, Limited
Kenaitze Indian Tribe	Naknek Native Village
Ketchikan Indian Corporation	NANA Regional Corporation, Incorporated
Kijik Corporation	Napakiak Corporation
Kikiktagruk Inupiat Corporation	Native Village of Afognak
King Island Native Community	Native Village of Akhiok
King Island Native Corporation	Native Village of Akutan
King Salmon Tribe	Native Village of Aleknagik

AK Draft 327 Application Notice
Tribal Mailing List

Native Village of Ambler	Native Village of Napaimute
Native Village of Atka	Native Village of Napakiak
Native Village of Barrow Inupiat Traditional Government	Native Village of Napaskiak
Native Village of Belkofski	Native Village of Nelson Lagoon
Native Village of Brevig Mission	Native Village of Nightmute
Native Village of Buckland	Native Village of Nikolski
Native Village of Cantwell	Native Village of Noatak
Native Village of Chenega	Native Village of Nuiqsut
Native Village of Chignik Lagoon	Native Village of Nunam Iqua
Native Village of Chitina	Native Village of Nunapitchuk
Native Village of Chuathbaluk	Native Village of Old Harbor
Native Village of Council	Native Village of Ouzinkie
Native Village of Deering	Native Village of Paimiut
Native Village of Diomedea	Native Village of Perryville
Native Village of Eagle	Native Village of Pilot Point
Native Village of Eek	Native Village of Pitka's Point
Native Village of Eklutna	Native Village of Point Hope
Native Village of Ekuk	Native Village of Point Lay
Native Village of Ekwok	Native Village of Port Graham
Native Village of Elim	Native Village of Port Heiden
Native Village of Eyak	Native Village of Port Lions
Native Village of False Pass	Native Village of Ruby
Native Village of Fort Yukon	Native Village of Saint Michael
Native Village of Gakona	Native Village of Savoonga
Native Village of Gambell	Native Village of Scammon Bay
Native Village of Georgetown	Native Village of Selawik
Native Village of Goodnews Bay	Native Village of Shaktoolik
Native Village of Hamilton	Native Village of Shishmaref
Native Village of Hooper Bay	Native Village of Shungnak
Native Village of Kanatak	Native Village of Stevens
Native Village of Karluk	Native Village of Tanacross
Native Village of Kiana	Native Village of Tanana
Native Village of Kipnuk	Native Village of Tatitlek
Native Village of Kivalina	Native Village of Tazlina
Native Village of Kluti Kaah	Native Village of Teller
Native Village of Kobuk	Native Village of Tetlin
Native Village of Kongiganak	Native Village of Tuntutuliak
Native Village of Kotzebue	Native Village of Tununak
Native Village of Koyuk	Native Village of Tyonek
Native Village of Kwigillingok	Native Village of Unalakleet
Native Village of Kwinhagak	Native Village of Unga
Native Village of Larsen Bay	Native Village of Venetie Tribal Government
Native Village of Marshall	Native Village of Wales
Native Village of Mary's Igloo	Native Village of White Mountain
Native Village of Mekoryuk	Natives of Kodiak, Incorporated
Native Village of Minto	Nelson Lagoon Corporation
Native Village of Nanwalek	Nenana Native Association
	Nerklikmute Native Corporation

AK Draft 327 Application Notice
Tribal Mailing List

New Koliganek Village Council	Qanirtuuq, Incorporated
New Stuyahok Village	Qawalangin Tribe of Unalaska
Newhalen Village	Qemirtalek Coast Corporation
Newtok Native Corporation	Rampart Village
Newtok Village	Russian Mission Native Corporation
Nikolai Village	Saguyak Incorporated
Nima Corporation	Saint George Island
Ninilchik Natives Association, Incorporated	Saint Paul Island
Ninilchik Village	Salamatof Native Association, Incorporated
Nome Eskimo Community	Sanak Corporation
Nondalton Village	Sea Lion Corporation
Noorvik Native Community	Sealaska Corporation
Northway Natives Incorporated	Seldovia Native Association, Incorporated
Norton Sound Health Corporation	Seldovia Village Tribe
Nulato Village	Seth-De-Ya-Ah Corporation
Nunakuiak Yupik Corporation	Shaan-Seet, Incorporated
Nunakauyarmiut Tribe	Shageluk Native Village
Nunapiglluraq Corporation	Shaktoolik Native Corporation
Nunapitchuk Limited	Shee Atika, Incorporated
Oceanside Corporation	Shishmaref Native Corporation
Ohog Incorporated	Shumagin Corporation
Old Harbor Native Corporation	Shuyak, Incorporated
Olgoonik Corporation	Sitka Tribe of Alaska
Olsonville, Incorporated	Sitnasuak Native Corporation
Organized Village of Grayling	Sivuqaq, Incorporated
Organized Village of Kake	Skagway Village
Organized Village of Kasaan	Solomon Native Corporation
Organized Village of Kwethluk	South Naknek Village
Organized Village of Saxman	Southcentral Foundation
Orutsararmuit Native Village	SouthEast Regional Health Corporation
Oscarville Native Corporation	St. George Tanaq Corporation
Oscarville Traditional Village	St. Mary's Native Corporation
Ounalashka Corporation	St. Michael Native Corporation
Ouzinkie Native Corporation	Stebbins Community Association
Paimiut Corporation	Stebbins Native Corporation
Paug-Vik Incorporated, Limited	Stuyahok Limited
Pauloff Harbor Village	Sun'aq Tribe of Kodiak
Pedro Bay Corporation	Swan Lake Corporation
Pedro Bay Village	Takotna Village
Petersburg Indian Association	Tanacross Incorporated
Pilot Point Native Corporation	Tanadgusix Corporation
Pilot Station Traditional Village	Tanalian, Incorporated
Pilot Station, Incorporated	Tanana Chiefs Conference
Pitka's Point Native Corporation	Tangirnaq Native Village
Platinum Traditional Village	Telida Village
Point Possession, Incorporated	Teller Native Corporation
Portage Creek Village	Tetlin Native Corporation
Qagan Tayagungin Tribe of Sand Point Village	The Chenega Corporation

AK Draft 327 Application Notice
Tribal Mailing List

The English Bay Corporation
The Eyak Corporation
The King Cove Corporation
The Kuskokwim Corporation
The Port Graham Corporation
The Tatitlek Corporation
The Thirteenth Regional Corp
Tihteet'aii, Incorporated
Tikigaq Corporation
Toghotthele Corporation
Togiak Natives Limited
Tozitna, Limited
Traditional Village of Togiak
Tulkisarmute Incorporated
Tuluksak Native Community
Tuntutuliak Land, Limited
Tununmiut Rinit Corporation
Twin Hills Native Corporation
Twin Hills Village
Tyonek Native Corporation
Uganik Natives, Incorporated
Ugashik Village
Ukpeagvik Inupiat Corporation
Umkumiut Native Village
Unalakleet Native Corporation
Unga Corporation
Uyak Natives, Incorporated
Village of Alakanuk
Village of Anaktuvuk Pass
Village of Aniak
Village of Atmoutluak
Village of Bill Moore's Slough
Village of Chefornak
Village of Clarks Point
Village of Crooked Creek
Village of Dot Lake
Village of Iliamna
Village of Kalskag
Village of Kaltag
Village of Kotlik
Village of Lower Kalskag
Village of Ohogamiut
Village of Red Devil
Village of Salamatoff
Village of Sleetmute
Village of Solomon
Village of Stony River
Village of Venetie-INACTIVE
Village of Wainwright
Wales Native Corporation
White Mountain Native Corporation
Wrangell Cooperative Association
Yak-Tat Kwaan Incorporated
Yakutat Tlingit Tribe
Yukon Kuskokwim Health Corporation
Yupit of Andreafski
Zho-Tse, Incorporated

From: [Horne, Taylor C \(DOT\)](#)
To: [Alicia Bishop - NOAA Federal](#); [jon.kurland@noaa.gov](#); [sadie.wright@noaa.gov](#); ["barbara.mahoney@noaa.gov"](#); ["greg.balogh@noaa.gov"](#); ["Geoff_Haskett@fws.gov"](#); ["Sue_Masica@nps.gov"](#); ["melissa_burns@fws.gov"](#); ["sarah_conn@fws.gov"](#); ["Soderlund.dianne@epa.gov"](#); ["fordham.tami@epa.gov"](#); ["barbara.mahoney@noaa.gov"](#); ["Kmarchowsky@fs.fed.us"](#); ["brooke_merrell@nps.gov"](#); ["Shannon.R.Morgan@usace.army.mil"](#); ["dlmorton@fs.fed.us"](#); ["jennifer_spegon@fws.gov"](#); [Soto, Edward M \(DNR\)](#); [Rollins, Mark W \(DNR\)](#); ["blakep@akrr.com"](#); ["maddy@akrr.com"](#); ["greenbaumj@akrr.com"](#); ["adolfaeb@akrr.com"](#); ["stephensl@akrr.com"](#); ["leons@akrr.com"](#); ["sautelc@akrr.com"](#); [Hobbie, David S POA](#); ["Newman, Sheila M POA"](#); [Salyer, Michael POA](#); ["Muir, Jordan"](#); ["Sonja_Jahrsdoerfer@fws.gov"](#); [Bittner, Judith E \(DNR\)](#); ["curtis.jennifer@epa.gov"](#); ["bcribley@blm.gov"](#); ["Bert_Frost@nps.gov"](#); ["McLerran.dennis@Epa.gov"](#); ["bpendleton@fs.fed.us"](#)
Cc: ["Tim.Haugh@dot.gov"](#); [Healy, Roger K \(DOT\)](#); [Goldstein, Melissa L \(DOT\)](#); [Heck, Linda K \(DOT\)](#); [Horne, Taylor C \(DOT\)](#); [Sumner, Amy L \(DOT\)](#); [Elliott, Brian A \(DOT\)](#); [Lindh, Hilary K \(DOT\)](#); [Nelson, Brett D \(DOT\)](#)
Subject: DOT&PF NEPA Assignment Program Public Notice: May 31 deadline
Date: Tuesday, April 26, 2016 1:52:39 PM
Attachments: [image001.png](#)

Hello,

I am pleased to announce that Alaska DOT&PF's draft NEPA Assignment application is posted for public notice at : <http://dot.alaska.gov/stwddes/desenviron/resources/nepa.shtml>

The public notice period lasts until May 31st. Please address any comment or support letters to me. Additionally, I am happy to schedule a time to discuss the program with you and your colleagues. The webpage linked above also contains links to a FAQ and other information about the NEPA Assignment Program.

Thank you,
Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

Request for Comments on Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska, Department of Transportation and Public Facilities

Pursuant to 23 U.S.C. 327, the Alaska Department of Transportation and Public Facilities (DOT&PF) is preparing to apply to the Federal Highway Administration (FHWA) to participate in the FHWA's Surface Transportation Project Delivery Program which allows the Secretary of the United States Department of Transportation to assign to the State of Alaska responsibilities for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects. Through this program DOT&PF would assume FHWA's responsibilities for preparing Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, and all other related environmental responsibilities performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities will be subject to the same procedural and substantive requirements as apply to FHWA.

The proposed draft application and information regarding the NEPA Assignment Program is available online at: <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>. The document may also be obtained by contacting DOT&PF as described below. The public comment period will end May 31, 2016. Comments received during the comment period will be reviewed, compiled and submitted with DOT&PF's final application to FHWA. If FHWA accepts the application, the DOT&PF and FHWA will negotiate a memorandum of understanding (MOU), a draft of which will be made available for public comment on the Federal Register at a later date.

The public is invited to comment on the proposed draft application. Comments must be received by May 31, 2016 to be considered in the final application to FHWA. For additional information, or to comment on this proposed draft application, please contact:

Taylor C. Horne, Statewide Environmental Program Manager, Statewide Design and Engineering Services – Room 105, Alaska Department of Transportation and Public Facilities at P.O. Box 112500 Juneau, AK 99811-2500, (907) 465-6957, taylor.horne@alaska.gov

The DOT&PF complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications who require special accommodations while gathering information on this file, should contact Taylor Horne at telephone number (907) 465-8944, or email him at taylor.horne@alaska.gov.

[Attachments, History, Details](#)

Attachments

None

Revision History

Created 4/28/2016 2:40:59 PM by SHWhistler

Details

Department: Transportation and Public Facilities
 Category: Public Notices
 Sub-Category:
 Location(s): Statewide
 Project/Regulation #:

Publish Date: 5/1/2016
 Archive Date: 5/31/2016

Events/Deadlines:

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT } SS.

Before me, the undersigned, a notary public, this day personally appeared Jenny Nance, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper (i) published in newspaper format, (ii) distributed daily more than 50 weeks per year, (iii) with a total circulation of more than 500 and more than 10% of the population of the Fourth Judicial District, (iv) holding a second class mailing permit from the United States Postal Service, (v) not published primarily to distribute advertising, and (vi) not intended for a particular professional or occupational group. The advertisement which is attached is a true copy of the advertisement published in said paper on the following day(s):

May 1, 8, 2016

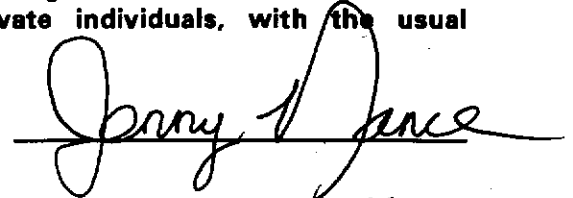
State of Alaska / DOT & PF / Statewide Design

Ad # 34785

Acct # 2941

Public Notice-Nat'l Env Policy Act (NEPA)

and that the rate charged thereon is not excess of the rate charged private individuals, with the usual discounts.



Subscribed and sworn to before me on this 16 day

of May, 2016



Notary Public in and for the State Alaska.

My commission expires

DEC 7, 2017

NOTARY PUBLIC
M. BURNELL
STATE OF ALASKA
My commission Expires December 7, 2017

PUBLIC NOTICE

Request for Comments on Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska, Department of Transportation and Public Facilities

National Environmental Policy Act (NEPA) Assignment

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Taylor C. Horne, Statewide Environmental Program Manager,
Statewide Design and Engineering Services - Room 105, Alaska Department of Transportation and Public Facilities at P.O. Box 112500
Juneau, AK 99811-2500 (907) 465-6937, taylor.horne@alaska.gov

F0004795

Affidavit of Publication

United States of America

Ad #: 7000054971

DOT-Design and Engineering

AO#: 16-DES-007

PUBLIC NOTICE

Request for Comments on Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska, Department of Transportation and Public Facilities

National Environmental Policy Act (NEPA) Assignment

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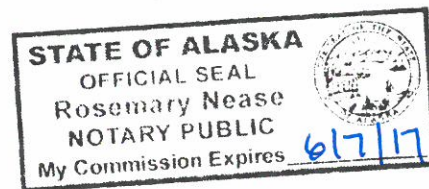
I, Stephanie West, first duly sworn, oath, depose, and say that I am the Principle Clerk of the JUNEAU EMPIRE, a newspaper of general circulation, published in the city of Juneau, State of Alaska; that the publication was published in said newspaper, on the 1st day of May 2016 and thereafter for 1 additional day(s), the last date of publication being May 8th, 2016.

Stephanie West

Subscribed and sworn to before me this 29th day of June 2016.

Rosemary Nease

Notary Public in and for the State of Alaska.



270214
#1384988
\$498.00

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath
deposes and says that she is
a representative of the
Alaska Dispatch News, a
daily newspaper. That said
newspaper has been approved
by the Third Judicial Court,
Anchorage, Alaska, and it now
and has been published in the
English language continually as a
daily newspaper in Anchorage,
Alaska, and it is now and during
all said time was printed in an
office maintained at the aforesaid
place of publication of said
newspaper. That the annexed is
a copy of an advertisement as it
was published in regular issues
(and not in supplemental form)
of said newspaper on

May 1 & 8, 2016

and that such newspaper was
regularly distributed to its
subscribers during all of said
period. That the full amount of
the fee charged for the foregoing
publication is not in excess of
the rate charged private individuals.

Signed Emma Dunlap

Subscribed and sworn to before
me this 28 day of June

20 Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

PUBLIC NOTICE

**Request for Comments on
Proposed Draft Application for Assignment of
Environmental Responsibilities to the State of Alaska,
Department of Transportation and Public Facilities**

National Environmental Policy Act (NEPA) Assignment

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Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

BRITNEY L. THOMPSON
State of Alaska
Commission Expires Feb 23, 2019

From: whatsup@npogroups.org on behalf of Peg Tileston
To: [What's Up](#)
Subject: [\[whatsup\] What's Up 5/4/2016 Email Version](#)
Date: Thursday, May 05, 2016 12:27:20 AM

****Marks new in this issue.**

May 4, 2016 Compiled weekly by Peg Tileston

On behalf of the Alaska Center for the Environment (ACE) and Alaska Women's Environmental Network (AWEN)

CONFERENCES, WORKSHOPS, SEMINARS, SPECIAL EVENTS

Alaska GOV. BILL WALKER has proclaimed the MONTH of MAY as BIKE MONTH with MAY 16 to 20 as BIKE to WORK WEEK. The AK Dept. of Transportation & Public Facilities will join organizations throughout the state during May to support Bike Month events. Biking is an affordable, healthy form of transportation and a great way to get the 30 to 60 minutes of daily activity recommended for optimum health. To view Gov. Walker's proclamation, visit: gov.alaska.gov/newsroom/2016/04/bike-month-2/

May 5

ANCHORAGE & FAIRBANKS - The ALASKA STATE LANDS ADVISORY GROUP (ASLAG) and the CITIZENS' ADVISORY COMMISSION on FEDERAL AREAS (CACFA) will have a joint work session from 10am to 4pm in the Anchorage and Fairbanks Legislative Information Offices at 716 West 4th Avenue in Anchorage and 1292 Sadler Way #308 in Fairbanks. ASLAG charter and additional information on its mission and activities can be found at <http://dnr.alaska.gov/commis/cacfa/alaskastatelands.htm> . This meeting is open to the public. Persons wishing to attend the meeting and/or provide comments who are unable to attend in person at either location may call (844)586-9085. The work session will be "listen-only" with one 30-minute opportunity for public testimony at 3:30pm. For more information, please contact Sara Taylor, CACFA Executive Director, at (907)269-3645 or email sara.taylor@alaska.gov.

May 5 -7

ANCHORAGE - ALASKA TRAILS 2016 STATEWIDE TRAILS CONFERENCE

Join trail advocates from around the state for learning, networking and partnership at the 2016 Statewide Trails Conference, May 5-7, BP Energy Center. With the theme: "DOING MORE WITH LESS" presenters will highlight sustainable trail practices with a focus on how to get things done in times of fiscal uncertainty and constraint. New this year at the conference: Helical Pile Elevated Walkways, Maps and Apps, Physics for Trail Builders, Increasing diversity on trails, Combating Invasives on Trails, Trail Bridge Options. Check out Alaska Trails' [NEW WEBSITE](#) for information on - Agenda, Keynotes, Breakout Descriptions, Speaker Bios and registration information at <http://www.alaska-trails.org/trails-conference.html>. **New this year: -Door Prizes** – All those who register for the conference and Alaska Trails membership will be eligible for a variety of door prizes from businesses across the state. **-Two Poster Sessions** – bring a display to share with attendees on Thursday afternoon and Saturday morning. **-Vendor tables** – A limited number of vendor tables are available – right next to the lunch buffet. **-Pre-Conference Session TERRAIN DYNAMICS with MIKE SHIELDS** on Wednesday, May 4.

May 6

ANCHORAGE - COMMERCIAL LED LIGHTING for ALASKA WORKSHOP will be held from Noon to 4:30pm in the Gorsuch Common Room #107, UAA, presented by DAVE INMAN, Lighting Unlimited. This workshop is for lighting installers, commercial and industrial building owners, government officials and others interested in the options, pitfalls, and potential cost savings from various LED lighting options. By proper lighting selection and controls, we can reduce current lighting energy use by 70-95% and greatly reduce maintenance costs. But there are risks involved. See the latest lighting options and learn about making the best lighting choices for commercial applications. This workshop is sponsored by Alaska Center for Appropriate Technology (ACAT). Qualifies for 3 CEUs for residential endorsement. Presenter: DAVE INMAN, Lighting Unlimited. COST: \$40 for ACAT members; \$80 for non-members | Additional fee for CEUs. For more information, contact 907.229.1982, email info@acat.org or go to www.acat.org.

May 6 & 7

ANCHORAGE & FAIRBANKS – Public meeting will be held by the CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS (CACFA) from 8:30am to 5pm on Friday and from 9am to 5pm on Saturday in the Legislative

Information Offices, 716 W. 4th. Presentations and discussion are scheduled to include: USFWS Proposed Rulemaking on Wildlife Harvest and Closure Process for Alaska Refuges; Wilderness and Backcountry Management Planning in Wrangell-St. Elias National Park & Preserve; Land Use Planning for the Chugach and Tongass National Forests; Regulations, Policies and Status of Land Use Planning for BLM Areas in Alaska; Alaska State Lands Advisory Group Update; and Commission-sponsored summits and outreach planning. To watch or listen to the meeting live, visit <http://www.akl.tv> during the meeting times. Audio/video of each meeting will be archived and available after the meeting via weblink on the [CACFA website](#). This meeting is open to the public. Participants may attend the meeting at either location; the Fairbanks location will be patched into the Anchorage location via teleconference. Periods of public comment are scheduled for 11:30am and 3:30pm on

Community Hall. Agenda will include preparation of comments on the Federal Subsistence fisheries proposals. For more information contact George Heim at 599-2000.

May 15

WRANGELL/ST. ELIAS NATIONAL PARK – Deadline for comments on the proposed **MINING PLAN OF OPERATIONS (MPO)** which has been submitted by Vern Fiehler of Chisana, for the purpose of conducting a suction dredge placer gold mining operation on the **GOLD RUN GROUP of UNPATENTED MINING CLAIMS** located in the Gold Hill area within Wrangell St. Elias National Park and Preserve (WRST). Mr. Fiehler has submitted a mining plan of operations, detailing his proposed means and methods. The mineral rights to the Gold Run claims are owned by Mr. Fiehler. Access to the site will be authorized via a Right-of-Way Certificate of Access (RWCA). Access in the summer (May through September) will be via the Chicken airstrip, then by Off Road Vehicle approximately 1.5 miles on an existing trail to the claims. Some materials may be hauled to the claims from Chisana in the winter via snowmachine. The mineral rights to the Little Eldorado Group claims are owned by Chisana Mining LLC. NPS will prepare an Environmental Assessment (EA) that will analyze and examine the proposed mining operations and reasonable alternatives to ensure that it satisfies the requirements of 36 CFR 9.10, and would not injure or adversely affect federally owned land. For more information, contact Bruce Rogers at 907-822-7276. Submit comment at <http://parkplanning.nps.gov/document.cfm?parkID=21&projectID=49549&documentID=72321>.

****May 18**

Comments are due on the proposal by the Div. of Water to phase-in increased fees for wastewater discharges over a three (3) year period. The first year fee is 50% more than the current fee, so that the increase is minimal and gives affected permittees time to adjust to the new fee. The second year fee increase is 50% of the remaining balance of the new fee. In some cases, the percent increase in the second year fee will be higher than the percent increase in the first year's fee. The third year will be the new full fee. A public hearing is scheduled for May 25 at Noon **if a public hearing is requested** by Wednesday, May 18. The public notice package, including the revised fee regulations, is available at http://dec.alaska.gov/water/wwdp/online_permitting/fee_regs.htm. The website also includes information for where and how to comment and a point of contact.

****May 28**

HAINES - Deadline for comments on the **ENVIRONMENTAL ANALYSIS (EA) for CONSTANTINE METAL RESOURCES LTD'S PROPOSED PLAN of OPERATIONS** to expand exploration on federal mining claims located near Haines. Constantine submitted a new plan to expand their existing exploration activities in June 2015. Previously, the BLM authorized Constantine to carry out up to five acres of ground disturbing exploratory activity on their federal claims. Constantine's proposed expanded exploration is adjacent to ongoing activity in the Palmer Project within the Porcupine Mining District. The Plan proposes up to 2.5 miles of additional road construction including the installation of culverts and bridges over gullies and streams in the vicinity of Glacier Creek. It also includes a switchback road with rock fall berms and an area at the terminus of the switchback road to stage equipment and facilities. The proposed road would provide access for up to 40 new drill sites. These drill sites would provide a staging area for helicopter and ground-supported exploration activities. Constantine plans to continue exploration for the next 5 – 10 years. To review and comment on the EA, go to https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do. Using an "Advanced Search," enter NEPA number: DOI-BLM-AK-A020-2016-0006-EA. Comments may also be submitted to the BLM Glennallen Field Office, Attn: Constantine, P.O. Box 147, Glennallen, AK 99588.

****May 31**

Deadline for comments on **PROPOSED DRAFT APPLICATION for ASSIGNMENT OF ENVIRONMENTAL RESPONSIBILITIES to the STATE OF ALASKA**. The AK Dept of Transportation & Public Facilities (DOT&PF) is preparing to apply to the Federal Highway Administration (FHWA) to participate in the FHWA's Surface Transportation Project Delivery Program which allows the Secretary of the United States Department of Transportation to assign to the State of Alaska responsibilities for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects. Through this program DOT&PF would assume FHWA's responsibilities for preparing Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, and all other related environmental responsibilities performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities will be subject to the same procedural and substantive requirements as apply to FHWA. The proposed draft application and information regarding the NEPA Assignment Program is available online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>. If FHWA accepts the application, the DOT&PF and FHWA will negotiate a memorandum of understanding (MOU), a draft of which will be made available for public comment on the Federal Register at a later date. For more information, contact Taylor C. Horne, Statewide Environmental Program Manager, at (907) 465-6957 or email taylor.horne@alaska.gov.

****May 31 (DEADLINE EXTENDED from APRIL 30) (CORRECTED INFORMATION)**

Deadline for comments for the **DONLIN GOLD PROJECT ENVIRONMENTAL IMPACT STATEMENT (EIS)**. The Draft EIS analyzes the impacts of issuing permits for an open pit, hardrock gold mine 10 miles north of the village of Crooked Creek on the Kuskokwim River in southwest Alaska. In addition to the proposed mine, the project would: • Construct a 315 mile natural gas pipeline from Cook Inlet through the Alaska Range to the mine site that would potentially impact lands with the following special use designations: -Susitna Flats State Game Refuge; -Lake Creek, Alexander Creek, Kroto and Moose Creek Recreation Rivers; -Willow Creek State Recreation area; and -the Iditarod National Historic Trail. •

From: whatsup@npogroups.org on behalf of Peg Tileston
To: [What's Up](#)
Subject: [whatsup] What's Up 5/11/16 Email Version
Date: Wednesday, May 11, 2016 10:39:07 PM

****Marks new items in this issue.**

May 11, 2016 Compiled weekly by Peg Tileston

On behalf of the Alaska Center for the Environment (ACE) and Alaska Women's Environmental Network (AWEN)

CONFERENCES, WORKSHOPS, SEMINARS, SPECIAL EVENTS

May 12 -15

HOMER - 24TH ANNUAL KACHEMAK BAY SHOREBIRD FESTIVAL will be held. This year Keynote Speakers **SHARON STITELER** and **KEVIN KARLSON**, with **DALE ROSSELET** joining the celebration, to offer a handful of entertaining talks and workshops. **RAM PAPIISH**, Featured Artist, has created a beautiful interpretation of our featured bird, the [Black Oystercatcher](#). As always, there will be a plethora of activities to choose from, including field excursions, boat trips, educational talks, the Junior Birders Program, and much, much more! There's something for everyone. A full listing of events will be available in mid-March 2016. The **BIRD ART AUCTION FUNDRAISER** will return this year, featuring Alaskan artists and Alaskan birds. The art will be **auctioned online only** and can be viewed online and at the Islands and Ocean Visitor Center before and during the Festival. To learn more, or to bid on the art, check our [website](#) for details. For more information about the festival, contact info@kachemakshorebird.org or call 907-226-4631 or go to www.kachemakshorebird.org.

May 16

Celebrate the **50TH ANNIVERSARY of ARBOR DAY in ALASKA**. Activities are taking place across the state where folks can plant, celebrate, and learn more about trees. Planting trees is a gift for our family, friends, and neighbors, and for future generations. On our website, <http://forestry.alaska.gov/community/news>, you will find an Alaska Arbor Day events calendar. Even better you could plan and promote your own event with the help of materials also located on the web site. Please contact Stephen Nickel at Stephen.nickel@alaska.gov or 907-269-8466 if you have questions, would like materials to distribute, or to post your event on the calendar of Arbor Day Celebrations. More information on growing trees in Alaska can be found at <http://forestry.alaska.gov/community/publications> and <http://www.alaskaplants.org/>.

May 20 – 21

GIRDWOOD - INSTITUTE OF THE NORTH will hold its **ANNUAL ALASKA DIALOGUE** at the Alyeska Resort. The topic is **DIALOGUE ON DEVOLUTION**. The agenda is still under development; however, often the Dialogue depends less on the few speakers who will present and more on those who attend. Dialogue participants will bring unique and valuable knowledge and experience to this discussion. We hope you will join us. Participation is limited to 100. This event is by invitation only, but we welcome expressions of interest. Devolution is quite simply the transfer of power from one level of government to a lower level. In this case, we will explore 1) federal to state or tribal; 2) state to local or tribal; and 3) power sharing agreements. Topics will range from co-management of resources to cooperative arrangements between local and tribal governments. Registration is open at www.institutenorth.org.

May 31 – June 3

FAIRBANKS - The **AGRICULTURE in the CLASSROOM EDUCATOR WORKSHOP: ENHANCING AGRICULTURE LITERACY for REGULAR EDUCATION, GIFTED AND SPECIAL EDUCATION TEACHERS** will be held at UAF. This course offers Agricultural Literacy training through fun, hands-on study and investigation of agriculture education resources. It will assist new educators and those who want to expand their classroom offerings as they learn how to integrate agriculture lessons into their classrooms. This course is an introduction to the many resources available through the Alaska Ag in the Classroom program, and interdisciplinary methods, including STEM, to teach principles of agriculture. The course will visit locations around Fairbanks including local farms and agriculture businesses. The cost for the workshop is \$196 for one credit and \$202 for 2 credits. Register at www.uaf.edu/summer/registration/ or contact Melissa Sikes at [907-479-1213](tel:907-479-1213) or fairbanksswd@gmail.com for more information.

June 2 – 5

YAKUTAT - YAKUTAT TERN FESTIVAL is a celebration of the natural and cultural resources of Yakutat, Alaska.

****May 31 (DEADLINE EXTENTION)** – Deadline for comments on the **UPDATE to PORTIONS of ANNEX B of the ALASKA FEDERAL/STATE PREPAREDNESS PLAN for RESPONSE to OIL & HAZARDOUS SUBSTANCE DISCHARGES/RELEASES (UNIFIED PLAN)** that relates to the **REGIONAL STAKEHOLDERS COMMITTEE PROCESS**. These changes clarify and strengthen the process for community and stakeholder participation and outreach during an oil spill or hazardous materials release. The draft document is available for review at <http://dec.alaska.gov/spar/perp/plans/uc.htm>. For more information, contact Jade Gamble at (907) 262-3421 or email Jade.Gamble@alaska.gov. Submit comments to <http://alaskarrt.org/comment/Default.aspx> or email decsparrplanning@alaska.gov.

May 31

Deadline for comments on the **PROPOSED DRAFT APPLICATION for ASSIGNMENT of ENVIRONMENTAL RESPONSIBILITIES to the STATE of ALASKA, DEPARTMENT of TRANSPORTATION and PUBLIC FACILITIES NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) ASSIGNMENT**. Through this program DOT&PF would assume FHWA's responsibilities for preparing Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, and all other related environmental responsibilities performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities will be subject to the same procedural and substantive requirements as apply to FHWA. The proposed draft application and information regarding the NEPA Assignment Program are available at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>. If FHWA (MOU), a draft of which will be made available for public comment on the Federal Register at a later date. For more information, or to submit comments on this proposed draft application, contact Taylor C. Horne, Statewide Environmental Program Manager, (907) 465-6957 or email taylor.horne@alaska.gov.

****May 31**

Comments are due on the proposal to Issue **AIR QUALITY CONTROL OPERATING PERMIT, REVISION 2 to DOYON UTILITIES, LLC, FORT WAINWRIGHT** (Privatized Emission Units). The potential annual emissions of regulated air pollutants will not exceed: 142 tons PM, 1,533 tons NOx, 1,767 tons SO2, 851 tons CO, 12 tons VOCs, and 29 tons non-VOC HAPs. The draft Operating Permit, Statement of Basis and administrative records are available at <http://dec.alaska.gov/Applications/Air/airtoolsweb/AirPermitsApprovalsAndPublicNotices>. For more information or to submit comments, contact Kwame Agyei at (907)465-5124 or email kwame.agyei@alaska.gov.

May 31 (DEADLINE EXTENDED from APRIL 30)

Deadline for comments for the **DONLIN GOLD PROJECT ENVIRONMENTAL IMPACT STATEMENT (EIS)**. The Draft EIS analyzes the impacts of issuing permits for an open pit, hardrock gold mine 10 miles north of the village of Crooked Creek on the Kuskokwim River in southwest Alaska. In addition to the proposed mine, the project would: • Construct a 315 mile natural gas pipeline from Cook Inlet through the Alaska Range to the mine site that would potentially impact lands with the following special use designations: -Susitna Flats State Game Refuge; -Lake Creek, Alexander Creek, Kroto and Moose Creek Recreation Rivers; -Willow Creek State Recreation area; and -the Iditarod National Historic Trail. • Construct a new port at Angyaruaq (Jungjuk) on the Kuskokwim River and a 30 mile access road to the proposed mine site; • Require expansion of the Bethel Yard Dock and fuel terminals in Dutch Harbor; And • Supply equipment, cargo and diesel fuel using barges operated on the Kuskokwim River. The Corps is the lead federal agency for this EIS. The Bureau of Land Management; U.S. Fish and Wildlife Service, Pipeline and Hazardous Materials Safety Administration; U.S. Environmental Protection Agency; the Alaska Department of Natural Resources; the Aniak/Kuskokwim River Watershed Council; and the federally recognized Tribal governments of Crooked Creek, Chuathbaluk, Knik and Napaimute serve as cooperating agencies in developing the EIS. The Donlin Gold Mine Application can be viewed at www.donlingoldeis.com/EISDocuments.aspx. For more information, contact Keith Gordon at (907) 753-5710, toll free from within Alaska at (800) 478-2712, or email POA.donlingoldeis@usace.army.mil. Submit comments at <http://www.donlingoldeis.com/Comment.aspx>.

****June 2**

FAIRBANKS - Comments are due on an application for a permit to **APPLY HERBICIDE to CONTROL INVASIVE ELODEA in CHENA LAKE, CHENA SLOUGH, and TOTCHAKET SLOUGH**. Elodea is an invasive aquatic plant that has the potential to grow abundantly and compromise water quality, hinder boat and float plane traffic, reduce dissolved oxygen, and impact fisheries. Early control of this invasive plant will help prevent spread to other locations. Physical or mechanical controls are inappropriate, as these methods break the plant into fragments which can then reproduce. Copies of the application are available online <http://dec.alaska.gov/eh/pest/publicnotice.htm>. For specific information regarding the application, contact Karin Hendrickson at (907) 376-1856 or email Karin.Hendrickson@alaska.gov. For more information or to submit

From: whatsup@npogroups.org on behalf of Peg Tileston
To: [What's Up](#)
Subject: [whatsup] What's Up 5/25/16 Email Version
Date: Wednesday, May 25, 2016 11:12:09 PM

****Marks new items in this issue.**

May 25, 2016 Compiled weekly by Peg Tileston

On behalf of the Alaska Center for the Environment (ACE) and Alaska Women's Environmental Network (AWEN)

CONFERENCES, WORKSHOPS, SEMINARS, SPECIAL EVENTS

May 31 – June 3

FAIRBANKS - The AGRICULTURE in the CLASSROOM EDUCATOR WORKSHOP: ENHANCING AGRICULTURE LITERACY for REGULAR EDUCATION, GIFTED AND SPECIAL EDUCATION TEACHERS will be held at UAF. This course offers Agricultural Literacy training through fun, hands-on study and investigation of agriculture education resources. It will assist new educators and those who want to expand their classroom offerings as they learn how to integrate agriculture lessons into their classrooms. This course is an introduction to the many resources available through the Alaska Ag in the Classroom program, and interdisciplinary methods, including STEM, to teach principles of agriculture. The course will visit locations around Fairbanks including local farms and agriculture businesses. The cost for the workshop is \$196 for one credit and \$202 for 2 credits. Register at www.uaf.edu/summer/registration/ or contact Melissa Sikes at [907-479-1213](tel:907-479-1213) or fairbanksswcd@gmail.com for more information.

June 2 – 5

YAKUTAT - YAKUTAT TERN FESTIVAL is a celebration of the natural and cultural resources of Yakutat, Alaska. Yakutat hosts one of the largest and southern most known nesting colonies of Aleutian Terns, as well as Arctic Terns and up to 200 other bird species that nest in or migrate through the area. The festival is family friendly and offers activities for birders as well as non-birders, including field trips, seminars, kid's activities, evening banquets and other programs, bird banding demonstration, and an art exhibit. Our guest keynote speaker this year is Dr. David Duffy. Dave is a professor of botany and director of the Pacific Cooperative Studies Unit at the University of Hawaii. His work has included the effect of El Nino on seabirds in Peru, fishery interactions with seabirds in Peru and South Africa, the effects of Exxon Valdez oil spill and climate shifts on seabirds in Prince William Sound, and determining just how much of Alaska's biodiversity is actually protected. Most recently he has become interested in how to shape management and science to respond to the problem of invasive alien species in Hawaii. His research has included studying several species of terns, including research in Prince William Sound and Yakutat. Alaska author Debbie Miller has been a resident of northern Alaska for 37 years, and has developed a passion for writing nature books about the extraordinary wilderness and wildlife that surround her family's home near Fairbanks. Other area activities include sight-seeing, hiking, fishing, surfing, canoeing and kayaking, wildlife viewing, and beach-combing. Please see [Yakutat Tern Festival Home](#), visit us on Facebook, or call (907) 784-3359 for more information.

June 6

ANCHORAGE - CONFLUENCE: SUMMIT ON THE OUTDOORS CONFERENCE will be held on the Alaska Pacific University campus from 8:30am to 5:30pm. There's almost never been a better time to talk about the outdoors. Low oil prices. \$4 billion budget deficits. The gallows talk of a statewide recession, wondering how to grow and diversify Alaska's economy into new and underrepresented sectors with the assets we already have. The outdoor economy generates billions in consumer spending, wages and salaries in Alaska and with your vision can become an even greater engine for economic diversification as well as an instrument for rural economic development, a foundation for healthy communities and a world-class destination for adventure travelers. Hear from guest speakers including [Brad Peterson](#), the nation's first director of a statewide Office of Outdoor Recreation, [CAILIN O'BRIEN-FEENEY](#) of the Outdoor Industry Association, Palmer-born mountaineer [BEN ERDMANN](#) and businesswoman [HEATHER KELLY](#) among others. The event is hosted by Valdez-based non-profit Levitation 49 and supported by the Outdoor Industry Association, Recreational Equipment Inc., adidas Outdoors, The North Face, Agnew Beck Consulting and Denali Brewing. To register, go to <http://www.levitation49.org/tickets>.

June 6 – 14

KODIAK - NORTH PACIFIC FISHERY MANAGEMENT COUNCIL will meet at the Kodiak Harbor Convention Center & other listed locations.

of developing comprehensive management measures to address the trawl fleet's ability to fish within the established PSC limits; through that action, the Council will consider further reductions to GOA Chinook salmon PSC limits. More information on comprehensive GOA measures can be found on the page for [GOA Trawl Bycatch Management](#). Comments should be emailed to npfmc.comments@noaa.gov.

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Deadline for comments on the **PROPOSED DRAFT APPLICATION for ASSIGNMENT of ENVIRONMENTAL RESPONSIBILITIES to the STATE of ALASKA, DEPARTMENT of TRANSPORTATION AND PUBLIC FACILITIES (DOT&PF)** for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects. Through this program DOT&PF would assume FHWA's responsibilities for **PREPARING CATEGORICAL EXCLUSIONS, ENVIRONMENTAL ASSESSMENTS, ENVIRONMENTAL IMPACT STATEMENTS, and ALL OTHER RELATED ENVIRONMENTAL RESPONSIBILITIES** performed by FHWA, including approving decision documents, consulting directly with resource agencies, and complying with all applicable environmental regulations, policies, and guidance. DOT&PF's assumption of responsibilities will be subject to the same procedural and substantive requirements as apply to FHWA. The proposed draft application and information regarding the NEPA Assignment Program is available at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>. Comments received during the comment period will be reviewed, compiled and submitted with DOT&PF's final application to FHWA. If FHWA accepts the application, the DOT&PF and FHWA will negotiate a memorandum of understanding (MOU), a draft of which will be made available for public comment on the Federal Register at a later date. For additional information, or to comment on this proposed draft application, contact Taylor C. Horne, Statewide Environmental Program Manager, at (907) 465-6957 or email taylor.horne@alaska.gov.

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June 1

CHENA HOT SPRINGS - Comments are due on an **APPLICATION FOR TRAPPING CABIN PERMIT** from Ken Charron for the construction of a wall tent platform for the purpose of shelter while trapping near the North Fork of the Chena River, approximately 12 miles northeast of Chena Hot Springs. Mr. Charron has trapped this area numerous years, using a snowmachine to run his lines. The casefile ADL 420644 is available for review at the Dept.

Draft 327 Application
Comments and Responses

A	B	C	D	E	F	G	H	I	J	K	L	M	N	
1	date	Last name	First name	address	subject	comment/response summary	response date	response comment	1st paragraph comment text	2nd paragraph comment text	3rd paragraph comment text	4th plus paragraphs comment text	continued comment text	continued2 comment text
2	5/18/16	Bishop	Beth	betbis@gmail.com	JNU Access	"drop the road project"	7/7/16	JNU Access statement	Please drop the "road" project! It is a bad idea on so many levels - cost, conservation, upkeep etc. etc. The State is in enough of a fiscal bind and doesn't need any more expensive and high upkeep projects that cause degradation of the environment.					
3	5/25/16	Cornelius	Michele	michelescornelius@gmail.com	general environmental concerns; AHMS; opposed to Assignment	Bad idea - environmental review processes and cost.	7/7/16	AMHS; NEPA Assignment Program statements	Giving NEPA authority to the Alaska Department of Transportation is a bad idea. This would remove safeguards that helps ensure environmental review processes are fair and accurate before a project can move forward and will cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers. During the current budget crisis when cuts are being made to important services like the Alaska Marine Highway System, this doesn't make sense. NEPA authority should remain with the Federal Highway Administration.					
4	5/18/16	Crichton	Jan	jcrichton@alaska.edu	General Environmental Concerns; assignment concerns re: environmental process; program expense	removal of FHWA environmental oversight; expense of assignment	7/7/16	NEPA Assignment Program statement	I hear DOT is applying to take over NEPA authority from the Federal Highway Administration. FNA currently signs off on major transportation projects. This is a necessary safeguard that helps ensure environmental review processes are fair and accurate for large projects and their impacts. The takeover is estimated to cost the state over \$1 million per year, when those services are already provided by the federal government. In this tough budget time this cannot be justified. Also the Alaska DOT has not shown consistent or unbiased judgment regarding projects or their impacts or the use (or squirreling away) of funds. The state has much more dire needs for these funds elsewhere, and the FHA is already providing this service.					
5	5/17/16	Dalley	Gary	thedalays@alaska.net	No state takeover of Fed jobs	No state takeover of Fed jobs	7/7/16	NEPA Assignment Program statement	How can you do the feds job when you can't build a road now. Also, we're broke and you want to hire your nephew? I am totally against taking Federal responsibility over, it's merely wasting money.					
6	5/23/16	Dense	Chas	cdense@clowd.com; seacc.org	opposed to Assignment	makes good fiscal sense for FHWA to maintain significant oversight responsibilities for larger projects	7/7/16	NEPA Assignment Program statement; EIS projects excluded statement	Based on my experience as a concerned member of the public and as a former project review manager for the Alaska Department of Natural Resources, Division of Land and Water Management, Southeast Region, I am opposed to the Alaska Department of Transportation and Public Facilities' proposed acquisition of responsibilities for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects from the Federal Highway Administration.	Although I know little about the Sterling Highway project, I have followed the Gravina Access ("to nowhere"), and the Juneau Access "improvements" projects for years with interest. These latter two projects are perfect examples of why I do not believe DOT&PF should be in a position to approve its own projects. From my perspective, the NEPA documents for these projects were biased and skewed to result in pre-determined outcomes. The courts have confirmed this point over the years more than once.	Having an outside entity (i.e., FHWA) with ultimate review and approval authority at least gives a modicum of oversight of what I believe to be DOT&PF's too-narrow and seemingly non-inclusive view of the world. Further, it only makes good federal fiscal sense for FHWA to maintain significant oversight responsibilities for the larger, more expensive projects that require Environmental Impact Statements. DOT&PF just doesn't seem to have responsible fiscal restraint when it gets to use "free" federal dollars. A case in point are the steel piles the State of Alaska purchased over ten years ago for Juneau Access, well ahead of any approval for the project, that are still being stored at cost in Seattle. If Juneau Access is abandoned, these piles will have been a waste of federal and state dollars from "jumping the gun." Though I believe FHWA could do a better job themselves, at least there is a structure for better oversight that effectively would be eliminated if DOT&PF were to take over oversight of themselves.	The apparent conflict of interest of "self-assessments" calls to mind the fox watching over the hen house. As well, I find it fascinating these "self assessments" do not seem to include consultations with participating agencies. The bottom of page 21 of the Application states "Over the last five years, there have been five EA/FONISs and no EIS/RDIs approved by FHWA for Federal-aid Highway Program projects in Alaska." What is not stated is how many EISs are in process, how long have they been in process, and what problems, hurdles, and legal issues have they encountered that prevents them from being approved. I suspect the Gravina and Juneau Access projects may be included in such a list. In any event, these projects must remain under FHWA oversight. In conclusion, I believe FHWA should retain EIS authorities for the benefit of the public interest. Thank you for the opportunity to comment.		
7	5/18/16	Fink	Bob	1bobfink@gmail.com	JNU Access	opposes JNU Access	7/7/16	JNU Access statement	I'm really shocked and really dismayed to hear that there is still an expensive unnecessary plan to continue with the bazaar road desecrating the wilderness beauty of the land up here in the upper Lynn canal. I thought at least that would be put on the "back burner" so to speak because of the budgetary situation Alaska now faces. PLEASE STOP SPENDING OUR LIMITED FUNDS ON SUCH A WASTE OF MONEY!					
8	5/31/16	French	Bob	bkfrench@gmail.com	opposed to assignment	insufficient DOT NEPA experience; lack of transparent/honest project evaluations; insufficient qualified personnel w/ current budget; APRA & FOIA not comparable; incomplete application	7/7/16	APRA-FOIA matrix; NEPA Assignment Program; Application completeness statements	Please accept these comments regarding the Alaska Department of Transportation and Public Facilities (DOT&PF) seeking responsibility for the full range of federal environmental review duties for federal highway projects allowable under the statute, including but not limited to approval authority for Records of Decision, National Environmental Policy Act (NEPA) review, Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, Endangered Species Act Section 7 consultation, and evaluation under Section 4(f) of the U.S. Department of Transportation Act of 1956. I have been closely involved with EA's, EIS's and Section 4(f) evaluations for several projects, and I strongly oppose this application for the following reasons:	1. The FAQ page states: "The program allows for more efficient delivery of projects and flexibility in DOT&PF procedures." While some may lament the amount of time that it takes to do a fully compliant environmental review, and may complain about the rigidity of Federal NEPA law, the existing NEPA process sometimes offers the only chance for the public to interact with stakeholders and decision makers, and, as flawed as the NEPA process may be, the court-tested process makes sure that the requirements of NEPA are met. Because DOT&PF does not have the experience, transferring responsibilities to DOT&PF will likely cause non-compliant EA's, EIS's and CE's, which will ultimately cause inefficiency due to lawsuits forcing the DOT&PF to correctly follow the NEPA process, which will ultimately delay final decisions.	2. The FAQ page further states: "DOT&PF will be able to build stronger relationships with stakeholders and agencies through direct engagement and ownership of decision-making." My experience with DOT&PF, is that they have failed to meet the meet the stipulated requirements of Memoranda of Agreements with Stakeholders that they signed, and feel that an independent agency, such as FHWA, which doesn't have a direct financial stake in whether or not a particular project goes forward, will provide a more impartial and fair engagement with agencies and stakeholders. In the projects I have been involved with, DOT&PF have demonstrated an inability or perhaps an unwillingness to engage in open, transparent, and honest evaluations of projects.	3. DOT&PF does not currently have personnel who have the qualifications to take on NEPA duties, and with the current state budget situation, DOT&PF should be reducing staff, not trying to hire or train more staff. This significant expansion of duties and responsibilities for DOT&PF should not be approved by the Administration, as DOT&PF does not have the expertise to undertake the highly complex and difficult processes required. 4. Moving the NEPA process to DOT&PF will further hinder citizen involvement and feedback. The Alaska Public Records Act is not comparable to the federal Freedom of Information Act, which is a required component of the Application to assume NEPA Assignments.	Regulations require that the State circulates "the complete application" for public comment. This Draft Application is missing critical pieces that the public should be able to comment on, including the certification: 1) "that the State has legal authority to assume the responsibilities of the Secretary for the Federal environmental laws and projects requested, and that the State consents to exclusive Federal court jurisdiction with respect to the responsibilities the State is requesting to assume," and 2) "that the State has laws that are comparable to FOIA." This Draft Application is not complete, and without having the full document to review, the public is not allowed the full benefit of commenting on this application. I urge the Administration to reject this application, and to retain NEPA responsibilities with the Federal Agencies currently responsible for these assignments.	
9	5/18/16	Furbish	C. E.	cefurb@yahoo.com	general environmental concerns; oppose assignment; FHWA safeguard removal and program expense	removal of FHWA environmental oversight; expense of assignment	7/7/16	NEPA Assignment Program statement	I vehemently oppose this proposal for two reasons. 1) This adds unnecessary expenses to state administration, costs that are now covered by the Federal Highway Administration. The costs will be routine in that projects required to have environmental review will still need to have that process completed. And the costs will be unpredictable when/if AKDOT&PF produces an inadequate EIS that is challenged legally. The state of Alaska is trying to cut costs in our present economic situation. We should not take on costs that are already covered by the federal government.	2) The AKDOT&PF does not have a good track record for producing thoroughly researched, logical and well-presented Environmental Impact Statements. Federal Highway Administration involvement provides a modicum of oversight. Removing the FHA participation in the process will only make it easier for AKDOT&PF to become over-independent and inward-focused. It will make it too easy for them to ignore input from outside the agency, input that includes citizens and communities that are impacted by the AKDOT&PF projects.				
10	5/30/16	Jefferson	Donna	aldonna@gmail.com	opposes assignment; Windy Corner Project	concerns: lack of fair and accurate environmental reviews	7/7/16	Windy Corner (contacts) and NEPA Assignment Program statement	I am very concerned about the AKDOT's application to take over NEPA authority from the Federal Highway Administration. You can see, my comment comes near the end of the comment period, as I had no idea such possibility was unfolding until recently. It is difficult to stay up on everything these days, but I appreciate to give my comment, especially on this occasion. Allowing this responsibility to AKDOT will remove an important safeguard which helps ensure environmental reviews processes are accurate and fair. In my observations over the years, the AKDOT is becoming too powerful in their project planning and implementation. We are losing faith in the AKDOT's judgement as they push overly expensive highway projects, without really HEARING Alaskans who want to help shape these projects in less expensive and intrusive ways. I am also sending my recent comments to a large project in my "backyard", which is another example of how excessive power and funding can corrupt good decision making. Please help curb the runaway train; the AKDOT does not deserve more responsibility of doing legitimate environmental processes of its own projects, it deserves less.					
11	5/18/16	Kaden	Hayden		assignment concerns re: environmental process; JNU Access; Marine Hwy; program expense	removal of FHWA environmental oversight; expense of assignment in light of Marine Hwy cuts; questionable judgment in light of JNU Access	7/7/16	JNU Access; AMHS; NEPA Assignment Program statements	I understand that the Alaska Department of Transportation is applying to take over NEPA authority from the Federal Highway Administration. Right now, the Federal Highway Administration signs off on major transportation projects. This change would remove a safeguard that helps ensure environmental review processes are fair and accurate before a project can move forward. The move would cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers. Why is the state willing to pay for more administrators while slashing the Alaska Marine Highway System budget? My wife and I, our whole community, and most of the small communities of Southeast and Western Alaska rely heavily on the AMHS. Not to mention that the Alaska DOT has shown questionable judgement by pushing the Juneau road extension in face of hard evidence showing it is an unpopular, money losing liability for the state. Can someone explain why DOT taking over NEPA authority makes economic sense.					

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	date	Last name	First name	address	subject	comment/response summary	response date	response comment	1st paragraph comment text	2nd paragraph comment text	3rd paragraph comment text	4th plus paragraphs comment text	continued comment text	continued2 comment text
12	5/27/16	Kawerak, Inc	Melanie Bahnke, President	mbahnke@kjawerak.org	support assignment	supports assignment	7/7/16	suggest responding with an individual letter attached to an email. Out of respect. Linda	Kawerak is a nonprofit corporation and tribal consortium authorized by Bering Strait Region tribes to administer certain programs of the BIA pursuant PL 93-638 and has compacted the BIA Tribal Transportation Program (TIP) on behalf of 16 federally recognized tribes in this region. As of 2012 we are now under a Program Agreement with FHWA. Kawerak has established its Transportation Program to fulfill the requirements under its compact with BIA and FHWA Program Agreement and to coordinate with all governmental entities within its consortium which have transportation roles and responsibilities.	Kawerak serves the Bering Strait region in western Alaska. Currently 17 communities occupy the Nome Census Area, of which Nome has the largest population at 3,700 and is the regional hub for medical and transportation facilities including a port and harbor, and other essential services for the region. The Bering Strait region is about the size of West Virginia with a population of over 9,900. Most of our villages lack basic infrastructure such as water and sewer, roads, ports and harbors. The situation can be compared to third world living conditions.	We support DOTPF's application to assume the NEPA Responsibility for the State of Alaska's roads and we understand this will not affect the tribes' responsibilities under NEPA. We are pleased that DOTPF will provide consultation when tribes request so, and that DOTPF will reach out to FHWA throughout the environmental process as stated in your April 25, 2016 cover letter.			
13	5/30/16	Kesler	Stephanie	Skessler@pci.com	opposes assignment	concerns: expansion of DOT duties/responsibilities; lack of expertise for assignment; budget crisis; lack of transparency/honest project evaluation; APRA and FOIA	7/7/16	APRA-FOIA matrix; NEPA Assignment Program statement	My comments are in regards to AKDOT seeking responsibility for the full range of federal environmental review duties for federal highway projects allowable under the statute, including but not limited to approval authority for records of decision, National Environmental Policy Act (NEPA) review, Endangered Species Act Section 7 consultation, and evaluation under Section 4(f) of the U.S. Department of Transportation Act of 1966.	- This is a significant expansion of duties and responsibilities for AKDOT - AKDOT does not have the expertise to undertake the highly complex and difficult processes required - The State of Alaska and AKDOT is in a severe budget crisis that will not be resolved quickly. Additional funds for the expansion of duties and responsibilities would be significant - AKDOT is not a transparent organization. They have demonstrated an inability or at the very least an unwillingness to engage in open, transparent, and honest evaluations of projects.	- Moving the NEPA process to AKDOT will further hinder Citizen involvement and feedback. The Alaska Public Records Act is not comparable to the federal Freedom of Information Act. - Finally, and this is blunt, but moving the NEPA process to AKDOT is the equivalent of hiring the fox to guard the henhouse.			
14	5/20/16	Routson-Lombardo	Tristan	tr1289@gmail.com	General environmental concerns; opposed to Assignment	No to NEPA assignment; not Trust State of AK; additional cost to state	7/7/16	NEPA Assignment Program statement	Having the State take over NEPA authority from the Feds is a horrible idea. It will cost our state more money and I do not trust the State of Alaska to be fair, honest, stewards of our resources. I am so thankful for the roads, trains and ferries that we (still) have maintained and running in Alaska, but I don't think continued development and ongoing maintenance should come at a cost to the environment and Alaskan's quality of life.					
15	5/18/16	Kruger	Linda	lindaalaska2003@gmail.com	general environmental concerns; opposes assignment	concerns: fair/well thought out processes/decisionmaking; accurate/impartial information/review/comment;	7/7/16	NEPA Assignment Program statement	I believe NEPA authority the federal level provides the best assurance of fair and well thought out processes and decisionmaking. We need accurate and impartial information and as we have seen in the past (the Juneau Access Project is a recent example) ADOT cannot provide impartial review and comment. It is their job to advocate for projects. In addition we can't have a good public debate about a project without accurate, impartial information. That's why we need a legitimate environmental process with an outside referee - not having the same agency approve the information that we know is determined to get one answer. The federal process provides the independent review that is needed.					
16	5/18/16	Laroe	Jen	jalaroe@yahoo.com	opposed to assignment; concerns re: environmental process; JNU Access; Marine Hwy; program expense	removal of FHWA environmental oversight; expense of assignment in light of Marine Hwy cuts; questionable judgment in light of JNU Access	7/7/16	JNU Access; AMHS; NEPA Assignment Program statements	Please help keep the Alaska DOT accountable and do not support the take over of NEPA authority from the Federal Highway Administration. Right now, the Federal Highway Administration signs off on major transportation projects. A change in who holds authority would remove a safeguard that helps ensure environmental review processes are fair and accurate before a project can move forward. The move would cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers. Why is the state willing to pay for more administrators while slashing the Alaska Marine Highway System budget? Not to mention that the Alaska DOT has shown questionable judgement by pushing the Juneau road extension in face of hard evidence showing it is an unpopular, money losing liability for the state.	Please keep the DOT in check with environmental concerns and questionable projects. I wish someone had stopped the Egan Highway illumination project before the scenic vista of our town was devastated with a steel rib cage down the length of what used to be one of the most beautiful drives around.				
17	5/18/16	Lundstedt	Christine	baranof9general@gmail.com	general environmental concerns; opposed to Assignment	stupid idea	7/7/16	NEPA Assignment Program statement	The ADOT taking over NEPA is a fantastically stupid idea. Or is it, worse, a back door effort to pave (ha) the way for ecological and natural destruction?? DON'T DO IT!!!					
18	5/18/16	Martin	Brett	brett@leengineering.com	pro assignment & JNU Access	Supports Assignment for streamlining and cost savings	7/7/16	JNU Access; Thank you for your comments of support statements	I recently heard that the State was soliciting input from the public on the final dispensation of the Juneau Access Road and that the State is looking to take over the NEPA authority for the Juneau Access Road from the FHWA. I have worked in southeast Alaska for the last 21 years and think this is an excellent move on the State of Alaska's behalf. I believe that the State can move a project like this through the system at a significantly savings to the government. I believe that in taking over the NEPA responsibilities, the State is saying that with a more streamlined approach and more focused consultants, the State of Alaska can come to resolution on critical issues in a more timely manner.	I currently live in Sitka and find that the community as a whole is largely divided into two groups. There are those that wish that the economic well-being of the local communities should take a back seat to any progress and there are those who have lived in southeast Alaska all their lives and would like to see the local region recover. The conservation movement in Sitka is largely driven by a few well-funded individuals but is by no means the majority of the populace. I have found in the last 2 years living there, that the majority of folks that I speak to are for improving the southeast regional economy and if building roads will do that, then we should go for it.	It is clearly understood that freight is the biggest cost of living in southeast Alaska. By connecting our local population centers, the State of Alaska is taking the right step towards easing the economic hardships throughout the region. Since the loss of the timber industry in southeast Alaska, populations have been decreasing due to a lack of jobs and revenues across the board. I applaud the State's decision to move forward by making cost-effective logical choices.			
19	5/18/16	McCarthy	Kathrin	kwmcCarthy@alaska.edu	opposed to assignment; JNU Access; general environmental concerns	removal of FHWA environmental oversight; expense of assignment	7/7/16	JNU Access; NEPA Assignment Program statements	I am writing to you to express disappointment in the DOT's proposal to take over the NEPA authority that would protect Alaskans and Alaska's environment from ill conceived and un-necessary road projects. The federal government under NEPA has this authority and I do not understand why DOT would want to take over an expensive regulatory activity when the federal government already pays for and saddle our financially strapped state with these costs. I am opposed to Alaska Department of Transportation having this authority.	The Juneau road project is a great example of a very bad and expensive idea especially when we need roads. In other parts of our state and DOT has continued to push the Juneau road project. Please just finished the required draft EIS and let go of the road out of Juneau. Get on with other things that need doing. In my opinion giving AK DOT NEPA oversight would be a terrible mistake.	I have written to DOT many times expressing my opposition to the road up Lynn Canal and given my many reasons for not wanting to see this happen. I have never received a response to any of my emails.			
20	5/18/16	Menke	Kathleen	kj@aknk.com	general environmental concerns; opposed to Assignment	State cannot be trusted with NEPA oversight	7/7/16	NEPA Assignment Program statement	No...absolutely not...this state cannot be trusted to take over NEPA oversight of DOT projects.					
21	5/19/16	Nelson	Jay	jaynelson2@hotmail.com	general environmental concerns; opposed to Assignment	State cannot be trusted with NEPA oversight; program expense	7/7/16	NEPA Assignment Program statement	For the record, I am opposed to DOT taking on additional authority and expense by trying to take NEPA authority from the Federal Highway Administration. I come from a long line of civil engineers so I'm sure that you are quite good at building roads, I'm also quite sure you have no business fairly assessing the environmental consequences of your projects. The suspiciously small amount of funding requested for taking over NEPA authority is either entirely inadequate to do a credible job, or disingenuously low.	In addition, I find it unconscionable that DOT requesting additional unnecessary funding while every other department of government, funding for schools, healthcare and children is being dramatically reduced.	I am opposed to DOT requesting the authority to take over NEPA authority from the Federal Highway Administration.			
22	5/18/16	Noder	Lawrence	lunobar@gmail.com	general environmental concerns; AHMS; opposed to Assignment	opposed to additional DOT responsibility due to "poor performance with the Marine Highway"	7/7/16	AMHS; NEPA Assignment Program statements	I personally think it's a very bad idea to have the state DOT take over ANY further responsibilities, especially in view of how poorly their performance with the Marine Highway has been and their proposed budget cuts for the same Marine Hwy. As far as I'm concerned the entire commission should be replaced because of very poor past decisions.					
23	5/18/16	Pezatti	Mark	wheretheartonesun@gmail.com	assignment concerns re: environmental process; JNU Access; Marine Hwy; program expense	removal of FHWA environmental oversight; expense of assignment in light of Marine Hwy cuts; questionable judgment in light of JNU Access;	7/7/16	JNU Access; AMHS; NEPA Assignment Program statements	As a frequent visitor to Juneau, I have been following news of the Juneau Access project and felt compelled to send these comments.	A recent development that concerns me is that the Alaska Department of Transportation is now applying to take over NEPA authority from the Federal Highway Administration. This change would remove a safeguard that helps ensure environmental review processes are fair and accurate before a project can move forward. I have read that the move would cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers.	I don't understand why the state would be willing to pay for more administrators while slashing the Alaska Marine Highway System budget. This news is concerning in light of the fact that the Alaska DOT has shown questionable judgement by pushing the Juneau road extension in face of hard evidence showing the proposed project is an unpopular, money losing liability for the Alaska.	As the appointed Environmental Program Manager I would like to be reassured that you are working for the residents of Juneau's best interests.		
24	5/26/16	Remund	Marty	remundmarty@yahoo.com	JNU Access	supports ferry system	7/7/16	JNU Access statement	I am against the Juneau access road. It's a bad idea. I am for supporting the ferry system instead.					

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25	5/18/16	Short-Rhoads	Elizabeth	eljanise@yahoo.com	general environmental concerns; AHMS; oppose assignment: FHWA safeguard removal and program expense	removal of FHWA environmental oversight; expense of assignment	7/7/16	AMHS; NEPA Assignment Program statements	As part of an Alaskan fishing family that relies on a healthy environment for its livelihood, I am opposed to the take over of NEPA by the Alaska DOT. I believe safeguards provided by the Federal Highway Administration are an important contributor to the protection of our environment and would like to see those remain in place.	In addition, I am opposed to the unnecessary \$1.2 million in costs that would result from the take over of NEPA by the DOT and believe they would be irresponsible in this time of extreme budget crisis. I would much rather see those funds support our ailing ferry system—the roadway in Southeast where I live.				
26	5/31/16	Sierra Club, Earthjustice, et al	Sarah Saunders	saunders@earthjustice.org aline@dot.gov marc.luiken@alaska.gov Sandra Garcia-Aline sandra.garcia-aline@dot.gov Sierra Club, Earthjustice, et al	opposed to Assignment	insufficient DOT NEPA experience; lack of transparent/honest project evaluations; insufficient qualified personnel w/ current budget; APRA & FOIA not comparable; incomplete application; JNU Access & ANILCA concerns	7/7/2016	APRA-FOIA matrix; NEPA Assignment Program; JNU Access; ANILCA; Application completeness addressed in a letter from Taylor Horne.	I am writing in opposition to the Juneau access road. At this time the state can not afford an unnecessary and responsible project which will cost the state millions to maintain, provides policing and emergency services. This road does not go to Haines, it shaves a few hours off a ferry ride which is already available and efficiently moving people in and out of Juneau. Stop the madness and special interest pressure.					
27	5/18/16	Stansbury	Colleen	collips@gmail.com	JNU Access	opposes JNU Access	7/7/16	JNU Access statement	thanks for the opportunity to comment on this idea. I think it is a bad one. The state budget is a total mess and now you want to assume even more responsibilities? This just doesn't make sense. I understand FHWA will provide some of the funding, but it WILL cost the state no matter how much the feds say they will provide and we need to embrace all the budget reducing opportunities we can. And that means NOT taking on any more responsibilities that the federal government is currently providing.	In addition, I am concerned about the lack of oversight this would bring to DOT projects. It is always good to have an independent set of eyes, i.e. FHWA, to review NEPA compliance on state projects. I have worked with DOT on the STIP back in the Knowles administration and there is a definite bias towards getting projects completed with the minimal of FHWA/NEPA oversight. NEPA is there for a purpose – to make certain that projects as they go forward fully disclose the impacts and plan the mitigation needed. I feel DOT will not do a good job of policing themselves. FHWA is doing a good job and they should keep the job.				
28	5/30/16	Stratton	Jim	stratto@pci.net	general environmental concerns; opposes assignment	concerns: additional responsibilities/cost; lack of oversight	7/7/16	NEPA Assignment Program statement						
29	5/31/16	The Wilderness Society	Lois Epstein, P.E., cc: Marc Luiken, Sandra Garcia-Aline	lois_epstein@tws.org	opposes full NEPA assignment		7/7/16	NEPA Assignment Program; APRA-FOIA matrix; EIS, Ambler Mining Road, and G2G addressed in a letter from Taylor Horne.	As a former member of the AMATS Technical Advisory Committee, a former head of the non-profit Alaska Transportation Priorities Project, author of multiple recent publications discussing financial and other problems with Alaska's transportation mega-projects, Arctic Program Director for the Wilderness Society (TWS) who works on Arctic transportation issues, and a licensed engineer in Alaska, I am writing to request that Alaska DOT & PF not submit a final application to the Federal Highway Administration for National Environmental Policy Act (NEPA) Assignment beyond the existing Memorandum of Understanding (MOU) covering categorically excluded projects. The existing MOU presumably, covers only minor, non-controversial transportation decisions, unlike this application.	TWS's reasons for opposing full NEPA Assignment is that this is a discretionary action which would cost the state substantial funds it does not have and is not likely to have in the near future, and that there will be many downsides to public participation by Alaskans through full NEPA Assignment, as discussed below. While TWS agrees that Federal Highway Administration's NEPA role in Alaska results in some decision-making delays, these delays are not a compelling reason to pursue full NEPA Assignment. There would be substantial state financial costs for this discretionary action and the draft application to FHWA from Alaska DOT & PF does not entirely, covered by the federal government's annual formula contribution to Alaska from the Highway Trust Fund. With that contribution used for full NEPA Assignment, those funds potentially amounting to millions of dollars would be unavailable to the state to meet important transportation infrastructure needs such as upgrading existing bridges, road safety enhancements, building new ferries, etc. Currently, the federal government's role in NEPA development does not cost the state anything.	Full NEPA Assignment also likely would increase conflicts of interest and public distrust of Alaska DOT & PF decisions, which are significant concerns. These concerns result from: •The differences in, and the costs of obtaining, information under the state's Public Records Act vs. the federal Freedom of Information Act. These differences would make it harder and more costly for the public to obtain the information it needs to provide input on transportation projects compared to the current system. •The state engaging in many Endangered Species Act (the ACT) lawsuits against the federal government, making complying with the Act even as the state opposes the decisions under the Act highly conflicted and problematic. This especially would be true at a time when the state experiences financial constraints that would impact expensive design decisions required for Act compliance. •Conflicts between the state wanting to pursue transportation projects (e.g., adding passing lanes, which make it harder and more dangerous for moose to cross) and the resulting, adverse impacts on wildlife which often are costly for the state to address. These conflicts exist even for non-endangered species such as moose in the Kenai National Wildlife Refuge, with the Sterling Highway passing through the refuge.	•Speeding up decision-making which can lead to bad and costly decisions, particularly for highly controversial projects. Many members of the public currently believe that the state wants full NEPA Assignment to speed up "bulld" decisions for major, controversial projects (see the attachment). For example, the Krik Arm Bridge, which may require a Supplemental Environmental Impact Statement (EIS), should not be included in full NEPA Assignment should that occur, due to a significant conflict if the state determines whether or not to require a Supplemental EIS. •Many Alaskans already feeling ignored by the state because of problematic transportation decisions such as moving the 200+ mile Ambler Road project from Alaska DOT & PF to the Alaska Industrial Development and Export Authority (AIDEA). AIDEA does not have to comply with important federal requirements for transportation system planning such as including this major road in the statewide Long Range Transportation Plan and for public involvement; and, •The federal government maintaining its Government to Government consultation role with tribes even as tribal government needs and suggestions regarding particular projects' NEPA processes and other environmental issues would be addressed by the state and not the federal government. As a result, the federal government would have little ability to ensure tribal government concerns are fully addressed.	Thank you for your attention to these important concerns. Again, as stated above, TWS requests that Alaska DOT & PF not submit a final application to the Federal Highway Administration for NEPA Assignment beyond the existing MOU covering categorically excluded projects. Please feel free to contact me at 907 272-9453, x107 or lois_epstein@tws.org if you have any questions regarding these comments.	
30	5/4/16	The Wilderness Society	Lois Epstein, P.E., cc: H. Harris	lois_epstein@tws.org ; cc: hharris@earthjustice.org	March public meeting offer.	interested in public meeting offered in March	5/5/16	See email response from Taylor Horne	I am interested in requesting a public meeting on this topic but I see I missed the deadline (https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=180279) to request such a meeting. I just saw the notice today. Was the notice only published at this online location?	As background, I am a former member of the AMATS Technical Advisory Committee and have worked extensively on transportation issues in Alaska since 2007. I was director of the public interest non-profit Alaska Transportation Priorities Project from 2007-2010.				
31	5/22/16	Thompson	Matthew	mthomp7@hotmail.com	general environmental concerns; opposed to Assignment	unsound due to costs	7/7/16	NEPA Assignment Program statement	This would be an unsound decision considering the budget crisis our state is already in. Let the Federal Highway Administration continue to assume the authority and bills that the NEPA process incurs for projects within our state.					
32	5/18/16	Thompson	Michael	mtrangermike@gmail.com	JNU Access	opposes JNU Access	7/7/16	JNU Access statement	As a longtime Yakutat resident I do not support the Juneau Access Road Project in any way! Unfortunate this project remains a DOT priority even though it's a complete waste of dwindling state funds and the vast majority of Alaskans don't support it, instead we could provide/restore necessary operational funding to our unique and special AMHS!					
33	5/18/16	Tolles	Richmond	santaak@yahoo.com	general environmental concerns; opposes assignment	state budget expense	7/7/16	NEPA Assignment Program statement	Mr. Horne, I do not believe it is a good decision for the state DOT to take over NEPA from the federal highway administration. With our state in financial ruin, it is not the time to make more expense for the state.					
34	5/26/16	USCG	Shelly Sugarman	Shelly.H.Sugarman@uscg.mil			7/7/16	Concerns responded to in a letter from Taylor Horne	Thank you for the opportunity to comment on the draft AKDOT&PF Application for Assumption of Federal Highway Administration Responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327. As you know, the Coast Guard issues permits for bridges affecting the navigable waters of the United States. In performing this function, the Coast Guard often works closely with the U.S. Department of Transportation (DOT) and its operating administrations, including the Federal Highway Administration. To ensure the Coast Guard's navigational concerns are addressed early in the planning phase for DOT projects, the Coast Guard entered into a Memorandum of Understanding with the several DOT operating administrations, and a separate Memorandum of Agreement (MOA) with the FHWA to expedite the bridge permitting and NEPA processes, and to specifically address the unique issues associated with Title 23-funded highway projects, including FHWA's authority under 23 U.S.C. § 144(c).	Enclosed for your reference, please find a copy of the Coast Guard-FHWA MOA dated January 14, 2014. The Coast Guard understands that States assuming FHWA's responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327, will abide by the MOA, and as such, will notify the Coast Guard at the earliest phases of project planning to ensure that any potential navigation impacts are evaluated for NEPA scoping purposes. In addition, the Coast Guard understands that although State DOTs or Highway Agencies typically advise FHWA on navigation issues for projects crossing U.S. navigable waters, the FHWA retains the statutory authority under 23 U.S.C. § 144(c), even when a State has assumed the FHWA's NEPA responsibilities.	Please note the Coast Guard's bridge authorities are not environmental laws as indicated in Appendix B to the Application. Nonetheless, navigation should be evaluated as early as possible to eliminate unreasonably obstructive project alternatives. Should you have any questions, contact me or my FHWA liaison, Mr. Zachary Schulman at 202-372-2611.			

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						Concerns regarding NEPA Analysis / competency; Procedure should be implemented before MOU; Add Migratory Bird E.O.; Develop AK migratory bird plan; Early coordination with USFWS on FLAP, EIS, Cooperating status if project is in NWR; Review draft MOU and USFWS related procedures		Concerns responded to in a letter from Taylor Horne.	The NEPA directs each federal agency to consider the environmental effects of its actions, using a systematic, interdisciplinary approach. It is vital that information in any NEPA document is objective and complete. Based on previous project coordination with the ADOT&PF, we have concerns regarding NEPA analyses under the NEPA Assignment Program including the range of potential alternatives presented, the evaluation of the effects of the proposed alternatives, and the decision of which NEPA procedure (Categorical Exclusion, Environmental Assessment or Environmental Impact Statement) is applicable to the proposed action. We provide reference to the Sterling Highway Mile Post 58-79 Rehabilitation and the Passing Lanes project and the Sterling Highway Mile Post 45-60 project as examples of the above referenced concerns.	Based on the information currently provided, the application lacks sufficient detail regarding how the ADOT &PF will maintain compliance with administrative laws administered by the Service after the NEPA Assignment takes effect. Key implementation procedures related to the NEPA Assignment will not be developed until after the execution of the NEPA Assignment Program Memorandum of Understanding (MOU). We strongly recommend implementation procedures be developed and finalized before the application is finalized and approved. These procedures will guide the development of documents, analyses, coordination, and consultations required for the ADOT&PF to fulfill environmental review responsibilities. They are important factors to consider when determining whether the ADOT &PF has the capability and authority to complete environmental reviews on behalf of the FHWA. We recommend the following implementation procedures be presented for public scoping and agency review, and be finalized before the application is approved: <ul style="list-style-type: none"> • the Alaska NEPA Assignment Program Environmental Procedures Manual; • Quality Assurance/Quality Control Procedures; • Project Scoping Procedures; • Conflict Resolution Procedures with External Agencies; and • Prior Concurrence Procedures. 	We recommend that Executive Order (the Order) 13186 be included in Appendix B (List of FHWA's Environmental Review Responsibilities for Which ADOT&PF Requests to be Assigned). The Order, Responsibilities of Federal Agencies to Protect Migratory Birds, directs federal agencies that take actions that either directly or indirectly effect migratory birds to develop a MOU, and to work with the Service, and other federal agencies to promote conservation of migratory bird populations.	The FHWA is currently developing a national Bird Conservation Plan (BCP) template that can be used to aid States in the development of a BCP and describes how State DOTs, the FHWA, and our agency can work together programmatically to address transportation project-related impacts to migratory birds and their habitat during construction, operation, and maintenance of transportation projects. To support the intent and goals of the Assignment Program, we recommend the development of an Alaska-specific BCP to reduce transportation project impacts on migratory birds.	If the Assignment Program is authorized as proposed, we request early coordination with the ADOT &PF, especially for all FLAP projects for which the ADOT &PF has been granted responsibility, and for Class I (those requiring an Environmental Impact Statement) projects. Early coordination with the Service and with other resource agencies, particularly during the early phases of the assumption process, will result in the development of appropriate project alternatives, improved document quality, and ensure greater protection of trust resources. In addition, if projects are within the boundary of, or have the potential to affect a National Wildlife Refuge, we request that the Service be accorded cooperating agency status at project inception.	As the Assignment Program process moves forward, we request the opportunity to review and comment on the anticipated MOU between the ADOT &PF and the FHWA, as well as other forthcoming documents and procedures related to the Assignment and our authorities as outlined above.
35	6/15/16	USF&WS	Melissa Burns	melissa_burnes@fws.gov			7/7/16	Concerns responded to in a letter from Taylor Horne.	Thank you for the opportunity to review the Alaska Department of Transportation and Public Facilities (DOT&PF) draft National Environmental Policy Act (NEPA) Assignment Program application. The National Park Service (NPS) comments on this proposal are primarily focused on programs and projects where the NPS and Federal Highway Administration (FHWA) each have responsibilities.	Although it is our understanding that FHWA would retain NEPA responsibilities for projects funded and co-managed within the Federal Lands Transportation Program (FLTP), there may be instances where the Federal Lands Access Program (FLAP) may also need to be excluded from the NEPA Assignment Program for projects designed or constructed by DOT &PF. FLAP projects designed or constructed by DOT &PF (see page 36) may still have a perceived or real conflict of interest that rests with the State of Alaska for access to federal public lands. There are recognized, developed access points and transportation corridors into parklands, wildlife refuges, and recreational lands that carry a compliance burden. Such burdens may require the state to conduct environmental analyses and render a decision on behalf of FHWA, and also the federal land management agency. There are also unresolved RS 2477 rights of way that the state may be pursuing which could potentially arise using FLAP funding; that may also pose as a problem for all parties involved.	The proposal identifies a list of specific projects that would not be assigned to the State of Alaska (see page 9 and 36). In addition to the four projects identified, others, including the Ambler Mining District Industrial Access Project, should be added to the list of excluded projects. The Alaska National Interest Lands Conservation Act (ANILCA) specifies that the Secretary of Interior and Secretary of Transportation shall determine the most desirable route across Gates of the Arctic National Preserve. The desired route, via an Environmental and Economic Analysis (EEA), shall be in lieu of NEPA compliance and be exempt from judicial review. FHWA has been the delegated authority from the Secretary of Transportation for the EEA and has been very involved in the review of the draft application. While the EEA is in lieu of NEPA compliance, an Environmental Impact Statement is expected to be prepared for the remainder of the route. Should the State of Alaska assume FHWA responsibilities for this project, a perceived or actual conflict of interest would rest with the state for making a decision on behalf of the federal government for access across National Park System units in Alaska.	The proposal includes a request for DOT&PF to assume FHWA authorities for ANILCA (Appendix B of the proposal). The Ambler Mining District Industrial Access Project is one example of potential conflict of interest for the State of Alaska to act in a federal capacity for access and other transportation land use decisions yet to be implemented under ANILCA. Title XI of ANILCA (see section 1104 of that act) assigns additional responsibilities to the Secretary of Transportation for decision-making, planning and providing other assistance related to proposed transportation systems in National Park System units in Alaska. The ADOT &PF proposal would place the State of Alaska in a position of making decisions on behalf of the federal government with a perceived or real conflict of interest in cases involving access to or across federal public lands. The ANILCA-based responsibilities of the Secretary of Transportation, that may be or have been delegated to FHWA, should not be assigned to DOT &PF.	The proposal states DOT&PF would assume responsibility for all Section 4(f) approvals, but would not make any determination without consulting with FHWA and obtaining FHWA's approval of the determination (see page 27). This process appears to be inefficient and also creates a perceived or actual conflict of interest for the State of Alaska to process Section 4(f) determinations for federal lands. In addition, there is a potential conflict of interest for those projects that include use of Land and Conservation Water Fund (LCWF) monies. Two new fund programs created by the Fixing America's Surface Transportation Act (FAST) are not addressed, but should be added to responsibilities excluded from the NEPA Assignment Program because the State of Alaska could very well be an applicant for funding from the "Nationally Significant Freight and Highway Projects Program" and "Nationally Significant Federal Lands and Tribal Projects Program." If put into a position of receiving funds for a "nationally significant" project and taking on the responsibility of completing NEPA on behalf of the federal government, it could again place the state in a position of making a decision on behalf of the federal government, with a perceived or real conflict of interest in cases involving access to or across federal public lands.	FHWA and all federal land management agencies have instituted new stewardship and oversight initiatives for projects within the FLTP, and it is presumed that some level of stewardship and oversight would be retained for FLAP. The new FAST national project programs, and other projects as assigned that may have a federal land management agency role or responsibility. If that is the case, and the State of Alaska is given NEPA assignment responsibilities, it should then be included in all stewardship, oversight tasks and duties within project agreements, and properly designated for its role(s) in the stewardship and oversight process. The NPS appreciates the opportunity to review the DOT &PF draft proposal. We hope adjustments will be made prior to the final application for the NEPA Assignment Program application to eliminate potential or perceived conflicts of interest for decisions on behalf of the federal government for access to federal public lands.
36	5/31/16	US National Park Service	Oliver Dillard III	oliver_dillard@nps.gov		concerns: FLAP funded projects; Ambler Mining District Industrial Access Project; ANILCA; 4(f) and LCWF monies; Fast Act - Nationally Significant Freight and Highway Projects Program; and Nationally Significant Federal Lands and Tribal Projects Program; stewardship agreements	7/7/16	Concerns responded to in a letter from Taylor Horne						
37	5/2/16	Yehle	Camden	camden.brooks@alaska.com	general environmental concerns; self regulation concerns	self regulation concerns. Outside oversight necessary.	7/7/16	NEPA Assignment Program statement	I would like to submit a comment on the Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska, Department of Transportation and Public Facilities that appeared on the Online Notice system today. I can see how this could streamline the environmental process for some projects and I am aware the state already can approve Categorical Exclusion environmental documents in some cases, but I am concerned that an expansion of this program to higher impact and more controversial projects would be a case of self regulation which is by nature prone to corruption. I don't want to see any agency including DOT&PF designing, building, and regulating their own larger projects. Outside oversight is necessary to keep the project process fair, balanced, and transparent.					

<u>Letter dated June 15, 2016</u>		<u>US Fish and Wildlife Service</u>	
Paragraph	Issue	Original Text	DOT Response
1	intro	na	Thank you for your comments dated June 15, 2016 regarding the DOT&PF's Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327. We recognize that US Fish and Wildlife Service (Service) has concerns regarding the implementation of Alaska's NEPA Assignment Program. In addition to the below responses to your comments, I would like to offer to meet at your convenience to discuss the NEPA Assignment Program in further detail along with an offer to include
2	Concerns regarding NEPA Analysis / competency	The NEPA directs each federal agency to consider the environmental effects of its actions, using a systematic, interdisciplinary approach. It is vital that information in any NEPA document is objective and complete. Based on previous project coordination with the ADOT&PF, we have concerns regarding NEPA analyses under the NEPA Assignment Program including the range of potential alternatives presented, the evaluation of the effects of the proposed alternatives, and the decision of which NEPA procedure (Categorical Exclusion, Environmental Assessment or Environmental Impact Statement) is applicable to the proposed action. We provide reference to the Sterling Highway Mile Post 58-79 Rehabilitation and the Passing Lanes project and the Sterling Highway Mile Post 45-60 project as examples of the above referenced concerns.	The DOT&PF remains committed to the objective, complete, and unbiased implementation of FHWA's assigned NEPA responsibilities. Under NEPA Assignment, the DOT&PF remains obligated to comply with all applicable laws, regulations, executive orders, and guidance for the Federal-aid Highway Program projects to which NEPA Assignment applies. Furthermore, the DOT&PF is very interested in working closely with the Service to identify any areas of improvement that are of concern and to closely coordinate during the project development process.

<u>Letter dated June 15, 2016</u>		<u>US Fish and Wildlife Service</u>	
Paragra ph	Issue	Original Text	DOT Response
3 & 4	Procedure should be implemented before MOU	<p>Based on the information currently provided, the application lacks sufficient detail regarding how the ADOT &PF will maintain compliance with administrative laws administered by the Service after the NEPA Assignment takes effect. Key implementation procedures related to the NEPA Assignment will not be developed until after the execution of the NEPA Assignment Program Memorandum of Understanding (MOU). We strongly recommend implementation procedures be developed and finalized before the application is finalized and approved. These procedures will guide the development of documents, analyses, coordination, and consultations required for the ADOT&PF to fulfill environmental review responsibilities. They are important factors to consider when determining whether the ADOT &PF has the capability and authority to complete environmental reviews on behalf of the FHWA. We recommend the following implementation procedures be presented for public scoping and agency review, and be finalized before the application is approved:</p> <ul style="list-style-type: none"> • the Alaska NEPA Assignment Program Environmental Procedures Manual; • Quality Assurance/Quality Control Procedures; • Project Scoping Procedures; • Conflict Resolution Procedures with External Agencies; and • Prior Concurrence Procedures. 	<p>The DOT&PF's current environmental procedures applicable to all existing projects are available online (http://dot.alaska.gov/stwddes/desenviron/resources/docprep.shtml). These procedures will remain in effect until replaced by updated procedures which will also be available on the website. The schedule for procedures implementation for NEPA Assignment has been developed in coordination with FHWA and allows for earlier implementation if necessary. The DOT&PF intends on involving FHWA in the development of these revised chapters and the FHWA will have opportunities to review and comment on draft procedures prior to implementation. The DOT&PF would like to continue to solicit input from partner agencies like USFWS while developing program guidance on related resource areas. For example, the DOT&PF was able to incorporate USFWS comments on the DOT&PF 6004 Program Interim Section 7 ESA Consultation Procedures (http://dot.alaska.gov/stwddes/desenviron/assets/pdf/resources/esa_sec7_procedures.pdf) and looks forward to future opportunities to collaborate on guidance development.</p>
5	Add Migratory Bird E.O.	<p>We recommend that Executive Order (the Order) 13186 be included in Appendix B (List of FHWA's Environmental Review Responsibilities for Which ADOT&PF Requests to be Assigned). The Order, Responsibilities of Federal Agencies to Protect Migratory Birds, directs federal agencies that take actions that either directly or indirectly effect migratory birds to develop a MOU, and to work with the Service, and other federal agencies to promote conservation of migratory bird populations.</p>	<p>We have discussed the inclusion of E.O. 13186 in the NEPA Assignment Program with FHWA. The FHWA's position is that E.O. 13186 does not apply to the Federal-aid Highway Program; therefore, the DOT&PF cannot include it in the application.</p>

<u>Letter dated June 15, 2016</u>		<u>US Fish and Wildlife Service</u>	
Paragra ph	Issue	Original Text	DOT Response
6	Develop AK migratory bird plan	The FHWA is currently developing a national Bird Conservation Plan (BCP) template that can be used to aid States in the development of a BCP and describes how State DOTs, the FHWA, and our agency can work together programmatically to address transportation project-related impacts to migratory birds and their habitat during construction, operation, and maintenance of transportation projects. To support the intent and goals of the Assignment Program, we recommend the development of an Alaska-specific BCP to reduce transportation project impacts on migratory birds.	The DOT&PF looks forward to working closely with USFWS to develop an Alaska-specific Bird Conservation Plan to programmatically address potential transportation project impacts to migratory birds. Please let me know an acceptable time and location for a kickoff discussion on the matter.
7	Early coordination with USFWS on FLAP, EIS; Cooperating status if project is in NWR	If the Assignment Program is authorized as proposed, we request early coordination with the ADOT &PF, especially for all FLAP projects for which the ADOT &PF has been granted responsibility, and for Class I (those requiring an Environmental Impact Statement) projects. Early coordination with the Service and with other resource agencies, panicularly during the early phases of the assumption process, will result in the development of appropriate project alternatives, improved document quality, and ensure greater protection of trust resources. In addition, if projects are within the boundary of, or have the potential to affect a National Wildlife Refuge, we request that the Service be accorded cooperating agency status at project inception.	The DOT&PF is committed to working closely with partner agencies and will reach out early in the project development process to involve USFWS on projects that may affect the Service's trust resources. The DOT&PF will implement FHWA's NEPA regulations and is committed to complying with the regulation requirements for identifying and collaborating with cooperating agencies during the NEPA process.
8	Review draft MOU and USFWS related procedures	As the Assignment Program process moves forward, we request the opportunity to review and comment on the anticipated MOU between the ADOT &PF and the FHWA, as well as other forthcoming documents and procedures related to the Assignment and our authori ties as outlined above.	If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. If the Service continues to have specific concerns after meeting with DOT&PF and FHWA, the Service could provide those concerns to FHWA during the Federal Register comment period. All comments received by FHWA and DOT&PF will be considered

Letter dated May 31 2016		US Parks Service	
Paragrap	Issue	Original Text	DOT Response
1	intro	na	Thank you for your comments dated May 31, 2016 (attached) regarding the DOT&PF's Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327. We recognize that National Park Service (NPS) has concerns regarding the implementation of Alaska's NEPA Assignment Program. In addition to the below responses to your comments, I would like to offer to meet at your convenience to discuss the NEPA Assignment Program in further detail along with an offer to include FHWA Alaska Division staff in the meeting.
2	FLAP conflict of interest;	<p>Although it is our understanding that FHWA would retain NEPA responsibilities for projects funded and co-managed within the Federal Lands Transportation Program (FLTP), there may be instances where the Federal Lands Access Program (FLAP) may also need to be excluded from the NEPA Assignment Program for projects designed or constructed by DOT &PF. FLAP projects designed or constructed by DOT &PF (see page 36) may still have a perceived or real conflict of interest that rests with the State of Alaska for access to federal public lands. There are recognized, developed access points and transportation corridors into parklands, wildlife refuges, and recreational lands that carry a compliance burden. Such burdens may require the state to conduct environmental analyses and render a decision on behalf of FHWA, and also the federal land management agency. There are also unresolved RS 2477 rights of way that the state may be pursuing which could potentially arise using FLAP funding; that may also pose as a problem for all parties involved.</p>	In the context of the NEPA Assignment Program, there are no instances where a "compliance burden" would require DOT&PF to make a NEPA decision on behalf of a federal land management agency. NEPA Assignment only applies to the FHWA's NEPA authorities and cannot apply to any other federal agency. Similarly, the NEPA Assignment program does not alter any federal agency's role during the RS 2477 right of way process. While a project dealing with RS 2477 right of way may require that DOT&PF complete the NEPA and environmental permitting processes, there is no change to the right of way process or federal agencies' roles in dealing with RS 2477. If the NEPA Assignment is made by FHWA to DOT&PF, the assigned FHWA NEPA authorities would include consultation with Federal Land Management Agencies. Early coordination with other agencies is an essential part of the project development process supported by DOT&PF, especially in Alaska where many of the DOT&PF transportation facilities are accessing Federal Lands.
3	Exclude Ambler; conflict of interest	<p>The proposal identifies a list of specific projects that would not be assigned to the State of Alaska (see page 9 and 36). In addition to the four projects identified, others, including the Ambler Mining District Industrial Access Project, should be added to the list of excluded projects. The Alaska National Interest Lands Conservation Act (ANILCA) specifies that the Secretary of Interior and Secretary of Transportation shall determine the most desirable route across Gates of the Arctic National Preserve. The desired route, via an Environmental and Economic Analysis (EEA), shall be in lieu of NEPA compliance and be exempt from judicial review. FHW A has been the delegated authority from the Secretary of Transportation for the EEA and has been very involved in the review of the draft application. While the EEA is in lieu of NEPA compliance, an Environmental Impact Statement is expected to be prepared for the remainder of the route. Should the State of Alaska assumes FHW A responsibilities for this project, a perceived or actual conflict of interest would rest with the state for making a decision on behalf of the federal government for access across National Park System units in Alaska.</p>	As specified in 23 USC 327, the NEPA Assignment Program only applies to certain administrations under the USDOT, including FHWA. DOT&PF is seeking assignment of FHWA's NEPA authorities; no other FHWA authorities will be assigned to the DOT&PF under this program, such as planning, Right of Way, or financial oversight of Federal-aid Highway Program projects. The assigned responsibilities are limited to the environmental analysis and public processes required by NEPA and associated laws, regulations, and Executive Orders, as will be defined in a Memorandum of Understanding (MOU) executed between DOT&PF and FHWA. For example, 23 USC 327 specifically excludes assignment of Sections 134 and 135 pertaining to MPO and Statewide planning, including FHWA's consideration of the concerns of Indian Tribal Governments and Federal Land Management Agencies that have jurisdiction over land within the boundaries of the State. This early coordination with Federal Land Management Agencies for the development of transportation plans provides an important phase for any future project that requires consideration of the Federal Land Management Agency concerns. The statute does not allow for a state to make decisions on behalf of another federal agency, nor does it allow for a state to make decisions for FHWA that are unrelated to NEPA. Another example that is directly identified in your letter is the Environmental and Economic Analysis (EEA) required by ANILCA for access across Gates of the Arctic National Preserve. This decision cannot be assigned under the NEPA Assignment Program; therefore, the application does not need to list the EEA in the discretionary list of excluded projects. FHWA has stated that the USDOT Secretary's EEA decision under ANILCA is not assignable per 23 USC 327.

Letter dated May 31 2016		US Parks Service	
Paragrap	Issue	Original Text	DOT Response
4	Conflict of interest	The proposal includes a request for DOT &PF to assume FHW A authorities for ANILCA (Appendix B of the proposal). The Ambler Mining District Industrial Access Project is one example of potential conflict of interest for the State of Alaska 'to act in a federal capacity for access and other transportation land use decisions yet to be implemented under ANILCA. Title XI of ANILCA (see section 1104 of that act) assigns additional responsibilities to the Secretary of Transportation for decision-making, planning and providing other assistance related to proposed transportation systems in National Park System units in Alaska. The ADOT &PF proposal would place the State of Alaska in a position of making decisions on behalf of the federal government, with a perceived or real conflict of interest in cases involving access to or across federal public lands. The ANILCA-based responsibilities of the Secretary of Transportation, that may be or have been delegated to FHW A, should not be assigned to DOT &PF.	[Refer to answer above re: limitation of assigned responsibilities]
5	4(f) / 6(f)	The proposal states DOT&PF would assume responsibility for all Section 4(f) approvals, but would not make any determination without consulting with FHWA and obtaining FHWA's approval of the determination (see page 27). This process appears to be inefficient an also creates a perceived or actual conflict of interest for the State of Alaska to process Section 4(f) determinations for federal lands. In addition, there is a potential conflict of interest for those projects that include use of Land and Conservation Water Fund (LCWF) monies.	The draft Alaska DOT&PF NEPA Assignment Program Application states that only "constructive use" determinations under Section 4(f) will be made in consultation with, and the approval of, FHWA. Constructive use determinations are rarely made and can be legally complex; they are discreet from other Section 4(f) determinations and findings. Under NEPA Assignment DOT&PF will make all other Section 4(f) decisions, including Section 4(f) applicability determinations based on 23 CFR 774 and FHWA policy and guidance documents. The DOT&PF will seek concurrence from the official(s) with jurisdiction over the Section 4(f) property when required by regulations. Under NEPA Assignment, the DOT&PF would be assigned the FHWA's responsibility for conducting the Section 6(f) process for use of lands where Land and Water Conservation Fund (LWCF) monies were expended. The DOT&PF will not be assuming decisionmaking authority from any other federal entity besides FHWA; the DOT&PF will follow all the regulations and guidance that apply to the conversion of LWCF lands.
6	FAST funding program	Two new fund programs created by the Fixing America's Surface Transportation Act (FAST) are not addressed, but should be added to responsibilities excluded from the NEPA Assignment Program because the State of Alaska could very well be an applicant for funding from the "Nationally Significant Freight and Highway Projects Program" and "Nationally Significant Federal Lands and Tribal Projects Program." If put into a position of receiving funds for a "nationally significant" project and taking on the responsibility of completing NEPA on behalf of the federal government, it could again place the state in a position of making a decision on behalf of the federal government, with a perceived or real conflict of interest in cases involving access to or across federal public lands.	The NEPA Assignment program only applies to the assignment of FHWA's project-specific NEPA responsibilities on Federal Lands Highway Program FLAP projects that are designed and constructed by DOT&PF. For those projects, the DOT&PF will perform all NEPA related environmental review, pubic involvement, and permitting activities; these may include project agreements that are associated with environmental commitments for the project. The DOT&PF looks forward to partnering with Federal Land Management Agencies such as the National Park Service for successful implementation of certain FLAP projects.
7		FHW A and all federal land management agencies have instituted new stewardship and oversight initiatives for projects within the FLTP, and it is presumed that some level of stewardship and oversight would be retained for FLAP, the new FAST national project programs, and other projects as assigned that may have a federal land management agency role or responsibility. If that is the case, and the State of Alaska is given NEPA assignment responsibilities, it should then be included in all stewardship, oversighttasks and duties within project agreements, and properly designated for its role(s) in the stewardship andoversight process.	[refer to answer above re: FAST Funding]
8		The NPS appreciates the opportunity to review the DOT&PF draft proposal. We hope adjustments will bemade prior to the final application for the NEPA Assignment Program application to eliminate potentialor perceived conflicts of interest for decisions on behalf of the federal government for access to federal public lands.	If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. If there are specific concerns from the National Park Service after meeting with DOT&PF and FHWA the NPS could provide those concerns to FHWA during the Federal Register comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

From: [Horne, Taylor C \(DOT\)](mailto:Horne.Taylor.C@DOT)
To: ["betbis@gmail.com"](mailto:betbis@gmail.com)
Cc: [Hogins, Gary R \(DOT\)](mailto:Hogins.Gary.R@DOT)
Subject: DOT&PF Comment Response RE: "The road"
Date: Thursday, July 07, 2016 1:11:51 PM
Attachments: [image002.png](#)

Dear Ms. Bishop,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor
Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public
Facilities 3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Beth Bishop [<mailto:betbis@gmail.com>]
Sent: Wednesday, May 18, 2016 9:07 AM
To: Horne, Taylor C (DOT)
Subject: "The road"

Dear Mr. Taylor,

Please drop the "Road" project! It is a bad idea on so many levels - cost, conservation, upkeep etc. etc. The State is in enough of a fiscal bind and doesn't need any more expensive and high upkeep projects that cause degradation of the environment.

Thank you for considering my comments.

Sincerely,

Elizabeth M. Bishop
--betbis@gmail.com

From: [Horne, Taylor C \(DOT\)](#)
To: ["michelescornelius@gmail.com"](mailto:michelescornelius@gmail.com)
Cc: [Neussl, Michael A \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Don't give NEPA authority to Alaska DOT
Date: Thursday, July 07, 2016 3:26:37 PM
Attachments: [image002.png](#)

Dear Ms. Cornelius,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

Alaska Marine Highway System

Your comments regarding the Alaska Marine Highway System budget reductions have been forwarded to the Deputy Commissioner of the Alaska Marine Highway System by copy of this email. The NEPA Assignment Program is federally funded and will not affect funding for the Alaska Marine Highway System (michael.neussl@alaska.gov).

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Michele [<mailto:michelescornelius@gmail.com>]
Sent: Tuesday, May 24, 2016 10:14 PM
To: Horne, Taylor C (DOT)
Subject: Don't give NEPA authority to Alaska DOT

Giving NEPA authority to the Alaska Department of Transportation is a bad idea. This would remove safeguards that helps ensure environmental review processes are fair and accurate before a project can move forward and will cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers. During the current budget crisis when cuts are being made to important services like the Alaska Marine Highway System, this doesn't make sense. NEPA authority should remain with the Federal Highway Administration.

Sincerely,

Michele Cornelius, Haines Alaska

From: [Horne, Taylor C \(DOT\)](#)
To: ["igcrichton@alaska.edu"](mailto:igcrichton@alaska.edu)
Subject: DOT&PF Comment Response RE: DOT vs FHA, NEPA authority
Date: Thursday, July 07, 2016 3:37:07 PM
Attachments: [image002.png](#)

Dear Ms. Crichton,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Jan Crichton [<mailto:jgcrichton@alaska.edu>]
Sent: Wednesday, May 18, 2016 9:01 AM
To: Horne, Taylor C (DOT)
Subject: DOT vs FHA, NEPA authority

I hear DOT is applying to take over NEPA authority from the Federal Highway Administration. FHA currently signs off on major transportation projects. This is a necessary safeguard that helps ensure environmental review processes are fair and accurate for large projects and their impacts. The takeover is estimated to cost the state over \$1 million per year, when those services are already provided by the federal government. In this tough budget time this cannot be justified. Also the Alaska DOT has not shown consistent or unbiased judgment regarding projects or their impacts or the use (or squirreling away) of funds. The state has much more dire needs for these funds elsewhere, and the FHA is already providing this service.

Thank you

Jan Crichton

From: [Horne, Taylor C \(DOT\)](#)
To: ["thedailys@alaska.net"](mailto:thedailys@alaska.net)
Subject: DOT&PF Comment Response RE: state takeover of feds jpb
Date: Thursday, July 07, 2016 4:23:58 PM
Attachments: [image002.png](#)

Dear Mr. Dailey,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Gary Dailey <thedaileys@alaska.net>

Sent: May 14, 2016 4:20 PM

To: Horne, Taylor C (DOT)

Subject: state takeover of feds jpb

How can you do the feds job when you can't build a road now. Also, we're broke and you want to hire your nephew? I am totally against taking federal responsibility over, it's merely wasting money.

Gary Dailey

Sent from [Mail](#) for Windows 10



Virus-free. www.avast.com

From: [Horne, Taylor C \(DOT\)](mailto:cdense@icloud.com)
To: ["cdense@icloud.com"](mailto:cdense@icloud.com)
Cc: info@seacc.org
Subject: DOT&PF Comment Response RE: Comments on NEPA Assignment and CE Assignment -- 6004 Program
Date: Thursday, July 07, 2016 3:20:26 PM
Attachments: [image002.png](#)

Dear Mr. Dense,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

Environmental Impact Statement (EIS) projects

The only active FHWA funded EIS projects in Alaska, Gravina Access, Juneau Access Improvements; and Sterling Highway: MP 45-60, are listed on page 9 and with Appendix A of the draft, indicating that the DOT&PF is requesting that these projects not be assigned to the DOT&PF as part of the NEPA Assignment Program. All new EIS projects will be assigned to DOT&PF under the NEPA Assignment Program.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Chas Dense [<mailto:cdense@icloud.com>]
Sent: Monday, May 23, 2016 3:02 PM
To: Horne, Taylor C (DOT)
Cc: info@seacc.org
Subject: Comments on NEPA Assignment and CE Assignment -- 6004 Program

Dear Mr. Horne:

Based on my experience as a concerned member of the public and as a former project review manager for the Alaska Department of Natural Resources, Division of Land and Water Management, Southeast Region, I am opposed to the Alaska Department of Transportation and Public Facilities' proposed acquisition of responsibilities for complying with the National Environmental Policy Act (NEPA) on Federal-aid highway projects from the Federal Highway Administration.

Although I know little about the Sterling Highway project, I have followed the Gravina Access ("to nowhere"), and the Juneau Access "Improvements" projects for years with interest. These latter two projects are perfect examples of why I do not believe DOT&PF should be in a position to approve its own projects. From my perspective, the NEPA documents for these projects were biased and skewed to result in pre-determined outcomes. The courts have confirmed this point over the years more than once.

Having an outside entity (i.e., FHWA) with ultimate review and approval authority at least gives a modicum of oversight of what I believe to be DOT&PF's too-narrow and seemingly non-inclusive view of the world. Further, it only makes good federal fiscal sense for FHWA to maintain significant oversight responsibilities for the larger, more expensive projects that require Environmental Impact Statements. DOT&PF just doesn't seem to have responsible fiscal restraint when it gets to use "free" federal dollars. A case in point are the steel piles the State of Alaska purchased over ten years ago for Juneau Access, well ahead of any approval for the project, that are still being stored at cost in Seattle. If Juneau Access is abandoned, these piles will have been a waste of federal and state dollars from "jumping the gun." Though I believe FHWA could do a better job themselves, at least there is a structure for better oversight that effectively would be eliminated if DOT&PF were to take over oversight of themselves.

The apparent conflict of interest of "self-assessments" calls to mind the fox watching over the hen house. As well, I find it fascinating these "self assessments" do not seem

to include consultations with participating agencies.

The bottom of page 21 of the Application states "Over the last five years, there have been five EA/FONSI and no EIS/RODs approved by FHWA for Federal-aid Highway Program projects in Alaska." What is not stated is how many EISs are in process, how long have they been in process, and what problems, hurdles, and legal issues have they encountered that prevents them from being approved. I suspect the Gravina and Juneau Access projects may be included in such a list. In any event, these projects must remain under FHWA oversight.

In conclusion, I believe FHWA should retain EIS authorities for the benefit of the public interest. Thank you for the opportunity to comment.

Sincerely,
Chas Dense
427 West 11th St.
Juneau, AK 99801

From: [Horne, Taylor C \(DOT\)](#)
To: ["1bobfink@gmail.com"](mailto:1bobfink@gmail.com)
Cc: [Hogins, Gary R \(DOT\)](#)
Subject: DOT&PF Comment Response RE:
Date: Thursday, July 07, 2016 1:13:19 PM
Attachments: [image001.png](#)

Dear Mr. Fink,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6956 Cell: (907) 500-4333

From: bob fink <1bobfink@gmail.com>
Sent: May 18, 2016 10:19 PM
To: Horne, Taylor C (DOT)
Subject:

I'm really shocked and really dismayed to hear that there is still an expensive unnecessary plan to continue with the bazaar road desecrating the wilderness beauty of the land up here in the upper Lynn canal. I thought at least that would be put on the "back burner " so to speak because of the budgetary situation Alaska now faces. PLEASE STOP SPENDING OUR LIMITED FUNDS ON SUCH A WASTE OF MONEY!

From: [Horne, Taylor C \(DOT\)](#)
To: ["bkfrench@gmail.com"](mailto:bkfrench@gmail.com)
Cc: [Walker, Bill M \(GOV\)](#)
Subject: DOT&PF Comment Response RE: Comments on the DOT&PF NEPA Assignment Program Application
Date: Thursday, July 07, 2016 3:15:31 PM
Attachments: [APRA-FOIA chart 7.1.16.pdf](#)
[image001.png](#)

Dear Mr. French,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

The Alaska Public Records Act and the Freedom of Information Act

While there are certain differences between the federal and state public records rules, the general scope of records available for review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 USC 327. Please see the attached APRA-FOIA chart for more details.

Application completeness

This comment opportunity was provided to solicit comments on DOT&PF's draft application, as described in 23 CFR 773. If FHWA accepts DOT&PF's final application for NEPA Assignment and enters into Memorandum Of Understanding (MOU) negotiations, a notice and request for comment

on the draft MOU and the final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered as the parties negotiate the terms of the NEPA Assignment MOU.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Bob French <bgkfrench@gmail.com>
Sent: May 31, 2016 10:54 PM
To: Horne, Taylor C (DOT); Walker, Bill M (GOV)
Subject: Comments on the DOT&PF NEPA Assignment Program Application

May 31, 2016

To: Mr. Taylor Horne,
Statewide Environmental Program Manager
3132 Channel Dr.
P.O. Box 112500
Juneau, AK 99811-2500
Via: E-mail only.

Please accept these comments regarding the Alaska Department of Transportation and Public Facilities (DOT&PF) seeking responsibility for the full range of federal environmental review duties for federal highway projects allowable under the statute, including but not limited to approval authority for Records of Decision, National Environmental Policy Act (NEPA) review, Categorical Exclusions, Environmental Assessments, Environmental Impact Statements, Endangered Species Act Section 7 consultation, and evaluation under Section 4(f) of the U.S. Department of Transportation Act of 1966.

I have been closely involved with EA's, EIS's and Section 4(f) evaluations for several projects, and I *strongly* oppose this application for the following reasons:
The FAQ page states: *"The program allows for more efficient delivery of projects and*

flexibility in DOT&PF procedures.” While some may lament the amount of time that it takes to do a fully compliant environmental review, and may complain about the rigidity of Federal NEPA law, the existing NEPA process sometimes offers the only chance for the public to interact with other stakeholders and decision makers, and, as flawed as the NEPA process may be, the court-tested process makes sure that the requirements of NEPA are met. Because DOT&PF does not have the experience, transferring responsibilities to DOT&PF will likely cause non-compliant EA’s, EIS’s and CE’s, which will ultimately cause inefficiency due to lawsuits forcing the DOT&PF to correctly follow the NEPA process, which will ultimately delay final decisions. The FAQ page further states: *“DOT&PF will be able to build stronger relationships with stakeholders and agencies through direct engagement and ownership of decision-making.”* My experience with DOT&PF, is that they have failed to meet the stipulated requirements of Memoranda of Agreements with Stakeholders that they signed, and feel that an independent agency, such as FHWA, which doesn’t have a direct financial stake in whether or not a particular project goes forward, will provide a more impartial and fair engagement with agencies and stakeholders. In the projects I have been involved with, DOT&PF have demonstrated an inability or perhaps an unwillingness to engage in open, transparent, and honest evaluations of projects. DOT&PF does not currently have personnel who have the qualifications to take on NEPA duties, and with the current state budget situation, DOT&PF should be reducing staff, not trying to hire or train more staff. This significant expansion of duties and responsibilities for DOT&PF should not be approved by the Administration, as DOT&PF does not have the expertise to undertake the highly complex and difficult processes required.

Moving the NEPA process to DOT&PF will further hinder citizen involvement and feedback. The Alaska Public Records Act is not comparable to the federal Freedom of Information Act, which is a required component of the Application to assume NEPA Assignments.

Regulations require that the State circulates “the complete application” for public comment. This Draft Application is missing critical pieces that the public should be able to comment on, including the certification: 1) *“that the State has legal authority to assume the responsibilities of the Secretary for the Federal environmental laws and projects requested, and that the State consents to exclusive Federal court jurisdiction with respect to the responsibilities the State is requesting to assume,”* and 2) *“that the State has laws that are comparable to FOIA.”* This Draft Application is not complete, and without having the full document to review, the public is not allowed the full benefit of commenting on this application.

I urge the Administration to reject this application, and to retain NEPA responsibilities with the Federal Agencies currently responsible for these assignments.

Thank you for the opportunity to comment,

Robert French
685 Birch Street
Anchorage, Alaska 99501

The Alaska Public Records Act and the Freedom of Information Act Compared

	Alaska Public Records Act (APRA)	Freedom of Information Act (FOIA)	Comparison
Conclusion			While there are certain differences between the federal and state public records rules, the general scope of records available review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 U.S.C. § 327.
Types of Records Available	Agency records in all formats including electronic records.	Agency records in all formats including electronic records.	APRA[1] is consistent with FOIA[2][3]: AK's definition would encompass all categories of documents in 5 U.S.C. § (a)(1)-(2); APRA specifically allows for retrieval of electronic records.[4]
Costs for Production of Documents	Statutory fee waiver for agency search costs (applicable to public interest & private interest requesters) results in most records requests produced without payment required. Fees for copies may not exceed the "standard unit cost of duplication established by the public agency;"[5] Advance payment for request in excess of five hours agency time. [6]	Standard waiver fee for agency search costs only apply to educational or scientific institutions and the news media [7]. Requires advance payment for larger records requests that could cost \$250 for a federal agency's personnel to search and duplicate records. [8]	Nearly identical to the provision governing fees for copies in FOIA.[9] Under DOT&PF's established costs, the fee for electronic copies of records maintained in electronic form cannot exceed "the actual cost of the supplies used in filing the request." [10] Since the vast majority of DOT&PF responses to public record requests are delivered as email attachments, the agency normally collects no money from requestors for duplication costs.
Processing Requests for Records	Each agency shall "furnish all requested records that are disclosable" no later than the 10th working day from records request receipt.[11]	Each agency must "determine within ten days (except Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore." [12]	Fundamental difference that affects processing outcomes: FOIA requires annual reporting to Congress and the federal attorney general. APRA requires Commissioner and Attorney General approvals (with right to be heard by requester) for prolonged extensions by agency. [13]
Procedures for Appeals	Authorizes judicial appeals from the denial of a public records request, and provides a right to seek immediate injunctive relief.[14] Similar to FOIA, if an agency fails to respond within the authorized period, the requestor may proceed as if he or she has exhausted administrative remedies.[15]	Authorizes judicial review where agency records are alleged to have been improperly withheld.[16]	An assertion that "a losing Public Records Act litigant is liable for 20-30% of the State's attorney's fees" is incorrect. The Alaska Supreme Court held that a public interest litigant that unsuccessfully appeals the withholding of documents under APRA should not have attorney's fees awarded against it.[17] The Sierra Club and other environmental groups would all likely meet the court's qualification of public interest litigants; therefore an adverse award of attorney's fees in APRA litigation would be highly unlikely.
Footnotes	[1] AS 40.25.100-220.	[2] 5 U.S.C. § 552.	[3] See Rush v. Department of State, 716 F.Supp. 598, 600 (S.D. Fla. 1989) (noting that FOIA does not define "agency record," but that the U.S. Supreme Court provided clarification of the term); 5 U.S.C. § 552(f) ("record" includes any information that would be an agency record subject to the requirements of 5 U.S.C. § 552 when maintained by an agency in any format, including an electronic format).
	[4] AS 40.25.115; 5 U.S.C. § 552(a)(3)(C).	[5] AS 40.25.110(b). [6] AS 40.25.110(c).	[7] 5 U.S.C. § 552(a)(4)(A)(ii)(II). [8] 5 U.S.C. § 552(a)(4)(A)(v).
	[9] 5 U.S.C. § 552(a)(4)(A)(ii) (limiting fees to reasonable standard charges).	[10] DOT&PF Policy & Procedure 06.04.040 (Fees for Copying Public Records)	[11] 2 AAC 96.325(a). [12] 5 U.S.C. § 552(a)(6)(A)(i). [13] 2 AAC 96.325(e)
	[14] AS 40.25.124 and AS 40.25.125	[15] 2 AAC 96.330(f); 5 U.S.C. § 552(a)(6)(C)(i).	[16] 5 U.S.C. § 552(a)(4)(B). [17] G'wich'in Steering Committee, 10 P.3d at 585.

From: [Horne, Taylor C \(DOT\)](#)
To: ["cefurby@yahoo.com"](mailto:cefurby@yahoo.com)
Subject: DOT&PF Comment Response RE: Draft Application to Assume FHWA's NEPA Responsibilities
Date: Thursday, July 07, 2016 4:27:54 PM
Attachments: [image002.png](#)

Dear Ms. Furbish,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

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Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: C. E. Furbish [<mailto:cefurby@yahoo.com>]
Sent: Wednesday, May 18, 2016 9:14 AM
To: Horne, Taylor C (DOT)
Subject: Draft Application to Assume FHWA's NEPA Responsibilities

Ms. Taylor,

I vehemently oppose this proposal for two reasons.

1) This adds unnecessary expenses to state administration, costs that are now covered by the Federal Highway Administration. The costs will be routine in that projects required to have environmental review will still need to have that process completed. And the costs will be unpredictable when/if AKDOT&PF produces an inadequate EIS that is challenged legally. The state of Alaska is trying to cut costs in our present economic situation. We should not take on costs that are already covered by the federal government.

2) The AKDOT&PF does not have a good track record for producing thoroughly researched, logical and well-presented Environmental Impact Statements. Federal Highway Administration involvement provides a modicum of oversight. Removing the FHA participation in the process will only make it easier for AKDOT&PF to become over-independent and inward-focused. It will make it too easy for them to ignore input from outside the agency, input that includes citizens and communities that are impacted by the AKDOT&PF projects.

Sincerely,

C. E. Furbish
Skagway, AK

From: [Horne, Taylor C \(DOT\)](#)
To: ["akdonnaj@gmail.com"](mailto:akdonnaj@gmail.com)
Cc: [Schmid, Tom J \(DOT\)](#)
Subject: DOT&PF Comment Response RE: AKDOT application to assume NEPA authority
Date: Thursday, July 07, 2016 3:12:27 PM
Attachments: [image002.png](#)

Dear Ms. Jefferson,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

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Seward Highway Milepost 105-107 Windy Corner (Federal Project No. 0A31034; State of Alaska Project No.: Z566310000)

By copy of this email, your comments have been forwarded to the appropriate project staff (tom.schmid@alaska.gov).

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,

Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Donna Jefferson <akdonnaj@gmail.com>
Sent: May 30, 2016 11:07 AM
To: Horne, Taylor C (DOT)
Subject: AKDOT application to assume NEPA authority

To: Taylor Horne

I am very concerned about the AKDOT's application to take over NEPA authority from the Federal Highway Administration. You can see, my comment comes near the end of the comment period, as I had no idea such possibility was unfolding until recently. It is difficult to stay up on everything these days, but I appreciate to give my comment, especially on this occasion. Allowing this responsibility to AKDOT will remove an important safeguard which helps ensure environmental reviews processes are accurate and fair. In my observations over the years, the AKDOT is becoming too powerful in their project planning and implementation. We are losing faith in the AKDOT's judgement as they push overly expensive highway projects, without really HEARING Alaskans who want to help shape these projects in less expensive and intrusive ways. I am also sending my recent comments to a large project in my "backyard", which is another example of how excessive power and funding can corrupt good decision making. Please help curb the runaway train; the AKDOT does not deserve more responsibility of doing legitimate environmental processes of t's own projects, it deserves less.

Sincerely,

Donna Jefferson
Indian, Alaska
907-301-8207
Akdonnaj@gmail.com

Sorry to burden you with extra reading Taylor, but it ties in to my concerns.

Recent comment on WindyCorner project/Seward Highway May 2016

I have lived along Turnagain Arm since 1990, driving this vital and beloved corridor everyday of the week in both directions, in all seasons. The Seward Highway is one of the most notable in the state, bestowed with the triple designation of being a National Scenic Byway, USDA Forest Service Byway and All American Road. With these designations we are mandated to preserve the special intrinsic qualities of the lands while making good decisions to improve safety, access and education along these roads. I have been following the Windy Corner project with interest and have the following comments at this time.

1. The Windy Corner project is prohibitively expensive at 80+ million, particularly with regards to our economic times and it's touted safety mitigation value. Review carefully Alaska Safety Corridors MVA/fatalities sites as project information was not so clear. The project segment does not appear to be "the most dangerous" of the corridor. Since Traffic Safety Corridor Designation in 2006, there has been significant improvements in safety and highway efficiency. We can continue to employ actions that are working and in addition, add some more affordable improvements such as;

Turn lanes at McHugh Creek, Indian, Bird, and Portage, mainly Alaska Wildlife Conservation Center.

Keep the AST on this highway segment- they have made a difference. Unfortunately, this may be difficult with budget cuts.

Utilize video cams to enforce speed limits, headlights on law, and slow drivers who refuse to utilize pullout lanes. Drones?

Additional flashing speed and pedestrian signs

Consider slower speed limits in more dangerous areas.

2. Material sites within the Chugach State Park will grossly detract from the intrinsic value of the highway corridor and the park. A major concern for many people is where the 1.8 + million cubic yards of material estimated for the project will come from. I was not clear or satisfied with any answers or depictions of these large mining sites, though I was told they were much larger than the Bird Creek quarry. Some type of virtual depiction would be more helpful. What I do know is that Material site #1, at 22 acres, at the edge of Rainbow Valley, has an astonishingly rich and productive ecosystem of sheltered, rolling bench lands embedded there, home of numerous bear and moose. Check it out. Material site #2, at 18.3 acres, near the edge of Indian Valley, abuts the Falls Creek-Indian section of Turnagain Trail and mentioned in project information as not passable. In actuality, it is well travelled to Falls Creek and also accesses IndianHouse Mtn via an old sheep trail, long shared by humans, which rivals Bird Ridge trail. Needless to say, there are many sheep in the rocky areas of this segment.

With all that said, I feel strongly that mining materials from the Chugach State Park on this particular corridor is complex with regards to wildlife habitat and the diverse recreational users that seek these special places. Material sites should come from the Portage area or perhaps continue excavating at the Bird Creek quarry to avoid a string of disruptions as we rework the highway.

3. The Windy Corner viewing platform and parking area at it's current design is too large and may negatively effect the habits of the animals we love to see. Not to mention, the long period of construction may negatively effect their habits of being there.

4. Perhaps AKDOT should find/ fund creative projects involving railway travel to get folks off the highway.

In all honesty, I believe we should hold off on the Windy Point Project until more sustainable financial times. The days of Alaskans dismissing "federal funding" as something we don't pay for is erroneous thinking, like printing money we don't have. We all pay federal funding and must think critically and carefully when choosing to fund our necessities and our dreams.

Sincerely,

Donna Jefferson

Akdonnaj@gmail.com

907-301-8207

From: [Horne, Taylor C \(DOT\)](#)
To: ["haydenkaden@gmail.com"](mailto:haydenkaden@gmail.com)
Cc: [Neussl, Michael A \(DOT\)](#)
Subject: DOT&PF Comment Response RE: DOT to take over NEPA authority?
Date: Thursday, July 07, 2016 3:29:47 PM
Attachments: [image002.png](#)

Dear Mr. Kaden,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

Alaska Marine Highway System

Your comments regarding the Alaska Marine Highway System budget reductions have been forwarded to the Deputy Commissioner of the Alaska Marine Highway System by copy of this email. The NEPA Assignment Program is federally funded and will not affect funding for the Alaska Marine Highway System (michael.neussl@alaska.gov).

Juneau Access Improvements

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF (gary.hogins@alaska.gov).

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Hayden Kaden [<mailto:haydenkaden@gmail.com>]
Sent: Wednesday, May 18, 2016 11:20 AM
To: Horne, Taylor C (DOT)
Subject: DOT to take over NEPA authority?

I understand that the Alaska Department of Transportation is applying to take over NEPA authority from the Federal Highway Administration. Right now, the Federal Highway Administration signs off on major transportation projects. This change would remove a safeguard that helps ensure environmental review processes are fair and accurate before a project can move forward. The move would cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers. Why is the state willing to pay for more administrators while slashing the Alaska Marine Highway System budget? My wife and I, our whole community, and most of the small communities of Southeast and Western Alaska rely heavily on the AMHS. Not to mention that the Alaska DOT has shown questionable judgement by pushing the Juneau road extension in face of hard evidence showing it is an unpopular, money losing liability for the state. Can someone explain why DOT taking over NEPA authority makes economic sense.

Sincerely,

Hayden Kaden
P.O. Box 138
Gustavus, AK 99826
haydenkaden@gmail.com

From: [Horne, Taylor C \(DOT\)](#)
To: ["Anna Ashenfelter"; Melanie Bahnke](#)
Subject: DOT&PF Comment Response RE: Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities
Date: Thursday, July 07, 2016 5:51:55 PM
Attachments: [Kawerak response -7.7.16.pdf](#)
[image001.png](#)

Dear Ms. Ashenfelter and Ms. Bahnke,

Thank you for your comments regarding the draft NEPA Assignment Program application. Please see the attached letter in response to your May 25, 2016 letter.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Anna Ashenfelter [mailto:office.assist@kawerak.org]
Sent: Friday, May 27, 2016 8:36 AM
To: Horne, Taylor C (DOT)
Cc: Melanie Bahnke
Subject: Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities

Good morning,

Attached you'll find document, Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities, and if you have any questions or concerns, please contact Melanie Bahnke, President of Kawerak, Inc., at (907) 443-5231, or mbahnke@kawerak.org.

Thank you,

Anna Ashenfelter
Office Assistant
Kawerak Inc.
Ph: (907) 443-4321
Fax: (907)443-4452



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and Public Facilities

Design & Engineering Services
Environmental Section

3132 Channel Drive
Juneau, Alaska 99811-2500
Main: 907-465-2960
Toll free: 800-467-6955
Fax: 907-465-3124

July 7, 2016

Ms. Melanie Bahnke
President
Kawerak, Inc.
P.O. Box 948
Nome, AK 99762

Reference: Kawerak, Inc. Comments on Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327. Your comments in support of DOT&PF's NEPA Assignment Program are appreciated and will be incorporated into the final application.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

If you have any questions, require clarification, or want additional information, please contact me at (907) 465-6957 and taylor.horne@alaska.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Taylor C. Horne".

Taylor C. Horne
DOT&PF Statewide Environmental Program Manager

"Keep Alaska Moving through service and infrastructure."

From: [Horne, Taylor C \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#)
Subject: Fw: Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities
Date: Friday, May 27, 2016 8:50:46 AM
Attachments: [signature -8985865402095368552.png](#)
[Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities.pdf](#)



Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6956 Cell: (907) 500-4333

From: Anna Ashenfelter <office.assist@kawerak.org>
Sent: May 27, 2016 8:36 AM
To: Horne, Taylor C (DOT)
Cc: Melanie Bahnke
Subject: Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities

Good morning,

Attached you'll find document, Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities, and if you have any questions or concerns, please contact Melanie Bahnke, President of Kawerak, Inc., at (907) 443-5231, or mbahnke@kawerak.org.

Thank you,

Anna Ashenfelter
Office Assistant
Kawerak Inc.
Ph: (907) 443-4321
Fax: (907)443-4452



SERVING THE
VILLAGES OF:
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SHISHIAREF
SOLOI 10N
STEBBINS
ST CHAEL
TCLLER
UN>LAKLEET
WALES
WHITE MOUNTAIN

May 25, 2016

Taylor C. Horne, Program Manager
State of Alaska, DOTPF
Juneau, Ala.ska 99811

Via email: taylor.horne@alaska.gov

Subject: Public Comments to DOTPF's application to Assume FHWA's NEPA responsibilities

Kawerak is a nonprofit corporation and tribal consortium authorized by Bering Strait Region tribes to administer certain programs of the BIA pursuant PL 93-638 and has compacted the BIA Tribal Transportation Program (TTP) on behalf of 16 federally recognized tribes in this region. As of 2012 we are now under a Program Agreement with FHWA. Kawerak has established its Transportation Program to fulfill the requirements under its compact with BIA and FHWA Program Agreement and to coordinate with all governmental entities within its consortium which have transportation roles and responsibilities.

Kawerak serves the Bering Strait region in western Alaska. Currently 17 communities occupy the Nome Census Area, of which Nome has the largest population at 3,700 and is the regional hub for medical and transportation facilities including a port and harbor, and other essential services for the region. The Bering Strait region is about the size of West Virginia with a population of over 9,900. Most of our villages lack basic infrastructure such as water and sewer, roads, ports and harbors. The situation can be compared to third world living conditions.

We support DOTPF's application to assume the NEPA Responsibility for the State of Alaska's roads and we understand this will not affect the tribes' responsibilities under NEPA. We are pleased that DOTPF will provide consultation when tribes request so, and that DOTPF will reach out to FHWA throughout the environmental process as stated in your April 25, 2016 cover letter.

Thank you for the opportunity to provide public comment. If you have any questions please contact me at mbahnke@kawerak.org or call my office at 907/443-5231.

Sincerely,

KAWERAK, NC.,



Melanie Bahnke
President

MB/OM

cc: KTP

From: [Horne, Taylor C \(DOT\)](#)
To: ["SKesler@qci.com"](mailto:SKesler@qci.com)
Subject: DOT&PF Comment Response RE: Comments regarding AKDOT's application to participate in the FHWA NEPA Delivery Program
Date: Thursday, July 07, 2016 3:10:09 PM
Attachments: [APRA-FOIA chart 7.1.16.pdf](#)
[image001.png](#)

Dear Ms. Kesler,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

The Alaska Public Records Act and the Freedom of Information Act

While there are certain differences between the federal and state public records rules, the general scope of records available for review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 USC 327. Please see the attached APRA-FOIA chart for more details.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Stephanie Kesler <SKesler@gci.com>
Sent: May 31, 2016 8:40 PM
To: Horne, Taylor C (DOT)
Subject: Comments regarding AKDOT's application to participate in the FHWA NEPA Delivery Program

Mr Horne,

My comments are in regards to AKDOT seeking responsibility for the full range of federal environmental review duties for federal highway projects allowable under the statute, including but not limited to approval authority for records of decision, National Environmental Policy Act (NEPA) review, Endangered Species Act Section 7 consultation, and evaluation under Section 4(f) of the U.S. Department of Transportation Act of 1966.

I *strongly* oppose this application:

This is a significant expansion of duties and responsibilities for AKDOT

AKDOT does not have the expertise to undertake the highly complex and difficult processes required

The State of Alaska and AKDOT is in a severe budget crisis that will not be resolved quickly. Additional funds for the expansion of duties and responsibilities would be significant

AKDOT is not a transparent organization. They have demonstrated an inability or at the very least an unwillingness to engage in open, transparent, and honest evaluations of projects.

Moving the NEPA process to AKDOT will further hinder citizen involvement and feedback. The Alaska Public Records Act is not comparable to the federal Freedom of Information Act.

Finally, and this is blunt, but moving the NEPA process to AKDOT is the equivalent of hiring the fox to guard the henhouse.

Thank you for the opportunity to comment,

Stephanie Kesler

The Alaska Public Records Act and the Freedom of Information Act Compared

	Alaska Public Records Act (APRA)	Freedom of Information Act (FOIA)	Comparison
Conclusion			While there are certain differences between the federal and state public records rules, the general scope of records available review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 U.S.C. § 327.
Types of Records Available	Agency records in all formats including electronic records.	Agency records in all formats including electronic records.	APRA[1] is consistent with FOIA[2][3]: AK's definition would encompass all categories of documents in 5 U.S.C. § (a)(1)-(2); APRA specifically allows for retrieval of electronic records.[4]
Costs for Production of Documents	Statutory fee waiver for agency search costs (applicable to public interest & private interest requesters) results in most records requests produced without payment required. Fees for copies may not exceed the "standard unit cost of duplication established by the public agency;"[5] Advance payment for request in excess of five hours agency time. [6]	Standard waiver fee for agency search costs only apply to educational or scientific institutions and the news media [7]. Requires advance payment for larger records requests that could cost \$250 for a federal agency's personnel to search and duplicate records. [8]	Nearly identical to the provision governing fees for copies in FOIA.[9] Under DOT&PF's established costs, the fee for electronic copies of records maintained in electronic form cannot exceed "the actual cost of the supplies used in filing the request." [10] Since the vast majority of DOT&PF responses to public record requests are delivered as email attachments, the agency normally collects no money from requestors for duplication costs.
Processing Requests for Records	Each agency shall "furnish all requested records that are disclosable" no later than the 10th working day from records request receipt.[11]	Each agency must "determine within ten days (except Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore." [12]	Fundamental difference that affects processing outcomes: FOIA requires annual reporting to Congress and the federal attorney general. APRA requires Commissioner and Attorney General approvals (with right to be heard by requester) for prolonged extensions by agency. [13]
Procedures for Appeals	Authorizes judicial appeals from the denial of a public records request, and provides a right to seek immediate injunctive relief.[14] Similar to FOIA, if an agency fails to respond within the authorized period, the requestor may proceed as if he or she has exhausted administrative remedies.[15]	Authorizes judicial review where agency records are alleged to have been improperly withheld.[16]	An assertion that "a losing Public Records Act litigant is liable for 20-30% of the State's attorney's fees" is incorrect. The Alaska Supreme Court held that a public interest litigant that unsuccessfully appeals the withholding of documents under APRA should not have attorney's fees awarded against it.[17] The Sierra Club and other environmental groups would all likely meet the court's qualification of public interest litigants; therefore an adverse award of attorney's fees in APRA litigation would be highly unlikely.
Footnotes	[1] AS 40.25.100-220.	[2] 5 U.S.C. § 552.	[3] See Rush v. Department of State, 716 F.Supp. 598, 600 (S.D. Fla. 1989) (noting that FOIA does not define "agency record," but that the U.S. Supreme Court provided clarification of the term); 5 U.S.C. § 552(f) ("record" includes any information that would be an agency record subject to the requirements of 5 U.S.C. § 552 when maintained by an agency in any format, including an electronic format).
	[4] AS 40.25.115; 5 U.S.C. § 552(a)(3)(C).	[5] AS 40.25.110(b). [6] AS 40.25.110(c).	[7] 5 U.S.C. § 552(a)(4)(A)(ii)(II). [8] 5 U.S.C. § 552(a)(4)(A)(v).
	[9] 5 U.S.C. § 552(a)(4)(A)(ii) (limiting fees to reasonable standard charges).	[10] DOT&PF Policy & Procedure 06.04.040 (Fees for Copying Public Records)	[11] 2 AAC 96.325(a). [12] 5 U.S.C. § 552(a)(6)(A)(i). [13] 2 AAC 96.325(e)
	[14] AS 40.25.124 and AS 40.25.125	[15] 2 AAC 96.330(f); 5 U.S.C. § 552(a)(6)(C)(i).	[16] 5 U.S.C. § 552(a)(4)(B). [17] G'wich'in Steering Committee, 10 P.3d at 585.

From: [Horne, Taylor C \(DOT\)](#)
To: ["tk11289@gmail.com"](mailto:tk11289@gmail.com)
Subject: DOT&PF Comment Response RE: NEPA Authority
Date: Thursday, July 07, 2016 4:28:52 PM
Attachments: [image002.png](#)

Dear Mr. Knutson-Lombardo,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500

Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Tristan Knutson-Lombardo [<mailto:tkl1289@gmail.com>]
Sent: Thursday, May 19, 2016 8:57 PM
To: Horne, Taylor C (DOT)
Subject: NEPA Authority

Hi Mr. Horne,

Having the State take over NEPA authority from the Feds is a horrible idea. It will cost our state more money and I do not trust the State of Alaska to be fair, honest, stewards of our resources. I am so thankful for the roads, trains and ferries that we (still) have maintained and running in Alaska, but I don't think continued development and ongoing maintenance should come at a cost to the environment and Alaskan's quality of life.

Please consider this a very loud **NO** to the State of Alaska's intent to take over NEPA.

Thank you,

Tristan Knutson-Lombardo
707 Dixon St
Juneau, AK 99801

From: [Horne, Taylor C \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#)
Subject: FW: DOT&PF Comment ResponseRE: NEPA authority
Date: Thursday, July 07, 2016 4:50:17 PM
Attachments: [image002.png](#)

FYI

From: Linda Kruger [mailto:lindalaska2003@gmail.com]
Sent: Thursday, July 07, 2016 4:48 PM
To: Horne, Taylor C (DOT)
Subject: Re: DOT&PF Comment ResponseRE: NEPA authority

You totally missed my point! I never said anything about funding! Maybe you confused my concerns with someone else's? More likely you sent a boiler plate reply that had nothing to do with my comments at all. Interesting.

Linda

On Thu, Jul 7, 2016 at 4:30 PM, Horne, Taylor C (DOT) <taylor.horne@alaska.gov> wrote:
Dear Ms. Kruger,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

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If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: [\(907\) 465-6957](tel:9074656957) Cell: [\(907\) 500-4333](tel:9075004333)

From: Linda Kruger [<mailto:lindalaska2003@gmail.com>]
Sent: Wednesday, May 18, 2016 10:45 AM
To: Horne, Taylor C (DOT)
Subject: NEPA authority

I believe NEPA authority the federal level provides the best assurance of fair and well thought out processes and decisionmaking. We need accurate and impartial information and as we have seen in the past (the Juneau Access Project is a recent example) ADOT cannot provide impartial review and comment. It is their job to advocate for projects. In addition we can't have a good public debate about a project without accurate, impartial information. That's why we need a legitimate environmental process with an outside referee — not having the same agency approve the information that we know is determined to get one answer. The federal process provides the independent review that is needed.

Linda Kruger
PO Box 35012
Juneau AK 99803

From: [Horne, Taylor C \(DOT\)](#)
To: ["jalaroo@yahoo.com"](mailto:jalaroo@yahoo.com)
Cc: [Neussl, Michael A \(DOT\)](#); [Hogins, Gary R \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Alaska DOT needs checks and balances with NEPA in the Fed's hands
Date: Thursday, July 07, 2016 3:31:49 PM
Attachments: [image001.png](#)

Dear Ms. Laroe,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

Alaska Marine Highway System

Your comments regarding the Alaska Marine Highway System budget reductions have been forwarded to the Deputy Commissioner of the Alaska Marine Highway System by copy of this email. The NEPA Assignment Program is federally funded and will not affect funding for the Alaska Marine Highway System (michael.neussl@alaska.gov).

Juneau Access Improvements

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements

project staff with DOT&PF (gary.hogins@alaska.gov).

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: jen laroe <jalaroo@yahoo.com>
Sent: May 18, 2016 10:58 PM
To: Horne, Taylor C (DOT)
Subject: Alaska DOT needs checks and balances with NEPA in the Feds hands

Dear Taylor Horne,

Please help keep the Alaska DOT accountable and do not support the take over of NEPA authority from the Federal Highway Administration. Right now, the Federal Highway Administration signs off on major transportation projects. A change in who holds authority would remove a safeguard that helps ensure environmental review processes are fair and accurate before a project can move forward. The move would cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers. Why is the state willing to pay for more administrators while slashing the Alaska Marine Highway System budget? Not to mention that the Alaska DOT has shown questionable judgement by pushing the Juneau road extension in face of hard evidence showing it is an unpopular, money losing liability for the state.

Please keep the DOT in check with environmental concerns and questionable projects. I wish someone had stopped the Egan Highway Illumination project before the scenic vista of our town was devastated with a steel rib cage down the length of what used to be one of the most beautiful drives around.

Sincerely,

Jennifer LaRoe
5134 Glacier Highway
Juneau, AK 99801

From: [Horne, Taylor C \(DOT\)](#)
To: ["baranof9general@gmail.com"](mailto:baranof9general@gmail.com)
Subject: DOT&PF Comment Response RE:
Date: Thursday, July 07, 2016 4:50:57 PM
Attachments: [image002.png](#)

Dear Ms. Lundstedt,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Christine Lundstedt [<mailto:baranof9general@gmail.com>]
Sent: Wednesday, May 18, 2016 2:04 PM
To: Horne, Taylor C (DOT)
Subject:

HELLO-

The ADOT taking over NEPA is a fantastically stupid idea. Or is it, worse, a back door effort to pave (ha) the way for ecological and natural destruction??

DON'T DO IT!!!

Christine Lundstedt
907-738-3111

From: [Horne, Taylor C \(DOT\)](mailto:Horne.Taylor.C@DOT)
To: ["brett@leiengineering.com"](mailto:brett@leiengineering.com)
Subject: DOT&PF Comment Response RE: Juneau Access Road - Moving to the State from FHWA is a good move
Date: Thursday, July 07, 2016 4:59:46 PM
Attachments: [image002.png](#)

Dear Mr. Martin,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

Your comments in support of DOT&PF's NEPA Assignment Program are appreciated and will be incorporated into the final application.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered as the parties negotiate the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Brett Martin [<mailto:brett@leiengineering.com>]
Sent: Wednesday, May 18, 2016 10:35 AM
To: Horne, Taylor C (DOT)
Subject: Juneau Access Road - Moving to the State from FHWA is a good move

Dear Taylor,

I recently heard that the State was soliciting input from the public on the final dispensation of the Juneau Access Road and that the State is looking to take over the NEPA authority for the Juneau Access Road from the FHWA. I have worked in southeast Alaska for the last 21 years and think this is an excellent move on the State of Alaska's behalf. I believe that the State can move a project like this through the system at a significantly savings to the government. I believe that in taking over the NEPA responsibilities, the State is saying that with a more streamlined approach and more focused consultants, the State of Alaska can come to resolution on critical issues in a more timely manner.

I currently live in Sitka and find that the community as a whole is largely divided into two groups. There are those that wish that the economic well-being of the local communities should take a back seat to any progress and there are those who have lived in southeast Alaska all their lives and would like to see the local region recover. The conservation movement in Sitka is largely driven by a few well-funded individuals but is by no means the majority of the populace. I have found in the last 2 years living there, that the majority of folks that I speak to are for improving the southeast regional economy and if building roads will do that, then we should go for it.

It is clearly understood that freight is the biggest cost of living in southeast Alaska. By connecting our local population centers, the State of Alaska is taking the right step towards easing the economic hardships throughout the region. Since the loss of the timber industry in southeast Alaska, populations have been decreasing due to a lack of jobs and revenues across the board. I applaud the State's decision to move forward by making cost-effective logical choices.

Sincerely,

Brett C Martin, PE
Principal Engineer/Vice-President
LEI Engineering & Surveying
907.401.0777

From: [Horne, Taylor C \(DOT\)](#)
To: ["kwmccarthy@alaska.edu"](mailto:kwmccarthy@alaska.edu)
Cc: [Hogins, Gary R \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Juneau "access project"
Date: Thursday, July 07, 2016 3:07:50 PM
Attachments: [image002.png](#)

Dear Ms. McCarthy,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Kathrin McCarthy [<mailto:kwmccarthy@alaska.edu>]
Sent: Wednesday, May 18, 2016 9:46 AM
To: Horne, Taylor C (DOT)
Subject: Juneau "access project"

Dear Mr. Taylor

I am writing to you to express disappointment in the DOT's proposal to take over the NEPA authority that would protect Alaskans and Alaska's environment from ill conceived and unnecessary road projects. The federal government under NEPA has this authority and I do not understand why DOT would want to take over an expensive regulatory activity when the federal government already pays for and saddle our financially strapped state with these costs. I am opposed to Alaska Department of Transportation having this authority.

The Juneau road project is a great example of a very bad and expensive idea especially when we need roads in other parts of our state and DOT has continued to push the Juneau road project. Please just finished the required draft EIS and let go of the road out of Juneau. Get on with other things that need doing. In my opinion giving Ak. DOT NEPA oversight would be a terrible mistake.

I have written to DOT many times expressing my opposition to the road up Lynn Canal and given my many reasons for not wanting to see this happen. I have never received a response to any of my emails.

Sincerely,

Kathrin W. McCarthy
414 3rd St. Juneau, Ak.
907-635-0051

From: [Horne, Taylor C \(DOT\)](#)
To: ["ci@akmk.com"](mailto:ci@akmk.com)
Subject: DOT&PF Comment Response RE: No to State Plan to take over NEPA
Date: Thursday, July 07, 2016 4:53:06 PM
Attachments: [image002.png](#)

Dear Ms. Menke,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor
Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public
Facilities 3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

-----Original Message-----

From: ci@akmk.com [mailto:ci@akmk.com]

Sent: Wednesday, May 18, 2016 12:00 PM

To: Horne, Taylor C (DOT)

Subject: No to State Plan to take over NEPA

No..absolutely not..this state cannot be trusted to take over NEPA oversight of DOT projects.

Kathleen Menke, Haines

From: [Horne, Taylor C \(DOT\)](#)
To: ["jaywnelson2@hotmail.com"](mailto:jaywnelson2@hotmail.com)
Subject: DOT&PF Comment Response RE: DOT Taking NEPA Authority
Date: Thursday, July 07, 2016 4:54:22 PM
Attachments: [image002.png](#)

Dear Mr. Nelson,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Jay Nelson [<mailto:jaywnelson2@hotmail.com>]

Sent: Thursday, May 19, 2016 9:00 AM

To: Horne, Taylor C (DOT)

Subject: DOT Taking NEPA Authority

Ms/Mr. Taylor,

For the record, I am opposed to DOT taking on additional authority and expense by trying to take NEPA authority from the Federal Highway Administration. I come from a long line of civil engineers so I'm sure that you are quite good at building roads, I'm also quite sure you have no business fairly assessing the environmental consequences of your projects. The suspiciously small amount of funding requested for taking over NEPA authority is either entirely inadequate to do a credible job, or disingenuously low.

In addition, I find it unconscionable that DOT requesting additional unnecessary funding while every other department of government, funding for schools, healthcare and children is being dramatically reduced.

I am opposed to DOT requesting the authority to take over NEPA authority from the Federal Highway Administration.

Sincerely,

Jay

Jay W. Nelson
819 Goldbelt Avenue
Juneau, Alaska 99801
907-789-1733 (h)
907-209-1084(c)

From: [Horne, Taylor C \(DOT\)](#)
To: ["junobear@gmail.com"](mailto:junobear@gmail.com)
Cc: [Neussl, Michael A \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Comment
Date: Thursday, July 07, 2016 3:27:58 PM
Attachments: [image002.png](#)

Dear Mr. Noder,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

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Alaska Marine Highway System

Your comments regarding the Alaska Marine Highway System budget reductions have been forwarded to the Deputy Commissioner of the Alaska Marine Highway System by copy of this email. The NEPA Assignment Program is federally funded and will not affect funding for the Alaska Marine Highway System (michael.neussl@alaska.gov).

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Lawrence Noder [<mailto:junobear@gmail.com>]
Sent: Wednesday, May 18, 2016 8:33 AM
To: Horne, Taylor C (DOT)
Subject: Comment

Mr. Horne,

I personally think it's a very bad idea to have the state DOT take over ANY further responsibilities, especially in view of how poorly their performance with the Marine Highway has been and their proposed budget cuts for the same Marine Hwy. As far as I'm concerned the entire commission should be replaced because of very poor past decisions.

Sincerely, Lawrence Noder

From: [Horne, Taylor C \(DOT\)](#)
To: ["wherethegreatonesrun@gmail.com"](mailto:wherethegreatonesrun@gmail.com)
Cc: [Neussl, Michael A \(DOT\)](#); [Hogins, Gary R \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Juneau Access project NEPA authority
Date: Thursday, July 07, 2016 3:35:41 PM
Attachments: [image002.png](#)

Dear Mr. Pezzati

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

Alaska Marine Highway System

Your comments regarding the Alaska Marine Highway System budget reductions have been forwarded to the Deputy Commissioner of the Alaska Marine Highway System by copy of this email. The NEPA Assignment Program is federally funded and will not affect funding for the Alaska Marine Highway System (michael.neussl@alaska.gov).

Juneau Access Improvements

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF (gary.hogins@alaska.gov).

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Mark Ohe [<mailto:wherethegreatonesrun@gmail.com>]
Sent: Wednesday, May 18, 2016 8:28 AM
To: Horne, Taylor C (DOT)
Subject: Juneau Access project NEPA authority

As a frequent visitor to Juneau, I have been following news of the Juneau Access project and felt compelled to send these comments.

A recent development that concerns me is that the Alaska Department of Transportation is now applying to take over NEPA authority from the Federal Highway Administration. This change would remove a safeguard that helps ensure environmental review processes are fair and accurate before a project can move forward. I have read that the move would cost the state an estimated \$1.2 million each year to pay for a service that the federal government already covers.

I don't understand why the state would be willing to pay for more administrators while slashing the Alaska Marine Highway System budget. This news is concerning in light of the fact that the Alaska DOT has shown questionable judgement by pushing the Juneau road extension in face of hard evidence showing the proposed project is an unpopular, money losing liability for the Alaska.

As the appointed Environmental Program Manager I would like to be reassured that you are working for the residents of Juneau's best interests.

Mark Pezzati
56 Mayer Road
Andes, NY 13731-2648

From: [Horne, Taylor C \(DOT\)](#)
To: ["remundmarty@yahoo.com"](mailto:remundmarty@yahoo.com)
Cc: [Hogins, Gary R \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Juneau access road project
Date: Thursday, July 07, 2016 1:18:54 PM

Dear Mr. Remund,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,

Taylor

Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

-----Original Message-----

From: Marty Remund [<mailto:remundmarty@yahoo.com>]

Sent: Thursday, May 26, 2016 10:02 AM

To: Horne, Taylor C (DOT)

Subject: Juneau access road project

Sent from my iPhone. I am against the Juneau access road. It's a bad idea. I am for supporting the ferry system instead. Sincerely, Marty Remund, Haines

From: [Horne, Taylor C \(DOT\)](#)
To: ["elianise@yahoo.com"](mailto:elianise@yahoo.com)
Cc: [Neussl, Michael A \(DOT\)](#)
Subject: DOT&PF Comment Response RE: NEPA take over by Alaska DOT
Date: Thursday, July 07, 2016 3:24:59 PM
Attachments: [image002.png](#)

Dear Ms. Short-Rhoads,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

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Alaska Marine Highway System

Your comments regarding the Alaska Marine Highway System budget reductions have been forwarded to the Deputy Commissioner of the Alaska Marine Highway System by copy of this email. The NEPA Assignment Program is federally funded and will not affect funding for the Alaska Marine Highway System.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Elizabeth Short-Rhoads [<mailto:elianise@yahoo.com>]
Sent: Wednesday, May 18, 2016 8:38 AM
To: Horne, Taylor C (DOT)
Subject: NEPA take over by Alaska DOT

Dear Mr. Horne,

As part of an Alaskan fishing family that relies on a healthy environment for its livelihood, I am opposed to the take over of NEPA by the Alaska DOT. I believe safeguards provided by the Federal Highway Administration are an important contributor to the protection of our environment and would like to see those remain in place.

In addition, I am opposed to the unnecessary \$1.2 million in costs that would result from the take over of NEPA by the DOT and believe they would be irresponsible in this time of extreme budget crisis. I would much rather see those funds support our ailing ferry system--the roadway in Southeast where I live.

Sincerely,

Beth Short-Rhoads
Jamestown Fisheries &
Fireweed Dinner Service
111 Jamestown Drive
Sitka, AK 99835
907-738-9942

From: [Horne, Taylor C \(DOT\)](mailto:Horne.Taylor.C@DOT)
To: "ssaunders@earthjustice.org"; "hharris@earthjustice.org"; "ewhalen@earthjustice.org"
Cc: [Walker, Bill M \(GOV\)](mailto:Walker.Bill.M@GOV); [Luiken, Marc A \(DOT\)](mailto:Luiken.Marc.A@DOT); Sandra.Garcia-Aline@dot.gov; [Hogins, Gary R \(DOT\)](mailto:Hogins.Gary.R@DOT)
Subject: DOT&PF Comment Response RE: Department of Transportation NEPA Assignment Draft Application
Date: Thursday, July 07, 2016 5:27:03 PM
Attachments: [SC response.7.7.16.final.pdf](#)
[Sierra APRA-FOIA chart 7.1.16.pdf](#)
[image003.png](#)

Dear Ms. Saunders, Ms. Harris, Ms. Whalen,

Thank you for submitting comments on the draft NEPA Assignment Program application. Please see the attached letter in response to your May 31, 2016 letter.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Sarah Saunders [<mailto:ssaunders@earthjustice.org>]
Sent: Tuesday, May 31, 2016 2:05 PM
To: Horne, Taylor C (DOT)
Cc: Walker, Bill M (GOV); 'sandra.garcia-aline@dot.gov'; Luiken, Marc A (DOT); Holly Harris; Erin Whalen
Subject: Department of Transportation NEPA Assignment Draft Application
Importance: High

Dear Mr. Taylor,

Attached are comments submitted on behalf of the Alaska Chapter of the Sierra Club et al. concerning the Alaska Department of Transportation and Public Facilities' draft application to the Federal Highway Administration for assignment of NEPA responsibilities for Federal-aid Highway projects.

If you have any questions or concerns about these comments, please contact Erin Whalen at ewhalen@earthjustice.org or Holly Harris at hharris@earthjustice.org.

Thank you,

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July 7, 2016

Ms. Holly Harris and Ms. Erin Whalen
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Reference: Comments on Draft Application to Assume FHWA's NEPA Responsibilities
Pursuant to 23 USC 327

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

"Keep Alaska Moving through service and infrastructure."

Juneau Access Improvements

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF (gary.hogins@alaska.gov).

ANILCA

ANILCA's Title XI provides procedures for the development of transportation and utility systems (TUS) across federal conservation units in Alaska. 16 USC 3161, et seq. Under Title XI, the Secretary of Transportation is specifically identified as one of the "appropriate federal agencies" to review proposed TUS projects. Id. at 3164(b). The EIS for any proposed TUS project is prepared by all appropriate federal agencies, which by regulation is defined as all federally agencies issuing necessary permits. Id. at 3164(e) and 43 CFR 36.2(d). By regulation, the lead federal agency for an ANILCA Title XI EIS is "the federal agency having management jurisdiction over the longest lineal portion of the right-of-way requested [under ANILCA]." 43 CFR 36.5(a). Since FHWA does not manage any conservation lands in Alaska, it would never be the lead agency in an ANILCA Title XI EIS.

The Alaska Public Records Act and the Freedom of Information Act

While there are certain differences between the federal and state public records rules, the general scope of records available for review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 USC 327. Please see the attached APRA-FOIA chart for more details.

Application completeness

This comment opportunity was provided to solicit comments on DOT&PF's draft application, as described in 23 CFR 773. If FHWA accepts DOT&PF's final application for NEPA Assignment and enters into Memorandum of Understanding (MOU) negotiations, a notice and request for comment on the draft MOU and the final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered as the parties negotiate the terms of the NEPA Assignment MOU.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Taylor C. Horne', with a long horizontal flourish extending to the right.

Taylor C. Horne
DOT&PF Statewide Environmental Program Manager

Attachment: APRA – FOIAA Comparison Matrix

The Alaska Public Records Act and the Freedom of Information Act Compared

	Sierra Club Concern	Alaska Public Records Act (APRA)	Freedom of Information Act (FOIA)	Comparison
Conclusion				While there are certain differences between the federal and state public records rules, the general scope of records available for review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 U.S.C. § 327.
Types of Records Available		Agency records in all formats including electronic records.	Agency records in all formats including electronic records.	APRA ^[1] is consistent with FOIA ^[2] ^[3] : AK's definition would encompass all categories of documents in 5 U.S.C. § (a)(1)-(2); APRA specifically allows for retrieval of electronic records. ^[4]
Costs for Production of Documents	Are fees waived when disclosure serves the public interest? Are agencies authorized to demand advance payment?	Statutory fee waiver for agency search costs (applicable to public interest & private interest requesters) results in most records requests produced without payment required. Fees for copies may not exceed the "standard unit cost of duplication established by the public agency;" ^[5] Advance payment for request in excess of five hours agency time. ^[6]	Standard waiver fee for agency search costs only apply to educational or scientific institutions and the news media ^[7] . Requires advance payment for larger records requests that could cost \$250 for a federal agency's personnel to search and duplicate records. ^[8]	Nearly identical to the provision governing fees for copies in FOIA. ^[9] Under DOT&PF's established costs, the fee for electronic copies of records maintained in electronic form cannot exceed "the actual cost of the supplies used in filing the request." ^[10] Since the vast majority of DOT&PF responses to public record requests are delivered as email attachments, the agency normally collects no money from requestors for duplication costs.
Processing Requests for Records	Is there a provision for expediting requests? Is there any provision to monitor agency compliance and implementation of the law?	Each agency shall "furnish all requested records that are disclosable" no later than the 10th working day from records request receipt. ^[11]	Each agency must "determine within ten days (except Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore." ^[12]	Fundamental difference that affects processing outcomes: FOIA requires annual reporting to Congress and the federal attorney general. APRA requires Commissioner and Attorney General approvals (with right to be heard by requester) for prolonged extensions by agency. ^[13]
Procedures for Appeals	Are there any consequences for an agency that fails to comply with the law's time limits? Are there any consequences for a public official who improperly obstructs the disclosure of public records? If a citizen seeking judicial review of the improper denial of a request prevails, can that citizen fully recover the attorney's fees incurred in that action? If a citizen loses a case seeking judicial review of the denial of the request, is that citizen liable for attorney's fees the government incurred in that action?	Authorizes judicial appeals from the denial of a public records request, and provides a right to seek immediate injunctive relief. ^[14] Similar to FOIA, if an agency fails to respond within the authorized period, the requestor may proceed as if he or she has exhausted administrative remedies. ^[15]	Authorizes judicial review where agency records are alleged to have been improperly withheld. ^[16]	An assertion that "a losing Public Records Act litigant is liable for 20-30% of the State's attorney's fees" is incorrect. The Alaska Supreme Court held that a public interest litigant that unsuccessfully appeals the withholding of documents under APRA should not have attorney's fees awarded against it. ^[17] The Sierra Club and other environmental groups would all likely meet the court's qualification of public interest litigants; therefore an adverse award of attorney's fees in APRA litigation would be highly unlikely.
Footnotes		^[1] AS 40.25.100-220.	^[2] 5 U.S.C. § 552.	^[3] See <i>Rush v. Department of State</i> , 716 F.Supp. 598, 600 (S.D. Fla. 1989) (noting that FOIA does not define "agency record," but that the U.S. Supreme Court provided clarification of the term); 5 U.S.C. § 552(f) ("record" includes any information that would be an agency record subject to the requirements of 5 U.S.C. § 552 when maintained by an agency in any format, including an electronic format).
		^[4] AS 40.25.115; 5 U.S.C. § 552(a)(3)(C).	^[5] AS 40.25.110(b). ^[6] AS 40.25.110(c).	^[7] 5 U.S.C. § 552(a)(4)(A)(ii)(I). ^[8] 5 U.S.C. § 552(a)(4)(A)(v).
		^[9] 5 U.S.C. § 552(a)(4)(A)(ii) (limiting fees to reasonable standard charges).	^[10] DOT&PF Policy & Procedure 06.04.040 (Fees for Copying Public Records)	^[11] 2 AAC 96.325(a). ^[12] 5 U.S.C. § 552(a)(6)(A)(i). ^[13] 2 AAC 96.325(e)
		^[14] AS 40.25.124 and AS 40.25.125	^[15] 2 AAC 96.330(f); 5 U.S.C. § 552(a)(6)(C)(i).	^[16] 5 U.S.C. § 552(a)(4)(B). ^[17] G'wich'in Steering Committee, 10 P.3d at 585.

ALASKA CHAPTER SIERRA CLUB—ALASKA PUBLIC INTEREST RESEARCH
GROUP—BROOKS RANGE COUNCIL—COOK INLETKEEPER—GREATER
SOUTHEAST ALASKA CONSERVATION COUNCIL—LYNN CANAL CONSERVATION
NORTHERN ALASKA ENVIRONMENTAL CENTER—SKAGWAY MARINE ACCESS
COMMISSION—SOUTHEAST ALASKA CONSERVATION COUNCIL
THE BOAT COMPANY—ALASKA WILDERNESS LEAGUE—CENTER FOR
BIOLOGICAL DIVERSITY—EARTHJUSTICE—GREENPEACE
PACIFIC ENVIRONMENT—THE WILDERNESS SOCIETY

May 31, 2016

VIA EMAIL AND EXPRESS MAIL

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**Re: Comments Regarding the Alaska Department of Transportation and Public
Facilities' Draft Application to Participate in the Federal Highway Administration's
Surface Transportation Delivery Program for NEPA Assignment**

Dear Mr. Horne,

The undersigned groups submit these comments on the Alaska Department of Transportation and Public Facilities' (the Department) draft application to participate in the Federal Highway Administration's (the Administration's) Surface Transportation Delivery Program (the Program) under 23 U.S.C. § 327.¹ The Department seeks responsibility for the full range of federal environmental review duties for federal highway projects allowable under the statute, including but not limited to approval authority for records of decision, National Environmental Policy Act (NEPA) review, Endangered Species Act Section 7 consultation, and evaluation under Section 4(f) of the U.S. Department of Transportation Act of 1966.

The Administration should not approve the Department's assignment request. First, the State of Alaska (the State) is ill-equipped to take on additional responsibilities for federal environmental review and approval, in terms of both resources and expertise. Second, the Governor cannot credibly certify that the Alaska Public Records Act is comparable to the federal Freedom of

¹ Alaska Department of Transportation and Public Facilities, Application to Assume the Administration's NEPA Responsibilities Pursuant to 23 U.S.C. § 327 (May 1, 2016) (Draft Application).

Information Act (FOIA), as he is required to complete the application. Third, the application cannot be approved until the Department circulates a complete draft as the statute requires; key pieces are missing from the current draft.

I. ALASKA IS NOT PREPARED FINANCIALLY TO ASSUME RESPONSIBILITY FOR THIS FEDERAL DECISION-MAKING.

To be eligible for the Program, a state must have “the financial and personnel resources necessary to carry out the responsibilities it is assuming.”² Therefore, a “critical piece of information” in a state’s application is whether the state has, and will continue to have, the resources necessary to discharge the duties it requests.³ Alaska cannot meet this requirement. The State faces a \$4.1 billion budget deficit in the current fiscal year due to plummeting oil prices and production,⁴ and a low-price oil environment is likely to ensure ongoing annual deficits. Alaska will need to enact drastic fiscal reforms to reduce the shortfall.⁵ In observation of this crisis, Standard & Poor’s Ratings Services reduced the State’s credit rating and warned it would implement further reductions absent swift corrections.⁶ The Governor’s proposed solution includes heavy budget cuts to all government agencies, including the Department.⁷ Widespread reductions in government spending are expected no matter what solution the State ultimately adopts.

² 23 C.F.R. § 773.105(a)(1)(v).

³ 79 Fed. Reg. 55,381, 55,391 (Sept. 16, 2014).

⁴ See, e.g., Nathaniel Herz, *Alaska budget deficit just jumped \$300M because of low oil prices, Walker administration says*, ALASKA DISPATCH NEWS (Mar. 21, 2016), <http://www.adn.com/article/20160321/alaska-budget-deficit-just-jumped-300m-because-low-oil-prices-walker-administration>.

⁵ See *id.*; *The Party’s Over in Alaska*, BOE REPORT (May 6, 2016), <http://boereport.com/2016/05/06/127627/>; Scott Cohn, *Cheap oil creates a new frontier in Alaska – making ends meet*, CNBC (Apr. 21, 2016), <http://www.cnbc.com/2016/04/21/cheap-oil-creates-a-new-frontier-in-alaska-making-ends-meet.html>; ALASKA DEPARTMENT OF REVENUE, *Spring 2016 Forecast Reflects Lower Oil Prices* (Apr. 7, 2016), <http://dor.alaska.gov/Portals/5/16-003%20Spring%202016%20Revenue%20Forecast%20Reflects%20Lower%20Oil%20Prices.pdf?ver=2016-04-07-173204-720>.

⁶ STANDARD & POOR’S RATINGS SERVICES, *Summary: Alaska; Appropriations; General Obligation; Moral Obligation* at 2, 6 (Jan. 5, 2016), <http://treasury.dor.alaska.gov/Portals/0/docs/SP%20Alaska-RatingReport-Jan-05-2016.pdf?ver=2016-01-08-102218-713>.

⁷ See *Doing What Needs to Be Done: Life at \$50 a Barrel*, WALKER MALLOTT ADMINISTRATION at 19 (2015), http://gov.alaska.gov/Walker_media/documents/GovernorsBudgetBook.pdf (showing spending reductions for all State agencies).

The Draft Application not only fails to explain how the State can responsibly take on new federal responsibilities under the circumstances; it omits any mention of the State’s current financial problems and uncertain financial outlook. Compounding this omission, the Draft Application does not adequately describe the resources the Department will devote to the Program. The Administration’s regulations require “[a] description of the staff positions, including management, that will be dedicated to fulfilling the additional functions needed to perform the assigned responsibilities” and “[a] summary of the anticipated financial resources available to meet the activities and staffing needs identified.”⁸ Both are absent from the Draft Application.⁹ In their place is an assertion that the Department “has been allocated funding to cover the costs of applying for and administering the NEPA Assignment Program including funding for additional staff positions.”¹⁰ The Draft Application, however, does not say how much funding was allocated for this purpose, how many staff positions the Department will add, or what duties the new staff will perform.

Now more than ever, Alaska cannot afford to take on the additional financial responsibilities for federal-aid highway projects. Even if the State were otherwise prepared to shoulder these responsibilities, which it is not, the Administration should not transfer them until the State’s multi-billion dollar budget deficit is reduced and the budget stabilizes. At a minimum, the Department must 1) provide the information about its immediate and long-term financial commitment to the Program that is required by regulation, and 2) explain how Alaska can commit to providing additional resources on an ongoing basis with deep, as-yet-unidentified budget cuts on the horizon.

II. THE DEPARTMENT LACKS ENVIRONMENTAL REVIEW EXPERTISE AND HAS A TRACK RECORD OF COMPROMISED PUBLIC PROCESSES AND DECISION-MAKING REGARDING FEDERAL-AID HIGHWAY DECISIONS.

The State also should not participate in the Program because the Department lacks expertise in environmental review processes. The federal environmental review statutes are powerful tools designed, among other things, to “ensure[] that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”¹¹ NEPA “[f]irst . . . ensures that [a federal] agency, in reaching its decision, will have

⁸ 23 C.F.R. § 773.109(a)(4)(i); *id.* § (a)(5).

⁹ *See generally* Draft Application at 31-33.

¹⁰ *Id.* at 33. The Draft Application also notes the Department will fund the Program out of its \$12.8 million operating budget for Statewide Design and Engineering Services. That still falls short of the regulatory requirement because it does not specify how much of the operating budget will be available for the Program. *Id.*

¹¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1998) (referring to NEPA); *see also Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1125 (9th Cir. 1998) (the Endangered Species Act “prohibits the irreversible or irretrievable commitment of resources” before an agency concludes required consultation about effects to endangered species (quoting 16 U.S.C. § 1536(d)).

available, and will carefully consider, detailed information concerning significant environmental impacts Second, it guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”¹² The Endangered Species Act has no less a goal than “to halt and reverse the trend toward species extinction, whatever the cost.”¹³ As such, it demands a “policy of institutionalized caution.”¹⁴

Alaska has no environmental laws comparable to NEPA, the Endangered Species Act, or the numerous other federal statutes establishing duties the Department proposes to assume. As a result, it lacks experience making development decisions whose outcomes are not prejudged, but informed by extensive up-front analysis and robust public processes, as these laws demand.¹⁵

This lack of experience is reflected in significant and costly mistakes, as demonstrated, by way of example and very convincingly, by the Juneau Access Improvement Project process. The Department prepared an environmental impact statement (EIS) that ignored the option of improving ferry service to Juneau with existing vessels rather than building a road. Both the Ninth Circuit Court of Appeals and the lower federal District Court ruled the decision to ignore the ferry option was unlawful. In response to the Ninth Circuit’s decision, however, the Department prepared a draft supplemental EIS that offers equally problematic and obvious failings. As a regular columnist for the state’s largest newspaper recently opined:

The new EIS showed that ferries were less expensive. But the state was still free to choose the most expensive option. After all, the most expensive project might give the greatest benefit to the public.

Buried 1,421 pages deep in that report, however, was a nugget of information that deflated the project. Economists at the McDowell Group, hired by the state, had found that the project would return 28 cents in benefit to the public for every dollar spent by the government.

By comparison, another new McDowell study shows the ferry system generally brings back more than \$2 in benefit for every dollar spent by the state. Regardless of that, it doesn’t take an MBA to realize that spending a dollar to get back 28 cents doesn’t make any sense.

¹² *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (quoting *Methow Valley*, 490 U.S. at 349).

¹³ *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978).

¹⁴ *Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1030 (9th Cir. 2011).

¹⁵ For example, NEPA analysis “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.” *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000).

But DOT ignored that information in its EIS analysis and buried it deep in the document where no one might notice. Why? My guess, from watching the agency for years, is that DOT as an institution really wanted to build the road. The EIS was just a hurdle to get past. The decision had already been made.¹⁶

In short, the Department not only has had limited practice even as a participant in the NEPA process, given the relatively small number of Federal-aid Highway projects requiring NEPA EIS reviews in Alaska,¹⁷ it also has demonstrated an inability or, at least an unwillingness, to engage in an open, transparent, and honest evaluation of a proposed project *before* it makes its decisions. Transferring responsibilities to the Department will risk future poor results and inefficiency, which will frustrate informed decision-making and delay final decisions. Put simply, getting to a bad decision faster does nothing to advance the public's interests in federal highway decisions.

Unlike in other states, Alaska's inexpert handling of environmental review and approval may also frustrate federal efforts to ensure that land-use decisions adequately protect subsistence users under the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120. The Department wishes to take over "subsistence consultation under ANILCA Section 810."¹⁸ ANILCA, however, assigns responsibility for the requisite determinations about the effects of land use on subsistence to the "head of the Federal agency having primary jurisdiction over such lands."¹⁹ Therefore, the Administration may not assign those responsibilities.

III. ALASKA'S PUBLIC RECORDS ACT IS NOT COMPARABLE TO FOIA.

The State's assignment request also should be denied because of the fundamental and overwhelming differences between the Alaska Public Records Act and FOIA. These differences compromise the public's ability to understand the choices regarding federal highway projects.

States applying to participate in the Program must have "laws in effect that are comparable" to FOIA, "including laws providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction."²⁰ The

¹⁶ Charles Wohlforth, *The state wants to review and approve its own transportation plans. Bad idea.*, ALASKA DISPATCH NEWS (May 14, 2016), <http://www.adn.com/article/20160514/state-wants-review-and-approve-its-own-transportation-plans-bad-idea>.

¹⁷ See, e.g., Draft Application at 21 ("Over the last five years, there have been five EA/FONSIs and no EIS/RODs approved by FHWA for Federal-aid Highway Program projects in Alaska."). Despite the small quantity, Federal-aid Highway projects in Alaska that need an EIS tend to be the most controversial: Juneau Access, Gravina Access, Knik Arm Crossing, Izembek Road, Sterling Highway MP 45-60, etc.

¹⁸ Draft Application at 25.

¹⁹ 16 U.S.C. § 3120(a).

²⁰ 23 C.F.R. § 773.105(a)(1)(iv); *id.* § 773.107(d);

application must include a certification to that effect.²¹ The Administration has explained that “public involvement processes will provide the public with an opportunity to raise any concerns regarding a particular State’s public records law and its comparability with FOIA.”²² The Draft Application does not include a certification that Alaska has laws comparable to FOIA. Instead, it indicates this certification will only be provided in the final draft to the Administration.²³ Therefore, it is unclear on what basis State officials will assert Alaska’s laws are comparable to FOIA. Presumably, the State law most similar to FOIA and, therefore, most likely to be the subject of the forthcoming certification, is Alaska’s Public Records Act. The Public Records Act, however, is not comparable to FOIA. In both form and implementation, it makes it far more difficult for concerned citizens to access public information.

On its face, the Public Records Act deviates from FOIA in fundamental ways that put the public at a significantly greater disadvantage than FOIA. These deviations include, but are not limited to, differences in the cost and method for obtaining records, accountability for agencies that disregard the law, costs and risks of suing to compel disclosure, and degree of oversight for implementation of the law. They are summarized in the table below.

	FOIA	Alaska Public Records Act
Are fees waived when disclosure serves the public interest?	Yes. “Documents shall be furnished without any charge or at a charge reduced” if disclosure is in the public interest. ²⁴	Maybe, but no more than \$500 may be waived or reduced in any 12-month period for each requester and “any other requesters acting in concert with the requester” combined, including requests to all public agencies. ²⁵
Are agencies authorized to demand advance payment?	Only in limited circumstances. The agency may not require it unless the fee will exceed \$250 or the requester has previously failed to pay in a timely fashion. ²⁶	With no limitation. The agency may require advance payment before conducting a search. ²⁷ Payment is always required before records are disclosed. ²⁸

²¹ *Id.* § 773.109(a)(7).

²² 79 Fed. Reg. at 55,389.

²³ Draft Application at 41, App. C.

²⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

²⁵ 2 AAC 96.370.

²⁶ 5 U.S.C. § 552(a)(4)(A)(v).

²⁷ AS 40.25.110(c).

Is there a provision for expediting requests?	Yes, when there is a compelling need or if determined by the agency. ²⁹	No.
Are there any consequences for an agency that fails to comply with the law's time limits?	Yes. The agency may not charge search fees if it fails to comply with the time limits. ³⁰	No. Injunctive relief is available to force disclosure, ³¹ but there is no other penalty for failure to comply with time limits.
Are there any consequences for a public official who improperly obstructs the disclosure of public records?	Yes. Disciplinary action and punishment for contempt may be warranted. ³²	No.
If a citizen seeking judicial review of the improper denial of a request prevails, can that citizen fully recover the attorney's fees incurred in that action?	Yes. ³³	No. Generally a prevailing Public Records Act litigant would only be able to recover 20-30% of the attorney's fees, ³⁴ though the judge may vary the fee award based on a variety of factors. ³⁵

²⁸ *Id.*

²⁹ 5 U.S.C. § 552(a)(6)(E)(i).

³⁰ *Id.* § 552(a)(4)(A)(viii).

³¹ *See* AS 40.25.125.

³² *See* 5 U.S.C. § 552(a)(4)(F)(i), (a)(4)(G).

³³ *See* 5 U.S.C. § 552(a)(4)(E).

³⁴ Alaska R. Civ. P. 82(b)(2).

³⁵ *Id.* 82(b)(3).

<p>If a citizen loses a case seeking judicial review of the denial of the request, is that citizen liable for attorney's fees the government incurred in that action?</p>	<p>No. Not unless, perhaps, the case was frivolous.³⁶</p>	<p>Yes. A losing Public Records Act litigant is liable for 20-30% of the State's attorney's fees, though the judge may vary the fee award based on a variety of factors.³⁷</p>
<p>Is there any provision to monitor agency compliance and implementation of the law?</p>	<p>Yes. Each agency is required to provide the Attorney General with a detailed report about its public records activities, including but not limited to the number of record requests received, granted, denied; decisions appealed; fees collected in connection with requests; and number of fee waivers requested, granted and denied.³⁸ There is also a federal agency devoted to overseeing administration of FOIA.³⁹</p>	<p>No.</p>

As a consequence of these differences, it is significantly more expensive and more difficult to request public records under the Public Records Act than it is under FOIA. It is also more expensive, more risky, and less useful to pursue judicial review of the improper denial of a request. By the same token, it is easier and less risky for agencies to violate the law. It is even difficult to assess the extent to which these disadvantages deprive the public of information, because there are no publicly available statistics about how many records requests and fee waivers are denied, how expensive the average request is, or how many denials are appealed and reversed.

³⁶ See, e.g., *Crews v. Revenue*, No. CV 99-8388 CBM (RCX), 2000 WL 900800, at *6 (C.D. Cal. Apr. 26, 2000) (not awarding fees to the government but warning that repeated frivolous claims might result in such an award).

³⁷ Alaska R. Civ. P. 82(b)(2); see, e.g., *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1257 (Alaska 2010) (upholding an award of almost \$4,000 in attorneys fees in favor of the State against a non-profit public interest law firm under Rule 82).

³⁸ 5 U.S.C. § 552(e).

³⁹ *Id.* § 552(h).

What information is publicly available supports the conclusion that the Public Records Act is not comparable to FOIA in implementation, and that, as a practical matter, it fails to ensure disclosure of public records to anywhere near the same extent as FOIA. The U.S. Department of Transportation's annual FOIA report corroborates that the Administration grants the majority of fee waiver requests.⁴⁰ The report also suggests that the Administration views FOIA as a cost of doing government business, not a paid service to the public; of the \$732,773 in FOIA-related costs the Administration incurred, it only collected \$20,724, or just under three percent.⁴¹ Finally, the report shows that the Administration employs five full-time FOIA staff, whose job is to ensure the Administration implements the law correctly.⁴² The Department appears to have no equivalent Public Records Act staff.

In sum, Alaska's Public Records Act is not comparable to FOIA, either in form or implementation. In fact, it has been ranked as one of the worst public records laws in the country.⁴³ Granting the Department's request would impermissibly undercut public access to information about Federal-aid Highway projects in the Alaska.

IV. THE DRAFT APPLICATION IS INCOMPLETE AND INHIBITS PUBLIC REVIEW AND COMMENT.

Finally, the State's request must be rejected because the Draft Application incomplete. This makes it impossible for the public to provide fully informed comments on the proposed assignment.

Administration regulations require the State to circulate "the *complete* application" for public comment.⁴⁴ The Draft Application is missing critical pieces that the public should be able to comment on, including the certification: 1) "that the State has legal authority to assume the responsibilities of the Secretary for the Federal environmental laws and projects requested, and that the State consents to exclusive Federal court jurisdiction with respect to the responsibilities the State is requesting to assume," and 2) "that the State has laws that are comparable to FOIA."⁴⁵ These certifications go to the State's very eligibility to participate in the Program.⁴⁶ As such, omitting them from the materials circulated for public comment on the Draft

⁴⁰ U.S. Department of Transportation, Freedom of Information Act (FOIA) FY 2015 Annual Report at PDF 27, https://cms.dot.gov/sites/dot.gov/files/docs/DOT_FY_2015_FOIA_Annual_Report_0.pdf.

⁴¹ *Id.* at PDF 28-29.

⁴² *Id.* at PDF 28.

⁴³ See Better Government Association, Freedom of Information in the USA at 13 (2002), <http://www.bettergov.org/freedom-of-information-in-the-usa> (ranking Alaska's Public Records Act 48th in effectiveness at promoting public access to public records).

⁴⁴ 23 C.F.R. § 773.107(b) (emphasis added)

⁴⁵ 23 C.F.R. §§ 773.109(a)(6), (7).

⁴⁶ 23 C.F.R. §§ 773.107(c), (d).

Application is not a mere technicality, but an error that deprives the public of the opportunity to submit meaningful comments on the State's application.⁴⁷ The Administration should require the Department to circulate a complete draft before considering its application.

In the complete draft, the Department should list the Knik Arm Bridge project in Appendix A as excluded from the Program.⁴⁸ The Administration completed an EIS for the bridge in 2010,⁴⁹ but changed circumstances may soon necessitate a supplemental EIS. As with the on-going projects in Appendix A, it would be inefficient and potentially controversial to transfer responsibility for environmental review of the Knik Arm Bridge because that review has already begun under the current regime.

V. CONCLUSION

For all of these reasons, the undersigned groups believe the Administration must deny the Department's application to participate in the Program. Before the Administration should even consider Alaska for participation, the State must resolve its budget crisis in a way that will not interfere with discharging the responsibilities the Department requests, legislatively reform its Public Records Act, and submit an application that contains all of the detail the regulations require and has been circulated for public review in its complete form.

Respectfully,

Pamela Brodie
Alaska Chapter Chair
ALASKA CHAPTER OF THE
SIERRA CLUB

Lori Hanemann
ALASKA PUBLIC INTEREST
RESEARCH GROUP

John Gaedeke
Chairman
BROOKS RANGE COUNCIL

Bob Shavelson
Executive Director
COOK INLETKEEPER

Dave Beebe
President
GREATER SOUTHEAST ALASKA
CONSERVATION COUNCIL

Eric Holle
President
LYNN CANAL CONSERVATION, INC.

⁴⁷ See, e.g., 79 Fed. Reg. at 55,389 (noting "the public involvement processes will provide the public with an opportunity to raise any concerns regarding a particular State's public records law and its comparability with FOIA"); *id.* at 55,395 (explaining "any information from third parties on the adequacy of approving assignment . . . , or on the performance of a State, are important factors in the . . . Administration's decisionmaking and oversight process with regard to this Program").

⁴⁸ See Draft Application at 36-37, App. A.

⁴⁹ Federal Highway Administration, *Major Projects*, <http://www.fhwa.dot.gov/akdiv/majorprojects.cfm> (last modified Apr. 14, 2015).

Elisabeth Dabney
Executive Director
NORTHERN ALASKA ENVIRONMENTAL
CENTER

Ken Russo
Vice President
SKAGWAY MARINE ACCESS
COMMISSION

Emily Ferry
Interim Director
SOUTHEAST ALASKA
CONSERVATION COUNCIL

Hunter McIntosh
President
THE BOAT COMPANY

Andy Moderow
Alaska State Director
ALASKA WILDERNESS LEAGUE

Miyoko Sakashita
Senior Counsel
CENTER FOR BIOLOGICAL
DIVERSITY

Erin Whalen
Associate Attorney
EARTHJUSTICE

Larry Edwards
Campaigner
GREENPEACE

Kevin Harun
Arctic Program Director
PACIFIC ENVIRONMENT

Lois Epstein, P.E.
Arctic Program Director
THE WILDERNESS SOCIETY

cc: Governor Bill Walker, bill.walker@alaska.gov
Sandra Garcia-Aline, Federal Highway Administration Division Administrator,
sandra.garcia-aline@dot.gov
Marc Luiken, Alaska Department of Transportation and Public Facilities Commissioner,
marc.luiken@alaska.gov

From: [Horne, Taylor C \(DOT\)](mailto:Taylor.C.Horne@DOT.alaska.gov)
To: ["codlips@gmail.com"](mailto:codlips@gmail.com)
Cc: [Hogins, Gary R \(DOT\)](mailto:Gary.R.Hogins@DOT.alaska.gov)
Subject: DOT&PF Comment Response RE: Another road to nowhere.
Date: Thursday, July 07, 2016 1:15:15 PM

Dear Ms. Stansbury,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

-----Original Message-----

From: Colleen Stansbury [<mailto:codlips@gmail.com>]
Sent: Wednesday, May 18, 2016 2:21 PM
To: Horne, Taylor C (DOT)

Subject: Another road to nowhere.

Mr Horne I am writing in opposition to the Juneau access road. At this time the state can not afford an unnecessary and irresponsible project which will cost the state millions to maintain, provides policing and emergency services. This road does not go to Haines, it shave a few hours off a ferry ride which is already available and efficiently moving people in and out of Juneau. Stop the madness and special interest pressure.

Thank You,
Colleen Stansbury
P O Box 145
Gustavus, Alaska

Sent from my iPhone

From: [Horne, Taylor C \(DOT\)](#)
To: ["stratto@gci.net"](mailto:stratto@gci.net)
Subject: DOT&PF Comment Response RE: DOT assuming NEPA authority
Date: Thursday, July 07, 2016 4:55:25 PM
Attachments: [image002.png](#)

Dear Mr. Stratton,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Jim Stratton <stratto@gci.net>

Sent: May 30, 2016 12:43 PM

To: Horne, Taylor C (DOT)

Subject: DOT assuming NEPA authority

Taylor – thanks for the opportunity to comment on this idea. I think it is a bad one. The state budget is a total mess and now you want to assume even more responsibilities? This just doesn't make sense. I understand FHWA will provide some of the funding, but it WILL cost the state no matter how much the feds say they will provide and we need to embrace all the budget reducing opportunities we can. And that means NOT taking on any more responsibilities that the federal government is currently providing.

In addition, I am concerned about the lack of oversight this would bring to DOT projects. It is always good to have an independent set of eyes, i.e. FHWA, to review NEPA compliance on state projects. I have worked with DOT on the STIP back in the Knowles administration and there is a definite bias towards getting projects completed with the minimal of FHWA/NEPA oversight. NEPA is there for a purpose – to make certain that projects as they go forward fully disclose the impacts and plan the mitigation needed. I feel DOT will not do a good job of policing themselves. FHWA is doing a good job and they should keep the job.

Thank you

Jim Stratton
12821 Mountain Place
Anchorage, AK 99516

From: [Horne, Taylor C \(DOT\)](#)
To: ["lois_epstein@tw.s.org"](mailto:lois_epstein@tw.s.org)
Cc: [Luiken, Marc A \(DOT\)](#); Sandra.Garcia-Aline@dot.gov
Subject: DOT&PF Comment Response RE: Comments on the NEPA Assignment draft application
Date: Thursday, July 07, 2016 5:12:50 PM
Attachments: [image002.png](#)
[WS response 7.7.16.final.pdf](#)
[APRA-FOIA chart 7.1.16.pdf](#)

Dear Ms. Epstein,

Thank you for your comments on the draft NEPA Assignment Program application. Please see the attached letter in response to your May 31, 2016 letter.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Lois Epstein <lois_epstein@tw.s.org>
Sent: May 31, 2016 4:54 PM
To: Horne, Taylor C (DOT)
Cc: Luiken, Marc A (DOT); sandra.garcia-aline@dot.gov
Subject: Comments on the NEPA Assignment draft application

Dear Mr. Horne: Please accept the attached comments on the draft application by Alaska on full NEPA Assignment.

Thank you for your interest in these comments, and please let me know you have received them.

Lois Epstein, P.E.
Engineer & Arctic Program Director
The Wilderness Society
work: 907.272.9453, x107 | cell: 907.748.0448
www.wilderness.org

Facebook: www.facebook.com/TheWildernessSociety
Twitter: twitter.com/Wilderness

 *We protect wilderness and inspire Americans to care for our wild places*



July 7, 2016

Ms. Lois N. Epstein, P.E.
Arctic Program Director
The Wilderness Society
Lois_epstein@tw.s.org

Reference: Comments on Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviro/ressources/nepa.shtml>.

"Keep Alaska Moving through service and infrastructure."

The Alaska Public Records Act and the Freedom of Information Act

While there are certain differences between the federal and state public records rules, the general scope of records available for review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 USC 327. Please see the attached APRA-FOIA chart for more details.

Environmental Impact Statement (EIS) projects

The only active FHWA funded EIS projects in Alaska, Gravina Access, Juneau Access Improvements; and Sterling Highway: MP 45-60, are listed on page 9 and with Appendix A of the draft, indicating that the DOT&PF is requesting that these projects not be assigned to the DOT&PF as part of the NEPA Assignment Program. All new EIS projects will be assigned to DOT&PF under the NEPA Assignment Program.

Ambler Mining District Industrial Access project

The Ambler Mining District Industrial Access project does not involve FHWA funds and is therefore not eligible for assignment to DOT&PF under the NEPA Assignment Program.

According to the project's website

(<http://www.aidea.org/Programs/InfrastructureDevelopment/AmblerMiningDistrictIndustrialAccess.aspx>) several federal agency permits are required for this project, which would require a non-FHWA federal agency to lead the NEPA process.

Government to Government consultations

As stated on pages 20 and 26, and Appendix B of the draft application, FHWA will retain responsibility for conducting formal government-to-government consultations with federally recognized Indian tribes. The State will continue to handle routine consultations with the tribes and understands that a tribe has the right to direct consultation with FHWA upon request. The State may also assist FHWA with formal consultations, with the consent of a tribe, but FHWA remains responsible that this consultation occurs.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,



Taylor C. Horne
DOT&PF Statewide Environmental Program Manager

Attachment: APRA – FOIAA Comparison Matrix

The Alaska Public Records Act and the Freedom of Information Act Compared

	Alaska Public Records Act (APRA)	Freedom of Information Act (FOIA)	Comparison
Conclusion			While there are certain differences between the federal and state public records rules, the general scope of records available review, the overall accessibility of the documents, and the rights to court review are very similar. Alaska's Public Records Act meets the requirements for assignment of responsibilities under 23 U.S.C. § 327.
Types of Records Available	Agency records in all formats including electronic records.	Agency records in all formats including electronic records.	APRA[1] is consistent with FOIA[2][3]: AK's definition would encompass all categories of documents in 5 U.S.C. § (a)(1)-(2); APRA specifically allows for retrieval of electronic records.[4]
Costs for Production of Documents	Statutory fee waiver for agency search costs (applicable to public interest & private interest requesters) results in most records requests produced without payment required. Fees for copies may not exceed the "standard unit cost of duplication established by the public agency;"[5] Advance payment for request in excess of five hours agency time. [6]	Standard waiver fee for agency search costs only apply to educational or scientific institutions and the news media [7]. Requires advance payment for larger records requests that could cost \$250 for a federal agency's personnel to search and duplicate records. [8]	Nearly identical to the provision governing fees for copies in FOIA.[9] Under DOT&PF's established costs, the fee for electronic copies of records maintained in electronic form cannot exceed "the actual cost of the supplies used in filing the request." [10] Since the vast majority of DOT&PF responses to public record requests are delivered as email attachments, the agency normally collects no money from requestors for duplication costs.
Processing Requests for Records	Each agency shall "furnish all requested records that are disclosable" no later than the 10th working day from records request receipt.[11]	Each agency must "determine within ten days (except Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore." [12]	Fundamental difference that affects processing outcomes: FOIA requires annual reporting to Congress and the federal attorney general. APRA requires Commissioner and Attorney General approvals (with right to be heard by requester) for prolonged extensions by agency. [13]
Procedures for Appeals	Authorizes judicial appeals from the denial of a public records request, and provides a right to seek immediate injunctive relief.[14] Similar to FOIA, if an agency fails to respond within the authorized period, the requestor may proceed as if he or she has exhausted administrative remedies.[15]	Authorizes judicial review where agency records are alleged to have been improperly withheld.[16]	An assertion that "a losing Public Records Act litigant is liable for 20-30% of the State's attorney's fees" is incorrect. The Alaska Supreme Court held that a public interest litigant that unsuccessfully appeals the withholding of documents under APRA should not have attorney's fees awarded against it.[17] The Sierra Club and other environmental groups would all likely meet the court's qualification of public interest litigants; therefore an adverse award of attorney's fees in APRA litigation would be highly unlikely.
Footnotes	[1] AS 40.25.100-220.	[2] 5 U.S.C. § 552.	[3] See Rush v. Department of State, 716 F.Supp. 598, 600 (S.D. Fla. 1989) (noting that FOIA does not define "agency record," but that the U.S. Supreme Court provided clarification of the term); 5 U.S.C. § 552(f) ("record" includes any information that would be an agency record subject to the requirements of 5 U.S.C. § 552 when maintained by an agency in any format, including an electronic format).
	[4] AS 40.25.115; 5 U.S.C. § 552(a)(3)(C).	[5] AS 40.25.110(b). [6] AS 40.25.110(c).	[7] 5 U.S.C. § 552(a)(4)(A)(ii)(II). [8] 5 U.S.C. § 552(a)(4)(A)(v).
	[9] 5 U.S.C. § 552(a)(4)(A)(ii) (limiting fees to reasonable standard charges).	[10] DOT&PF Policy & Procedure 06.04.040 (Fees for Copying Public Records)	[11] 2 AAC 96.325(a). [12] 5 U.S.C. § 552(a)(6)(A)(i). [13] 2 AAC 96.325(e)
	[14] AS 40.25.124 and AS 40.25.125	[15] 2 AAC 96.330(f); 5 U.S.C. § 552(a)(6)(C)(i).	[16] 5 U.S.C. § 552(a)(4)(B). [17] G'wich'in Steering Committee, 10 P.3d at 585.



May 31, 2016

VIA EMAIL: taylor.horne@alaska.gov

Taylor Horne, Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive
P.O. Box 112500
Juneau, AK 99811-2500
E: taylor.horne@alaska.gov

Re: Comments Regarding the Alaska Department of Transportation and Public Facilities' Draft Application to Participate in the Federal Highway Administration's Surface Transportation Delivery Program for Full NEPA Assignment

Dear Mr. Horne:

As a former member of the AMATS Technical Advisory Committee, a former head of the non-profit Alaska Transportation Priorities Project, author of multiple recent publications discussing financial and other problems with Alaska's transportation mega-projects,¹ Arctic Program Director for The Wilderness Society (TWS) who works on Arctic transportation issues, and a licensed engineer in Alaska, I am writing to request that Alaska DOT & PF not submit a final application to the Federal Highway Administration for National Environmental Policy Act (NEPA) Assignment beyond the existing Memorandum of Understanding (MOU) covering categorically excluded projects. The existing MOU presumably, covers only minor, non-controversial transportation decisions, unlike this application.

TWS's reasons for opposing full NEPA Assignment is that this is a discretionary action which would cost the state substantial funds it does not have and is not likely to have in the near future, and that there will be many downsides to public participation by Alaskans through full NEPA Assignment, as discussed below.

While TWS agrees that Federal Highway Administration's NEPA role in Alaska results in some decision-making delays, these delays are not a compelling reason to pursue full

¹ The latest, *Easy to Start, Impossible to Finish IV: Despite Budget Troubles, Alaska Continues to Spend Millions on Questionable Road, Bridge and Energy Projects* (March 2016), see <http://bit.ly/1Z0Trum>, discusses mega-projects Governor Bill Walker placed a spending hold on in December 2014. Gov. Walker then later removed that hold. The transportation projects covered in this report are the proposed Ambler Road, the Knik Arm Bridge, and Juneau Access.

NEPA Assignment. There would be substantial state financial costs for this discretionary action and the draft application to FHWA from Alaska DOT & PF does not quantify these costs.² The costs would be largely, but not entirely, covered by the federal government's annual formula contribution to Alaska from the Highway Trust Fund. With that contribution used for full NEPA Assignment, those funds potentially amounting to millions of dollars would be unavailable to the state to meet important transportation infrastructure needs such as upgrading existing bridges, road safety enhancements, building new ferries, etc. Currently, the federal government's role in NEPA development does not cost the state anything.

Full NEPA Assignment also likely would increase conflicts of interest and public distrust of Alaska DOT & PF decisions, which are significant concerns. These concerns result from:

- The differences in, and the costs of obtaining, information under the state's Public Records Act vs. the federal Freedom of Information Act. These differences would make it harder and more costly for the public to obtain the information it needs to provide input on transportation projects compared to the current system;
- The state engaging in many Endangered Species Act (the Act) lawsuits against the federal government, making complying with the Act even as the state opposes the decisions under the Act highly conflicted and problematic. This especially would be true at a time when the state experiences financial constraints that would impact expensive design decisions required for Act compliance;
- Conflicts between the state wanting to pursue transportation projects (e.g., adding passing lanes, which make it harder and more dangerous for moose to cross) and the resulting, adverse impacts on wildlife which often are costly for the state to address. These conflicts exist even for non-endangered species such as moose in the Kenai National Wildlife Refuge, with the Sterling Highway passing through the refuge;
- Speeding up decision-making which can lead to bad and costly decisions, particularly for highly controversial projects. Many members of the public currently believe that the state wants full NEPA Assignment to speed up "build" decisions for major, controversial projects (see the attachment).³ For example, the Knik Arm Bridge, which may require a Supplemental Environmental Impact Statement (EIS),⁴ should not be included in full NEPA Assignment should that

² These costs will include new staff at Alaska DOT & PF and the Alaska Department of Law, substantial new training for staff, and meeting the approximately 10% match requirement for this program not covered by the federal government.

³ C. Wohlforth, *The state wants to review and approve its own transportation plans. Bad idea.*, Alaska Dispatch News (May 14, 2016), available at <http://www.adn.com/article/20160514/state-wants-review-and-approve-its-own-transportation-plans-bad-idea>.

⁴ Due to, for example, substantially increased costs changing the current EIS' "Purpose and Need" which has a specific cost included, design changes necessitated by federal permitting requirements, etc.

occur, due to a significant conflict if the state determines whether or not to require a Supplemental EIS;

- Many Alaskans already feeling ignored by the state because of problematic transportation decisions such as moving the 200+ mile Ambler Road project from Alaska DOT & PF to the Alaska Industrial Development and Export Authority (AIDEA). AIDEA does not have to comply with important federal requirements for transportation system planning such as including this major road in the statewide Long Range Transportation Plan⁵ and for public involvement; and,
- The federal government maintaining its Government to Government consultation role with tribes even as tribal government needs and suggestions regarding particular projects' NEPA processes and other environmental issues would be addressed by the state and not the federal government. As a result, the federal government would have little ability to ensure tribal government concerns are fully addressed.

Thank you for your attention to these important concerns. Again, as stated above, TWS requests that Alaska DOT & PF not submit a final application to the Federal Highway Administration for NEPA Assignment beyond the existing MOU covering categorically excluded projects.

Please feel free to contact me at 907 272-9453, x107 or lois_epstein@tws.org if you have any questions regarding these comments.

Sincerely,



Lois N. Epstein, P.E.
Arctic Program Director

cc: Marc Luiken, Commissioner
Sandra Garcia-Aline, Federal Highway Administration AK Division Administrator

⁵ See <http://dot.alaska.gov/stwdplng/areaplans/lrtpp2014/index.shtml>.

ATTACHMENT

The state wants to review and approve its own transportation plans. Bad idea.

Author: [Charles Wohlforth](#)

Published May 14, 2016, Alaska Dispatch News

State transportation planners are asking to take on the federal government's legal liability and millions of dollars in staff and consultant costs so they can avoid having another agency approve their work.

The Alaska Department of Transportation's track record does not inspire confidence in giving it the power to review, approve and defend its own environmental impact statements, now the responsibility of the Federal Highway Administration.

The proposal is [open for public comment until May 31](#) but five new staff positions have already been budgeted at a cost of \$1.2 million. The state would also accept the federal government's legal liability for the complex, endless litigation over these projects, although those costs could still be covered mostly by federal dollars.

Pat Pitney, director of the Office of Management and Budget, said state officials expect no real cost from the change, because DOT will complete the environmental process faster and more efficiently, bringing in savings. Gov. Sean Parnell's administration developed the plan and Gov. Bill Walker is still pursuing it.

Speed is the objective — to get big projects built faster. But making mistakes faster is not a good goal.

As Alaska leaves behind an era of spending on uncompleted megaprojects, we have the environmentalists and gadflies to thank that DOT and other state agencies didn't sink us even deeper into the hole we are in today. They used this process to get the information they needed.

Environmental impact statements don't stop bad decisions — that's not how the process works — but they force agencies to research their plans, producing the evidence that can expose their folly.

The Juneau Access Road is a vivid example of how this process works.

DOT did an environmental impact statement, or EIS, that ignored the option of improving ferry service to Juneau with existing vessels rather than chipping a road and series of tunnels along the cliff of the Lynn Canal fjord. Environmentalists sued, and a judge made DOT planners go back and look again.

The new EIS showed that ferries were less expensive. But the state was still free to choose the most expensive option. After all, the most expensive project might give the greatest benefit to the public.

Buried 1,421 pages deep in that report, however, was a nugget of information that deflated the project. Economists at the McDowell Group, hired by the state, had found that the project would return 28 cents in benefit to the public for every dollar spent by the government.

By comparison, another new McDowell study shows the ferry system generally brings back more than \$2 in benefit for every dollar spent by the state. Regardless of that, it doesn't take an MBA to realize that spending a dollar to get back 28 cents doesn't make any sense.

But DOT ignored that information in its EIS analysis and buried it deep in the document where no one might notice. Why? My guess, from watching the agency for years, is that DOT as an institution really wanted to build the road. The EIS was just a hurdle to get past. The decision had already been made.

I know plenty of smart, ethical people at DOT. But the agency's culture is stuck in the past. Rather than listening and responding to the public, it tries to convince people that its plans are what they need. Influencing DOT, or even figuring out what it's up to, is difficult and beyond most people's patience.

DOT officials did not reply to my requests for comment. I began contacting them Thursday morning.

An environmental impact statement may seem like busy work but for the public it can be the only way to get the truth.

Economist Gregg Erickson heard about the cost-benefit finding on the Juneau access project through his economist grapevine. He went looking for it in the report. He publicized the finding in a newspaper column and comments to the federal government.

The Juneau Access Road is a zombie project now — it is still consuming money but only until engineers can finish the paperwork to put it to bed.

I repeat this story to demonstrate why DOT should not be trusted to check its own homework.

Yes, it is galling to have the agency ask for new positions when the state is in financial straits. I am skeptical that savings will cover that cost, or the

cost of lawsuits challenging environmental studies. To get this approval, the state will have to waive its immunity, opening itself up to those suits.

But the bigger issue is the quality of our decision making.

Now the studies are reviewed and approved by the Federal Highway Administration, which absorbs the cost. Having DOT bureaucrats submit their work to other DOT bureaucrats for review and approval could lead to less thorough results and more lawsuits. No one outside their circle of predetermined decisions will be involved.

Only two states have done this: California and Texas. Maybe it makes sense at their scale. At ours, it does not.

Information will also be harder to get for activists. Although the federal Freedom of Information Act has its own problems, the state's system for providing public records is worse. When state officials don't want to comply, they can charge huge fees for lawyers or other staffers to review records, effectively making them unavailable.

"Why would we accept this responsibility now?" said Emily Ferry, acting director of the Southeast Alaska Conservation Council and an opponent of the Juneau access project since 2003. "It's unclear why this makes DOT's life any easier, other than losing that last check and balance."

Ferry said she hates wasting money but her more basic reason for opposing the project is to protect the rich wildlife habitat at Berner's Bay and the scenery along Lynn Canal. Other people have different values and would sacrifice those resources for a road.

But we can't have that debate without accurate, impartial information. That's why we need a legitimate environmental process with an outside referee — not having the same agency approve the information that we know is determined to get one answer.

Charles Wohlforth's column appears three times weekly.

From: [Horne, Taylor C \(DOT\)](mailto:Horne, Taylor C (DOT))
To: "Lois Epstein"
Cc: hharris@earthjustice.org
Subject: RE: NEPA Assignment
Date: Thursday, May 05, 2016 4:47:40 PM
Attachments: [image002.png](#)

Hello Ms. Epstein,

I am sorry that you missed the opportunity to request a public meeting on the NEPA Assignment Program application. As stated on page 34 of the draft application, during February 2016 the DOT&PF published a public notice of an opportunity for a public meeting in March in newspapers in Juneau, Anchorage, and Fairbanks and online (on the Online Public Notice system and via the "What's Up" Alaska Center for the Environment (ACE) and Alaska Women's Environmental Network (AWEN) email newsletter) ; no requests for a public meeting were received and no meeting was held.

However, there are two remaining public comment opportunities. The current state public notice period on the draft application runs through May 31, 2016. If FHWA accepts the application, the DOT&PF and FHWA will negotiate a memorandum of understanding (MOU), a draft of which will be made available for public comment on the Federal Register at a later date.

There is additional information regarding the NEPA Assignment Program available on the DOT&PF's website: <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>

Thank you,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Lois Epstein [mailto:lois_epstein@tw.s.org]
Sent: Wednesday, May 04, 2016 11:59 AM
To: Horne, Taylor C (DOT)
Cc: hharris@earthjustice.org
Subject: NEPA Assignment

Hello Taylor. I am interested in requesting a public meeting on this topic but I see I missed the deadline (<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=180279>) to request such a meeting. I just saw the notice today. Was the notice only published at this online location?

As background, I am a former member of the AMATS Technical Advisory Committee and have

From: [Horne, Taylor C \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#)
Subject: FW: NEPA Assignment
Date: Wednesday, May 04, 2016 12:02:07 PM

From: Lois Epstein [mailto:lois_epstein@tws.org]
Sent: Wednesday, May 04, 2016 11:59 AM
To: Horne, Taylor C (DOT)
Cc: hharris@earthjustice.org
Subject: NEPA Assignment

Hello Taylor. I am interested in requesting a public meeting on this topic but I see I missed the deadline (<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=180279>) to request such a meeting. I just saw the notice today. Was the notice only published at this online location?

As background, I am a former member of the AMATS Technical Advisory Committee and have worked extensively on transportation issues in Alaska since 2007. I was director of the public interest non-profit Alaska Transportation Priorities Project from 2007-2010.

Thank you for your help with this request.

Lois Epstein, P.E.
Engineer & Arctic Program Director
The Wilderness Society
work: 907.272.9453, x107 | cell: 907.748.0448
www.wilderness.org

Facebook: www.facebook.com/TheWildernessSociety
Twitter: twitter.com/Wilderness

 *We protect wilderness and inspire Americans to care for our wild places*

From: [Horne, Taylor C \(DOT\)](#)
To: ["mthomp7@hotmail.com"](mailto:mthomp7@hotmail.com)
Subject: DOT&PF Comment Response RE: Please stop the application for NEPA Authority to be transferred from F. H. A. and taken on by AK DOT
Date: Thursday, July 07, 2016 4:57:24 PM
Attachments: [image002.png](#)

Dear Mr. Thompson,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Matthew Thompson [<mailto:mthomp7@hotmail.com>]

Sent: Sunday, May 22, 2016 10:39 AM

To: Horne, Taylor C (DOT)

Subject: Please stop the application for NEPA Authority to be transfered from F. H. A. and taken on by AK DOT

This would be an unsound decision considering the budget crisis our state is already in. Let the Federal Highway Administration continue to assume the authority and bills that the NEPA process incurs for projects within our state.

Regards,

Matthew Thompson

From: [Horne, Taylor C \(DOT\)](#)
To: ["mjtrangermike@gmail.com"](mailto:mjtrangermike@gmail.com)
Cc: [Hogins, Gary R \(DOT\)](#)
Subject: DOT&PF Comment Response RE: Juneau access road is a bad idea and a waste of state funds which could be spent funding our AMHS for the future!
Date: Thursday, July 07, 2016 1:17:23 PM
Attachments: [image001.png](#)

Dear Mr. Thompson,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

As stated on page 9 of the draft application under §773.109(a)(1), the Juneau Access Improvements project will not be assigned to the DOT&PF under the NEPA Assignment Program. By copy of this email, your comments have been forwarded to the appropriate Juneau Access Improvements project staff with DOT&PF. (gary.hogins@alaska.gov)

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor
Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public
Facilities 3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6956 Cell: (907) 500-4333

From: Michael Thompson <mjtrangermike@gmail.com>
Sent: May 18, 2016 10:17 PM
To: Horne, Taylor C (DOT)
Subject: Juneau access road is a bad idea and a waste of state funds which could be spent funding our AMHS for the future!

G'day,

As a longtime Yakutat resident I do not support the Juneau Access Road Project in any way! Unfortunate this project remains a DOT priority even though It's a complete waste of dwindling state funds and the vast majority of Alaskans don't support It, instead we could provide/restore necessary operational funding to our unique and special AMHS!!

Cheers,
Sincerely,
Michael Thompson

From: [Horne, Taylor C \(DOT\)](#)
To: ["santaak@yahoo.com"](mailto:santaak@yahoo.com)
Subject: DOT&PF Comment Response RE: NEPA
Date: Thursday, July 07, 2016 4:56:21 PM
Attachments: [image002.png](#)

Dear Mr. Tolles,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor
Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Richmond Tolles [<mailto:santaak@yahoo.com>]
Sent: Wednesday, May 18, 2016 11:35 AM
To: Horne, Taylor C (DOT)
Subject: NEPA

Mr. Horne; I do not believe it is a good decision for the state DOT to take over NEPA from the federal highway administration. With our state in financial ruin, it is not the time to make more expence for the state.

thank you
Richmond Tolles
HC 60 box 4012
Haines, AK. 99827

[Sent from Yahoo Mail on Android](#)

From: [Horne, Taylor C \(DOT\)](#)
To: ["Sugarman, Shelly CIV"](#)
Cc: [Pavilonis, Tim W CIV](#); [Dunn, Brian](#); [Schulman, Zachary N CIV](#)
Subject: DOT&PF Response Letter RE: AKDOT Draft Application for Assumption of FHWA Responsibilities: Coast Guard Comment
Date: Thursday, July 07, 2016 11:44:47 AM
Attachments: [USCG response 7.7.16.letterhead - Copy.pdf](#)

Hello Ms. Sugarman,

Please find attached the DOT&PF's letter in response to USCG's May 26, 2016 comments on the NEPA Assignment Program draft application.

Thank you,
Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

-----Original Message-----

From: Sugarman, Shelly CIV [<mailto:Shelly.H.Sugarman@uscg.mil>]
Sent: Thursday, May 26, 2016 10:35 AM
To: Horne, Taylor C (DOT)
Cc: Pavilonis, Tim W CIV; Dunn, Brian; Schulman, Zachary N CIV
Subject: AKDOT Draft Application for Assumption of FHWA Responsibilities: Coast Guard Comment

Coast Guard comments on the subject are attached.

Thank you for the opportunity to comment.

Shelly Sugarman
Chief, Bridge Permits and Policy Division (CG-BRG-2)
Coast Guard Bridge Program
USCG Headquarters
202.372.1521



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and Public Facilities

Design & Engineering Services
Environmental Section

3132 Channel Drive
Juneau, Alaska 99811-2500
Main: 907-465-2960
Toll free: 800-467-6955
Fax: 907-465-3124

July 7, 2016

Ms. Shelly H. Sugarman, Chief
Bridge Programs and Policy Division
U.S. Coast Guard Bridge Program
United States Coast Guard
2703 Martin Luther King Jr. Ave
Washington, D.C. 20593-7509

Reference: CG-BRG-2 Comments on Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327

Thank you for your comments dated May 26, 2016 regarding the DOT&PF's Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327. I appreciate you providing a copy of the MOA between the U.S. Coast Guard (USCG) and the Federal Highway Administration (FHWA) to expedite the bridge permitting and NEPA processes. The DOT&PF understands that FHWA retains the statutory authority under 23 U.S.C. 144(c) in the NEPA Assignment program. Any Memorandum of Understanding executed by FHWA and DOT&PF will show that NEPA assignment does not include bridge permitting and navigability determinations.

The DOT&PF looks forward to continuing to work productively with the USCG under NEPA Assignment. If you have any questions, require clarification, or want additional information, please contact me at (907) 465-6957 and taylor.horne@alaska.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Taylor C. Horne".

Taylor C. Horne
DOT&PF Statewide Environmental Program Manager

"Keep Alaska Moving through service and infrastructure."

From: [Horne, Taylor C \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#)
Subject: FW: AKDOT Draft Application for Assumption of FHWA Responsibilities: Coast Guard Comment
Date: Thursday, May 26, 2016 10:40:32 AM
Attachments: [USCG comments on AK draft NEPA Assignment Application.pdf](#)

-----Original Message-----

From: Sugarman, Shelly CIV [<mailto:Shelly.H.Sugarman@uscg.mil>]
Sent: Thursday, May 26, 2016 10:35 AM
To: Horne, Taylor C (DOT)
Cc: Pavilonis, Tim W CIV; Dunn, Brian; Schulman, Zachary N CIV
Subject: AKDOT Draft Application for Assumption of FHWA Responsibilities: Coast Guard Comment

Coast Guard comments on the subject are attached.

Thank you for the opportunity to comment.

Shelly Sugarman
Chief, Bridge Permits and Policy Division (CG-BRG-2)
Coast Guard Bridge Program
USCG Headquarters
202.372.1521

U.S. Department of
Homeland Security

United States
Coast Guard

Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave
Washington, DC 2059-J-7509
Staff Symbol:CG BRG-2
Phone: (202) 372-1512
Email:
Shelly.HSugarman@uscg.mil

May 26, 2016

Taylor C. Home
Statewide Environmental Program Manager
3132 Channel Drive
P.O. Box 112500
Juneau, AK 99811-2500

RE:Coast Guard Comments on draft AKDOT&PF Application for Assumption of Federal Highway Administration Responsibilities Pursuant to the Surface Transportation Delivery Program, 23 U.S.C. § 327

Dear Mr. Home,

Thank you for the opportunity to comment on the draft AKDOT&PF Application for Assumption of Federal Highway Administration Responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327. As you know, the Coast Guard issues permits for bridges affecting the navigable waters of the United States. In performing this function, the Coast Guard often works closely with the U.S. Department of Transportation (DOT) and its operating administrations, including the Federal Highway Administration. To ensure the Coast Guard's navigational concerns are addressed early in the planning phase for DOT projects, the Coast Guard entered into a Memorandum of Understanding with the several DOT operating administrations, and a separate Memorandum of Agreement (MOA) with the FHWA to expedite the bridge permitting and NEPA processes, and to specifically address the unique issues associated with Title 23-funded highway projects, including FHWA's authority under 23 U.S.C. § 144(c).

Enclosed for your reference, please find a copy of the Coast Guard-FHWA MOA dated January 14, 2014. The Coast Guard understands that States assuming FHWA's responsibilities pursuant to the Surface Transportation Project Delivery Program, 23 U.S.C. §327, will abide by the MOA, and as such, will notify the Coast Guard at the earliest phases of project planning to ensure that any potential navigation impacts are evaluated for NEPA scoping purposes. In addition, the Coast Guard understands that although State DOTs or Highway Agencies typically advise FHWA on navigation issues for projects crossing U.S. navigable waters, the FHWA retains the statutory authority under 23 U.S.C. § 144(c), even when a State has assumed the FHWA's NEPA responsibilities.

Please note the Coast Guard's bridge authorities are not environmental laws as indicated in Appendix B to the Application. Nonetheless, navigation should be evaluated as early as possible to eliminate unreasonably obstructive project alternatives. Should you have any questions, contact me or my FHWA liaison, Mr. Zachary Schulman at 202-372-261 J.

Regards,



Shelly Sugarman
Chief, Bridge Penruts and Policy Division
Coast Guard Bridge Program

MEMORANDUM OF AGREEMENT
Between
The United States Coast Guard
and
The Federal Highway Administration
To Coordinate and Improve Bridge Planning and Permitting

I. Parties

The Parties to this Memorandum of Agreement (MOA) are the U.S. Coast Guard (USCG) and the Federal Highway Administration (FHWA).

II. Purpose

The purpose of this MOA is to expedite and coordinate the planning, environmental review and decisionmaking for bridge permits by:

- a. Determining which bridge design concepts unreasonably obstruct navigation as soon as practicable and prior to or concurrent with the NEPA scoping process in order to inform project alternatives to be evaluated;
- b. Preparing a coordinated environmental document that satisfies both USCG and FHWA NEPA requirements and results in a shared, or joint environmental impact decision documents where practicable and concurrent environmental impact decision documents at all other times; and
- c. Concurrently conducting the environmental evaluation and processing of the Bridge Permit application materials, whenever possible.

III. Authorities

- a. USCG enters into this MOA pursuant to the authority of: 14 U.S.C. § 141.
- b. FHWA enters into this MOA pursuant to the authority of the Secretary of Transportation to carry out title 23, U.S.C., as delegated to the FHWA Administrator in 49 CFR 1.85, and to carry out the functions of the Secretary under NEPA and related environmental laws, as delegated in 49 CFR 1.81(a)(5).
- c. Applicable Programmatic Authorities:
 1. National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190, 83 Stat. 852 (1970), *as amended; classified to* 42 U.S.C. §§ 4321-4347.
 2. National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915 (*codified as amended by* Pub.L. No. 96-515, 94 Stat. 2987 (1980) *at* 16 U.S.C. § 470).

3. Act of Aug. 18, 1894, c. 299, § 5, 28 Stat. 362; *as amended; classified to 33 U.S.C. § 499.*
4. Act of March 3, 1899, c. 425, § 9, 30 Stat. 1151; *as amended; classified to 33 U.S.C. § 401, 406, 502 (commonly referred to as the: 'Rivers and Harbors Appropriations Act of 1899').*
5. Act of March 23, 1906, c. 1130, § 1, 34 Stat. 84; *as amended; classified to 33 U.S.C. § 491-498 (commonly referred to as the: 'General Bridge Act of 1906').*
6. Act of June 21, 1940, c. 409, 54 Stat. 497; *as amended; classified to 33 U.S.C. §§ 511-524; (commonly referred to as the: 'Truman-Hobbs Act').*
7. Act of August 2, 1946, 60 Stat. 847; *as amended; classified to 33 U.S.C. §§ 525-533 (commonly referred to as: 'the General Bridge Act of 1946').*
8. "An Act to give the consent of Congress to the construction of certain international bridges, and for other purposes," Pub. L. No. 92-434 (H.R. 15577), 86 Stat. 731-733 (September 26, 1972); *as amended; classified to 33 U.S.C. §§ 535-535i (commonly referred to as: 'the International Bridge Act of 1972').*
9. Efficient Environmental Reviews for Project Decisionmaking, 23 U.S.C. § 139.
10. National Bridge and Tunnel Inventory and Inspection Standards, 23 U.S.C. § 144.

IV. Definitions

- a. State DOT/Highway Agency (HA) means that department, commission, board, or official of any State or Federal agency charged by its laws with the responsibility for highway construction.
- b. Project Sponsor means an agency or entity seeking Federal transportation funds and responsible for initiating and carrying forward the planning, design, environmental review, and construction of a project in conjunction with the State DOT/HA. This agency or entity could include a political subdivision of a State, an authority created or authorized under State law, or a private entity

V. USCG/FHWA Coordination

The table below identifies coordination procedures both for actions requiring a USCG bridge permit and projects where FHWA determines that a USCG permit is not required.

For bridges that are determined to be exempt from USCG bridge permitting pursuant to 23 U.S.C. § 144(c), the FHWA will make a preliminary permitting exemption determination during project preplanning or NEPA scoping and inform the USCG in a timely manner so USCG can

make necessary determinations regarding navigation lights and signals required by 14 U.S.C. § 85 and provide timely notice to local mariners of waterway changes.

The steps in the table are not necessarily meant to follow sequentially, but rather provide guidance for what actions FHWA and USCG may need to take, and the role of each agency at each stage.

(FHWA /State DOT/HA) Activities	U.S. Coast Guard Activities
Planning Stage	
<p>During the early planning stage, prior to the NEPA scoping process, establish an appropriate point of contact and notify USCG of projects on plan or State Transportation Improvement Program (STIP), if applicable, that may require a bridge permit and ensure that the State DOTs/HA notify the USCG during the planning phase of a project.</p>	<p>Provide timely review of FHWA/State DOT/HA notifications of projects on plans or STIP and participate in FHWA/State DOT planning and project meetings, as appropriate, providing a USCG point of contact (usually a USCG District Bridge Office).</p>
Project Initiation Stage	
<p>At the initiation of a project requiring a USCG permit, invite USCG to early coordination meetings to discuss issue identification. Consider early site visit with resource agencies.</p>	<p>Participate in early coordination meetings to discuss issue identification. Participate in site visit, as appropriate.</p>
<p>Prior to the NEPA scoping process, determine whether or not a USCG permit is required pursuant to 23 U.S.C. § 144(c) and 23 CFR part 650, Subpart H. FHWA/State DOT/HA should notify USCG in a timely manner of the preliminary determination made so that any necessary coordination with USCG can be accomplished during the environmental review. FHWA/State DOT/HA also should notify USCG whenever the proposed action may substantially affect local navigation to allow for timely notice to mariners of waterway changes and to require the establishment, maintenance, and operation of lights and signals as required under 14 U.S.C. § 85 and 33 CFR part 118.</p>	<p>Consult with FHWA/State DOT/HA early and often on permit jurisdictional issues. USCG will review 23 U.S.C. § 144(c) determinations by FHWA. If USCG identifies issues or concerns with the preliminary determination, USCG should timely notify the FHWA/State DOT/HA so as to not delay project advancement.</p>

<p>When serving as the lead Federal agency and prior to the NEPA scoping process, FHWA will formally request USCG be a cooperating or participating agency in the environmental review process.</p>	<p>When serving as the lead Federal agency and prior to the NEPA scoping process, USCG will formally request FHWA be a cooperating or participating agency in the environmental process.</p>
<p>Upon receipt of invitation from USCG to become a cooperating or participating agency in the environmental analysis process, within 30 days FHWA will provide written acceptance of the appropriate status and work with USCG to prepare NEPA documentation (ROD, FONSI, CE Determination) that satisfies both the FHWA's and the USCG's NEPA requirements.</p>	<p>Upon receipt of invitation from FHWA to become a cooperating or participating agency in the environmental review process, within 30 days USCG will provide written acceptance of the appropriate status and work with the FHWA to prepare NEPA documentation (ROD, FONSI, CE Determination) that satisfies both the FHWA's and the USCG's NEPA requirements.</p>
<p>FHWA Will meet and cooperate with USCG whenever requested to resolve problems and avoid unnecessary project delays.</p>	<p>USCG will meet and cooperate with the FHWA/State DOT/HA whenever requested to resolve problems and avoid unnecessary project delays.</p>
<p>Continue coordination with USCG regardless of level of environmental class of action.</p> <p>Based on project information, determine the level of NEPA Environmental Documentation (CE, EA, or EIS). Coordinate with USCG using applicable guidelines. For multi-State bridge projects, make sure that all of the affected State DOT/HAs and responsible jurisdictions and oversight agencies carry out appropriate coordination efforts. For historic bridges requiring Section 106 of the National Historic Preservation Act compliance, copy USCG on all correspondence to the State Historic Preservation Officer (SHPO) and consulting parties. If a Memorandum of Agreement (MOA) for the resolution of adverse impacts is needed, provide a draft copy of the MOA to USCG for review and provide a final copy of the MOA to USCG for their records.</p>	<p>Continue coordination with FHWA regardless of level of environmental class of action.</p> <p>For historic bridges requiring Section 106 compliance, USCG will review copies of FHWA section 106 compliance correspondence to ensure appropriate coverage of USCG bridge permit actions and comment if necessary. USCG will review a draft of any required Memorandum of Agreement (MOA) and comment if necessary. Although USCG typically will not sign the MOA where FHWA has agreed to act as lead agency on USCG's behalf based on the Advisory Council on Historic Preservation (ACHP) policy guidance, if for any reason USCG decides it is in their best interest to sign the MOA, USCG will notify FHWA during review of the draft MOA that they wish to sign the MOA.</p>

<p>For all bridge projects requiring a USCG Bridge Permit, FHWA/State DOT/HA will prior to scoping consult the USCG Bridge Permit Application Guide and meet with USCG to determine the appropriate documentation requirements for a complete bridge permit application. The FHWA/State DOT/HA and USCG will collectively determine at the earliest time practicable what navigational information each agency will provide, in accordance with USCG's guidance, in order to analyze the navigational impacts of the bridge design alternatives and prepare a navigational impact report concurrent with the NEPA scoping process whenever possible.</p>	<p>USCG will work with the FHWA/State DOT/HA/Project Sponsor to identify items needed for a complete bridge permit application and the earliest possible stage of the project planning that the FHWA/State DOT/HA/Project Sponsor should begin submitting permit application materials to the USCG. FHWA/State DOT/HA and USCG will collectively determine at the earliest time practicable what navigational information each agency will provide, in accordance with USCG's guidance. USCG shall provide to the FHWA/State DOT/HA readily available navigational information and points of contact for waterway associations and users to assist in the collection of navigational information by the FHWA/State DOT/HA.</p>
<p>Gather data and receive public comments to prepare navigational impact report prior to or concurrent with the NEPA scoping process to identify which bridge designs unreasonably obstruct navigation and therefore do not require environmental analysis¹. Compile applicable environmental information for the bridge permit application. Combine, as appropriate, preliminary public notice of project location and evaluation of impacts on navigation as part of the NEPA scoping. Respond to comments received on navigational aspects of highway bridges.</p>	<p>Assist with assessing navigational impacts and environmental documentation requirements. Respond to comments received on navigational aspects of highway bridges. USCG field bridge staff will cooperate with FHWA/State DOT/HA to ensure navigation impacts are adequately addressed. Review the navigational impact report prepared concurrent with the NEPA scoping process, and advise which bridge designs unreasonably obstruct navigation and therefore do not require environmental analysis.</p>

¹ Does not preclude the project sponsor from conducting further analysis at its own risk on an alternative that the USCG has identified as unreasonably obstructing navigation.

<p>When serving as the lead Federal agency under NEPA, FHWA will provide written notice to USCG and to the relevant regulatory agencies and associated consulting parties stating that FHWA will act as the lead Federal agency on behalf of USCG, as appropriate, for coordination with the U.S. Army Corps of Engineers and compliance with other environmental laws. In accordance with Section 1306 of MAP-21, the 180 day timeframe will commence upon the later of the following: 1) A permit application is formally submitted and determined to be complete by the USCG, or 2) A NEPA decision has been issued. FHWA shall furnish USCG with a written statement when it concludes consultations. The NEPA document shall reflect the appropriate mitigation commitments. If the consultations result in the need for additional mitigation or the need to supplement, revise or alter the signed NEPA document, FHWA will coordinate with USCG on a resolution. Significant new information or circumstances that arise and warrant consideration might result in the need to restart the 180-day timeframe in accordance with Section 1306 of MAP-21 and associated guidance.</p>	<p>Become involved early in the process upon FHWA/State DOT/HA's request. Cooperate with FHWA/State DOT/HA in determining appropriate level of environmental documentation.</p>
<p>Prepare necessary environmental documentation based on project analysis including the navigational impact report. Within the environmental document, include discussion of bridge potential impacts to the environment and a discussion of results of ongoing coordination with USCG.</p>	<p>Comment on environmental documentation within the environmental document, concentrating on the bridge(s) and approaches' environmental impacts.</p>
<p>Coordinate with USCG to determine if joint efforts for public notices, meetings, and hearing(s), especially in controversial projects, would be appropriate and would promote efficient decision-making.</p>	<p>Participate in joint public notices and meetings when requested by FHWA/State DOT/HA. When sufficient information is available on a given bridge, avoid separate USCG public meeting.</p>

<p>Continue environmental analysis, discuss preferred alternative, and complete environmental documentation. Furnish preliminary environmental documentation to USCG for review and, as appropriate, respond to comments received on environmental aspects of highway bridges. If USCG has not provided comments on aspects of the document related to the bridge permit application, contact USCG and obtain its views on the adequacy of the current bridge permit information.</p>	<p>Upon request, assist in preparing responses to any bridge related comments received on environmental document. Review preliminary environmental documentation and comment, as appropriate.</p>
<p>Coordinate with USCG to provide USCG with the documentation of navigational impacts and compliance with NEPA and other applicable Federal environmental statutes, regulations, and orders, including coordination letters from Federal and State resource and regulatory agencies. Where a combined Final Environmental Impact Statement/Record of Decision (FEIS/ROD) is anticipated under Pub. L. No. 112-141, Sec. 1319, of MAP-21, notify USCG and adjust review process of the FEIS/ROD accordingly. Prepare a consolidated and coordinated NEPA document that satisfies both USCG and FHWA NEPA requirements and issue a shared or joint environmental impact determination.</p> <p>To ensure USCG can adopt the NEPA document for its bridge permit action, the NEPA document should adequately address all comments received from the USCG as a cooperating agency.</p>	<p>If the bridges environmental impacts are adequately addressed in environmental documentation, USCG will adopt the FHWA NEPA documentation. USCG field bridge staff will cooperate with FHWA/State DOT/HA to ensure environmental impacts are adequately addressed. Prepare a consolidated and coordinated NEPA document that satisfies both USCG and FHWA NEPA requirements and issue a shared or joint environmental impact determination. Note: USCG and FHWA signatures on the NEPA document will occur before the USCG will determine the application to be complete. Consultations under other applicable environmental laws must be completed before the USCG can issue a bridge permit.</p> <p>When new navigational or environmental information is received during the permit review process, CG will consider it in accordance with the provisions of this MOA.</p>

<p>As early as practicable, submit application for USCG Bridge Permit. (Permit application(s) may include alternate bridge designs). At the request of USCG, issue certification in accordance with 23 U.S.C. § 139(h)(6)(D) when USCG has provided timely notice of incomplete application.</p> <p>Ensure that the documentation submitted to USCG with the permit application is complete with respect to documenting navigational impacts as well as compliance with NEPA and other required Federal environmental statutes, regulations, and orders. This compliance and documentation is intended to allow USCG to process the permit application as quickly as possible. The documentation shall include all coordination letters from Federal and State resource agencies, as relevant and appropriate, that the OA used to satisfy requirements under NEPA and other applicable Federal environmental statutes, regulations, and orders.</p>	<p>Continuously review permit application materials in order to determine if and when permit application is complete. Prior to determining that an application is complete, conduct concurrent processing of the environmental evaluation and the Bridge Permit application materials, whenever possible, to expedite the bridge permit decision process. USCG will advise FHWA/State DOT/HA/Project Sponsor of determination that application is complete as soon as possible, but no later than 30 days of determination. A formal public notice will be issued upon determination that application is complete. When USCG determines application is not complete, USCG will promptly advise applicant in writing that application is incomplete and provide copy of such notice to FHWA for purposes of 23 U.S.C. § 139(h)(6).</p> <p>When USCG determines an application is complete, in accordance with Section 1306 of MAP-21 and any associated guidance, USCG will recognize that the 180 day timeframe has commenced unless a final NEPA decision has not been issued.</p>
<p>Seek to resolve any outstanding issues prior to permit issuance. Discuss any extenuating circumstances with USCG so as not to delay permit issuance.</p>	<p>Seek to expedite review process where possible. Where disagreements arise over vertical and/or horizontal clearance, the USCG District Bridge Office will involve Headquarters to ensure consistency with Headquarters policy on bridge clearance issues.</p>
<p>Issue Resolution</p> <p>The following is a sequential process for resolving issues that shall apply if the dispute resolution provisions set forth in 23 U.S.C. § 139 are not applicable:</p>	
<p>Staff Level Meeting: hold meeting(s) with the parties that have day-to-day involvement in a project to attempt to resolve the issue(s)</p>	<p>Staff Level Meeting: hold meeting(s) with the parties that have day-to-day involvement in a project to attempt to resolve the issue(s)</p>
<p>If issue(s) not resolved at above level, elevate to Division Administrator.</p>	<p>If issue(s) not resolved at above level, elevate to USCG District Commander.</p>
<p>If issue(s) not resolved at above level, elevate to the Associate Administrator for Planning, Environment, and Realty.</p>	<p>If issue(s) not resolved at above level, elevate to the Director of Marine Transportation Systems.</p>

If issue(s) not resolved at above level, elevate to FHWA Administrator.	If issue(s) not resolved at above level, elevate to USCG Commandant.
If issue(s) not resolved at above level, elevate to DOT Secretary.	If issue(s) not resolved at above level, elevate to DHS Secretary.

VI. Limitations

- a. Nothing in this MOA is intended to conflict with current law or regulation or the directives of USCG or FHWA. If a term of this MOA is inconsistent with such authority, that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.
- b. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, against the United States, any party, their officers or employees, or any other person. This MOA does not direct or apply to any person outside the parties to this MOA.
- c. As required by the Antideficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the parties in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates the parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
- d. This MOA does not limit the signatories from developing programmatic agreements for specific procedures and processes to improve efficiencies and effectiveness related to interactions between the agencies to focus on unique issues and concerns in order to facilitate permit decision making and improved project delivery.

VII. Commencement/ Duration/ Modification/ Termination

- a. This MOA is effective upon the signature of all the parties. This MOA may be extended or modified, at any time by the mutual written consent of the parties. Either party may withdraw from this MOA at any time by providing at least 90 days written notice to the other party.
- b. All Memorandums of Agreements or Interagency Agreements made between the parties in furtherance of this MOA shall be made in accordance with the Purpose and subject to all the terms and provisions of this MOA.

IX. Points of Contact

United States Coast Guard
Office of Bridge Programs (CG-BRG)
US Coast Guard Stop 7418

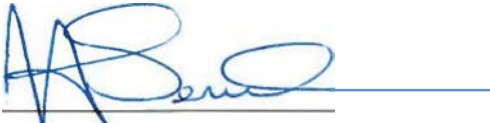
2703 Martin Luther King Jr Ave, SE
Washington, DC 20593-7418
202-372-1511

Federal Highway Administration
Office of Planning, Environment, and Realty
Office of Project Development and Environmental Review
HEPE-30
1200 New Jersey Avenue, SE
Washington, DC 20590
202-366-0116

X. Signatory Authority

This MOA is approved and authorized on behalf of each party by:

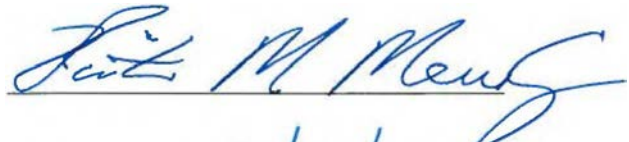
J. A. Servidio
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy



Date

01/14/2014

Victor M. Mendez
Administrator, Federal Highway Administration



Date

12/20/2013

From: [Horne, Taylor C \(DOT\)](#)
To: ["Burns, Melissa"](#)
Subject: DOT&PF Response Letter RE: NEPA Assignment Application - USFWS Comments
Date: Thursday, July 07, 2016 11:35:40 AM
Attachments: [USFWS response 7.7.16.final- Copy.pdf](#)

Hello Melissa,

Please find attached the DOT&PF's letter in response to USFWS's June 15, 2016 comments on the NEPA Assignment Program draft application.

I look forward to our planned meeting and future collaborations.

Thank you,
Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

-----Original Message-----

From: Burns, Melissa [mailto:melissa_burns@fws.gov]
Sent: Wednesday, June 15, 2016 3:35 PM
To: Horne, Taylor C (DOT)
Subject: NEPA Assignment Application - USFWS Comments

Hi Taylor,

Thank you for the opportunity to comment on the Draft NEPA Assignment Application and for granting our comment period extension request.
Please find our comments attached and let me know if you have any questions.

Best,

Melissa

--

Melissa Burns
Regional Conservation Planning Assistance Coordinator U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, AK 99503
907-786-3451



July 7, 2016

Mr. Greg Siekaniec
Regional Director
U.S. Department of the Interior
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503-6199

Reference: FWS/AFES Comments on Draft Application to Assume FWHA's NEPA Responsibilities Pursuant to 23 USC 327

Thank you for your comments dated June 15, 2016 regarding the DOT&PF's Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327. We recognize that US Fish and Wildlife Service (Service) has concerns regarding the implementation of Alaska's NEPA Assignment Program. In addition to the below responses to your comments, I would like to offer to meet at your convenience to discuss the NEPA Assignment Program in further detail along with an offer to include FHWA Alaska Division staff in the meeting.

The DOT&PF remains committed to the objective, complete, and unbiased implementation of FHWA's assigned NEPA responsibilities. Under NEPA Assignment, the DOT&PF remains obligated to comply with all applicable laws, regulations, executive orders, and guidance for the Federal-aid Highway Program projects to which NEPA Assignment applies. Furthermore, the DOT&PF is very interested in working closely with the Service to identify any areas of improvement that are of concern and to closely coordinate during the project development process.

The DOT&PF's current environmental procedures applicable to all existing projects are available online (<http://dot.alaska.gov/stwddes/desenviron/resources/docprep.shtml>). These procedures will remain in effect until replaced by updated procedures which will also be available on the website. The schedule for procedures implementation for NEPA Assignment has been developed in coordination with FHWA and allows for earlier implementation if necessary. The DOT&PF intends on involving FHWA in the development of these procedures and they will have opportunities to review and comment on draft procedures prior to implementation. The DOT&PF intends to solicit input from partner agencies like the Service while developing program guidance on related resource areas. For example, the DOT&PF was able to incorporate the

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Service's comments on the DOT&PF 6004 Program Interim Section 7 ESA Consultation Procedures (http://www.dot.state.ak.us/stwddes/desenviro/assets/pdf/resources/esa_sec7_procedures.pdf) and looks forward to future opportunities to collaborate on development of guidance materials.

We have discussed the inclusion of E.O. 13186 in the NEPA Assignment Program with FHWA. The FHWA's position is that E.O. 13186 does not apply to the Federal-aid Highway Program; therefore, the DOT&PF cannot include it in the application.

The DOT&PF looks forward to working closely with the Service to develop an Alaska-specific Bird Conservation Plan to programmatically address potential transportation project impacts to migratory birds. Please let me know an acceptable time and location for a kickoff discussion on the matter.

The DOT&PF is committed to working closely with partner agencies and will reach out early in the project development process to involve the Service on projects that may affect the Service's trust resources. The DOT&PF will implement FHWA's NEPA regulations and is committed to complying with the regulation requirements for identifying and collaborating with cooperating agencies during the NEPA process.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. If the Service continues to have specific concerns after meeting with DOT&PF and FHWA, the Service could provide those concerns to FHWA during the Federal Register comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

If you have any questions, require clarification, or want additional information, please contact me at (907) 465-6957 and taylor.horne@alaska.gov.

Sincerely,



Taylor C. Horne
DOT&PF Statewide Environmental Program Manager

From: [Heck, Linda K \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#)
Subject: 327 draft app FW: NEPA Assignment Application - USFWS Comments
Date: Thursday, June 16, 2016 7:48:35 AM
Attachments: [NEPA Assignment Application USFWS Comment Letter_20160615.pdf](#)
Importance: High

-----Original Message-----

From: Horne, Taylor C (DOT)
Sent: Wednesday, June 15, 2016 3:36 PM
To: Heck, Linda K (DOT) <linda.heck@alaska.gov>
Subject: FW: NEPA Assignment Application - USFWS Comments

-----Original Message-----

From: Burns, Melissa [mailto:melissa_burns@fws.gov]
Sent: Wednesday, June 15, 2016 3:35 PM
To: Horne, Taylor C (DOT)
Subject: NEPA Assignment Application - USFWS Comments

Hi Taylor,

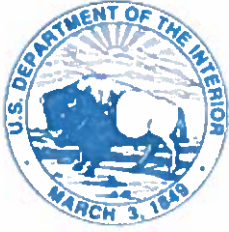
Thank you for the opportunity to comment on the Draft NEPA Assignment Application and for granting our comment period extension request.
Please find our comments attached and let me know if you have any questions.

Best,

Melissa

--

Melissa Burns
Regional Conservation Planning Assistance Coordinator U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, AK 99503
907-786-3451



United States Department of the Interior



U.S. FISH AND WILDLIFE SERVICE
1011 East Tudor Road
Anchorage, Alaska 99503-6199

IN REPLY REFER TO:
FWS/AFES

JUN 15 2016

Mr. Taylor C. Horne
Statewide Environmental Program Manager
Statewide Environmental Office, Design and Engineering Services
State of Alaska Department of Transportation
P.O. Box 112500
Juneau, Alaska 99811-2500

Dear Mr. Horne:

Thank you for the opportunity to review the Draft Alaska Department of Transportation and Public Facilities (ADOT&PF) National Environmental Policy Act (NEPA) Assignment Program Application (the application) for participation in the Federal Highway Administration's (FHWA) NEPA Assignment Program. Our comments and recommendations are provided in accordance with the Endangered Species Act (16 U.S.C. 1531-1544), Marine Mammal Protection Act (16 U.S.C. 1361-1407), Migratory Bird Treaty Act (16 U.S.C. 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), Clean Water Act (33 U.S.C. §1344), Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), Alaska National Interest Lands Conservation Act (16 USC 410hh-3233, 43 USC 1602-1784), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee), and National Environmental Policy Act [42 U.S.C. 4321-4347 1969 with Implementing Regulations (40 CFR parts 1500-1508)].

General Comments

The NEPA directs each federal agency to consider the environmental effects of its actions, using a systematic, interdisciplinary approach. It is vital that information in any NEPA document is objective and complete. Based on previous project coordination with the ADOT&PF, we have concerns regarding NEPA analyses under the NEPA Assignment Program including the range of potential alternatives presented, the evaluation of the effects of the proposed alternatives, and the decision of which NEPA procedure (Categorical Exclusion, Environmental Assessment or Environmental Impact Statement) is applicable to the proposed action. We provide reference to the Sterling Highway Mile Post 58-79 Rehabilitation and the Passing Lanes project and the Sterling Highway Mile Post 45-60 project as examples of the above referenced concerns.

Based on the information currently provided, the application lacks sufficient detail regarding how the ADOT&PF will maintain compliance with administrative laws administered by the

Service after the NEPA Assignment takes effect. Key implementation procedures related to the NEPA Assignment will not be developed until after the execution of the NEPA Assignment Program Memorandum of Understanding (MOU). We strongly recommend implementation procedures be developed and finalized before the application is finalized and approved. These procedures will guide the development of documents, analyses, coordination, and consultations required for the ADOT&PF to fulfill environmental review responsibilities. They are important factors to consider when determining whether the ADOT&PF has the capability and authority to complete environmental reviews on behalf of the FHWA.

Specific Comments

We recommend the following implementation procedures be presented for public scoping and agency review, and be finalized before the application is approved:

- the Alaska NEPA Assignment Program Environmental Procedures Manual;
- Quality Assurance/Quality Control Procedures;
- Project Scoping Procedures;
- Conflict Resolution Procedures with External Agencies; and
- Prior Concurrence Procedures.

We recommend that Executive Order (the Order) 13186 be included in Appendix B (List of FHWA's Environmental Review Responsibilities for Which ADOT&PF Requests to be Assigned). The Order, Responsibilities of Federal Agencies to Protect Migratory Birds, directs federal agencies that take actions that either directly or indirectly effect migratory birds to develop a MOU, and to work with the Service, and other federal agencies to promote conservation of migratory bird populations.

The FHWA is currently developing a national Bird Conservation Plan (BCP) template that can be used to aid States in the development of a BCP and describes how State DOTs, the FHWA, and our agency can work together programmatically to address transportation project-related impacts to migratory birds and their habitat during construction, operation, and maintenance of transportation projects. To support the intent and goals of the Assignment Program, we recommend the development of an Alaska-specific BCP to reduce transportation project impacts on migratory birds.

If the Assignment Program is authorized as proposed, we request early coordination with the ADOT&PF, especially for all FLAP projects for which the ADOT&PF has been granted responsibility, and for Class I (those requiring an Environmental Impact Statement) projects. Early coordination with the Service and with other resource agencies, particularly during the early phases of the assumption process, will result in the development of appropriate project alternatives, improved document quality, and ensure greater protection of trust resources. In addition, if projects are within the boundary of, or have the potential to affect a National Wildlife Refuge, we request that the Service be accorded cooperating agency status at project inception.

As the Assignment Program process moves forward, we request the opportunity to review and comment on the anticipated MOU between the ADOT&PF and the FHWA, as well as other forthcoming documents and procedures related to the Assignment and our authorities as outlined

above. Thank you in advance for your consideration of our comments. We look forward to receiving the final version of the application. If you have comments or questions, please contact Melissa Burns at 907-786-3451 or Doug Campbell at 907-786-3907.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Campbell". The signature is fluid and cursive, with the first name "Doug" being more prominent and the last name "Campbell" following in a similar style.

Acting Regional Director

From: [Horne, Taylor C \(DOT\)](#)
To: "Dillard, Oliver"; christopher_smith@nps.gov
Subject: DOT&PF Response Letter RE: Draft NEPA Assignment Program Application
Date: Thursday, July 07, 2016 11:41:59 AM
Attachments: [USNPS response.7.7.16.final.pdf](#)
[image002.png](#)

Hello Mr. Dillard and Mr. Smith,

Please find attached the DOT&PF's letter in response to NPS's May 31, 2016 comments on the NEPA Assignment Program draft application.

I look forward to our planned meeting and future collaborations.

Thank you,
Taylor

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Dillard, Oliver [mailto:oliver_dillard@nps.gov]
Sent: Tuesday, May 31, 2016 4:37 PM
To: Horne, Taylor C (DOT)
Subject: Draft NEPA Assignment Program Application

For your review.

/r
Oliver H. Dillard III
Administrative Officer
National Park Service
Alaska Regional Office
907-644-3514 phone
907-644-3806 fax
oliver_dillard@nps.gov
[Customer Satisfaction Survey](#)



July 7, 2016

Ms. Debora Cooper
Associate Regional Director for Resources
U.S. Department of the Interior
National Park Service, Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

Reference: 10.A. (AKRO-EP) 20160528 Comments on Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327

Thank you for your comments dated May 31, 2016 regarding the DOT&PF's Draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327. We recognize that National Park Service (NPS) has concerns regarding the implementation of Alaska's NEPA Assignment Program. In addition to the below responses to your comments, I would like to offer to meet at your convenience to discuss the NEPA Assignment Program in further detail along with an offer to include FHWA Alaska Division staff in the meeting.

In the context of the NEPA Assignment Program, there are no instances where a "compliance burden" would require DOT&PF to make a NEPA decision on behalf of a federal land management agency. NEPA Assignment only applies to the FHWA's NEPA authorities and cannot apply to any other federal agency. Similarly, the NEPA Assignment program does not alter any federal agency's role during the RS 2477 right of way process. While a project dealing with RS 2477 right of way may require that DOT&PF complete the NEPA and environmental permitting processes, there is no change to the right of way process or federal agencies' roles in dealing with RS 2477. If the NEPA Assignment is made by FHWA to DOT&PF, the assigned FHWA NEPA authorities would include consultation with Federal Land Management Agencies. Early coordination with other agencies is an essential part of the project development process supported by DOT&PF, especially in Alaska where many of the DOT&PF transportation facilities are accessing Federal Lands.

As specified in 23 USC 327, the NEPA Assignment Program only applies to certain administrations under the USDOT, including FHWA. DOT&PF is seeking assignment of FHWA's NEPA authorities; no other FHWA authorities will be assigned to the DOT&PF under this program, such as planning, Right of Way, or financial oversight of Federal-aid Highway Program projects. The assigned responsibilities are limited to the environmental analysis and

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public processes required by NEPA and associated laws, regulations, and Executive Orders, as will be defined in a Memorandum of Understanding (MOU) executed between DOT&PF and FHWA. For example, 23 USC 327 specifically excludes assignment of Sections 134 and 135 pertaining to MPO and Statewide planning, including FHWA's consideration of the concerns of Indian Tribal Governments and Federal Land Management Agencies that have jurisdiction over land within the boundaries of the State. This early coordination with Federal Land Management Agencies for the development of transportation plans provides an important phase for any future project that requires consideration of the Federal Land Management Agency concerns. The statute does not allow for a state to make decisions on behalf of another federal agency, nor does it allow for a state to make decisions for FHWA that are unrelated to NEPA. Another example that is directly identified in your letter is the Environmental and Economic Analysis (EEA) required by ANILCA for access across Gates of the Arctic National Preserve. This decision cannot be assigned under the NEPA Assignment Program; therefore, the application does not need to list the EEA in the discretionary list of excluded projects. FHWA has stated that the USDOT Secretary's EEA decision under ANILCA is not assignable per 23 USC 327.

The draft Alaska DOT&PF NEPA Assignment Program Application states that only "constructive use" determinations under Section 4(f) will be made in consultation with, and the approval of, FHWA. Constructive use determinations are rarely made and can be legally complex; they are discreet from other Section 4(f) determinations and findings. Under NEPA Assignment DOT&PF will make all other Section 4(f) decisions, including Section 4(f) applicability determinations based on 23 CFR 774 and FHWA policy and guidance documents. The DOT&PF will seek concurrence from the official(s) with jurisdiction over the Section 4(f) property when required by regulations.

Under NEPA Assignment, the DOT&PF would be assigned the FHWA's responsibility for conducting the Section 6(f) process for use of lands where Land and Water Conservation Fund (LWCF) monies were expended. The DOT&PF will not be assuming decisionmaking authority from any other federal entity besides FHWA; the DOT&PF will follow all the regulations and guidance that apply to the conversion of LWCF lands.

The NEPA Assignment program only applies to the assignment of FHWA's project-specific NEPA responsibilities on Federal Lands Highway Program FLAP projects that are designed and constructed by DOT&PF. For those projects, the DOT&PF will perform all NEPA related environmental review, public involvement, and permitting activities; these may include project agreements that are associated with environmental commitments for the project. The DOT&PF looks forward to partnering with Federal Land Management Agencies such as the National Park Service for successful implementation of certain FLAP projects.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. If there are specific concerns from the National Park Service after meeting with DOT&PF and FHWA the NPS could provide those concerns to FHWA during the Federal Register comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

If you have any questions, require clarification, or want additional information, please contact me at (907) 465-6957 and taylor.horne@alaska.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Taylor C. Horne', with a long horizontal flourish extending to the right.

Taylor C. Horne
DOT&PF Statewide Environmental Program Manager

From: [Horne, Taylor C \(DOT\)](#)
To: [Heck, Linda K \(DOT\)](#); ["Tim.Haugh@dot.gov"](mailto:Tim.Haugh@dot.gov)
Subject: FW: Draft NEPA Assignment Program Application
Date: Tuesday, May 31, 2016 4:38:15 PM
Attachments: [NEPA Application Response.pdf](#)

From: Dillard, Oliver [mailto:oliver_dillard@nps.gov]
Sent: Tuesday, May 31, 2016 4:37 PM
To: Horne, Taylor C (DOT)
Subject: Draft NEPA Assignment Program Application

For your review.

/r
Oliver H. Dillard III
Administrative Officer
National Park Service
Alaska Regional Office
907-644-3514 phone
907-644-3806 fax
oliver_dillard@nps.gov
[Customer Satisfaction Survey](#)



United States Department of the Interior

NATIONAL PARK SERVICE

Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

NRI rLv RH:l:l. m.
IOA (JKIW-Jil') 20160)2K

MAY 3 12016

Taylor C. Horne
Statewide Environmental Project Manager
Statewide Design and Engineering Services -Room 105
Alaska Department of Transportation and Public Facilities
P.O. Box 112500
Juneau, AK 99811-2500

Dear Mr. Horne:

Thank you for the opportunity to review the Alaska Department of Transportation and Public Facilities (DOT&PF) draft National Environmental Policy Act (NEPA) Assignment Program application. The National Park Service (NPS) comments on this proposal are primarily focused on programs and projects where the NPS and Federal Highway Administration (FHWA) each have responsibilities.

Although it is our understanding that FHWA would retain NEPA responsibilities for projects funded and co-managed within the Federal Lands Transportation Program (FLTP), there may be instances where the Federal Lands Access Program (FLAP) may also need to be excluded from the NEPA Assignment Program for projects designed or constructed by DOT&PF. FLAP projects designed or constructed by DOT&PF (see page 36) may still have a perceived or real conflict of interest that rests with the State of Alaska for access to federal public lands. There are recognized, developed access points and transportation corridors into parklands, wildlife refuges, and recreational lands that carry a compliance burden. Such burdens may require the state to conduct environmental analyses and render a decision on behalf of FHWA, and also the federal land management agency. There are also unresolved RS 2477 rights of way that the state may be pursuing which could potentially arise using FLAP funding; that may also pose as a problem for all parties involved.

The proposal identifies a list of specific projects that would not be assigned to the State of Alaska (see page 9 and 36). In addition to the four projects identified, others, including the Ambler Mining District Industrial Access Project, should be added to the list of excluded projects. The Alaska National Interest Lands Conservation Act (ANILCA) specifies that the Secretary of Interior and Secretary of Transportation shall determine the most desirable route across Gates of the Arctic National Preserve. The desired route, via an Environmental and Economic Analysis (EEA), shall be in lieu of NEPA compliance and be exempt from judicial review. FHWA has been the delegated authority from the Secretary of Transportation for the EEA and has been very involved in the review of the draft application. While the EEA is in lieu of NEPA compliance, an Environmental Impact Statement is expected to be prepared for the remainder of the route. Should the State of Alaska assume FHWA responsibilities for this project, a perceived or actual conflict of interest would rest with the state for making a decision on behalf of the federal government for access across National Park System units in Alaska.

The proposal includes a request for DOT&PF to assume FHWA authorities for ANILCA (Appendix B of the proposal). The Ambler Mining District Industrial Access Project is one example of potential conflict of interest for the State of Alaska to act in a federal capacity for access and other transportation land use decisions yet to be implemented under ANILCA. Title XI of ANILCA (see section 1104 of that act) assigns additional responsibilities to the Secretary of Transportation for decision-making, planning and providing other assistance related to proposed transportation systems in National Park System units in Alaska. The ADOT&PF proposal would place the State of Alaska in a position of making decisions on behalf of the federal government, with a perceived or real conflict of interest in cases involving access to or across federal public lands. The ANILCA-based responsibilities of the Secretary of Transportation, that may be or have been delegated to FHWA, should not be assigned to DOT&PF.

The proposal states DOT&PF would assume responsibility for all Section 4(t) approvals, but would not make any determination without consulting with FHWA and obtaining FHWA's approval of the determination (see page 27). This process appears to be inefficient and also creates a perceived or actual conflict of interest for the State of Alaska to process Section 4(t) determinations for federal lands. In addition, there is a potential conflict of interest for those projects that include use of Land and Conservation Water Fund (LCWF) monies.

Two new fund programs created by the Fixing America's Surface Transportation Act (FAST) are not addressed, but should be added to responsibilities excluded from the NEPA Assignment Program because the State of Alaska could very well be an applicant for funding from the "Nationally Significant Freight and Highway Projects Program" and "Nationally Significant Federal Lands and Tribal Projects Program." If put into a position of receiving funds for a "nationally significant" project and taking on the responsibility of completing NEPA on behalf of the federal government, it could again place the state in a position of making a decision on behalf of the federal government, with a perceived or real conflict of interest in cases involving access to or across federal public lands.

FHWA and all federal land management agencies have instituted new stewardship and oversight initiatives for projects within the FLTP, and it is presumed that some level of stewardship and oversight would be retained for FLAP, the new FAST national project programs, and other projects as assigned that may have a federal land management agency role or responsibility. If that is the case, and the State of Alaska is given NEPA assignment responsibilities, it should then be included in all stewardship, oversight tasks and duties within project agreements, and properly designated for its role(s) in the stewardship and oversight process.

The NPS appreciates the opportunity to review the DOT&PF draft proposal. We hope adjustments will be made prior to the final application for the NEPA Assignment Program application to eliminate potential or perceived conflicts of interest for decisions on behalf of the federal government for access to federal public lands.

Sincerely,



Debora Cooper
Associate Regional Director for Resources

From: [Horne, Taylor C \(DOT\)](#)
To: ["camden.brooksalaska@gmail.com"](mailto:camden.brooksalaska@gmail.com)
Subject: DOT&PF Comment Response RE: Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska
Date: Thursday, July 07, 2016 4:58:37 PM
Attachments: [image002.png](#)

Dear Mr. Yehle,

Thank you for your comments in regard to Alaska Department of Transportation and Public Facilities' (DOT&PF) draft application to assume the Federal Highway Administration's (FHWA) NEPA responsibilities pursuant to 23 USC 327.

NEPA Assignment Program

While the NEPA Assignment Program requires legislative authorization to expend funds, there will be no additional financial burden to the state because the program is federally funded.

Using federal funds, NEPA documents would be prepared, reviewed, approved and defended by the State of Alaska. The entire process would continue to be open for public review and under the state's direction all NEPA requirements must still be met. The DOT&PF would still be required to seek review and approvals from federal and state agencies such as the US Forest Service, US Environmental Protection Agency, US Army Corps of Engineers, National Marine Fisheries Service, and others under applicable environmental laws and regulations. FHWA would continue to perform annual program audits and maintain federal oversight of the program to ensure Alaska is complying with environmental laws. FHWA has the ability to renew or terminate the NEPA Assignment Program based on the state's performance.

As described in DOT&PF's draft Application to Assume FHWA's NEPA Responsibilities Pursuant to 23 USC 327 (DOT&PF has had the Categorical Exclusion (CE) Assignment Program since September 2009, under which DOT&PF assumed most of FHWA's responsibilities for environmental review, resource consultation, and environmental regulatory compliance-related actions pertaining to the review and approval of assigned CE projects. Over the last five years, DOT&PF has assumed responsibility for approximately 95 percent of the Federal-Aid Highway Program projects in Alaska. More information on the CE Assignment can be found online at <http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>.

If FHWA accepts DOT&PF's application for NEPA Assignment and enters into MOU negotiations, a notice and request for comment on the draft MOU and final application will be posted in the Federal register for a 30-day comment period. All comments received by FHWA and DOT&PF will be considered when negotiating the terms of the NEPA Assignment MOU.

Sincerely,
Taylor Horne

Taylor C. Horne
Statewide Environmental Program Manager
Alaska Department of Transportation and Public Facilities
3132 Channel Drive, P.O. Box 112500
Juneau, Alaska 99811-2500
Phone: (907) 465-6957 Cell: (907) 500-4333

From: Camden Yehle [<mailto:camden.brooksalaska@gmail.com>]

Sent: Monday, May 02, 2016 9:38 AM

To: Horne, Taylor C (DOT)

Subject: Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska

Hi Taylor - I would like to submit a comment on the Proposed Draft Application for Assignment of Environmental Responsibilities to the State of Alaska, Department of Transportation and Public Facilities that appeared on the Online Notice system today. I can see how this could streamline the environmental process for some projects and I am aware the state already can approve Categorical Exclusion environmental documents in some cases, but I am concerned that an expansion of this program to higher impact and more controversial projects would be a case of self regulation which is by nature prone to corruption. I don't want to see any agency including DOT&PF designing, building, and regulating their own larger projects. Outside oversight is necessary to keep the project process fair, balanced, and transparent.

Thank you for your consideration,

Camden Yehle

Sent from my iPad

**Appendix B. Certification of Consent to Exclusive Federal Court
Jurisdiction and Waiver of Immunity and that the State of Alaska's
Public Records Act is Comparable to the Federal Freedom of
Information Act.**



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

Office of the Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-5903
Main: 907-269-5100
Fax: 907-269-5110

June 30, 2016

Mr. Gregory Nadeau
Administrator
Federal Highway Administration
1200 New Jersey Ave., S.E.
Washington, DC 20590-9898

RE: Application to Assume FHWA's NEPA Responsibilities (23 USC 327)
Certifications from State Attorney General

Dear Mr. Nadeau:

The Alaska Department of Transportation and Public Facilities (DOT&PF) is submitting an application to assume Federal Highway Administration's (FHWA) responsibilities for National Environmental Policy Act (NEPA) decision making. FHWA regulations, at 23 C.F.R. §773.109(a)(6)&(7), require that a State's application for assignment of NEPA responsibilities include certain certifications by the State's Attorney General. The purpose of this letter is to provide the required certifications.

The Alaska Legislature expressly authorized DOT&PF to assume all responsibilities eligible to be assigned under 23 U.S.C. 327 for making FHWA's decisions with respect to NEPA compliance and environmental permitting of DOT&PF's highway programs and projects. *See*, AS 44.42.300. That legislative authorization includes the express authority for DOT&PF to enter into one or more memoranda of understanding (MOU) with FHWA to carry out the assigned responsibilities. Federal regulations require that the MOU and any renewals address all assignment program requirements including the State's consent to exclusive Federal court jurisdiction with respect to the responsibilities assumed. *See*, 23 C.F.R. 773.111(d) and 773.115(c)(2).

The Alaska Legislature expressly authorized the State Attorney General to waive the State's immunity under the Eleventh Amendment of the United States Constitution in federal court litigation involving compliance, discharge, or enforcement of responsibilities assumed by the DOT&PF pursuant to 23 U.S.C. 327. *See*, AS 44.23.020(g). Alaska's waiver of immunity, and Alaska's consent to exclusive

Gregory Nadeau
Application to Assume

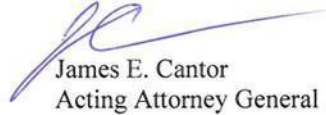
June 30, 2016
Page 2

Federal court jurisdiction with respect to the assumed responsibilities, will be detailed in the MOU and any renewals. A MOU signed by DOT&PF's Commissioner and the Attorney General constitutes a valid and legally binding obligation upon the State. Likewise, the State's consent to exclusive Federal court jurisdiction in the MOU, with respect to the assumed responsibilities, constitutes an Eleventh Amendment waiver that is valid, enforceable, and legally binding upon the State of Alaska.

Lastly, the State of Alaska's Public Records Act (PRA) is a comparable law to the Federal Freedom of Information Act (FOIA), in that both laws require public agencies to produce publically available documents and both laws allow denial of request for records to be judicially reviewed. Under the Alaska PRA a person may appeal a denial of a public records request pursuant to AS 40.25.124, and that person also has the right to seek injunctive relief under AS 42.25.125.

We believe this letter meets the certification requirements necessary for the NEPA assignment to the State of Alaska. We appreciate the opportunity to work together on this matter.

Sincerely,



James E. Cantor
Acting Attorney General

Appendix C. Correspondence recognizing that the DOT&PF is not seeking any new administration responsibilities or making significant changes to its Program.



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

1200 New Jersey Ave., SE
Washington, D.C. 20590

April 21, 2022

Mr. Douglas Kolwaite
Statewide Environmental Program Manager
Alaska Department of Transportation & Public Facilities
P.O. Box 112500
Juneau, AK 99811-2500

Subject: Alaska 327 NEPA Assignment MOU Renewal Determination of Significant Changes

Dear Mr. Kolwaite:

This letter is in follow-up to our commitment to you at the Alaska 327 MOU Renewal Meeting on February 28 to provide you a Federal Highway Administration (FHWA) determination on whether the changes proposed by the Alaska Department of Transportation and Public Facilities (AK DOT&PF) to its Surface Transportation Delivery Program under Section 327 of Title 23, United States Code, constitute significant changes warranting statewide notice for public comment prior to the formal submittal of the renewal package.

Based on the standard at Title 23, Code of Federal Regulations, Part 773.115(b), FHWA does not consider the minimal changes proposed by AK DOT&PF to warrant statewide public notice and comment prior to AK DOT&PF's submission of the 327 renewal package to FHWA.

We look forward to working with you and your staff on the renewal package so that the Surface Transportation Delivery Program may continue to be successfully implemented in Alaska. If you have questions, please contact David Williams at david.williams@dot.gov or 202-366-4074.

Sincerely yours,

Emily Biondi
Director, Office of Project Development
and Environmental Review

Cc: Jill Taylor, AK DOT&PF
Carolyn Morehouse, AK DOT&PF
Sean Lynch, AK DOT&PF

Appendix D. Draft MOU

**FIRST RENEWED MEMORANDUM OF UNDERSTANDING BETWEEN THE
FEDERAL HIGHWAY ADMINISTRATION AND
THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES CONCERNING
STATE OF ALASKA'S PARTICIPATION IN THE
SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM
PURSUANT TO 23 U.S.C. 327**

THIS FIRST RENEWED MEMORANDUM OF UNDERSTANDING (MOU), entered into by and between the FEDERAL HIGHWAY ADMINISTRATION (FHWA), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT), and the STATE OF ALASKA, acting by and through its ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT&PF), hereby provides as follows:

WITNESSETH

Whereas, Section 327 of Title 23 of the United States Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (Program) that allows the Secretary of the United States Department of Transportation (USDOT Secretary) to assign and states to assume the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. (NEPA), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required by Federal environmental law with respect to highway, public transportation, railroad, and multimodal projects within the State; and

Whereas, 23 U.S.C. 327(b)(2) and 23 Code of Federal Regulations (C.F.R.) part 773.109(a) requires a state to submit an application in order to participate in the Program; and

Whereas, on May 1, 2016, prior to submittal of its application to FHWA, DOT&PF published notice of, and solicited public comment on, its draft application to participate in the Program as required by 23 U.S.C. 327(b)(3) and 23 C.F.R. parts 773.107(b) and 773.109(a)(8), and addressed the comments received as appropriate; and

Whereas, Alaska Statute 44.42.300 authorizes DOT&PF to participate in the Program; and

Whereas, on July 12, 2016, the State of Alaska acting by and through DOT&PF, submitted an application to FHWA with respect to highway projects in the State of Alaska; and

Whereas, on August 25, 2017, FHWA published a notice in the *Federal Register* providing an opportunity for comment on its preliminary decision to approve DOT&PF's application and solicited the views of other appropriate Federal agencies concerning DOT&PF's application as required by 23 U.S.C. 327(b)(5) and 23 C.F.R. part 773.111(a); and

Whereas, the USDOT Secretary, acting by and through FHWA pursuant to 49 C.F.R. part 1.85(a)(3), determined that DOT&PF's application met the requirements of 23 U.S.C. 327 with respect to the Federal environmental laws and highway projects identified in the Original MOU (defined below); and

Whereas, On November 3, 2017 (Effective November 13, 2017, Amended August 20, 2020), following FHWA's approval of DOT&PF's application, FHWA and DOT&PF entered into the original Memorandum of Understanding (Original MOU) under which DOT&PF assumed and carried out the assigned duties and responsibilities of the USDOT Secretary under NEPA and other Federal environmental laws; and

Whereas, Section 13.1.1 of the Original MOU established a November 12, 2022, expiration date;

Whereas, FHWA conducted audits as required by the Original MOU and 23 U.S.C. (327)(g)(1)(B) during the State's participation in the Program; and

Whereas, FHWA has made the audit reports available to the public for comment through publication of notices in the Federal Register; and

Whereas, DOT&PF has also conducted self-assessments and monthly reports on its performance on the Program; and

Whereas, FHWA's audit reports are publicly available for inspection at https://environment.fhwa.dot.gov/nepa/program_assignment.aspx

Whereas, on XXXXXX ##, ####, pursuant to 23 C.F.R. part 773.115(a), DOT&PF notified FHWA of its intent to renew participation in the program with respect to highway projects, and the State of Alaska still has laws to allow the State, by and through DOT&PF, to participate in the Program; and

Whereas, pursuant to 23 C.F.R. part 773.115(b), DOT&PF coordinated with FHWA to determine if significant changes have occurred or new assignment responsibilities would be sought that would warrant a statewide notice and comment opportunity prior to the State's submission of its application for renewal and supplemental information (Renewal Package); and

Whereas, on XXXXXXXX ##, ####, after coordination between the agencies, FHWA determined that a statewide notice and comment period was unnecessary prior to the State's submission of the Renewal Package; and

Whereas, pursuant to 23 C.F.R. part 773.115(d), DOT&PF submitted its Renewal Package to FHWA on XXXXXXXX ##, ####, for approval to continue the assigned duties and responsibilities for highway projects pursuant to the Program; and

Whereas, on XXXXXX ##, ####, FHWA published a Federal Register notice and provided an opportunity for comment on DOT&PF's renewal request and solicited the views of the public and other Federal agencies concerning DOT&PF's renewal request as required by 23 C.F.R. part 773.115(f); and

Whereas, the USDOT Secretary, acting by and through FHWA, has considered the Renewal Package, comments received as a result of the Federal Register notice, auditing reports, and the State's overall performance in the Program as required by 23 C.F.R. 773.115(g) and has determined that DOT&PF's Renewal Package meets all the requirements of 23 C.F.R. part 773 and 23 U.S.C. 327.

Now, therefore, FHWA and DOT&PF agree as follows:

PART 1. PURPOSE OF MEMORANDUM OF UNDERSTANDING

1.1 Purpose

- 1.1.1 This MOU officially approves DOT&PF's application to renew participation in the Program and is the written agreement required by 23 U.S.C. 327(a)(2)(A) and (c) under which the USDOT Secretary may assign, and DOT&PF may assume, the responsibilities of the USDOT Secretary for Federal environmental laws with respect to one or more highway projects within the State of Alaska.
- 1.1.2 FHWA's decision to execute this MOU is based upon the information, representations, and commitments contained in DOT&PF's XXXXXXXX ##, ####, application (Renewal Package). As such, this MOU incorporates the Renewal Package. However, this MOU shall control to the extent there is any conflict between this MOU and the Renewal Package.
- 1.1.3 This MOU shall be effective upon expiration of the Original MOU, November 12, 2022 (Effective Date).
- 1.1.4
- 1.1.5 Pursuant to 23 U.S.C. 327(c)(3)(B) and 327(c)(3)(C), and subpart 4.3 of this MOU, third parties may challenge DOT&PF's action in carrying out environmental review responsibilities assigned under this

MOU. Otherwise, this MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the State of Alaska, its departments, agencies, or entities, its officers, employees, or agents. This MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the United States, its departments, agencies, or entities, its officers, employees, or agents.

PART 2. [RESERVED]

PART 3. ASSIGNMENTS AND ASSUMPTIONS OF RESPONSIBILITY

3.1 Assignments and Assumptions of NEPA Responsibilities

- 3.1.1 Pursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and DOT&PF assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal-aid highway projects such as 23 U.S.C. 139, 40 C.F.R. parts 1500-1508, USDOT Order 5610.1C, and 23 C.F.R. part 771, as applicable.
- 3.1.2 On the cover page of each Environmental Assessment (EA), Finding of No Significant Impact (FONS!), Environmental Impact Statement (EIS), and Record of Decision (ROD) prepared under the authority granted by this MOU, and for memoranda corresponding to any Categorical Exclusion (CE) determination it makes, DOT&PF shall insert the following language in a way that is conspicuous to the reader:

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by DOT&PF pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated **XXXXXXX ##**, **####**, and executed by FHWA and DOT&PF.

- 3.1.3 The DOT&PF shall disclose to the public and agencies, as part of agency outreach and public involvement procedures, including any Notice of Intent or seeping meeting notice, the disclosure in subpart 3.1.2 above.

3.2 Assignments and Assumptions of Responsibilities to Comply with Federal Environmental laws Other Than NEPA

- 3.2.1 Pursuant to 23 U.S.C. 327(a)(2)(B), on the Effective Date, FHWA assigns and DOT&PF assumes, subject to the terms and conditions set forth in this MOU, all of the USDOT Secretary's responsibilities under NEPA for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of highway projects specified under subpart 3.3 of this MOU, required under the following Federal environmental laws:

Air Quality

- Clean Air Act, 42 U.S.C. 7401-7671q, with the exception of project level conformity determinations

Alaska Specific

- Alaska National Interest Lands Conservation Act (ANILCA). Public Law 96-487. Except any responsibilities under 16 U.S.C. 410hh(4)(d)

Executive Orders (E.O.) Relating to Highway

- E.O. 11593, Protection and Enhancement of the Cultural Environment

- E.O. 11988, Floodplain Management (except approving design standards determinations that a significant encroachment is the only practicable alternative under 23 C.F.R. parts 650.113 and 650.115)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13007, Indian Sacred Sites
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13175, Consultation and Coordination with Indian Tribal Governments
- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

FHWA-Specific

- Efficient Project Reviews for Environmental Decision Making, 23 U.S.C. 139
- Environmental Impact and Related Procedures, 23 C.F.R. part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675

Historic and Cultural Resources

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)-(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C.1170
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108.

Land

- Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319

Noise

- Compliance with the noise regulations in 23 C.F.R. part 772
- Noise Control Act of 1972, 42 U.S.C. 4901-4918

Parklands and Other Special Land Uses

- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302- 200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 C.F.R. part 774

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201- 4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387
 - Section 319, 33 U.S.C. 1329
 - Section 401 , 33 U.S.C. 1341
 - Section 402, 33 U.S.C. 1342
 - Section 404, 33 U.S.C. 1344
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001-4130
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 C.F.R. part 777
- Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 401, 403, and 408
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f- 300j-26
- Wetlands Mitigation, 23 U.S.C. 119(g)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287

Wildlife

- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668-668c
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Migratory Bird Treaty Act, 16 U.S.C. 703-712

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536
- 3.2.4 Nothing in this Any FHWA environmental review responsibility not explicitly listed above and assumed by DOT&PF shall remain the responsibility of FHWA unless the responsibility is added by written agreement of the parties through the amendment process established in Part 14 13of this MOU and pursuant to 23 C.F.R. 773.113(b). This provision shall not be interpreted to abrogate DOT&PF's responsibilities to comply with the requirements of any Federal environmental laws that apply directly to DOT&PF independent of FHWA's involvement (through Federal assistance or approval).
- 3.2.3 The USDOT Secretary's responsibilities for government-to-government consultation with Indian tribes, as defined in 36 C.F.R. 800.16(m), are not assigned to or assumed by DOT&PF under this MOU. The FHWA remains responsible for government-to-government consultation, including initiation of government-to-government consultation consistent with Executive Order 13175- Consultation and Coordination with Indian Tribal Governments, unless otherwise agreed as described below. A notice from DOT&PF to an Indian tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" within the meaning of this MOU. If a project-related concern or issue is raised in a government-to-government consultation process with an Indian tribe, as defined in 36 C.F.R. 800.16(m), and is related to NEPA or another Federal law or which DOT&PF has assumed responsibilities under this MOU, and either the Indian tribe or FHWA determines that the issue or concern will not be satisfactorily resolved by DOT&PF, then FHWA may withdraw the assignment of all or part of the responsibilities for processing the project. In this case, the provisions of subpart 9.1 of this MOU concerning FHWA initiated withdrawal of an assigned project or part of an assigned project will apply. This MOU is not intended to abrogate, or prevent future entry into an agreement among DOT&PF, FHWA, and a tribe under which the tribe agrees to allow DOT&PF to consult for highway projects in Alaska. However, such agreements are administrative in nature and do not relieve FHWA of its legal responsibility for government-to-government consultation.
- 3.2.4 Nothing in this MOU shall be construed to permit DOT&PF's assumption of the USDOT Secretary's responsibilities for conformity determinations required by Section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.
- 3.2.5 On the cover page of each biological evaluation or assessment, historic properties or cultural resources report, Section 4(f) evaluation, or other analyses prepared under the authority granted by this MOU, DOT&PF shall insert the following language in a way that is conspicuous to the reader or include in the NEPA approval document (CE, EA, EIS):
- The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by DOT&PF pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated XXXXXX ##, #### and executed by FHWA and DOT&PF.
- 3.2.6 The DOT&PF shall disclose to the public and agencies, as part of agency outreach and public involvement procedures, the disclosure in subpart 3.2.5 of this MOU.
- 3.2.7 The DOT&PF agrees to assume FHWA's environmental review role and responsibilities as identified in existing interagency agreements among DOT&PF, USFWS, NMFS, and FHWA, and/or negotiate new agreements with USFWS and NMFS, if needed. The DOT&PF agrees to assume FHWA's Endangered Species Act Section 7 responsibilities of consultations (formal and informal) ongoing as of the date of the Original MOU execution.
- 3.2.8 The DOT&PF will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under 49 U.S.C. 303/ 23 U.S.C. 138 [Section 4(f)] without first consulting with FHWA and obtaining FHWA's approval of such determination.

3.3 Highway Projects

3.3.1 Except as provided in subpart 3.3.2 of this MOU or otherwise specified in this subpart, the assignments and assumptions of the USDOT Secretary's responsibilities under subparts 3.1 and 3.2 of this MOU shall apply to the environmental review, consultation, or any other action pertaining to the environmental review or approval of the following classes of highway projects located within the State of Alaska. The definition of "highway project" is found at 23 C.F.R. part 773.103, and for purposes of this MOU, "highway project" includes eligible preventative maintenance activities. The DOT&PF shall conduct any reevaluation required by 23 C.F.R. part 771.129 for projects for which construction is not completed prior to the date of the Original MOU, in accordance with the provisions of this MOU and the Original MOU. Prior to approving any CE determination, FONSI, final EIS, or final EIS/ROD, DOT&PF shall ensure and document that for any proposed project the design concept, scope, and funding are consistent with the current Transportation Improvement Plan (TIP), Regional Transportation Plan (RTP), or Metropolitan Transportation Plan (MTP), as applicable.

- A. All Class I, or EIS projects that are funded by FHWA or require FHWA approvals.
- B. All Class II, or CE projects, that are funded by FHWA or require FHWA approvals.
- C. All Class III, or EA projects, that are funded by FHWA or require FHWA approvals.
- D. The DOT&PF will not assume the NEPA responsibilities of other Federal agencies. However, DOT&PF may use or adopt another Federal agency's NEPA analysis or documents consistent with 40 C.F.R. parts 1500-1508, current law, and USDOT and FHWA regulations, policies, and guidance.

3.3.2 The following are specifically excluded from the list in subpart 3.3.1 of highway projects:

- A. Any Federal Lands Highway projects authorized under 23 U.S.C. 202, 203, 204, and Section 1123 of the Fixing America's Surface Transportation Act (P.L. 114-94), unless such projects will be designed and constructed by DOT&PF.
- B. Any project that crosses or is adjacent to international boundaries. For purposes of this MOU, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or the modification of an existing, Presidential Permit by the U.S. Department of State.
- C. Programs and projects advanced by direct recipients of Federal-aid Highway Program funds other than DOT&PF, including but not limited to:
 - 1. Recreational Trails program, 23 U.S.C. 206;
 - 2. TIGER Discretionary grants;
 - 3. Direct recipient tribal projects; and
 - 4. Shakwak program.
- D. Privately-funded or other agency funded projects requiring NEPA review as part of Interstate access approvals, unless such projects will be designed and constructed by DOT&PF.
- E. NEPA review for private requests for changes in controlled access, unless such projects will be designed and constructed by DOT&PF.
- F. Projects designed and constructed by FHWA pursuant to 23 U.S.C. 308.

3.4 Limitations

- 3.4.1 As provided at 23 U.S.C. 327(e), DOT&PF shall be solely responsible and solely liable for carrying out, in lieu of and without further approval by FHWA, all of the responsibilities it has assumed under this MOU.
- 3.4.2 As provided at 23 U.S.C. 327(a)(2)(D), any highway project or responsibility of the USDOT Secretary that is not explicitly assumed by DOT&PF under subpart 3.3.1 of this MOU remains the responsibility of the USDOT Secretary.

PART 4. CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

4.1 Certifications

- 4.1 .1 The DOT&PF hereby makes the following certifications:
- A. The DOT&PF has the legal authority to accept all the assumptions of responsibility identified in this MOU;
 - B. The DOT&PF has the legal authority to take all actions necessary to carry out all of the responsibilities it has assumed under this MOU;
 - C. The DOT&PF has the legal authority to execute this MOU;
 - D. The State of Alaska has laws in effect that are comparable to the Freedom of Information Act (FOIA) at 5 U.S.C. 552, and those laws are found in the Alaska Public Records Act at Alaska Statutes Title 40, Chapter 25; and
 - E. The Alaska Public Records Act provides that any decision regarding the public availability of a document under that Act is reviewable by an Alaska court of competent jurisdiction.

4.2 State Commitment of Resources

- 4.2.1 As required by 23 U.S.C. 327(c)(3)(D), DOT&PF will maintain the financial resources necessary to carry out the responsibilities it is assuming. The DOT&PF's substantial compliance with the Original MOU demonstrates that the DOT&PF's financial resources are adequate for the purpose of fulfilling the terms of this MOU. Should FHWA determine, after consultation with DOT&PF, that DOT&PF's financial resources are inadequate to carry out the USDOT Secretary's responsibilities, DOT&PF will take appropriate action to obtain the additional financial resources needed to carry out these responsibilities. If DOT&PF is unable to obtain the necessary additional financial resources, DOT&PF shall inform FHWA, and this MOU will be amended to assign only the responsibilities that are commensurate with DOT&PF's financial resources.
- 4.2.2 Similarly, DOT&PF has and will maintain adequate organizational and staff capability, including competent and qualified consultants where necessary or desirable, to effectively carry out the responsibilities it has assumed under this MOU. This includes, without limitation:
- A. Using appropriate environmental, technical, legal, and managerial expertise;
 - B. Devoting adequate staff resources; and
 - C. Demonstrating, in a consistent manner, the capacity to perform DOT&PF's assumed responsibilities under this MOU and applicable Federal laws.

Should FHWA determine, after consultation with DOT&PF, that DOT&PF's organizational and staff capability is inadequate to carry out the USDOT Secretary's responsibilities, DOT&PF will take appropriate action to obtain adequate organizational and staff capability to carry out these responsibilities. If DOT&PF is unable to obtain adequate organizational and staff capability, DOT&PF shall inform FHWA,

and the MOU will be amended to assign only the responsibilities that are commensurate with DOT&PF's available organizational and staff capability. Should DOT&PF choose to meet these requirements, in whole or in part, with consultant services, including outside counsel, DOT&PF shall maintain on its staff an adequate number of trained and qualified personnel, including counsel provided by the Alaska Department of Law, to oversee the consulting work.

- 4.2.3 When carrying out the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, DOT&PF staff (including consultants) shall comply with 36 C.F.R. part 800.2(a)(1). All actions that involve identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation (including 36 C.F.R. part 800.11) of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of the Interior's Professional Qualifications Standards (36 C.F.R. part 61, Appendix A). The DOT&PF shall ensure that all documentation required under 36 C.F.R. part 800.11 is reviewed and approved by a staff member who meets the Professional Qualifications Standards.

4.3 Federal Court Jurisdiction

- 4.3.1 As required under 23 U.S.C. 327(c)(3)(B), and authorized by Alaska Statute 44.23.020(g), DOT&PF hereby expressly consents, on behalf of the State of Alaska, to accept the jurisdiction of the Federal courts in cases that involve the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary assumed by DOT&PF under Part 3 of this MOU. The consent to Federal court jurisdiction shall remain valid after termination of this MOU, or FHWA's withdrawal of assignment of the USDOT Secretary's responsibilities, for any decision or approval made by DOT&PF pursuant to an assumption of responsibility under this MOU. The DOT&PF understands and agrees that, in accordance with 23 U.S.C. 327, the United States district court shall have exclusive jurisdiction over any civil action against the State of Alaska alleging a failure to carry out any responsibility assumed under this MOU, which constitutes a limited waiver of the State of Alaska's immunity under the Eleventh Amendment to the U.S. Constitution.

PART 5. APPLICABILITY OF FEDERAL LAW

5.1 Procedural and Substantive Requirements

- 5.1.1 As provided at 23 U.S.C. 327(a)(2)(C), in assuming the USDOT Secretary's responsibilities under this MOU, DOT&PF shall be subject to the same procedural and substantive requirements that apply to the USDOT Secretary in carrying out these responsibilities. Such procedural and substantive requirements include, but are not limited to, Federal statutes and regulations; Executive Orders issued by the President of the United States; USDOT Orders; Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500-1508); FHWA Orders, guidance, and policy issued by CEQ, Office of Management and Budget (OMB), USDOT, or FHWA (e.g. Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects); and any applicable Federal court decisions, and, subject to subpart 5.1.4 of this MOU, interagency agreements, and other similar documents that relate to the environmental review process, e.g., 2015 Red Book - Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects. Official USDOT and FHWA guidance and policies relating to environmental review are posted on FHWA's website, contained in FHWA Environmental Guidebook or published in the *Federal Register*, or sent to DOT&PF electronically or in hard copy.
- A. The DOT&PF has reviewed the 2014 MOA between the US Coast Guard (USCG) and FHWA and understands that by accepting FHWA's NEPA responsibilities, it also agrees to perform FHWA's obligations set forth in the MOU between the USDOT and the USCG and the MOA between FHWA and the USCG.
- B. The USDOT Secretary's authorities under 23 U.S.C. 144(c) are not assigned under this MOU.

- 5.1.2 The FHWA will use its best efforts to ensure that any new or revised Federal policy or guidance, which are final and applicable to FHWA's responsibilities under NEPA and other laws that are assumed by DOT&PF under this MOU, are communicated to DOT&PF within 10 business days of issuance. Delivery may be accomplished by e-mail, web posting (with e-mail or mail to DOT&PF notifying of web posting), mail, or publication in the *Federal Register* (with e-mail or mail to DOT&PF notifying of publication). If communicated to DOT&PF by e-mail or mail, such material will be sent to DOT&PF's Environmental Program Manager and the following address: NEPA@alaska.gov. When FHWA is considering changes to the Program or changes that may or will impact DOT&PF's assumed responsibilities or resources, FHWA shall seek input from DOT&PF. In the event a new or revised FHWA policy or guidance is not made available to DOT&PF as described in this subpart, and if DOT&PF had no knowledge of such policy or guidance, then a failure by DOT&PF to comply with such Federal policy or guidance will not be a basis for termination of this MOU.
- 5.1.3 The DOT&PF will coordinate with Federal resource agencies concerning applicable laws, formal guidance, and policies that such other Federal agencies are responsible for administering with respect to DOT&PF's highway projects and the assumption of responsibilities under this MOU.
- 5.1.4 The DOT&PF may enter into an interagency agreement with a Federal, State, tribal, or local agency regarding appropriate processes and procedures to carry out the project-specific responsibilities assumed under this MOU. Although FHWA is not required to be a signatory, such an interagency agreement must conform with all provisions of this MOU, especially subpart 5.2.1.
- 5.1.5 Upon termination of this MOU, DOT&PF and FHWA shall contact the Federal resource agency to determine whether any interagency agreement should be amended or reinstated as appropriate.

5.2 Rulemaking

- 5.2.1 As provided under 23 U.S.C. 327(f), nothing in this MOU allows DOT&PF to assume any rulemaking authority of the USDOT Secretary. Additionally, DOT&PF may not establish policy and guidance on behalf of the USDOT Secretary or FHWA for highway projects covered in this MOU. The DOT&PF's authority to establish State regulations, policy, and guidance concerning the State environmental review of State highway projects shall not supersede applicable Federal environmental review regulations, formal policy, or guidance established by or applicable to the USDOT Secretary or FHWA.
- 5.2.2 Nothing in this MOU prevents DOT&PF from commenting on any *Federal Register* notice for any matter, including Notices of Proposed Rulemaking and other public notices.

5.3 Effect of Assumption

- 5.3.1 For purposes of carrying out the responsibilities assumed under this MOU, and subject to the limitations contained in 23 U.S.C. 327 and this MOU, DOT&PF shall be deemed to be acting as FHWA with respect to the environmental review, consultation, and other related actions required under those responsibilities.

5.4 Other Federal Agencies

- 5.4.1 As provided under 23 U.S.C. 327(a)(2)(E), nothing in this MOU preempts or interferes with any power, jurisdiction, responsibility, or authority of any Federal agency other than USDOT (including FHWA), under applicable statutes and regulations with respect to a project.

PART 6. LITIGATION

6.1 Responsibility and Liability

6.1.1 As provided in 23 U.S.C. 327(e), DOT&PF will be solely liable and solely responsible for carrying out the responsibilities assumed under this MOU, in lieu of and without further approval of the USDOT Secretary. The FHWA and USDOT will have no responsibility or liability for the performance of the responsibilities assumed by DOT&PF, including any decision or approval made by DOT&PF while participating in the Program.

6.2 Litigation

6.2.1 Nothing in this MOU affects the United States Department of Justice's (USDOJ) authority to litigate claims, including the authority to approve a settlement on behalf of the United States if either FHWA or another agency of the United States is named in such litigation or if the United States intervenes pursuant to 23 U.S.C. 327(d){3}. In the event FHWA or any other Federal agency is named in litigation related to matters under this MOU or the United States intervenes in the litigation, DOT&PF will coordinate with FHWA and any USDOJ or Federal agency attorneys in the defense of that action.

6.2.2 The DOT&PF shall defend all claims brought in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, DOT&PF will provide qualified and competent legal counsel, including outside counsel if necessary. The DOT&PF will provide the defense at its own expense, subject to 23 U.S.C. 327(a)(2)(G) concerning Federal-aid participation in attorney's fees for DOT&PF's counsel.

6.2.3 The DOT&PF will notify the FHWA's Alaska Division Office and USDOJ's Assistant Attorney General for the Environment and Natural Resources Division, within seven (7) calendar days of DOT&PF's receipt of service of process of any complaint, concerning its discharge of any responsibility assumed under this MOU. The DOT&PF's notification to the FHWA and USDOJ shall be made prior to its response to the complaint. In addition, DOT&PF shall notify the FHWA's Alaska Division Office within seven (7) calendar days of receipt of any notice of intent to sue concerning its discharge of any responsibility assumed under this MOU.

6.2.4 The DOT&PF will provide the FHWA's Alaska Division Office and USDOJ copies of any motions, pleadings, briefs, and other such documents filed in any case concerning its discharge of any responsibility assumed under this MOU. The DOT&PF will provide such copies to the FHWA and USDOJ within seven (7) calendar days of receipt of service of any document or, in the case of any documents filed by or on behalf of DOT&PF, within seven (7) calendar days of the date of filing.

6.2.5 The DOT&PF will notify the FHWA's Alaska Division Office and USDOJ prior to settling any lawsuit, in whole or in part, and shall provide the FHWA and USDOJ with a reasonable amount of time of at least ten (10) calendar days, to be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. The DOT&PF will not execute any settlement agreement until: (1) FHWA and USDOJ have provided comments on the proposed settlement; (2) indicated that they will not provide comments on the proposed settlement; or (3) the review period has expired, whichever occurs first.

6.2.6 Within seven (7) calendar days of receipt by DOT&PF, DOT&PF will provide notice to FHWA's Division Office and USDOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities DOT&PF has assumed under this MOU. The DOT&PF shall notify FHWA's Alaska Division Office and USDOJ within five (5) days of filing a notice of appeal of a court decision. The DOT&PF shall confer with FHWA and USDOJ regarding the appeal at least forty-five (45) days before filing its initial brief on the merits of the appeal.

6.2.7 The DOT&PF's notifications to FHWA and USDOJ in subparts 6.2.3, 6.2.4, 6.2.5, and 6.2.6 shall be made by electronic mail to FHWA_assignment_lit@dot.gov, and NRS DOT.enrd@usdoj.gov, unless otherwise specified by FHWA and USDOJ. For copies of motions, pleadings, briefs, and other documents filed in a case, as identified in subpart 6.2.4, DOT&PF may opt to either send the materials to the email addresses identified above, send hardcopies to the mail address below, or add to the distribution list in the court's electronic filing system (e.g., PACER) the following two email addresses: FHWA_assignment_lit@dot.gov

and efile_nrs.enrd@usdoj.gov. The FHWA and USDOJ's comments under subpart 6.2.5 and 6.2.6 shall be made by electronic mail to NEPA@alaska.gov unless otherwise specified by DOT&PF. In the event that regular mail is determined necessary, mail should be sent by overnight mail service to:

For USDOJ: Assistant Attorney General for the Environment and Natural Resources Division at 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC, 20530.

For FHWA: Division Administrator, Federal Highway Administration - Alaska Division, P.O. Box 21648, 709 West 9th Street, Room 851, Juneau, AK 99802-1648.

For DOT&PF: Statewide Environmental Program Manager, Alaska Department of Transportation and Public Facilities, 3132 Channel Drive, PO Box 112500, Juneau, AK, 99811-2500.

6.3 Conflict Resolution

- 6.3.1 In discharging any of the USDOT Secretary's responsibilities under this MOU, DOT&PF agrees to comply with any applicable requirements of USDOT and FHWA statute, regulation guidance, or policy regarding conflict resolution. This includes compliance with the USDOT Secretary's responsibilities for issue resolution under 23 U.S.C. 139(h) with the exception of the USDOT Secretary's responsibilities under 23 U.S.C. 139(h)(7) regarding financial penalties.
- 6.3.2 The DOT&PF agrees to follow 40 CFR part 1504 in the event of pre-decision referrals to CEQ for Federal actions determined to be environmentally unsatisfactory. The DOT&PF also agrees to coordinate and work with CEQ on matters brought to CEQ with regards to the environmental review responsibilities for Federal highway projects DOT&PF has assumed under this MOU.

PART 7. INVOLVEMENT WITH OTHER AGENCIES

7.1 Coordination

- 7.1.1 The DOT&PF agrees to seek early and appropriate coordination with all applicable Federal, State, and local agencies in carrying out any of the responsibilities for highway projects assumed under this MOU.

7.2 Processes and Procedures

- 7.2.1 The DOT&PF will ensure that it has appropriate processes and procedures in place that provide for proactive and timely consultation, coordination, and communication with applicable Federal agencies in order to carry out the responsibilities assumed under this MOU, including the submission of all EISs together with comments and responses to the Environmental Protection Agency (EPA) as required by 40 CFR 1506.10 and for EPA's review as required by section 309 of the Clean Air Act, 42 U.S.C. 7609. These processes and procedures shall be formally documented. Documentation may be a formally executed interagency agreement or other format as appropriate.

PART 8. INVOLVEMENT WITH FHWA

8.1 Generally

- 8.1.1 In discharging any of the USDOT Secretary's and FHWA's responsibilities under this MOU, DOT&PF and FHWA agree to work cooperatively to resolve substantive issues regarding the implementation or interpretation of this MOU.
- 8.1.2 Except as specifically provided otherwise in this MOU, FHWA will not provide project-level assistance to DOT&PF in carrying out the responsibilities it has assumed under this MOU. Project-level assistance includes advice, consultation, or review of draft documents. However, project-level assistance does not include: process or Program-level assistance as described in subpart 8.1.5 of this MOU, including discussions concerning issues addressed in prior projects, interpretations of applicable law contained in

Title 23 U.S.C. or Title 49 U.S.C., interpretations of any FHWA or USDOT regulation, or interpretations of FHWA or USDOT policies or guidance.

- 8.1.3 The FHWA will not intervene, broker, act as intermediary, or otherwise be involved in any issue involving DOT&PF's consultation or coordination with other Federal resource agencies with respect to DOT&PF's discharge of any of the responsibilities assumed under this MOU for any particular highway project. However, FHWA may attend meetings between DOT&PF and other Federal agencies. Further, FHWA may submit comments to DOT&PF and the other Federal agency in the following extraordinary circumstances:
- A. FHWA reasonably believes that DOT&PF is not in compliance with this MOU;
 - B. FHWA determines that an issue between DOT&PF and the other Federal agency concerns an emerging national policy issue under consideration by the USDOT; or
 - C. Upon request by DOT&PF Environmental Program Manager, DOT&PF Commissioner, DOT&PF Deputy Commissioner, or DOT&PF Chief Engineer, or the Federal agency, with agreement by the FHWA.

The FHWA will notify both DOT&PF and the relevant Federal agency prior to attending any meetings between DOT&PF and such other Federal agency.

- 8.1.4 Other Federal agencies may raise concerns regarding compliance with this MOU by DOT&PF and may communicate these concerns to FHWA. The FHWA will review the concerns and any information provided to FHWA by such other Federal agency. If FHWA determines the concern has merit, FHWA shall inform the DOT&PF Environmental Program Manager. The DOT&PF will review the concerns and any information provided to FHWA, and work with the other Federal agency to resolve the concern. If the concern remains unresolved, FHWA will notify DOT&PF and will work with both DOT&PF and the other Federal agency to resolve the issue and, if necessary, take appropriate action to ensure compliance with this MOU.
- 8.1.5 At DOT&PF's request, FHWA may assist DOT&PF in evaluating its environmental program and developing or modifying any of its processes or procedures to carry out the responsibilities it has assumed under this MOU, including, but not limited to, emerging national policy issues and those processes and procedures concerning DOT&PF's consultation, coordination, and communication with other Federal agencies.
- 8.1.6 Communications between DOT&PF and FHWA regarding the administration of the responsibilities assigned and assumed under this MOU, and other process and Program-level communications described in subparts 8.1.2 and 8.1.5 of this MOU, are normally considered intra-agency communications for the purpose of deliberative process privileges under the Freedom of Information Act and the Alaska Public Records Act. The DOT&PF and FHWA shall promptly notify each other of requests for public records regarding the administration of the Program in Alaska.
- 8.1.8 The DOT&PF's obligations and responsibilities under 23 C.F.R. 1.5 are not altered in any way by executing this MOU.

8.2 MOU Monitoring and Oversight

- 8.2.1 Pursuant to 23 U.S.C. 327(h), the FHWA shall monitor and provide oversight over DOT&PF's performance in order to ensure DOT&PF's compliance with the MOU and all applicable Federal laws and policies, and to evaluate whether DOT&PF is meeting performance measures established pursuant to Part 10 of the MOU. The FHWA's monitoring program will consist of monitoring reviews, which will be coordinated with DOT&PF and take into account the FHWA Alaska Division's annual risk assessments.

FHWA shall provide its draft and final annual risk assessments to DOT&PF for review and comment on matters pertaining to DOT&PF's performance under this MOU.

- 8.2.2 In order to minimize the impact of the monitoring reviews on DOT&PF's day-to-day project delivery workload, the FHWA and DOT&PF will coordinate when scheduling joint monitoring reviews. The FHWA will complete two monitoring reviews during the term of the MOU. The first monitoring review shall be conducted within two years of the last audit and the second monitoring review shall be within two years of the first monitoring review. The FHWA may conduct additional monitoring activities during the off years, if deemed necessary by either DOT&PF or FHWA. DOT&PF and the FHWA Alaska Division Office will each designate a point of contact, who will be responsible for coordinating monitoring review schedules, requests for information and organizing meetings.
- 8.2.3 In order for FHWA to provide oversight and evaluate whether DOT&PF is meeting performance measures established pursuant to Part 10 of this MOU, DOT&PF shall make available for inspection by the FHWA any project files, general administrative files, and letters or comments received from governmental agencies and the public which pertain to DOT&PF's discharge of the responsibilities it has assumed under this MOU. DOT&PF will work with the FHWA to provide documents electronically to the extent it does not create an undue burden. DOT&PF environmental staff will be available for interviews as part of the monitoring reviews.
- 8.2.4 Pursuant to 23 U.S.C. 327(c)(4), DOT&PF is responsible for providing to the FHWA any information the FHWA reasonably considers necessary to ensure that DOT&PF is adequately carrying out the responsibilities assigned. At the request of the FHWA, DOT&PF will (within five business days or a mutually agreeable time frame) provide the FHWA with any information the FHWA considers necessary to ensure that DOT&PF is adequately carrying out the responsibilities assigned to DOT&PF.
- 8.2.5 DOT&PF agrees to perform regular quality assurance and quality control (*QA/QC*) activities to ensure responsibilities assumed under Part 3 of this MOU are being conducted in accordance with applicable laws and this MOU, to identify areas needing improvements in the process, and to timely take any corrective actions necessary to address the areas needing improvement. At a minimum, DOT&PF's *QA/QC* activities will include the review and monitoring of its processes relating to project decisions, environmental analysis, project file documentation, checking for errors and omissions, and legal sufficiency reviews. DOT&PF will provide documentation of this data and any identified trends to FHWA on an annual basis.
- 8.2.6 Upon the Effective Date of this MOU, DOT&PF will maintain a list of NEPA approvals and decisions (CE, EA, FONSI, DEIS, FEIS, FEIS/ROD, ROD) and Section 4(f) approvals it makes under this MOU. The DOT&PF will provide an updated list to FHWA every six (6) months.
- 8.2.7 Monitoring review reports, whether prepared by the FHWA or DOT&PF, shall include a description of the scope of the monitoring reviews, the compliance areas reviewed, a description of the monitoring process, and a list of areas identified as needing improvement. The reports shall identify findings that require corrective actions and shall discuss corrective actions that have been or will be implemented.
- 8.2.8 Prior to making any monitoring review report available to the public, the FHWA will transmit to DOT&PF a draft of the report and allow DOT&PF at least 14 calendar days to respond in writing. The FHWA will grant any reasonable request by DOT&PF to extend this response period up to a total of 30 calendar days. The FHWA will review the comments and revise the draft monitoring report, as appropriate.
- 8.2.9 DOT&PF agrees to post all FHWA monitoring reports on the DOT&PF Statewide Environmental Office website in order to make them available to the public.

8.3 Records Retention

8.3.1 DOT&PF will retain project files, and files pertaining to the discharge of its responsibilities under this MOU, in accordance with the DOT&PF Statewide Design and Engineering Services Division, State of Alaska Records Retention and Disposition Schedule, which meets or exceeds requirements established in FHWA Records Disposition Manual (Field Offices) Chapter 4, FHWA Order No. 1324.1 B, Issued July 29, 2013 or in accordance with any subsequent order that supersedes or replaces Order No. 1324.1 B. In accordance with DOT&PF Records Retention and Disposition Schedule 25-539.2, records will be retained for six (6) fiscal years after the completion of the project, reporting requirement or other applicable activity. Capital project files of historical significance (NEPA decision documents including CE, EA and EIS) will be retained permanently.

To the extent that FHWA's Records Disposition Manual is amended to provide for a longer retention period, DOT&PF will meet such requirement.

DOT&PF will permanently store records for Significant Transportation Projects as they are defined in FHWA Order No. 1324.1 B.

8.3.2 For the following record types DOT&PF will ensure that the following retention periods are maintained in the following manner:

- A. **FHWA-DOT&PF Environment Correspondence Files:** Correspondence between FHWA and DOT&PF relative to the interpretation, administration, and execution of this MOU and the environmental aspects of the Federal-aid Highway Program, as established in 8.1.2 and 8.1.5, shall be maintained by DOT&PF for a period of six (6) years after the resolution of the particular issue or after the guidance has been superseded. After six (6) years DOT&PF may follow the State records disposition process for these records.
- B. **National Environmental Policy Act (NEPA) and Related Documents:** For a period of 8 years after approval of the final construction voucher DOT&PF shall maintain Final NEPA Documents (Draft EISs, Final EISs, Supplemental EISs, RODs, EAs, FONSI, CE documentation and determinations), Supporting Materials (documentation supporting the Sec. 139 environmental review process [i.e., coordination plans that include project schedules, evidence for opportunities for public/agency input in purpose and need, alternatives] . scoping, public and agency comments; meeting minutes; NOI, Public Involvement Plans, public meeting summaries, public hearing certifications and transcripts, mitigation reports/tracking, technical reports; correspondence; studies and reports; references; errata sheets; and reevaluation documents); NEPA Reference Documents (written statements and supporting documents needed for reference); and official documents and correspondence related to reviews under other environmental requirements (e.g., ESA, CWA, Section 4(f), Section 106). After 8 years DOT&PF may follow the State records disposition process for these records except that DOT&PF will permanently store the above referenced records for Significant Transportation Projects as they are defined in Order No. 1224.1 B.

Drafts and working copies of paper or electronic documents should be kept until the final version of a document is completed. For long or complex documents, several earlier drafts and the current draft may be retained to ensure document integrity until the final draft is approved. Then, previous revisions may be erased or destroyed and only the final text and the requisite back-up copies will be kept as identified above.

- C. **Environmental Impact Statements • Other Agencies:** Files containing reviews and comments furnished by DOT&PF to other Federal agencies following reviews of an EIS for which another Federal agency is the lead agency shall be maintained by DOT&PF for a period of 5 years. After 5 years, DOT&PF may destroy these files when no longer needed.

D. **Noise Barriers:** DOT&PF agrees to maintain the necessary information to comply with 23 CFR 772.13(f) regarding noise abatement measures reporting. DOT&PF shall maintain this information for a period of 4 years after the end of the Federal fiscal year in which the project file is closed.

8.3.3 In the case of a conflict between FHWA Records Disposition Manual, FHWA Order 1324.1 B, DOT&PF Records Management Policy, and Retention and Disposal Schedule the more stringent retention requirements shall control.

8.3.4 Nothing contained in this MOU is intended to relieve DOT&PF of its recordkeeping responsibilities under 2 C.F.R. 200.333-200.337 (Record Retention and Access) or other applicable laws.

8.4 Federal Register

8.4.1 For any documents that are required to be published in the *Federal Register*, such as the Notice of Intent under 23 C.F.R. 771.123(a) and Notice of Final Agency Action under 23 U.S.C. 139(f)(2), DOT&PF shall transmit such document to FHWA's Alaska Division Office, with a request for publication in the *Federal Register* on behalf of DOT&PF. The FHWA's Alaska Division Office will submit such document to the *Federal Register* within five (5) calendar days of receipt of DOT&PF's request for publication in the *Federal Register*. If requested, DOT&PF shall reimburse FHWA for costs associated with publishing such documents in the *Federal Register* (excluding FHWA's overhead).

8.5 Participation in Resource Agency Reports

8.5.1 DOT&PF agrees to provide data and information requested by FHWA and resource agencies for the preparation of national reports to the extent that the information relates to determinations, findings, and proceedings associated with projects processed under this MOU. Such reports include but are not limited to:

- A. Information on the completion of and duration to complete all NEPA classes of action (EIS, EA, CE);
- B. Archeology Reports requested by the National Park Service (NPS);
- C. Endangered Species Act Expenditure Reports requested by the USFWS and NMFS;
- D. Project schedules and other project information for nationwide infrastructure transparency initiatives
- E. Project status and information for EAs and EISs for use on the searchable website maintained under section 41003(b) of the FAST Act [Fixing America's Surface Transportation Act, 42 U.S.C. 4370m-2(b) and 23 U.S.C. 139(0)] (Federal Permitting Dashboard) to be submitted in accordance with current and any future reporting standard issued by U.S. DOT pursuant to such provisions;
- F. NEPA Litigation Reports requested by CEQ; and
- G. Environmental Conflict Resolution reports requested by the Office of Management and Budget and CEQ.

8.6 Conformity Determinations

8.6.1 Pursuant to 23 U.S.C. 327(a)(2)(B)(iv)(II), for any project requiring a project-level conformity determination under the Clean Air Act and its implementing regulations, FHWA's Alaska Division Office will document the project level conformity determination within a reasonable timeframe. The FHWA's Alaska Division Office will restrict its review to only that data, analyses, applicable comments and

responses, and other relevant documentation that enable FHWA to make the project-level conformity determination.

8.7 Certification of NEPA Compliance

8.7.1 For projects funded by FHWA, DOT&PF shall ensure that a certification is included with each NEPA approval specifying that DOT&PF has fully carried out all responsibilities assumed under this MOU in accordance with this MOU and all applicable Federal laws, regulations, Executive Orders, and policies. DOT&PF shall ensure that this certification is made prior to the execution of any future Federal-aid approval or action. The DOT&PF shall include the certification in its request for authority to proceed to final design, right-of-way acquisition, or construction. The DOT&PF agrees to provide FHWA access to NEPA approvals and certifications.

8.8 Enforcement

8.8.1 Should FHWA determine that DOT&PF is not in compliance with this MOU, then FHWA shall take appropriate action to ensure DOT&PF's compliance, including appropriate remedies provided at 23 C.F.R. 1.36 for violations of or failure to comply with Federal law or regulations at 23 C.F.R. with respect to a project, withdrawing assignment of any responsibilities that have been assumed as provided in Part 9 of this MOU, or terminating DOT&PF's participation in the Program as provided in Part 13 of this MOU.

PART 9. WITHDRAWAL OF ASSIGNED RESPONSIBILITIES

9.1 FHWA-Initiated Withdrawal of Assigned Projects

9.1.1 The FHWA may, at any time, withdraw the assignment of all or part of the USDOT Secretary's responsibilities that have been assumed by DOT&PF under this MOU for any highway project or highway projects upon FHWA's determination that:

- A. With respect to such project or projects, DOT&PF is not in compliance with a material term of this MOU or applicable Federal laws or policies, and DOT&PF has not taken sufficient corrective action to the satisfaction of FHWA;
- B. The highway project or highway projects involve significant or unique national policy interests for which DOT&PF's assumption of the USDOT Secretary's responsibilities would be inappropriate; or
- C. DOT&PF cannot satisfactorily resolve an issue or concern raised in government-to-government consultation process, as provided in subpart 3.2.3.

9.1.2 Upon the FHWA's determination to withdraw assignment of the USDOT Secretary's responsibilities under subpart 9.1.1, FHWA will informally notify DOT&PF of FHWA's determination. After informally notifying DOT&PF of its determination, FHWA will provide DOT&PF written notice of its determination including the reasons for its determination. Upon receipt of this notice, DOT&PF may submit any comments that would resolve the compliance concern or objections to FHWA within 30 calendar days, unless FHWA agrees to an extended period of time. Upon receipt of DOT&PF's comments or objections, FHWA will make a final determination within 30 calendar days, unless extended by FHWA for cause, and notify DOT&PF of its decision. In making its determination, FHWA will consider DOT&PF's comments or objections, the effect the withdrawal of assignment will have on the Program, the amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.

9.1.3 The FHWA shall withdraw assignment of the responsibilities DOT&PF has assumed for any highway project when the preferred alternative that is identified in the CEs, EA, or FEIS is a highway project or part of a program that is specifically excluded in subpart 3.3.2. In such case, subpart 9.1.2 of this MOU shall not apply.

9.2 DOT&PF-Initiated Withdrawal of Assignment of Projects

- 9.2.1 The DOT&PF may, at any time, provide FHWA with notice of its intent to withdraw a highway project assumed under this MOU.
- 9.2.2 Upon DOT&PF's decision to request FHWA withdraw the assignment of the USDOT Secretary's responsibilities under subpart 9.2.1, DOT&PF shall informally notify FHWA of its desire for FHWA to withdraw assignment of its responsibilities. After informally notifying FHWA of its desire, DOT&PF will provide FHWA written notice of its desire, including the reasons for wanting FHWA to withdraw assignment of the responsibilities. Upon receipt of this notice, FHWA will have 30 calendar days, unless extended by FHWA for cause, to determine whether it will withdraw assignment of the responsibilities requested. In making its determination, FHWA will consider the reasons DOT&PF desires FHWA to withdraw assignment of the responsibilities, the effect the withdrawal of assignment will have on the Program, amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.

PART 10. PERFORMANCE MEASURES

10.1 General

- 10.1.1 FHWA and DOT&PF will continue to utilize a mutually established set of performance measures to evaluate DOT&PF's administration of its responsibilities under this MOU. The agreed-upon performance measures will be available on DOT&PF's website. With FHWA's review and consultation, DOT&PF may modify the performance measures, as needed. The agreed-upon performance measure categories are:

- Project Development Process Activities/Section 4(f)/Environmental Justice
- Ecological/Wetland
- Cultural Resources
- Legal Sufficiency Determinations
- Compliance with DOT&PF Environmental Procedures Manual
- Compliance with NEPA Assignment MOU

- 10.1.2 The DOT&PF's attainment of the performance measures indicated in this part of the MOU will be considered during FHWA monitoring, as required by 23 U.S.C. 327(h).
- 10.1.3 The DOT&PF shall collect and maintain all necessary and appropriate data related to the attainment of performance measures. In collecting this data, DOT&PF shall monitor its progress toward meeting the performance measures and include its progress in the summary described in subpart 8.2.5 of this MOU.

10.2 Performance Measures

- 10.2.1 The performance measures applicable to DOT&PF in carrying out the responsibilities it has assumed under this MOU are as follows:
- A. Compliance with NEPA, FHWA NEPA regulations, and other Federal environmental statutes and regulations:
- i. Maintain documented compliance with procedures and processes set forth in this MOU for the environmental responsibilities assumed under the Program.

- ii. Maintain documented compliance with requirements of all applicable Federal statutes and regulations for which responsibility is assumed (e.g., Section 106 of the NHPA, Section 7 of the ESA, etc.).
- B. QA/QC for NEPA decisions:
- i. Maintain and apply internal quality control and assurance measures and processes, including a record of:
 - a. Legal sufficiency determinations made by counsel; this shall include the legal sufficiency reviews of Notices of Intent and Notices of Final Agency Action as required by law, policy, or guidance;
 - b. Compliance with FHWA's and DOT&PF's environmental document content standards and procedures, including those related to QA/QC; and,
 - c. Completeness and adequacy of documentation of project records for projects done under the Program
- C. Relationships with agencies and the general public:
- i. Assess change in communication among DOT&PF, Federal and State resource agencies, and the public resulting from assumption of responsibilities under this MOU.
 - ii. Maintain effective responsiveness to substantive comments received from the public, agencies, and interest groups on NEPA documents and environmental concerns.
 - iii. Maintain effective NEPA conflict resolution processes whenever appropriate.
- D. Increased efficiency and timeliness in completion of the NEPA process:
- i. Monitor time of completion for NEPA approvals under this MOU and the Original MOU.
 - ii. Monitor time to completion for key interagency consultation formerly requiring FHWA participation (e.g., Section 7 biological opinions, Section 106 resolution of adverse effects) under this MOU and the Original MOU.

PART 11. TRAINING

- 11.1 The FHWA will provide DOT&PF with training, to the extent that FHWA and DOT&PF deem necessary, in all appropriate areas with respect to the environmental responsibilities that DOT&PF has assumed. Such training may be provided to DOT&PF by either FHWA, another Federal agency or other parties, as may be appropriate.
- 11.2 The DOT&PF will continue to implement training necessary to meet its environmental obligations under this Renewal Package. In developing the training plan, DOT&PF will consult with FHWA and other Federal agencies on an ongoing basis and will update its training plan annually. FHWA will remain available to aid in the training needs and development of training program elements. DOT&PF will be responsible for the final development and implementation of its training program.

PART 12. TERM, TERMINATION AND RENEWAL

12.1 Term

12.1.1 This MOU has a term of five (5) years from the Effective Date.

12.2 Termination by FHWA

12.2.1 As provided by 23 U.S.C. 327(j)(1) and 23 C.F.R. part 773.117(a), FHWA may terminate DOT&PF's participation in the Program, in whole or in part, at any time subject to the procedural requirements in 23 U.S.C. 327 and subpart 12.2.2 of this MOU. Termination may be based on DOT&PF's failure to adequately carry out its responsibilities under this MOU including, but not limited to:

- A. persistent neglect of, or noncompliance with Federal laws, regulations, and policies;
- B. failure to address deficiencies identified during the audit or monitoring process;
- C. failure to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities assumed;
- D. substantial non-compliance with this MOU; or
- E. persistent failure to adequately consult, coordinate, or account for the concerns of appropriate Federal, State, tribal, and local agencies with oversight, consulting, or coordination responsibilities under Federal environmental laws and regulations.

12.2.2 If FHWA determines that DOT&PF is not adequately carrying out the responsibilities assigned to DOT&PF, then:

- A. provide DOT&PF written notification of its non-compliance determination detailing a description of each responsibility in need of corrective action regarding an inadequacy identified ; and
- B. provide DOT&PF a period of not less than 120 days to take such corrective action as the FHWA determines is necessary to comply with this MOU.

12.2.3 If DOT&PF, after notification and the 120 day period, fails to take satisfactory corrective action, as determined by FHWA. FHWA shall provide notice to DOT&PF of its determination of termination. Any responsibilities identified to be terminated in the notice that have been assumed by DOT&PF under this MOU shall transfer to FHWA.

12.3 Termination by DOT&PF

12.3.1 The DOT&PF may terminate its participation in the Program, in whole or in part, at any time by providing FHWA notice of its intent at least 90 calendar days prior to the date that DOT&PF seeks to terminate and subject to such terms and conditions as FHWA may provide. In that event, FHWA and DOT&PF may develop a plan to transition the responsibilities that DOT&PF has assumed back to FHWA so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected Federal, State, and local agencies.

12.3.2 Any termination of assignment agreed to under a transition plan shall not be subject to the procedures or limitations provided for in Part 9 of this MOU and shall be valid as agreed to in the transition plan.

12.4 Validity of DOT&PF Actions

12.4.1 Any environmental approvals made by DOT&PF pursuant to the responsibilities DOT&PF has assumed under this MOU shall remain valid after termination of DOT&PF's participation in the Program or withdrawal of assignment by FHWA. The DOT&PF shall remain solely liable and solely responsible for any environmental approvals it makes pursuant to any of the responsibilities it has assumed while participating in the Program.

12.5 Renewal

12.5.1 This MOU is renewable in accordance with 23 U.S.C. 327 and implementing regulations, in effect at the time of the renewal. The DOT&PF and FHWA agree to initiate the renewal process at least 12 months prior to the expiration of this MOU.

PART 13. AMENDMENTS

13.1 Generally

13.1.1 All parts of this MOU may be amended at any time upon mutual agreement by both FHWA and DOT&PF, pursuant to 23 CFR 773.113(b).

13.2 Additional Projects, Classes of Projects and Environmental Review Responsibilities

13.2.1 The FHWA may assign, and DOT&PF may assume, responsibility for additional projects and additional environmental review responsibilities beyond those identified in Part 3 of this MOU, by executing an amendment to this MOU.

13.2.2 If DOT&PF decides to request amendment of this MOU to add or withdraw responsibility for projects or classes of projects, or environmental review responsibilities beyond those identified in Part 3 of this MOU, such request shall be treated as an amendment to DOT&PF's Renewal Package that was submitted to FHWA pursuant to 23 U.S.C. 327(b) and 23 C.F.R. part 773.115. In developing the amendment, DOT&PF shall identify the projects, classes of projects, and environmental review responsibilities it wishes to assume or withdraw and make any appropriate adjustments to the information contained in DOT&PF's Renewal Package, including verification of personnel and financial resources.

IN WITNESS **THEREOF**, the parties hereto have caused this MOU to be duly executed in duplicate as of the date of the last signature written below.

STATE OF ALASKA

Ryan Anderson
Commissioner
Department of Transportation and Public Facilities

Dated: _____

Attorney General
Department of Law

Dated: _____

FEDERAL HIGHWAY ADMINISTRATION

NAME
Administrator
Federal Highway Administration

Dated: _____