

**PROGRAMMATIC AGREEMENT  
FOR THE  
REVIEW AND APPROVAL OF  
CERTAIN NEPA CATEGORICALLY EXCLUDED TRANSPORTATION PROJECTS  
BETWEEN THE  
FEDERAL HIGHWAY ADMINISTRATION, COLORADO DIVISION  
AND THE  
COLORADO DEPARTMENT OF TRANSPORTATION**

**August 4, 2011**

**INTRODUCTION**

There are three classes of action that prescribe the level of documentation required in the National Environmental Policy Act (NEPA) process: Environmental Impact Statements (EISs), Environmental Assessments (EAs), and Categorical Exclusions (CEs). This Agreement applies to CEs - actions that do not individually or cumulatively have a significant environmental effect that are excluded from the requirement to prepare an EA or EIS (23 CFR 771.115(b)).

The Federal Highway Administration, Colorado Division (FHWA) follows the philosophy that the goal of the NEPA process is better decisions and not bigger documents. The primary purpose of this Agreement is to increase flexibility, streamline the environmental process and reduce paperwork. This Agreement provides for the expeditious processing of CE level actions by the Colorado Department of Transportation (CDOT), under the guidance and with the approval of FHWA. Programmatic CE actions meeting the criteria established under this Agreement are deemed approved by FHWA, do not require further NEPA approvals by FHWA, and do not require FHWA's signature on CDOT's Categorical Exclusion Determination Form (Form 128).

FHWA retains full federal authority and responsibility on all federal aid projects, reserves the right to modify document classification on a case-by-case basis, and to evaluate the implementation of this Agreement. This Agreement shall also not preclude FHWA's right to request individual review of any CE action.

FHWA relies on the expertise and experience of CDOT staff for implementation of this Agreement. FHWA will provide guidance, oversight, technical assistance, and approval as appropriate. CDOT may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.

This Agreement shall not preclude CDOT from requesting individual CE review and approval from FHWA when deemed necessary even though the action falls within the bounds of this Agreement. This Agreement shall not preclude processing projects outside the bounds of this Agreement with FHWA's participation and approval.

This Agreement supersedes all previous CE processing Agreements held between FHWA and CDOT.

## **DEFINITIONS**

For the purposes of this Agreement, the following classifications of NEPA decision documents are defined:

- 1) Programmatic Categorical Exclusion (PCE): An action that, based on past experience, does not involve significant environmental impacts and may be processed by CDOT under this Agreement. FHWA concurs in advance, on a programmatic basis, with CDOT's designation that those types of projects that satisfy certain conditions identified in this Agreement qualify as CEs. CDOT signs the Form 128 documenting the environmental clearance, and no further FHWA review or approval is necessary.
- 2) Non-Programmatic Categorical Exclusion (NCE): An action that does not individually or cumulatively have significant environmental impacts, but requires additional review by FHWA. CDOT prepares and signs the Form 128, which is then approved and signed by FHWA.
- 3) "C" list. Actions or projects listed in 23 CFR 771.117(c).
- 4) "D" list. Actions or projects listed in 23 CFR 771.117(d).
- 5) "P" list. Actions or projects listed in this agreement under "Eligible Scopes of Action" excluding those on the "C" list or "D" list.
- 6) Form 128. CDOT's Categorical Exclusion Determination Form.

## **REGULATORY BASIS**

In accordance with FHWA regulations (23 CFR 771.117(a)), CEs are actions which meet the definition contained in the Council on Environmental Quality regulations, 40 CFR 1508.4, and based on past experience with similar actions, do not involve significant environmental impacts<sup>1</sup>. They are actions which:

1. Do not induce significant impacts to planned growth or land use for the area,
2. Do not require the relocation of significant numbers of people,
3. Do not have a significant impact on any natural, cultural, recreational, historic, or other resource,
4. Do not involve significant air, noise or water quality impacts,
5. Do not have significant impacts on travel patterns, or
6. Do not otherwise, either individually or cumulatively, have any significant environmental impacts, and are, therefore, excluded from the requirement to prepare an EA or EIS.

## **ELIGIBLE SCOPES OF ACTION**

The types of projects listed in this section are considered to be PCEs and a Form 128 must be prepared. If more than one PCE category applies, the main category will be listed in the CE number field on Form 128 and the remaining categories will be listed in the comment box. If both NCE and PCE categories apply, the project will be processed as an NCE.

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<sup>1</sup> The significance of impacts is determined by context and intensity (40 CFR 1508.27)

Any action which normally would be classified as a PCE but could involve unusual circumstances will require CDOT and FHWA to review the project and conduct appropriate environmental studies to determine if the PCE classification is appropriate.

PCE categories include the following:

1. All “C”-list CEs listed in 23 CFR 771.117(c)
2. The following “D” list CEs from 23 CFR 771.117(d) (note: all other “D” list CEs are NCEs)

D6. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts (Non-Interstate). (23 CFR 771.117(d)(6))

D7. Approvals for changes in access control (Non-Interstate). (23 CFR 771.117(d)(7))

D9. Rehabilitation or reconstruction of existing rail bus transit buildings and ancillary buildings where only minor amounts of additional land are required, and there is not a substantial increase in the number of users. (23 CFR 771.117(d)(9))

D10. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic. (23 CFR 771.117(d)(10))

3. The following actions, known as “P” list CEs:

P1. Adding or lengthening turning lanes (including continuous turning lanes), intersection improvements, channelization of traffic, dualizing lanes at intersections and interchanges, or adding or lengthening bus queue-jumps.

P2. Flattening slopes; improving vertical or horizontal alignments.

P3. Installation of ramp metering control devices, freeway traffic surveillance and control systems, motorist aid systems, highway information systems, computerized traffic signalization systems or roadway lighting. Includes purchase and installation of equipment for Traffic Operations Centers.

P4. Restoring, replacing, or rehabilitation of culverts, inlets, drainage pipes and drainage systems, including safety treatments to improve these features.

P5. Preventive maintenance activities such as joint repair, pavement patching, crack sealing, skid hazard treatments, striping and shoulder repair.

P6. Restoration, rehabilitation or resurfacing of existing pavement; the removal and replacement of old pavement structure; or changes to the pavement such as installation of rumble strips.

P7. Upgrading, removal or addition of guardrail, median barrier or impact attenuators.

P8. Railroad crossing elimination by closure and railroad overpass removal within existing right-of-way.

P9. Clear zone safety improvements, such as fixed object removal or relocation.

P10. Screening unsightly areas.

P11. Restoration and rehabilitation of existing bridge structures, including painting, crack sealing, joint repair, scour repair, scour counter measures, bridge rail or bearing pad replacement, seismic retrofit, deck rehabilitation or replacement, or upgrade of bridge end approaches and guardrail transitions or other minor modifications.

P12. Widening of substandard bridge structures to provide shoulders.

P13. Acquisition of scenic or historic sites.

P14. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).

P15. Historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including railroad facilities and canals).

P16. Control and removal of outdoor advertising.

P17. Aesthetic treatments and other scenic beautification.

P18. Mitigation of water pollution due to highway runoff.

P19. Maintenance and/or replacement of existing noise barrier panels and/or posts.

P20. Perfection of title for right of way when the subsequent action is in support of an action that is not otherwise subject to FHWA review under NEPA (note: for Federal land transfers, use C5 - Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action [23 CFR 771.117(c)(5)])

P21. Restoration, rehabilitation or replacement of retaining walls or slope protection.

P22. Restoration, rehabilitation or modification of truck escape ramps.

P23. Installation, restoration, rehabilitation or replacement of rockfall mitigation measures.

P24. Geotechnical and other subsurface investigation.

P25. Installation of communication lines or other quasi-utilities structures along or across a transportation facility.

## **EVALUATION CRITERIA**

All of the project types listed above will, based on anticipated project activities and past experience, satisfy the definition of CEs found in 23 CFR 771.117 (a) and (b). In addition, the above listed project types will qualify as PCEs only if each of the following criteria are met:

- 1) The action does not have any significant environmental impacts as described in 23 CFR 771.117(a).
- 2) The action does not involve unusual circumstances as described in 23 CFR 771.117(b).
- 3) The action does not involve the following:
  - a) The addition of through lanes;
  - b) Adverse impacts (other than construction impacts) to local traffic patterns or property access;
  - c) Adverse impacts to community cohesion, planned community growth, or land use patterns;

- d) The acquisition of more than minor amounts of permanent right-of-way; as defined by not more than 5 acres per linear mile or more than 20% of the project land area for transportation related facilities (e.g. rest areas, intersections, maintenance yards) (note, this requirement does not apply to “perfection of title for ROW” projects under scopes of action C5 or P20);
- e) Any commercial or residential displacement;
- f) A determination of adverse effect by the State Historic Preservation Officer;
- g) A disproportionately high and adverse impact on minority or low-income populations;
- h) A noise impact as defined by meeting or exceeding the Noise Abatement Criteria, or an increase of 10 or more decibels (A-weighted);
- i) An Individual Evaluation for Section 4(f) of the Department of Transportation Act of 1966;
- j) The use of properties protected by Section 6(f) of the Land and Water Conservation Act;
- k) A U.S. Army Corps of Engineers Individual Section 404 permit;
- l) Discharge to a protected water, or adversely affecting a waterway that is impaired by criteria related to roadways or road construction;
- m) An adverse effect on a federally-listed threatened or endangered species or critical habitat;
- n) An adverse impact on a regulatory floodway or the base floodplain (100-year flood) elevations of a water course or water body;
- o) Work within or adjacent to a known Superfund sitelisted on EPA’s website;
- p) Changes in access control on the Interstate;
- q) A regionally significant project for air quality purposes as defined in 40 CFR 93.101 ;
- r) Tribal lands or impacts to tribal traditional cultural properties;
- s) The use of a temporary road, detour or ramp closure unless the use of such facilities satisfy the following conditions:
  - 1) Provisions are made for access by local traffic and so posted;
  - 2) Through-traffic dependent business will not be adversely affected;
  - 3) The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival;
  - 4) The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action;
  - 5) There is no substantial controversy associated with the temporary road, detour, or ramp closure;
- t) Substantial public opposition.

Failure of any project to meet the conditions listed above will require FHWA approval of a Form 128 before the project may be designated as a categorically excluded project. If any of the above criteria are not met FHWA approval of Form 128 is required; provide the relevant criteria number in the comment box of Form 128.

## **DOCUMENTATION**

All CEs, whether PCE or NCE, must be documented on Form 128. This standard form has been designed for use in preparation of CE documents for transportation projects. PCEs are approved by the CDOT Regional Planning and Environmental Manager (RPEM) or their designee. NCEs are approved by the RPEM (or designee) and the FHWA Operations Engineer or Program Delivery Engineer.

## **CLASSIFICATION VERIFICATION**

CDOT agrees to review the CEs classification on all proposed actions prior to requesting subsequent major project approvals or when the project scope or impacts change beyond expectations. This is intended to ensure that the CEs classification is still appropriate for the action.

## **MONITORING**

Full compliance with this Agreement will be determined through a process review to be jointly conducted by FHWA and CDOT. The results of such reviews will also be used to determine what Agreement modifications, if any, are necessary. Process reviews will be conducted at least every five years or as requested by either agency.

## **AGREEMENT REVISIONS AND DISSOLUTIONS**

This Agreement may be modified by mutual consent at any time. Any party of this Agreement may request that it be amended, whereupon the parties will consult to reach a consensus on the proposed amendment. Where no consensus can be reached, the Agreement will not be amended.

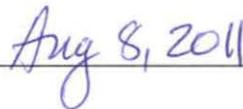
Any signatory to this Agreement may terminate it by providing thirty (30) days written notice to the other parties, provided that the signatories and concurring parties consult during the period prior to the termination to seek Agreement on amendments or other actions that would avoid termination.

**APPROVAL OF AGREEMENT**

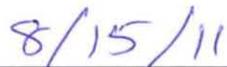
It is hereby determined that all CE projects that fall within the bounds of this Agreement are actions which meet the definition contained in 40 CFR 1508.4, and based upon past experience with similar actions, do not involve significant environmental impacts.

This Agreement is hereby approved and becomes effective on the last date noted below.

  
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Donald E. Hunt  
Executive Director  
Colorado Department of Transportation

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John M. Cater  
Division Administrator  
Federal Highway Administration

  
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Date