

## PROGRAMMATIC AGREEMENT FOR APPROVAL OF CERTAIN CATEGORICAL EXCLUSIONS

### BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE NEW JERSEY DEPARTMENT OF TRANSPORTATION

The Federal Highway Administration, New Jersey Division, hereinafter FHWA, and the New Jersey Department of Transportation, hereinafter NJDOT, have developed this Programmatic Agreement to outline the policy and procedures for environmental processing of certain Class II (CE) Actions as defined in Section 23 CFR 771.117 (and as amended) which normally are found to have no significant social, economic and environmental effects.

The FHWA hereby concurs in advance, on a programmatic basis, with NJDOT's designation that those types of projects listed on Attachment "A," and which satisfy the conditions and criteria in Attachment "B," will not result in significant environmental impacts, and are therefore categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS). As outlined in this Agreement, the NJDOT will determine and certify that a project meets Federal environmental requirements, and notify FHWA of its findings.

**APPLICABILITY** - This Agreement applies to projects which involve Federal funding and/or approvals, and supersedes previous agreements, including the "Group 2- Programmatic" list of CE's. This Agreement does not apply to those projects specifically exempted by regulation from Federal environmental requirements, nor to those projects for which an EA or EIS is required.

#### **PROCESS** -

1. NJDOT will conduct an interdisciplinary review, and provide appropriate public involvement opportunities, to determine whether a project meets the conditions of Attachments "A" and "B" of this Agreement. This determination shall be appropriately documented<sup>1</sup> in the project file.
2. NJDOT shall notify the FHWA that CE classification for the project was programmatically determined by the Manager of the Bureau of Environmental Services and certified by the Director of the Division of Project Management, at the time the authorization to proceed with final design, right-of-way acquisition or construction is requested.
3. NJDOT shall provide a quarterly listing of projects processed under this Agreement to FHWA, beginning three months from the execution of this Agreement. Documentation will be retained and accessible to authorized representatives of the FHWA and NJDOT for a minimum of three (3) years following completion of construction. Electronic files meeting Federal and State requirements may eventually replace "hard copy."

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<sup>1</sup> "Documentation" as used in this agreement is the appropriate engineering and environmental documentation required for a federally funded highway project. The level of detail reflected in the documentation will vary, depending on the complexity of the project and its likelihood of environmental impacts.

4. NJDOT may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.

AGREEMENT REVISIONS AND TERMINATION - This Agreement and its attachments may be expanded, deleted, modified, or terminated by mutual consent of the Division Administrator, FHWA and the Commissioner of NJDOT or designee at any time. It is anticipated that FHWA will conduct a process review approximately six (6) months from the execution of this Agreement; this review may result in recommendations for revisions.

APPROVAL OF AGREEMENT - The undersigned have reviewed this Agreement and determined that it complies with the laws, regulations and policies applicable to the FHWA and NJDOT. Accordingly, it is hereby approved and becomes effective on the last date noted below.

11/13/97  
Date

R. D. Tong  
Russell D. Tong, P.E.  
Assistant Commissioner  
Capital Program Management

10-22-97  
Date

Dennis L. Merida  
Dennis L. Merida  
Division Administrator  
Federal Highway Administrator

**AMENDMENT  
PROGRAMMATIC AGREEMENT FOR APPROVAL OF  
CERTAIN CATEGORICAL EXCLUSIONS**

This amendment eliminates the requirement under the PROCESS section two (2) of the original Agreement which states that the Director of the Division of Project Management shall certify the CE classification for the projects. It shall now read as follows:

2. NJDOT shall notify the FHWA that the CE classification for the project was programmatically determined by the Manager of the Bureau of Environmental Services, at the time the authorization to proceed with final design, right-of-way acquisition or construction is requested.

11/13/97  
Date

Russell D. Tong  
for Russell D. Tong, P.E.  
Assistant Commissioner, NJDOT  
Capital Program Management

10-22-97  
Date

Dennis L. Merida  
Dennis L. Merida, P.E.  
Division Administrator, New Jersey  
Federal Highway Administration

## ATTACHMENT "A"

*Only the following (30) activities may be designated as CE's under this Agreement without further approval or documentation, provided they do not cause any of the impacts listed on Attachment "B":*

1. Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
2. Approval of utility installations along or across a transportation facility.
3. Construction of bicycle and pedestrian lanes, paths, and facilities.
4. Activities included in the State's highway safety plan under 23 U.S.C. 402.
5. Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.
6. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
7. Landscaping.
8. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
9. Emergency repairs under 23 U.S.C. 125.
10. Acquisition of scenic easements.
11. Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.
12. Improvements to existing rest areas and truck weigh stations.
13. Ridesharing activities.
14. Bus and rail car rehabilitation.
15. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
16. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

17. The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
18. Track and railbed maintenance and improvements when carried out within the existing right-of-way.
19. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
20. Promulgation of rules, regulations, and directives.
21. Modernization of a highway by resurfacing, restoration, rehabilitation. **Reconstruction is not included in this category.** The definition of "3R" projects is located in the NJDOT Procedures Manual.
22. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
23. Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
24. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
25. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
26. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
27. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
28. Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.<sup>2</sup> Hardship and protective buying will be permitted

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<sup>2</sup> Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project-development on such land may proceed until the NEPA process has been completed.

29. Bridge painting.
30. Transportation Enhancement Activities.

*NJDOT may not "self certify" as a CE projects which involve any of the following four (4) activities, regardless of potential involvement with any of the issues listed in Attachment "B". Documentation which verifies that the particular project will not cause significant environmental impacts must be submitted to FHWA for their approval of its CE classification :*

1. Modernization of a highway by reconstruction, adding shoulders, adding auxiliary lanes (e.g., parking, weaving, turning, climbing), or modifications which result in a redirection of existing movements at an intersection/interchange. (Taken from activities in "d" list #1)
2. Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings. (a.k.a. "d" list #3)
3. Transportation corridor fringe parking facilities. (a.k.a. "d" list #4)
4. Construction of new truck weigh stations or rest areas. (a.k.a. "d" list #5)

## ATTACHMENT B

### A PROPOSED PROJECT MUST BE INDIVIDUALLY APPROVED BY FHWA IF:

**SECTION 4(f) OR 6 (f):** The proposed project results in the use of any property or properties protected under Section 4(f) of the Department of Transportation Act, or Section 6(f) of the Land and Water Conservation Fund Act.

**HISTORIC PROPERTIES:** Consultation with FHWA and the New Jersey State Historic Preservation Officer (SHPO) has resulted in an agreement that the proposed project results in an "Adverse Effect" upon any properties eligible for or listed in the National Register of Historic Places.

**WETLANDS:** The proposed project results in the placement of fill in 5 or more acres (2 hectares) of freshwater wetlands or State open waters, or if it requires the placement of fill in tidal wetlands, or if a Nationwide 404 permit applies.

**ENDANGERED SPECIES:** The proposed project affects species or critical habitat of species protected by the Endangered Species Act.

**SOLE SOURCE AQUIFER:** The proposed project is located within a designated Sole Source Aquifer *and* the project requires an EPA approval of a groundwater assessment.

**NOISE:** The proposed project is a Type I Action requiring a noise study in accordance with Section 772 of the Federal Aid Policy Guide.

**AIR QUALITY:** The proposed project causes any exceedances of the National Ambient Air Quality Standards (NAAQS), *or* if a Congestion Management Study/Major Investment Study (CMS/MIS) is required.

**RIGHT OF WAY:** The proposed action requires relocation of any residences or businesses, involves a control of access change or has a high risk of hazardous materials involvement.