

FHWA-DDOT CATEGORICAL EXCLUSIONS
PROGRAMMATIC AGREEMENT



**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION
AND
THE DISTRICT DEPARTMENT OF TRANSPORTATION
REGARDING
REVIEW AND APPROVAL PROCESS FOR CATEGORICAL EXCLUSIONS IN
ACCORDANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT
FOR THE FEDERAL AID HIGHWAY PROGRAM**

This Programmatic Agreement (“Agreement”) is entered into as of this 28th day of October, 2010, by and between the United States Department of Transportation, Federal Highway Administration by and through the Federal Highway Administration District of Columbia Division (“FHWA”) and the District Department of Transportation (“DDOT”) pursuant to D.C. Official Code §§ 50-921.01 et seq., individually referred to herein as “Party” and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, FHWA administers the Federal Aid Highway Program in the District of Columbia (“District”) through DDOT as authorized by 23 U.S.C. 101 et seq.; and

WHEREAS, DDOT, as the state Department of Transportation and the owner of the transportation infrastructure for the District, has jurisdictional and maintenance responsibility for the transportation infrastructure throughout the District; and

WHEREAS, FHWA has determined that the Federal Aid Highway Program requires review and approval of infrastructure construction projects to comply with the National Environmental Policy Act of 1969 (“NEPA”) and the Council on Environmental Quality (“CEQ”) regulations for implementing NEPA (40 CFR 1500 -1508); and

WHEREAS, in accordance with 40 CFR 1508.4 and 23 CFR 771.117 FHWA and DDOT agree that certain actions carried out through the Federal-Aid Highway Program do not have significant impacts on the human and natural environment; and

WHEREAS, this Agreement establishes a procedure that will reduce the paperwork and processing time for certain Federal actions for FHWA in administering the Federal Aid Highway Program for the District for actions that do not have significant impacts on the human and natural environment; and

WHEREAS, in accordance with 40 CFR 1500 -1508 and 23 CFR 771, FHWA and DDOT agree upon the advance review and approval process outlined in this Agreement.

WHEREAS, execution of this Agreement and implementation of its terms evidences that FHWA and DDOT have formalized the review and approval process to comply with the National Environmental Policy Act of 1970 (NEPA) (42 U.S.C. § 4321, et seq.) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR § 1500 -1508) for the Federal Aid Highway Program for the District of Columbia.

NOW, THEREFORE, FHWA and DDOT agree that the Federal Aid Highway Program shall be administered in accordance with the terms and conditions as provided herein.

I. PURPOSE AND RESPONSIBILITIES

- A. This Agreement sets forth the process by which FHWA, with the assistance of DDOT, shall fulfill its responsibilities under NEPA for the Federal Aid Highway Program administered in the District. This Agreement allows FHWA to provide an expeditious and efficient review and approval of documents related to infrastructure construction projects and to approve Categorical Exclusions (“CEs”) for projects which qualify for a CE determination under 23 CFR 771.117 (c) and (d). For the projects which meet the terms and conditions provided herein, this Agreement constitutes a one-time advance documentation and approval. As such, individual project review, documentation, and approval are not required by FHWA; provided however, that DDOT will prepare and maintain appropriate documentation for such projects.
- B. This Agreement establishes the basis for DDOT internal review of all projects funded through the Federal Aid Highway Program to comply with the requirements of 23 CFR 771.
- C. In compliance with its responsibilities under NEPA, and as a condition of its award to DDOT of any assistance under the Federal-Aid Highway Program, FHWA shall ensure that DDOT carries out the requirements of this Agreement. FHWA will make periodic reviews of DDOT’s procedures and documentation to ensure that all potential environmental impacts are being considered and to ensure that compliance with all applicable laws, regulations, executive orders, etc., is being properly documented.
- D. Pursuant to this Agreement, DDOT shall document all NEPA reviews and shall submit an Annual Report to FHWA which will include information on the projects that were approved using this Agreement. Further, DDOT shall certify that all terms and conditions provided herein have been satisfied for all of the projects processed under this Agreement.

II. CE ENVIRONMENTAL REVIEW AND APPROVAL PROCESS

DDOT shall follow the following process:

1. All documents shall be prepared pursuant to the requirements of 40 CFR 1500 -1508 and 23 CFR 771;
2. DDOT shall develop environmental processes pursuant to the requirements of 40 CFR 1500 -1508 and 23 CFR 771 and document the processes in the DDOT Environmental Policy and Process Manual;
3. DDOT shall prepare the Project Development & Environmental Review Form (Form-I), as included in Appendix A, for all projects and actions under the Federal Aid Program. This includes actions taken when any project progresses from one phase to the next (i.e. from planning to design, or from design to construction) as well as change orders;
4. Level 1 CE Actions: All actions that qualify as CEs identified in 23 CFR 771.117(c) and which meet all the requirements listed in Section III.A of this document will be classified as Level 1 CE (“CE-1”) Actions.
5. Level 2 CE Actions: All actions that qualify as CEs identified in 23 CFR 771.117(c) & (d) and which meet all the requirements listed in Section III.B of this document will be classified as Level 2 CE (“CE-2”) Actions .
6. Level 3 CE Actions: All actions that qualify as CEs identified in 23 CFR 771.117(c) & (d) which do not meet the requirements listed in Section III.A and III.B of this document, will be classified as Level 3 CE (“CE-3”) Actions.

III. CE DETERMINATIONS

In accordance with FHWA Environmental Impact and Related Procedures (23 CFR 771), CEs are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which:

- do not induce significant impacts to planned growth or land use for the area;
- do not require the relocation of significant numbers of people;
- do not have a significant impact on any natural, cultural, recreational, historic or other resource;
- do not involve significant air, noise, or water quality impacts;
- do not have significant impacts on travel patterns; and
- do not otherwise, either individually or cumulatively, have any significant environmental impacts.

A. Level 1 Categorical Exclusion (CE-1)

All actions that qualify as CEs, identified in 23 CFR 771.117(c) and that meet all the requirements of 40 CFR 1508.4, 23 CFR 771.117(a) & (b) and the requirements given

below, will be classified as CE-1 Actions. For such actions, Project Development & Environment Forms (Form I), included in Appendix A, will be prepared and no additional documentation will be necessary. The DDOT Environmental Division shall confirm that these actions meet the criteria of CE-1 projects and no significant impact exists. Only signature by the DDOT Environment Division Chief or his/her designee is required for CE-1 projects. Projects that do not meet the criteria of CE-1 actions shall be processed at the next appropriate higher level.

In order to qualify as a CE-1, the action cannot involve any of the following:

- a. Work outside the DDOT Right of Way (ROW) or ROW disposal/acquisition;
- b. Changes to the number of lanes (including General purpose, transit, and/or parking lanes);
- c. Decrease of the level of service of any intersection in the project area to “D” or worse;
- d. Adverse impact on minority, low-income, limited-English populations or any other population protected by Title VI of the Civil Rights Act of 1964;
- h. Any commercial or residential displacement;
- j. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303);
- k. The determination of an effect by the State Historic Preservation Office;
- l. Any Clean Water Act Section 404 Permits;
- m. Any effect to a federally-listed endangered or threatened species or critical habitat; or
- n. Any work on National Park Service (“NPS”) land except when approved by NPS as a CE.

B. Level 2 Categorical Exclusion (CE-2)

All actions that qualify as CEs identified in 23 CFR 771.117(c) & (d) and that meet all the requirements of 40 CFR 1508.4, 23 CFR 771.117(a) & (b) and the requirements given below, will be classified as CE-2 Actions. For such actions CE-2 form, included in Appendix B, will be prepared. The DDOT Environmental Division shall confirm that these actions meet the criteria of CE-2 projects and no significant impact exists. Only DDOT Environment Division Chief’s signatures are required for Level 2 CE projects. Projects that do not meet the criteria of Level 2 CE shall be processed at the next appropriate higher level.

In order to qualify as a CE-2, the action cannot involve any of the following:

- a. Any right-of-way acquisition or disposal;
- b. Commercial or residential displacement;
- c. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) except temporary use;

- d. The use of properties protected by Section 6(f) of the Land and Water Conservation Fund;
- e. A determination of adverse effect by the State Historic Preservation Office;
- f. Any Clean Water Act Section 404 Individual Permits
- g. Any Clean Water Act Section 402 (NPDES) Individual Permits;
- h. Any changes in access control on the freeway or the interstate system;

- k. Any known hazardous materials sites or previous land uses with potential for hazardous materials remains within the right-of-way;
- l. Any adverse effect to any federally listed endangered or threatened species or critical habitat;
- m. Adverse impacts to minority, low-income, limited-English populations or any other population protected by Title VI of the Civil Rights Act of 1964;
- n. Substantial Public controversy;
- o. Any work on NPS land except when approved by NPS as a CE; or

C. Level 3 Categorical Exclusion (CE-3)

All actions that qualify as CEs, identified in 23 CFR 771.117(c) & (d) and which meet all the requirements of 40 CFR 1508.4, 23 CFR 771.117(a) & (b), but which do not meet the requirements of Sections III.A and III.B above, will be classified as CE-3 Actions. For such actions, the CE-3 form included in Appendix C hereto will be prepared. DDOT Environmental Division shall confirm that these actions meet the criteria of CE-3 projects and that no significant impact exists. FHWA approval and signatures are required for all CE-3 projects. Signature by the DDOT Environment Division Chief or his/her designee is required before FHWA approval. Projects that do not meet the criteria of any Level of CE shall be processed as an EA or EIS pursuant to 40 CFR 1500 and 23 CFR 771.

IV. REVIEW AND MONITORING

DDOT will prepare an annual report for submittal to FHWA that covers the current Fiscal Year. The report will include summary information on projects processed under this Agreement. The report will also include all forms and documents prepared for all NEPA actions for the Federal Aid Program. Further, the report will include an assessment of the effectiveness of this Agreement, discuss concerns, if any, with the Agreement, and include recommendations for any proposed changes. This report may also identify any changes to the Environmental Forms (Form I, CE-2 Form, CE-3 document). FHWA and DDOT may change, revise, or update these forms at that time without amending this PA. The report shall be provided to the FHWA by November 1, 2011 and annually thereafter on or before November 1. FHWA will provide any review comments on the Annual Report, including recommendations for modifications to the Agreement, to DDOT within 30 days of receipt of the report.

FHWA shall monitor activities carried out pursuant to this Agreement. In compliance with its responsibilities under NEPA, and as a condition of its award to DDOT of any assistance under the Federal-Aid Highway Program, FHWA shall ensure that DDOT carries out the requirements of this Agreement. FHWA will make periodic reviews of the DDOTs procedures and documentation to ensure that all potential environmental impacts are being considered and compliance with all applicable laws, regulations, executive orders, etc., is being properly documented.

V. TERMINATION

Any Party to this Agreement may terminate it for any reason by providing thirty (30) days written notice to the other Party. In the event that a notice of termination is issued by either Party, the Parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination.

VI. MODIFICATION; AMENDMENT

Any party to this Agreement may request that it be amended at any time, whereupon the parties will consult with each other to consider such amendment.

VII. DURATION

This Agreement shall become effective upon execution by FHWA and DDOT and shall continue in full force for ten (10) years following the date the last signature is affixed hereto, unless terminated as provided above prior to expiration.

VIII. SEVERABILITY

The Parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

IX. APPLICABLE LAW

The Parties shall comply with all applicable laws, rules, and regulations whether now in force or hereafter enacted or promulgated that pertain to this Agreement.

X. RECITALS

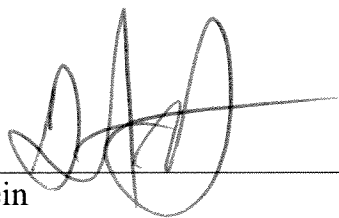
The above recitals are incorporated into this Agreement as if fully set forth herein.

XI. ANTI-DEFICIENCY

The obligations of the District to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "**Federal ADA**"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "**D.C. ADA**" and (i) and (ii) collectively, as amended from time to time, the "**Anti-Deficiency Acts**"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as follows:


DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION



Gabe Klein
Director
District Department of Transportation

Date 10/27/10

FEDERAL HIGHWAY ADMINISTRATION



Joseph C. Lawson
Division Administrator
Federal Highway Administration

Date 10/28/10

Forms and documents referenced in the PA are in Appendices A, B, and C.