PROGRAMMATIC CATEGORICAL EXCLUSION AGREEMENT
BETWEEN FEDERAL HIGHWAY ADMINISTRATION, NORTH DAKOTA DIVISION
AND
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT ("Agreement"), made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE of NORTH DAKOTA, acting by and through its NORTH DAKOTA DEPARTMENT OF TRANSPORTATION ("NDDOT") hereby provides as follows:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 (NEPA) and42 U.S.C. 4321-4370h (2014) 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) authorization 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 CFR 1.81(a)(5));

Whereas, the FHWA's NEPA implementing procedures (23 CFR part 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 North Dakota Department of Transportation (NDDOT) is a State agency that undertakes transportation projects that use Federal funds authorized (obligated or advance construction) under the Federal-aid Highway Program, as well as transportation projects that are not authorized for Federal funds but may require a Federal action. In this case, NDDOT must assist FHWA in fulfilling its obligations under NEPA for the NDDOT projects (23 CFR 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 implementing the authorities in Section 1318(d) of MAP-21, effective November 6, 2014;

Now, therefore, the FHWA and NDDOT 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 North Dakota Department of Transportation ("NDDOT").

II. PURPOSE

A. The purpose of this Agreement is to authorize NDDOT to assume CE authority on behalf of FHWA for actions listed in 23 CFR 771.117(c), for right of way disposal actions listed in 23 CFR 771.117(d)(6), or certified actions approved by FHWA in Section II. B. provided these actions do not exceed identified thresholds in Section VI.

B. This Agreement also authorizes NDDOT to certify to FHWA, and for FHWA to approve, based on 23 USC 139(b)(3) that an action not specifically listed in 23 CFR 771.117(c) or 23 CFR 771.117(d), but meeting the CE criteria in 23 CFR 771.117(a), qualifies for a CE, as long as there are no unusual circumstances that would require the preparation of either an EA or an EIS.

C. This Agreement does not allow for the NDDOT to assume CE approval authority for actions listed in 23 CFR 771.117(d), except for right of way disposal actions that meet the conditions specified in 23 CFR 771.117(d)(6).

III. AUTHORITIES

This Agreement is entered into pursuant to the following authorities:

1. National Environmental Policy Act, 42 U.S.C. 4321-4370
2. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318 (d)
3. DOT Order 5610.1D
4. 23 CFR 771.117

IV. NDDOT CE APPROVALS

A. NDDOT may make a CE Approval on behalf of FHWA if the action is listed in 23 CFR 771.117(c) or is a right of way disposal action meeting the conditions specified in 23 CFR 771.117(d)(6), and does not meet or exceed one or more of the thresholds in Section VI, or have unusual circumstances that would require the preparation of either an EA or EIS.

B. When making a CE Approval on behalf of FHWA, NDDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any other environmental requirements, and complete the review with a signature evidencing approval. No separate CE review or approval of the documentation by FHWA is required.

V. FHWA CE APPROVALS

A. FHWA retains CE approval authority for any action not listed in 23 CFR 771.117(c), or (d)(6), or exceeds one or more of the thresholds in Section VI, or has unusual circumstances that would require the preparation of either an EA or EIS.

B. NDDOT will prepare documentation for FHWA CE approvals and shall include: the applicable listed CE category or certified action, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any other environmental requirements, and complete the review with a signature evidencing approval.

C. Within 10 business days, FHWA will either provide the CE approval or identify the specific action(s) that require additional information before an action may be approved by FHWA.

VI. IDENTIFIED THRESHOLDS

Any action listed in 23 CFR 771.117(c) and 23 CFR 771.117 (d)(6) that meets or exceeds one or more of the thresholds identified below may not be approved by NDDOT and will require documentation for FHWA CE Approval:

A. The action involves acquisitions of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as one or more of the following:

1. Ten (10) acres or less per linear mile (not an average);
2. Three (3) acres or less per bridge, intersection, or interchange;
3. Temporary easements;
4. Acquisition of land for the use of environmental mitigation;

B. The action involves acquisitions that result in displacement of the owner(s) or tenant(s);

C. The action involves the construction of temporary access, or the closure of an existing road, bridge, or ramps, that would result in major traffic disruptions. However, based on Work Zone Safety and Mobility goals, no major traffic disruptions would occur;

D. The action involves a change in access control on the Interstate highway system;

E. The action results in a determination of adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act;

F. The action results in the permanent use of a resource protected under 23 USC 138 or 49 USC 303 (Section 4(f)) that cannot be documented with an FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges;

G. The action requires a U.S. Army Corps of Engineers (USACE) Section 404 Individual Permit;

H. The action requires a U.S. Coast Guard bridge permit;

I. The action *may affect, likely to adversely affect* federally listed endangered or threatened species or designated critical habitat pursuant to the Endangered Species Act;

J. The action requires a take permit for proposed impacts to Bald or Golden Eagles pursuant to Bald and Golden Eagle Protection Act;

K. The action includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. 108(d)).

VII. DOCUMENTATION OF CE APPROVALS AND CERTIFICATIONS

A. The NDDOT shall ensure that project–specific determinations on CE Approvals and Certifications include identification of the applicable action, ensure any conditions specified in FHWA regulations are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a NDDOT signature evidencing approval.

B. The NDDOT shall maintain a project record for NDDOT CE Approvals, certified actions, and FHWA CE approvals. This record should include at a minimum:

1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances. The document templates for NDDOT CE approvals and Certifications, and FHWA CE approvals will be published to the NDDOT website;

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 NDDOT's approval or FHWA's final approval; and

5. Documentation of re-evaluations, when required.

C. The following c-listed actions do not require any review or documentation: (c)(1); (c)(4); (c)(5); (c)(9)[1]; (c)(10); (c)(11); (c)(13); (c)(14); (c)(16); (c)(17); (c)(19); (c)(20); and (c)(29).

D. Any electronic or paper project records maintained by NDDOT shall be provided to FHWA at their request. The NDDOT 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 final voucher. This 3-year retention provision does not relieve NDDOT of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

VIII. NDDOT RESPONSIBILITIES

A. NDDOT shall consult 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 NDDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.

B. NDDOT shall meet applicable documentation requirements (Section VII.), applicable approval (Section IV.) and re-evaluation requirements (Section VII.), and applicable quality control/quality assurance, monitoring, and performance requirements in Section X.

C. NDDOT shall rely only upon employees directly employed by the NDDOT to make CE approvals, certifications, or CE submissions to FHWA under this Agreement. The NDDOT may not delegate its responsibility for CE approvals or certifications to third parties (e.g., consultants and local public agencies (LPA)).

D. NDDOT shall provide for quality assurance and quality control of in-house and consultant-produced documents. The NDDOT may procure through consultant services environmental and other technical expertise needed for compliance with this Agreement.

E. NDDOT shall ensure that the NDDOT Environmental Section Leader and Environmental Reviewers responsible for the Environmental Program and responsible to carry out the provisions of this Agreement will, at a minimum:

1. Be knowledgeable with and follow the appropriate subsections 23 CFR 771 through 774, and FHWA and NDDOT procedures for environmental analysis and NEPA compliance.

2. Have adequate experience addressing NEPA compliance for transportation projects.

3. Have completed NEPA related training on a regular basis.

F. In accordance to 23 CFR 771.129, the NDDOT shall re-evaluate its CE approvals and certifications for projects to ensure they are still valid. FHWA CE approvals may require consultation with FHWA. Completion of CE Re-evaluations and CE Addendums will follow the process within the NDDOT Design Manual.

IX. FHWA RESPONSIBILITIES

A. FHWA shall provide timely advice and technical assistance on CEs to the NDDOT, as requested.

B. FHWA shall provide timely review and response to any request for coordination, consultation, or compliance approval for any environmental FHWA requirement under law, regulation, or Executive Order related to NDDOT's processing of CE actions under this agreement. This includes Section 4(f) evaluations and determinations, formal ESA consultations except those included in a programmatic ESA consultation, and Section 106 Memorandums of Agreement.

C. FHWA shall provide timely input and review of NDDOT CE and certified action submissions. FHWA will base its approval of CE actions on the project documentation prepared by NDDOT under this Agreement.

D. FHWA shall oversee the implementation of this Agreement in accordance with the provisions in Sections X., including applicable monitoring and performance provisions.

FHWA shall ensure that the FHWA Environmental Program Manager and Transportation Engineers responsible to carry out the provisions of this Agreement will, at a minimum:

1. Be knowledgeable with and follow the appropriate subsections 23 CFR 771 through 774, and FHWA and NDDOT procedures for environmental analysis and NEPA compliance.
2. Have adequate experience addressing NEPA compliance for transportation projects.
3. Have completed NEPA related training on a regular basis.

X. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. NDDOT Quality Control & Quality Assurance

The NDDOT agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions are made in accordance with applicable law and this Agreement.

B. NDDOT Performance Monitoring and Reporting

1. The NDDOT should monitor performance under this Agreement and work with FHWA to assure quality performance.
2. The NDDOT shall submit a report annually to FHWA compiling CE actions completed during the reporting period. The report will be in database form and include various categories of information regarding individual CE approvals.
3. The NDDOT shall participate in program review(s) as requested by FHWA during the term of this Agreement. If determined necessary, the NDDOT shall prepare and implement a corrective action plan to address any findings or observations

identified in the FHWA review.

C. FHWA Oversight and Monitoring

1. FHWA will monitor the NDDOT's capacity to process CEs and performance of its CEs processing functions. Performance considerations include, without limitation, the quality and consistency of NDDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of NDDOT staff and consultants, and the effectiveness of NDDOT's administration of its internal CE approvals.

2. FHWA will conduct at least one program review as part of its oversight activities, during the term of this Agreement. The results of that review and corrective actions taken by the NDDOT shall be considered at the time the Agreement is considered for renewal.

3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to NDDOT's performance under this Agreement. The FHWA may require NDDOT 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.

XI. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and NDDOT 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.

XII. TERM, RENEWAL, AND TERMINATION

A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. The NDDOT 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 NDDOT requests renewal and FHWA determines that NDDOT 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 only by giving at least thirty (30) days written notice to the other party.

D. Expiration or termination of this Agreement shall mean that the NDDOT is not able to make CE 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. This Agreement is effective upon the date of the last signature below.

LINDSEY LUANN HANDEL

Digitally signed by LINDSEY LUANN HANDEL
Date: 2026.06.29 14:54:53 -05'00'

Lindsey L. Handel, P.E.
Division Administrator, North Dakota Division
Federal Highway Administration

Date

for Matt Linneman

Ronald J. Henke, P.E.
Director
North Dakota Department of Transportation

6/29/26
Date

Approved as to Substance:

Matt Gangness

Matt Gangness, P.E.
Environmental & Transportation Services Director
North Dakota Department of Transportation

6-29-2026
Date

APPROVED as to form this
29th day of June 2026
ATTORNEY GENERAL
By
SPECIAL ASST. ATTORNEY GENERAL