

Programmatic Agreement
between
the Federal Highway Administration,
and
the Vermont Agency of Transportation,
for Processing Projects Eligible for Categorical Exclusion under the
National Environmental Policy Act
June 1999 (updated January 2024)

The Federal Highway Administration (FHWA), through its Vermont Division, and the Vermont Agency of Transportation (VTrans) have developed this Programmatic Agreement (Agreement) establishing a procedure for the processing of projects eligible for Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA), including those projects delegated to VTrans Environmental Section for NEPA determinations, in accordance with United States Code of Federal Regulations (CFR) Title 23, part 771 (Environmental Impact & Related Procedures) and Title 40, part 1508 (Terminology & Index).

FHWA regulation 23 CFR 771.117(a) defines "Categorical Exclusions" as follows:

"CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FHWA's past experience with similar actions, do not involve significant environmental impacts. They are actions that: 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; or do not otherwise, either individually or cumulatively, have any significant environmental impacts."

Furthermore, FHWA regulation 23 CFR 771.117 (b) states as follows:

"Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action."

FHWA regulation 23 CFR 771.117(c) lists specific actions (project types) which meet the criteria for Categorical Exclusion and normally do not require any further NEPA approvals by FHWA. Regulation 23 CFR 771.117(d) lists additional actions which "may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement."

This Agreement includes all actions specified in 23 CFR 771.117(c) and (d) and establishes a procedure for programmatic approval of the specific actions which are eligible for CEs provided they meet the Criteria specified herein.

PROCEDURES

Per 23 CFR 771.117(g), FHWA hereby delegates to VTrans authority to make a NEPA CE determination on FHWA's behalf, for actions that both meet the criteria specified in the Programmatic Categorical Exclusion Criteria (Appendix A) and are specifically listed in paragraphs (c) and (d) of 23 CFR 771.117, subject to the terms and conditions of this Agreement.

FHWA has determined that all actions meeting the criteria specified in Appendix A are likely to be classified as Categorical Exclusions and have low potential for involving unusual circumstances. When questions arise regarding the appropriate NEPA class of action, authority for those determinations will remain with FHWA.

Procedural requirements for this Agreement are as follows:

- (1) Authority to make NEPA CE determinations at VTrans is solely delegated to VTrans Environmental Specialists and Environmental Specialist Supervisor.
- (2) VTrans will document the CE determinations in the form of a transmittal letter and supporting documents submitted to FHWA via the VTrans NEPA SharePoint site, in accordance with procedure in Appendix B;
- (3) VTrans agrees to retain all documentation of CE determinations, and supporting documentation, on the VTrans NEPA SharePoint site for FHWA review for a term of not less than five years after FHWA closure of Federal-aid projects;
- (4) FHWA and VTrans will schedule monthly coordination meetings to maintain dialogue regarding project issues, NEPA process, and related environmental requirements;
- (5) This Agreement provides for FHWA's monitoring of VTrans' compliance with the terms therein and for VTrans' execution of any needed corrective action. FHWA shall take into account VTrans' performance when considering renewal of the Agreement; and
- (6) VTrans agrees to make this Agreement available to the public via its public web site upon execution.

VTrans will coordinate with FHWA regarding any action which does not clearly meet the criteria of Appendix A. All CE level actions undertaken by VTrans, whether they meet the criteria specified in

Appendix A or not, will be documented via the VTrans NEPA SharePoint site (see Appendix B). Documentation included on VTrans' NEPA SharePoint site shall include, but may not be limited to, Section 106 Formal Comment Letters; Section 4(f) evaluations; natural resource determinations; environmental commitments and stipulations; and pertinent right-of-way coordination.

VTrans may produce Resource Identification Surveys and/or Scoping Reports and/or Project Delivery Team findings, for the purpose of determining the potential environmental impacts of a project, and whether that project satisfies the Programmatic Categorical Exclusion Criteria. VTrans may coordinate with FHWA on whether a particular threshold is being met for a project and request verbal or written concurrence that the proposed action meets the criteria of Appendix A. In instances where FHWA determines that there is insufficient information for concurrence, VTrans may obtain additional documentation to address the Criteria concerned. VTrans will document in a project's record any FHWA verbal or written concurrences received, as well as any issues raised and subsequently addressed through the review process, by memoranda placed in VTrans project files and/ or uploaded to VTrans NEPA SharePoint site.

Whenever actions do not meet the Programmatic Categorical Exclusion Criteria following these procedures, VTrans will provide Categorical Exclusion documentation and request FHWA concurrence via the VTrans NEPA SharePoint site. The VTrans NEPA SharePoint site will include a provision for recording the FHWA approval of the CE determination. In addition, the VTrans submittal letter to FHWA will include the following language: "FHWA concurrence in this Categorical Exclusion determination is indicated by electronic signature/stamp and date on VTrans' Environmental NEPA Share Point Site."

FHWA regulation 23 CFR 771.129(c) requires consultation regarding the validity of Categorical Exclusion determinations prior to proceeding to advanced project phases. Said consultations will be stylized as written "CE Re-evaluations" under any of the following circumstances:

- Whenever a project is proceeding into a major phase (final design, ROW, PS&E/Construction) and more than 3 years have elapsed since the original CE, or last re-evaluation; or
- If project scope or limits change; or
- If environmental resource impacts change; or
- If mitigation of resource impacts, or other environmental commitments are proposed to be changed.

Authority for performing CE re-evaluations is hereby delegated to VTrans for projects meeting the criteria of Appendix A and will be documented by being uploaded to the VTrans NEPA SharePoint site. Projects not delegated to VTrans will be submitted for FHWA review and approval via VTrans NEPA SharePoint site.

Whenever a project is proceeding into a major phase, and less than three years have elapsed since the original CE, or last re-evaluation, VTrans will document whether or not the CE determination remains valid. These determinations will not be uploaded to the SharePoint site but will be documented to the VTrans project file.

ELIZABETH ANNE SHIPLEY
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Date: 2024.02.13 06:52:09 -05'00'

2/13/24

Elizabeth Shipley, Environmental Program Manager, FHWA

Date

EXPIRATION, RENEWAL, AND TERMINATION

- 1. Expiration.** This Agreement shall have a term of five years from the date of approval.
- 2. Renewal.** This Agreement may be renewed for additional five year terms upon written agreement by the parties.
- 3. Termination.** This Agreement may be terminated before the Expiration Date by either party by giving written notice at least 90 days in advance.

AMENDMENT

No changes, modifications, or amendments to the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the FHWA and VTrans.

ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties and supersedes all prior agreements between the parties on this subject, including the Programmatic Agreement the parties entered into in June 1999.

APPROVAL OF AGREEMENT

We, the undersigned, have reviewed this Agreement and have determined that it complies with all applicable laws, regulations, and policies for preparing and processing Categorical Exclusions for FHWA actions. Accordingly, it is hereby approved and becomes effective on the latest date entered below.

Endorsement of the Vermont Agency of Transportation

Concur  Date 2/13/2024
DocuSigned by: BBE658022DA34B7

Jeremy Reed, P.E., Chief Engineer, Highway Division

Endorsement of the Federal Highway Administration

Concur Renwick L Warden Date 2/13/24
Digitally signed by Renwick L Warden Date: 2024.02.13 10:26:01 -05'00'

Randy Warden, Division Administrator

Approved as to form:

DocuSigned by:
Melissa Horwitz
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Date 2/13/2024

Assistant Attorney General

APPENDIX A: PROGRAMMATIC CATEGORICAL EXCLUSION CRITERIA



VTrans has determined that this project will **NOT**:

- A. ___ Require a temporary detour outside existing right-of-way, or a temporary wetland or stream crossing which will require non-routine mitigation, or a ramp closure, unless the following conditions are met:
 - (1) provisions are made for access by local traffic and the facility is posted accordingly,
 - (2) businesses dependent upon through traffic will not be unduly affected,
 - (3) the temporary detour or ramp closure will not interfere with local special events,
 - (4) the temporary detour, ramp closure, wetland or stream crossing will not substantially increase the environmental consequences of the action (project).
- B. ___ Involve construction in wetlands totaling more than 5,000 square feet of permanent impacts, requiring the Army Corp of Engineers to coordinate with resource agencies per the General Permit.
- C. ___ Require a Risk Analysis for an increase in 100-year flood water surface elevations, per EO 11988.
- D. ___ Involve construction within, or alter drainage patterns so as to adversely affect, a Sole Source Aquifer.
- E. ___ Require coordination with the US Fish and Wildlife Service for the preparation of a Biological Assessment for Threatened and Endangered Species, per 16 CFR Section 7.
- F. ___ Require acquisition of additional right-of-way (including permanent or temporary construction easements) involving: more than three acres of land per mile of roadway, or a total of 10 acres or more for a non-linear improvement (such as a bridge or an intersection), or any relocation of residences or businesses.
- G. ___ Require FHWA approval for changes in access control.
- H. ___ Involve acquisition of, or impacts upon Prime or Unique Farmland, unless a USDA Farmland Conversion Impact Rating Part VI Site Assessment has been completed and indicates Total Site Assessment Points less than 160 (doesn't apply to designated urban areas).
- I. ___ Cause an Adverse Effect to an archaeological or historic resource listed in, or eligible for inclusion in, the National Register of Historic Places.
- J. ___ Require use (permanent or temporary) of a Section 4(f) resource, unless that use meets the criteria for a de minimis or Programmatic 4(f); or involve the use of a Section 6(f) resource when compensation is required (property acquired or improved using Land and Water Conservation Funds).
- K. ___ Involve hazardous or residual waste liabilities subject to CERCLA and/or RCRA requirements.
- L. ___ Require a bridge permit from the US Coast Guard, per 23CFR 650 Subpart H.
- M. ___ Qualify as a Type I project and require analysis of noise abatement measures, per 23 CFR 772 and the FHWA approved VTrans Noise Policy.
- N. ___ Require Emergency Relief (ER) funding.

(NOTE: If coordination with the FHWA was required to reach this determination attach concurrence memo)

APPENDIX B: NEPA SHAREPOINT SITE PROCEDURE, SCREEN SHOT, AND POTENTIAL DOCUMENTS LIST

1. Open NEPA SharePoint Site at: <https://outside.vermont.gov/agency/vtrans/ENEPA/default.aspx>
2. Click on "PACE Documents" in the left column.
3. Under the drop-down list "New", choose "New Folder".
4. Name the folder and click "OK".
5. Find and open the folder.
6. Under the drop-down list "Upload", choose "Upload Document" or "Upload Multiple Documents" or drag documents into folder.
7. Click "Browse..." to find the appropriate folder to upload files.
8. Choose the appropriate file(s) and click "OK".
9. Click on "PACE" in the left column.
10. Under the drop-down list "New", choose "New Item".
11. Complete the form (see screen shot below).
12. Open each file and copy and paste the web address into the appropriate box.
13. If a document is not applicable, type # after http://.
14. When the form is complete, check the "Send Email" box.
15. An email will be automatically sent to FHWA.

Project Name	<input type="text"/>
Year	<input type="text"/> 
Project & Plan Set	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
Route	<input type="text"/>
NEPA Checklist	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
S 106 Determination	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
4(f)	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
Natural Resources Clearance	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
Other	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
VTrans Approval Signature	<input type="text"/>
VTrans Signature Date	<input type="text"/> 
Environmental Commitments	Type the Web address: (Click here to test) <input type="text" value="http://"/> Type the description: <input type="text"/>
Send Email	<input type="checkbox"/>
<input type="button" value="Save"/> <input type="button" value="Cancel"/>	

All documents will be uploaded to a project specific folder in the NEPA SharePoint site under a project specific item. The uploaded documents may include, but are not limited to, the following:

1. CE Document (Transmittal Letter and Analysis Sheets)
2. Plan Set
3. Section 106 Review
4. 4(f) Document
5. Natural Resource Clearance
6. Supporting documentation as appropriate to project
 - a) Archaeological Resource Assessment
 - b) Archaeological Phase I Survey
 - c) Threatened Endangered Species Permit
 - d) Noise Study
 - e) Hazardous Materials review/ conditions
 - f) Wetlands mapping/ review
 - g) Natural Resource reviews/ reports
 - h) Regulatory Agency reviews/ comments
 - i) Environmental Special Conditions Memo
 - j) Scoping Report/ Alternatives Studies
 - k) Stormwater Clearance Memo
 - l) Other as applicable (ROW info, photos, email correspondence, etc.)
7. Commitments (CE link)