

**PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,
WASHINGTON DIVISION
AND
THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS
CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

THIS PROGRAMMATIC AGREEMENT (“Agreement”), made and entered into this 4th day of February 2020, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION and the STATE of WASHINGTON, acting by and through its DEPARTMENT OF TRANSPORTATION hereby provides as follows:

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (hereinafter “FHWA”) and the Washington State Department of Transportation (hereinafter “WSDOT”).

II. PURPOSE

The purpose of this Agreement is to authorize the WSDOT to determine on behalf of FHWA whether a project qualifies for a Categorical Exclusion (CE) specifically listed in 23 CFR 771 without further review and approval by FHWA. This agreement allows WSDOT to make NEPA CE approvals on FHWA’s behalf for projects using Federal-aid funds or requiring FHWA approval.

III. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 - 4370
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. Fixing America’s Surface Transportation Act (FAST Act). P.L.114-94, 129 Stat. 1403, Sec. 1315
- D. 40 CFR parts 1500 - 1508
- E. DOT Order 5610.1C

IV. RESPONSIBILITIES

A. WSDOT is responsible for:

1. Approving CEs for actions specifically listed in 23 CFR 771.117(c) and 23 CFR 771.117(d) including c list activities constrained by 23 CFR 771.117(e), on behalf of FHWA. This includes any activities added through FHWA rulemaking to those listed in 23 CFR 771.117(c) or 23 CFR 771.117(d) after the date of execution of this Programmatic Agreement. WSDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a wet or electronic signature evidencing approval. No separate review or approval of the CE by FHWA is required.
2. Consulting with FHWA for actions that involve unusual circumstances (23 CFR 771.117(b)) to determine the appropriate class of action for environmental analysis and documentation. WSDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
3. Meeting applicable documentation requirements, as listed in Section V of this agreement, for State CE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
4. Relying only upon employees directly employed by the State to make CE approvals under this agreement. WSDOT may not delegate its responsibility for CE approvals to third parties (e.g., local government staff, other State agency staff).

B. FHWA is responsible for:

1. Providing timely review and approval of CEs for actions that are not specifically listed in 23 CFR 771.117(d), or for actions for which WSDOT has requested FHWA approval based on unusual circumstances.
2. Providing timely review and response to a request from WSDOT for a CE determination for an action not specifically listed in 23 CFR 771.117.
3. Providing timely review and response to any request for coordination, consultation, or compliance with any environmental requirement under law, regulation, or Executive Order related to the State's processing of CE actions under this agreement. This includes all Section 4(f) evaluations and *de minimis* and temporary occupancy determinations, all formal ESA consultations except those included in a programmatic ESA consultation, all responses to Essential Fish Habitat conservation

recommendations, all Section 106 Memorandums of Agreement, and government-to-government consultation with Native American Tribes.

4. Providing timely advice and technical assistance on CEs to WSDOT, as requested.
5. Overseeing the implementation of this Agreement in accordance with 23 CFR 771.117(g).

V. DOCUMENTATION OF WSDOT CE APPROVALS

- A. For WSDOT CE approvals, WSDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:
 1. For actions listed in 23 CFR 771.117(c) and 23 CFR 771.117(d), WSDOT will identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete WSDOT's NEPA form(s) with a WSDOT wet or electronic signature evidencing approval.
 2. In addition, for actions listed in 23 CFR 771.117(d), WSDOT shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.
- B. WSDOT should maintain a project record for CE approvals it makes on FHWA's behalf. This record should include at a minimum:
 1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 3. The name and title of the document approver and the date of WSDOT's approval.
 4. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when supporting documentation is not necessary).
- C. Any electronic or paper project records maintained by WSDOT should be provided to FHWA at its request. WSDOT should retain those records, including all letters and comments received from governmental agencies, the public and others for a period of no less than three (3) years after completion of project construction, according to state records retention schedules. This provision does not displace or relieve WSDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. CE APPROVALS AND RE-EVALUATIONS

- A. WSDOT's CE approvals may only be made by the WSDOT Director of Environmental Services, WSDOT Region and Modal Environmental Managers, WSDOT's Local Program Environmental Manager or staff they choose as delegates.
- B. In accordance with 23 CFR 771.129, the WSDOT shall re-evaluate its determinations and approvals for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING AND PERFORMANCE

A. WSDOT Quality Control and Quality Assurance

WSDOT agrees to carry out regular quality control and quality assurance activities, as described in WSDOT procedures, the Environmental Manual and Local Agency Guidelines to ensure WSDOT's CE approvals are made in accordance with applicable law and this Agreement. The signatories of the CEs are responsible for ensuring quality.

B. WSDOT Performance Monitoring and Reporting.

- 1. FHWA and WSDOT should cooperate in monitoring performance under this Agreement and work to assure quality performance.
- 2. WSDOT will implement corrective actions to ensure compliance with the terms of this agreement as needed.

C. FHWA Oversight and Monitoring

- 1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of WSDOT, as well as WSDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of WSDOT's CE approvals, adequacy and capability of WSDOT staff and consultants, and the effectiveness of WSDOT's administration of its internal CE approvals.
- 2. FHWA will conduct one or more program reviews as part of its oversight activities. WSDOT shall prepare and implement a corrective action plan as necessary to address any findings or observations identified in the FHWA review. WSDOT should draft the corrective action plan within forty-five (45) days of FHWA finalizing its review. The content of the corrective action plan shall be taken into account at the time this Agreement is considered for renewal.
- 3. WSDOT and FHWA should cooperate in all oversight and quality assurance activities.


VIII. AMENDMENTS

If the Parties agree to amend this Agreement, then FHWA and WSDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

IX. TERM, RENEWAL AND TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. WSDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if WSDOT requests renewal and FHWA determines WSDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time by giving at least thirty (30) days written notice to the other party.

Execution of this Agreement and implementation of its terms by both Parties provides evidence that both Parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.


Daniel M. Mathis
Division Administrator, Washington Division
Federal Highway Administration


Date


Roger Millar, PE, FASCE, FAICP
Secretary of Transportation
Washington State Department of Transportation


Date