



PROGRAMMATIC AGREEMENT

between the
Nevada Department of Transportation
and the
Federal Highway Administration
for

PROCESSING ACTIONS PROPOSED AS CATEGORICAL EXCLUSIONS

This Programmatic Agreement (PA) between the State of Nevada, Department of Transportation (NDOT) and the Federal Highway Administration (FHWA) Nevada Division establishes processing procedures and documentation required for projects proposed by NDOT as Categorical Exclusions (CE) as defined in 23 CFR Part 771.117 - *Categorical Exclusions*. NDOT may process such projects as Programmatic Categorical Exclusions (I or II), or Individual Categorical Exclusions, as appropriate, according to the procedures defined below:

A. Programmatic Categorical Exclusions I (PCEI)

Actions identified in 23 CFR 771.117(c), and additional c-list actions added through FHWA rulemaking, that meet the criteria of 23 CFR 771.117(a) and (b), normally do not require any further NEPA approvals by FHWA. For these actions, NDOT shall record in the project file all five of the following items: (1) a project description; (2) an identification of the CE activity from the list in 23 CFR 771.117 (c); (3) the outcome of any environmental studies conducted to consider unusual circumstances per 23 CFR 771 117 (b); (4) document that the CE classification is proper and that no unusual circumstances require the preparation of an EA or EIS; and (5) any document used in this decision or compliance with any other environmental laws or regulations (as appropriate). NDOT shall make all PCEI project files, including all documentation described above, available to FHWA for inspection at any time. NDOT shall submit electronic copies of all PCEI projects they have issued to FHWA.

B. Programmatic Categorical Exclusions II (PCEII)

Examples of actions identified in 23 CFR 771.117(d), and additional d-list example actions added through FHWA rulemaking that meet the criteria of 23 CFR 771.117(a) and (b) may be processed by NDOT as PCEII actions. The processing of PCEII actions made by NDOT must include documentation in the project file that states that all the required conditions are satisfied. For these actions, NDOT shall document that the criteria of 23 CFR 771.117(a) and (b) are met, as well as all the specific conditions listed below. The documentation in the project file shall record all six of the following items: (1) a project description; (2) identification of the specific example activity from the list in 23 CFR 771.117 (d); (3) a consideration of the project setting and any project impacts as reflected in the CE checklist and a project map; (4) the outcome of any environmental studies conducted to consider unusual circumstances per 23 CFR 771 117 (b); (5) document that the CE classification is proper and that no unusual circumstances require the preparation of an EA or EIS; and (6) any document prepared to assist in making this decision or any document prepared in order to be in compliance with any other environmental laws or regulations.

NDOT shall provide a copy of the documentation from their processing of PCEII actions to FHWA for review and approval via electronic mail (email). If FHWA does not respond within seven (7) calendar days of the date the documentation was e-mailed, NDOT may consider the FHWA approval date as the eighth calendar day, and document in an email to FHWA, FHWA's negative response as its CE approval. Any FHWA response shall identify any issues of concerns and NDOT shall re-submit documentation with revisions and provide FHWA with another 7-day review period, if applicable. The NDOT and FHWA emails shall be considered part of the administrative record for this project and be kept in the project file.

NDOT shall ensure that the following conditions apply to actions they process as PCEII actions:

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 is not a Type I project as defined in 23 CFR 772.
4. The action will not have an adverse impact on minority or low-income populations.
5. The action will not involve the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303).
6. The action will not result in a determination of adverse effect based on consultation with the State Historic Preservation Officer (or the Tribal Historic Preservation Officer if applicable).
7. The analysis required by Section 7 of the Endangered Species Act indicates that the project will have no effect on Federally-listed threatened and endangered species or critical habitats.
8. The action will not require any U.S. Coast Guard construction permits or any U.S. Army Corps of Engineers Section 404 permits (Individual or Nationwide).
9. The action will not involve any work in wetlands.
10. The action will not involve any work negatively affecting a regulatory floodway or any work negatively affecting the base floodplain (100-year flood) elevations of a watercourse or lake.
11. The action will not involve construction in, across, or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic

Rivers published by the U.S. Department of the Interior or the U.S. Department of Agriculture.

12. The action will not result in any changes in access control that affect traffic patterns.

Changes that would affect traffic patterns include actions such as the installation of medians or C-curb. Changes that would not affect traffic patterns include actions such as breaks in access control for maintenance or emergency access or minimal alterations or adjustments to driveways.

13. The action will not require the displacement of any commercial or residential occupant.

14. The action will not require the use of a temporary road, detour, or ramp closure unless the use of such facilities satisfies 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; and
5. There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.

15. The action will not involve any known hazardous materials sites or previous land uses with potential for hazardous materials sites or previous lands uses with potential for hazardous materials remains within the right of way.

16. The action conforms to the Air Quality State Implementation Plan, which is approved or promulgated by the Environmental Protection Agency in air quality maintenance? and non-attainment areas.

17. The proposed project, as described in the NEPA document, must be included in the fiscally constrained long range Regional Transportation Plan (RTP) and in the fiscally constrained Transportation Implementation Plan (TIP) and the Statewide Improvement plan (STIP). For projects not located within a metropolitan planning area, the project must be in the fiscally constrained STIP.

C. Individual Categorical Exclusions

NDOT may process an action listed in 23 CFR 771 (c) or (d) that does not satisfy the conditions for a programmatic CE as an Individual Categorical Exclusion provided that

NDOT prepares documentation that satisfies the conditions of 23 CFR 771.117 (a) and (b) and provides that documentation to FHWA for review and approval. NDOT shall provide documentation that clearly establishes that the proposed project results in no significant environmental adverse effects. NDOT shall create a project record that includes: (1) a project description including a project map; (2) an identification of the CE action from the list on 23 CFR 771.117 (c) or (d); (3) document that conditions of 23 CFR 771.117(a) and (b) are met and that no unusual circumstances occur that would require the preparation of an EA or EIS; (4) a consideration of the project setting and any project impacts as reflected in the CE check list, forms, or other documents that summarize the consideration of project effects and unusual circumstances; and (5) any stakeholder correspondence, consultation, public meeting or involvement documentation. NDOT shall submit the results of their processing of Individual Categorical Exclusions to FHWA for their review and approval.

GENERAL CONSIDERATION:

- All documents issued by NDOT under this agreement shall be signed and dated by NDOT's Environmental Services Division Chief or designated representative.
- This agreement shall not preclude NDOT from requesting individual CE review and approval from the FHWA when deemed necessary even though the action falls within the bounds of a PCEI or PCEII action under this agreement.
- This agreement shall also not preclude the FHWA's right to request individual review of CE actions that fall within the bounds of PCEIs and PCEIIs.
- NDOT shall consult with FHWA and document any CE re-evaluations pursuant to 23 CFR Part 771.129.
- NDOT shall ensure that CE documentation is made in accordance with applicable law and this Agreement.
- Periodic program level reviews will be undertaken either by FHWA alone or working jointly with NDOT in consideration of the technical competency and organizational capacity of NDOT, as well as NDOT's performance of its CE processing functions. Performance considerations will include: the quality and consistency of NDOT's project documentation, adequacy and capability of the resources applied by NDOT, and the quality and consistency of NDOT's administration of its processing of projects under this agreement. The first review shall occur within the first 12 months of this agreement and, as a minimum, every two years thereafter.
- For any identified deficiencies or program improvements, NDOT shall prepare a Corrective Action Plan that identifies deadlines for implementing the corrective actions. Any additional corrective actions shall be agreed upon and implemented by FHWA and/or NDOT as appropriate.
- This Agreement shall have a term of five (5) years, beginning on the date of the last signature. NDOT shall post and maintain an executed copy of this Agreement on its web site, available to the public.
- CE action reporting compliance will be satisfied by making a list of all CE actions

processed available to FHWA via NDOT's FTP site or other means agreed to by NDOT and FHWA. The list will include the following information for each CE action: 1) identify the action, including if it is listed in 771.117(c) or 117(d); 2) the date a CE class of action was recommended for this action (i.e., the CE start date); 3) the date of the CE determination (i.e., the CE completion date); 4) identification of any sources of delay in the CE processing; and 5) whether the action was processed as a PCEI, PCEII, or Individual CE.

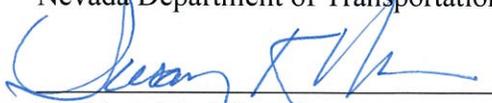
- NDOT agrees to re-evaluate any project actions processed under this agreement according to 23 CFR 771.129(c).
- This Agreement is renewable for additional terms of five (5) years each if NDOT requests renewal and the FHWA determines that NDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, the FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- At least six (6) months prior to the end of each five year term, NDOT and the FHWA shall meet to discuss the results under the Agreement and consider amendments to this Agreement.
- If one of the signatory parties to this agreement determines the requirements of environmental process under 23 CFR 771 is not being satisfied, that party shall notify the other party to the agreement in writing. A conference between the parties shall then be conducted to resolve the issue of concern. If no resolution can be reached, this agreement will be null and void, and the environmental evaluation processing will then be conducted as set forth in the Federal regulations.

AGREEMENT OF PARTIES

This programmatic agreement is intended to facilitate and enhance environmental streamlining for transportation projects in the state of Nevada. It does not create any new regulatory or legal requirements. Execution of this Agreement and implementation of its terms by NDOT formally evidence that NDOT has reviewed this Agreement and agrees to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.



for Director
Nevada Department of Transportation



Division Administrator
Federal Highway Administration

8-30-12

Date

9/5/2012

Date