

## MEMORANDUM OF UNDERSTANDING

between the  
Washington State Department of Transportation  
and the  
Federal Highway Administration

### PROGRAMMATIC CATEGORICAL EXCLUSION APPROVALS

This Memorandum of Understanding (MOU) between the Washington State Department of Transportation (WSDOT) and the Federal Highway Administration (FHWA) Washington Division establishes streamlined procedures for classifying and documenting projects as Categorical Exclusions (CE) identified in 23 CFR Part 771.117 - *Environmental Impact and Related Procedures*.

#### A. Categorical Exclusions

Actions identified in 23 CFR 771.117(c) that meet the criteria of 23 CFR 771.117(a) do not require further approvals by FHWA. WSDOT will document in the project file, cite the appropriate project type from those listed in 23 CFR 771.117(c), and determine that there are no unusual circumstances about the project that would warrant further environmental analysis.

#### B. Documented Categorical Exclusions Not Requiring FHWA Signature

WSDOT and FHWA concur through this agreement on a categorical exclusion (CE) classification for those projects identified in 23 CFR 771.117(d) which do not require further approvals by FHWA since they meet the criteria listed below. For these actions, WSDOT certifies that the criteria of 23 CFR 771.117(a) and all the following conditions will be satisfied for all of the projects processed under this programmatic classification and approval process.

WSDOT will document all Categorical Exclusions per this agreement in the project files. The documentation will be available for FHWA review upon request. WSDOT will notify FHWA of its determination that a project met the conditions outlined below via the construction authorization, which will indicate that the project has been determined a “CE – Programmatic” or “CE-State Documentation.” For projects meeting the conditions outlined in this section of the MOU, no further NEPA documentation should be sent to FHWA unless specifically requested by FHWA.

The following conditions will apply to those actions that qualify under 23 CFR 771.117(d), which are processed by WSDOT under this programmatic approach:

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 use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303);
4. The action does not result in a determination of adverse effect which is concurred with by the State Historic Preservation Officer (or the Tribal Historic Preservation Officer if applicable);
5. The action does not require any U.S. Coast Guard construction permits or any U.S. Army Corps of Engineers Section 404 permits (Individual or Nationwide);
6. The action does not involve any work in wetlands;
7. The action does 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.

Projects such as the installation of rumble strips, installation of pavement markers, “mill-and-fill” paving projects, placing a sign post, and conduit placement are unlikely to negatively affect the floodplain. New guardrail installations (other than replacing existing guardrail in-kind) may negatively affect the floodplain. Concrete barriers and large-post guardrails are more likely to negatively affect the floodplain than cable barriers. Replacements of features in-kind and in the same location are unlikely to negatively affect the floodplain;

8. The action does 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 U.S. Department of Agriculture;
9. 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;

10. The action will not require the acquisition of more than minor amounts of Right-of-Way (ROW).
  - This applies to the following types of ROW acquisition: fee title, permanent easements, temporary easements, and/or access rights.
  - Acquisition does not require displacements of residences, commercial establishments, nonprofit organizations, farms, and

personal property.

- Acquisition does not involve more than half the parcel.

Typical examples of minor amounts of ROW acquisition include: low cost, strip acquisitions, and corner acquisitions.

11. The action will not require 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 use of temporary road, detour, or ramp closure;
12. 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;
13. The action conforms to the Air Quality State Implementation Plan, which is approved or promulgated by the Environmental Protection Agency in air quality non-attainment areas;
14. The action is consistent with the state's Coastal Zone Management Plan as determined by the appropriate state agency;
15. 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.

**C. Documented Categorical Exclusions Requiring FHWA Signature**

If one or more of the conditions outlined in Part B are not satisfied, NEPA documentation on the appropriate WSDOT form will be required as defined in 23 CFR 771.1 17(d).

**Compliance Monitoring**

To ensure compliance and consistency among WSDOT Regions and Modes using this agreement, FHWA will request biannually a sample of CEs approved by WSDOT under Section B of this agreement to review. FHWA will report results of the review in writing to the agreement signatories.

**Agreement Duration**

This agreement will remain in effect until one of the parties terminates it.



**Paula Hammond, P.E.**  
Secretary of Transportation  
Washington State Department of Transportation

8/6/09  
Date



**Daniel M. Mathis, P.E.**  
Division Administrator  
Washington State Division Office  
Federal Highway Administration

8/11/09  
Date