

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

THIS PROGRAMMATIC AGREEMENT (“Agreement”), by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of ALABAMA, acting by and through its DEPARTMENT OF TRANSPORTATION (Alabama Department of Transportation, or “ALDOT”) hereby provides as follows:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321-4370h (2014), and the Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

Whereas, the Federal Highway Administration’s (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

Whereas, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA’s primary responsibilities (49 C.F.R. §1.81(a)(5));

Whereas, the FHWA’s NEPA implementing procedures (23 C.F.R. §771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

Whereas, the Alabama Department of Transportation is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for ALDOT projects (23 C.F.R. §771.109);

Whereas, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA;

Whereas, the FHWA developed regulations in 23 C.F.R. §771.117(g) implementing the authorities in section 1318(d), effective November 6, 2014;

Now, therefore, the FHWA and the ALDOT enter into this Programmatic Agreement (“Agreement”) for the processing of categorical exclusions.

I. PARTIES

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

II. PURPOSE

The purpose of this Agreement is to authorize the ALDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 C.F.R. §771.117.

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. 40 C.F.R. parts 1500 - 1508
- D. DOT Order 5610.1C
- E. 23 C.F.R. §771.117

IV. RESPONSIBILITIES

- A. The ALDOT is responsible for:
 - 1. 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. The ALDOT may decide, or FHWA may require, additional studies prior to making a CE approval or the preparation of an EA or EIS.
 - 2. For actions qualifying for a CE listed in Appendix A (CEs established in 23 CFR 771.117(c)) and Appendix B (CEs established in 23 CFR 771.117(d)) that do not exceed the thresholds in Section IV(A)(3) below, the ALDOT may make a CE approval on behalf of FHWA. The ALDOT will:
 - a. Identify the applicable listed CE,
 - b. Ensure all conditions or constraints are met,
 - c. Verify that unusual circumstance do not apply,
 - d. Address any and all other environmental requirements, and
 - e. Complete the review with a signature evidencing approval.

No separate review or approval of the Programmatic CE (PCE) by FHWA is required.

3. Actions listed in Appendices A and B that exceed the thresholds identified below may not be approved by the ALDOT. FHWA review and approval is required if the action:
 - a. Results in capacity expansion of a roadway by the addition of through lanes;
 - b. Involves permanent changes in access control that would affect traffic patterns. 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;
 - c. Involves the construction of temporary access or the closure of an existing road, bridge, or ramp that would result in major traffic disruptions. Major traffic disruption is defined as an action that will not require the uses of a temporary road, detour, or ramp closure unless the following conditions are met;
 - i. Provisions are made for access by local traffic and so posted;
 - ii. Through-traffic dependent businesses will not be adversely affected;
 - iii. The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action; and
 - iv. No substantial controversy is associated with the use of the temporary road, detour, or ramp closure.
 - d. Involves acquisitions of more than a minor amount of right-of-way, defined as 1.0 acre (this threshold does not apply to approvals for disposal of excess right-of-way);
 - e. Involves acquisitions that result in any residential or non-residential displacements;
 - f. Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to a Federally funded acquisition project (23 U.S.C. §108(d));
 - g. Results in a determination of adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act;
 - h. Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. §303);
 - i. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965, the Federal Aid in Sport Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;

- j. Involves a known hazardous material site within the proposed right-of-way;
 - k. Results in the loss of 0.5 acres or more of waters of the U.S. (including wetland) or impact of 300 linear feet or more of intermittent and ephemeral stream bed;
 - l. Requires a U.S. Coast Guard bridge permit;
 - m. Requires work that will result in an increase of more than 1 foot of surface water elevation in the base floodplain (100-year flood); increase the risk of damage to property and loss of human life; or result in modification of a watercourse;
 - n. Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture;
 - o. Is not consistent with State's Coastal Zone Management Plan;
 - p. May affect federally listed or candidate species, proposed or designated critical habitat, or exceeds the limitations of the Alabama Endangered Species MOA (Appendix C);
 - q. Is defined as a "Type I project" per 23 C.F.R. §772.5 and the ALDOT updated May 2011 noise policy; and
 - r. Does not conform to the State Implementation Plan (SIP) in air quality non-attainment areas, which is approved or promulgated by the U.S. Environmental Protection Agency.
4. Meeting applicable documentation requirements in Section V for State PCE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section VI, and applicable quality control, monitoring, and performance requirements in Section VII.
5. Relying only upon employees directly employed by the State (not consultants contracted by the State to act on the State's behalf) to make PCE approvals submitted to FHWA under this agreement. While third parties (i.e., consultants, local government staff, and other State agency staff) may prepare NEPA documents on behalf of the ALDOT in accordance with this agreement, the ALDOT may not delegate its responsibility for PCE approvals to third parties.

B. The FHWA is responsible for:

- 1. Providing timely advice and technical assistance on CEs to the ALDOT, as requested.

2. Providing timely input and review of CEs. FHWA will base its approval of CE actions on the project documentation prepared by the ALDOT under this Agreement.
3. Conducting an annual program/process review of randomly selected projects processed under this Agreement during the previous federal fiscal year.
4. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF ALDOT PCE APPROVALS

- A. The ALDOT will maintain a project record for PCE approvals it makes on FHWA's behalf and for each CE submitted to FHWA for approval. This record will include at a minimum:
 1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name and title of the document approver and the date of ALDOT's approval or FHWA's final approval; and
 5. Re-evaluations must follow the process as outlined in the Re-evaluation Process of Federal-aid Transportation Projects (Appendix D) and maintain the Re-evaluation Checklist for each project re-evaluation that includes right-of-way.
- B. Any electronic or paper project records maintained by the ALDOT will be provided to FHWA at their request. The ALDOT shall 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. This 3-year retention provision does not relieve the ALDOT of its project or program recordkeeping responsibilities under 2 C.F.R. §200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-EVALUATIONS

- A. The ALDOT's PCE approvals and CEs submitted to FHWA for approval may only be made by officers or offices specifically identified below:
 1. Approval of PCEs is delegated to ALDOT's Environmental Technical Section and Environmental Coordinators at ALDOT Regions, ALDOT County Transportation, ALDOT Innovative Programs, and ALDOT Multimodal.

- B. In accordance with 23 C.F.R. §771.129 and the FHWA Alabama Division/ALDOT Stewardship and Oversight Agreement, the ALDOT shall re-evaluate its determinations for projects with right-of-way in accordance with the Reevaluation Process.

VII. QUALITY ASSURANCE & PERFORMANCE MONITORING

A. ALDOT Quality Assurance

The ALDOT agrees to carry out regular quality assurance activities to ensure that its PCE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.

B. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of the ALDOT, as well as the ALDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of the ALDOT's PCE approvals, CE submissions to FHWA for approval, adequacy and capability of the ALDOT staff and consultants, and the effectiveness of the ALDOT's administration of its internal PCE approvals.
2. FHWA will conduct an annual program review as part of its oversight activities, during the term of this Agreement. By November 15 of each year, the ALDOT will provide to the FHWA Division Office a list of PCEs produced during the previous federal fiscal year (October 1 through September 30).
3. By December 1, the FHWA Division Office will randomly select documents for review. ALDOT will provide the selected documents and all backup information in electronic form to the FHWA Division Office by January 15. The Division Office will complete a review of the selected documents to determine, at a minimum, whether:
 - a. The project was correctly processed as a PCE based on the thresholds in Section IV(A)(3).
 - b. The project was in the TIP/STIP (with the TIP/STIP sheet included in the electronic file).
 - c. The appropriate United States Fish and Wildlife Service (USFWS) letter or MOA was attached.
 - d. The appropriate State Historic Preservation Office (SHPO) letter or MOU was attached.

After the review is completed, the FHWA Division Office will prepare a report, which will be forwarded to the ALDOT by March 1. The report will include observations, required actions, and recommendations.

4. The ALDOT shall prepare and implement a corrective action plan to address any findings, required actions, or observations identified in the FHWA review. The

ALDOT will draft the corrective action plan within 45 days of FHWA finalizing its review. Consideration of the results of the review and corrective actions taken by the ALDOT shall occur at the time this Agreement is considered for renewal.

5. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to the ALDOT's performance under this Agreement. The FHWA may require the ALDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
6. The ALDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and the ALDOT 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. The ALDOT 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 the ALDOT requests renewal and FHWA determines that the ALDOT 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 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that the ALDOT is not able to make PCE approvals on FHWA's behalf.

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.

Mark D. Bartlett

1/12/2016

Mark D. Bartlett

Date

Division Administrator, Alabama Division
Federal Highway Administration

John R. Cooper

1/05/2016

John R. Cooper

Date

Director
Alabama Department of Transportation