

**Programmatic Agreement**

**between the  
Federal Highway Administration Vermont Division  
and the  
Vermont Agency of Transportation Technical Services Division**

**regarding the  
Processing of Projects eligible for Categorical Exclusion  
under the National Environmental Policy Act  
also addressing EO 11990**



**June 1999**

## **AGREEMENT**

The Federal Highway Administration, Vermont Division (FHWA) and the Vermont Agency of Transportation, Technical Services Division (VAOT) have developed this Agreement establishing a procedure for the processing of projects eligible for Categorical Exclusion under the National Environmental Policy Act (NEPA) in accordance with United States Code of Federal Regulations (CFR) Title 23, part 771 and Title 40, part 1508.

The FHWA environmental regulation 23 CFR 771 defines "Categorical Exclusions" as: "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 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."

The FHWA environmental regulation 23 CFR 771 also states that: "Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, 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 impacts on properties protected by Section 4(f) of the Department of Transportation Act 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."

Regulation 23 CFR 771.117(c) lists 20 specific actions (project types) which meet the criteria for Categorical Exclusion and normally do not require any further NEPA approvals by the FHWA. Regulation 23 CFR 771.117(d) lists additional actions which "may be designated as CEs only after Administration approval." This Agreement includes all actions specified in 23 CFR 771.117(c) by reference and establishes a procedure for programmatic approval of actions which are eligible for CEs under 23 CFR 771.117(d) provided they meet the Criteria specified herein.

## **PROCEDURES**

Procedural requirements for this Agreement are as follows.

The FHWA has determined that all actions meeting the criteria specified in Appendix A, "Programmatic Categorical Exclusion Criteria", satisfy the requirements for Categorical Exclusion and have no potential for involving unusual circumstances. Accordingly, these actions are approved as Categorical Exclusions and may be documented as Programmatic Categorical Exclusions by the VAOT without formal concurrence of the FHWA.

The VAOT will coordinate with the FHWA regarding any project which does not clearly meet the Criteria for Programmatic Categorical Exclusion. The VAOT may produce Preliminary Resource Identification Surveys and/or Scoping Reports and/or Project Development Team findings, for the purpose of determining the potential environmental impacts of a project. The VAOT may verbally report the results of such studies to the FHWA and request verbal concurrence that the proposed action meets the Criteria for Programmatic Categorical Exclusion. In instances where the FHWA determines that there is insufficient information for concurrence, the VAOT may conduct additional environmental study to address the Criteria concerned. The FHWA may require copies of any such studies for review prior to concurrence. The VAOT will record FHWA verbal concurrences received, as well as any issues raised and subsequently addressed through the review process, by memoranda placed in VAOT project files.

The VAOT will submit a copy of each Programmatic Categorical Exclusion determination and a quarterly listing of all actions determined eligible for programmatic Categorical Exclusion to the FHWA. Said determinations will include verification of the applicability of the FHWA Wetland Finding Addressing EO 11990, established herein, for projects which involve new construction in wetlands.

For actions which do not qualify for programmatic Categorical Exclusion following these procedures, the FHWA will require a formal Categorical Exclusion document and concurrence request. This will normally occur when an action has high potential for involving substantial environmental impacts (such as to wetlands, threatened or endangered species, wildlife habitat, floodplains, etc.) and/or actions involving substantial controversy on environmental grounds (such as unresolved conflicting resource interests relative to design features). Such actions may still qualify for Categorical Exclusion (for instance by means of inclusion of compensatory or mitigative measures).

Actions determined to be eligible for Programmatic Categorical Exclusion will be Re-evaluated as required by 23 CFR 771.129. Re-evaluations will be performed prior to : FHWA authorization of Preliminary Engineering (PE), acquisition of any significant portion of the right-of-way (ROW) required for the project, or FHWA approval of Plans Specifications & Estimates (PS&E). Regardless of the foregoing statement, it is understood that the FHWA may authorize PE for development of an action (project), up to but not including submittal of Contract Plans ; with the understanding that appropriate NEPA documentation will be processed prior to commencing the "project design" phase, as defined in the VAOT Project Development Process; or acquisition of ROW. In addition, Re-evaluations will be performed at intervals no greater than three years following the original, or any subsequent, NEPA determination, or whenever potentially significant changes have occurred in : the scope or design footprint of the project, or the anticipated environmental impacts of the project, or the proposed mitigation measures to be included in the project. The VAOT Project Manager and Environmental Section will coordinate the Re-evaluation of actions (projects) as required above. The Re-evaluation will consider all applicable Programmatic Categorical Exclusion Criteria. Provided that the project continues to satisfy the Criteria, a Re-evaluation memo will be prepared for the files and a copy will be sent to the FHWA summarizing any changes that have occurred, including the results of review under applicable criteria, and stating that "Based upon re-evaluation of the proposed project, it has been determined that there have been no significant changes in the project scope, design footprint, anticipated impacts, or proposed mitigation measures and the determination that the project qualifies for Programmatic Categorical Exclusion remains valid."

## FEDERAL HIGHWAY ADMINISTRATION WETLAND FINDING ADDRESSING EO 11990

This statement sets forth the basis for a finding that there is no practical alternative to construction in wetlands for Federal-aid projects that meet the criteria established for processing under this Programmatic Agreement, and that all practicable measures to minimize harm to the wetlands which may result from such use will be taken. This finding is made in accordance with the requirements of Executive Order 11990, dated May 24, 1977.

The State of Vermont contains wetland areas along State and local highways and bridges on the Federal-aid system. Projects on said system, qualifying for categorical exclusion under this Programmatic Agreement, will be constructed on or essentially on existing location, substantially within existing highway rights-of-way or requiring only minor easements and requiring only minor permits for construction. Types of work involved could include resurfacing, widening of pavement and/or shoulders, improvement of side slopes, extension or replacement of culverts and/or ditch reconstruction, safety improvements, and intersection improvements; as well as reconstruction, widening, or replacement of bridges and other work necessary to preserve the existing transportation facility. The projects will be constructed in accordance with current policies and standards of the FHWA, the VAOT and the American Association of State Highway and Transportation Officials, in order to provide safe and efficient transportation facilities at reasonable costs for public use. The types of projects involved must meet the qualifications for Class II Federal-aid actions as described in 23 CFR 771.115(b) and 23 CFR 771.117(c) and (d) and must meet the criteria for programmatic categorical exclusion contained in this agreement.

It has been determined that there are no practicable alternatives to construction of said Federal-aid projects, in wetlands. To do nothing will not satisfy the public need for improvement of involved facilities, to meet the above referenced standards, and to safely and efficiently accommodate present and future traffic volumes. Normal maintenance is not sufficient to keep the involved roadways and/or bridges from deteriorating until useful service life is exceeded; whereupon the general welfare and economy of the local community and the general public may be seriously affected.

Said Federal-aid projects cannot be constructed so as to completely avoid wetlands. To completely avoid wetlands would either require construction on new alignment, involving acquisition of additional rights-of-way and/or relocations and causing impacts upon other environmental resources; or substantial reductions in standards, jeopardizing the safety of the traveling public and resulting in more accidents and potential loss of human life.

Said Federal-aid projects include all measures to minimize harm to wetlands. The VAOT will ensure that construction areas are minimized to the greatest extent possible and that construction will be kept within the existing highway right-of-way and/or minor easements necessary; so as to minimize harm to wetlands within and remaining outside of the highway right-of-way. Appropriate erosion and sedimentation controls will be included in project designs and best management practices will be implemented during construction, as required by VAOT Standard Specifications and as specified in contract special provisions.

During project development, the VAOT will coordinate with the Vermont Agency of Natural Resources (VANR), and/or the U.S. Army Corps of Engineers (COE) and other agencies, as appropriate,

to secure permits required for construction in wetlands and to develop reasonable mitigation measures for unavoidable impacts, as required, prior to proceeding with construction. Additional measures, as may be outlined in conditions of permits received and mutually agreed upon between VAOT and permitting agencies, will be taken to minimize harm to involved wetlands.

Work in wetlands will be limited to activities described in COE Section 404 General Permit #58, Category A or B (GP58), effective 10/15/97, for minimal impact projects within the State of Vermont. The COE has determined that projects authorized under GP58 will have minimal impact upon wetlands; this includes construction of the above Federal-aid projects. The VAOT will coordinate with the COE to reach mutual agreements for provision of reasonable mitigations for unavoidable impacts upon wetlands as may be required. All mitigation measures that are consistent with FHWA's current policies for mitigation of wetland impacts will be considered eligible for Federal participation.

Based on the above considerations, it is determined that there is no practicable alternative to the proposed new construction in wetlands for the above Federal-aid projects and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

Charles E. Basner  
Charles Basner, Division Administrator, FHWA

6/25/99  
Date

#### 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 John H. Perkins  
John H. Perkins, Director of Technical Services

25 Jun 99  
Date

Endorsement of the Federal Highway Administration

Concur Charles E. Basner  
Charles Basner, Division Administrator

6/25/99  
Date

## APPENDIX A

### PROGRAMMATIC CATEGORICAL EXCLUSION CRITERIA

The FHWA has determined that further environmental consultation with FHWA is not required for any action meeting the definitions for Categorical Exclusions, contained in 23 CFR 771.117 and in 40 CFR 1508.4, provided that the action (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 and/or streams (below Ordinary High Water) totaling more than 5,000 square feet, requiring the Army Corp of Engineers to coordinate with resource agencies per General Permit 58.
- C. Require a Risk Analysis for an increase in 100-year flood water surface elevations, per EO 11998.
- 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 10 acres total 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.
- I. Adversely Effect a historic or archaeological resource on, or eligible for inclusion on, 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 Programmatic 4(f) ; or require use of a Section 6(f) resource (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 VAOT Noise Policy