

**PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, OREGON DIVISION
AND
THE OREGON DEPARTMENT OF TRANSPORTATION
REGARDING APPROVAL OF ACTIONS CLASSIFIED AS
CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

THIS PROGRAMMATIC AGREEMENT (“Agreement”) made and entered into this 10th day of March 2025, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) AND THE STATE OF OREGON, acting by and through its DEPARTMENT OF TRANSPORTATION (“ODOT”), each herein referred to individually as “Party” and collectively referred to as “Parties”, hereby provides as follows:

WITNESSETH:

- A. Whereas,** the National Environmental Policy Act of 1969 (NEPA), 42 United States Code (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 from those requirements;
- B. Whereas,** the Federal Highway Administration’s (FHWA) distribution and spending 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;
- C. Whereas,** the United States (U.S.) 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));
- D. 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 (23 CFR 771.117(c)-(d));
- E. Whereas,** the Oregon Department of Transportation (ODOT) is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and assists FHWA in fulfilling its obligations under NEPA for the ODOT projects with a FHWA-nexus (23 CFR 771.109);
- F. Whereas,** by the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, an Oregon state agency may enter into agreements with units of local government or other state

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agencies or the United States federal government for any lawful purpose in performing a duty imposed upon it, in exercising a power conferred upon it, or in administering a policy or program delegated to it; and

- G. Whereas**, by the authority granted in ORS 366.558, ODOT may enter into cooperative agreements with the United States Federal Government relating to the survey, construction, improvement and maintenance of roads and highways, and do all other things necessary fully to carry out the cooperation contemplated by any Act of Congress regarding the construction, improvement or maintenance of public roads or highways in Oregon.
- H. Whereas**, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP21), 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;
- I. Whereas**, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014, (23 CFR 771.117(g));
- J. Whereas**, the FHWA and ODOT recognize the adjustments to NEPA implementation and reporting pursuant to sections 11311-11317 of the Infrastructure Investment and Jobs (IIJA) Act, Pub. L. 117-58, 135 Stat. 429 (Nov. 15, 2021);

Now, therefore, the FHWA and the Oregon Department of Transportation enter into this Programmatic Categorical Exclusion Agreement (“Agreement”) for the processing of categorical exclusions.

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration, Oregon Division (“FHWA”) and the Oregon Department of Transportation (“ODOT”).

II. AGREEMENT PURPOSE & LIMITATIONS

- A.** The purpose of this Agreement is to authorize ODOT to classify a project for a CE listed in 23 CFR 771.117 on behalf of FHWA provided it does not exceed the thresholds described in Section IV.A.2.b.
- B.** This Agreement does not delegate any other FHWA responsibility under environmental or other Federal laws. This Agreement applies to all ODOT projects using FHWA Federal-aid Highway Program funds.
- C.** Except as provided by the Federal-Aid Highway Program, no funding is exchanging hands through this Agreement.

III. AUTHORITIES

This Agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 - 4370
- B. Moving Ahead for Progress in the 21st Century Act, PL. 112-141, 126 Stat, 405, Sec.1318(d)
- C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- D. Infrastructure Investment and Jobs Act, Pub L 117-58, 135 Stat. 429, (November 15, 2021)
- E. U.S. Department of Transportation (DOT) Order 5610.1C
- F. 23 CFR 771.117
- G. ORS 190.110
- H. ORS 366.558

IV. RESPONSIBILITIES

A. ODOT is responsible for:

1. Consulting 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. ODOT may decide, or FHWA may require, additional studies to be performed prior to making a CE determination and approval, or the preparation of an EA or EIS. Such unusual circumstances include:
 - a. Significant environmental impacts;
 - b. Substantial controversy on environmental grounds;
 - c. Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
 - d. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
2. Ensuring the following process is completed for each project that ODOT classifies as a CE on behalf of FHWA:
 - a. ODOT may approve on behalf of FHWA those CEs specifically listed in 23 CFR 771.117 (c) and (d) that do not exceed the thresholds listed in Section IV.A.2.b. (below) of this Agreement. For the purposes of this Agreement, CEs meeting these criteria and approved by ODOT are hereinafter referred to as “programmatic agreement categorical exclusions” or “PCEs”. For each PCE, ODOT will identify the applicable listed CE from
 - b. 771.117 (c) and/or (d), ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the PCE by FHWA is required. ODOT may not approve the actions listed in 23 CFR 771.117 (c) and (d) if the following thresholds are met or exceeded. Notwithstanding the listing of the action in 23 CFR 771.117 (c) or (d), ODOT may not

approve the PCE and must instead defer to FHWA to review and approve the action as a CE if the action:

- i. Involves use of properties protected by Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. 303) that requires preparation of an Individual Section 4(f) Evaluation;
 - ii. Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);
 - iii. Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);
 - iv. Requires an Individual Permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act;
 - v. Results in an increase in the designated regulatory floodway elevation, or an increase of more than 1 foot of surface water elevation in the 100-year floodplain when no regulatory floodway is designated;
 - vi. Requires a formal Wild and Scenic River Section 7(a) consultation with, and determination from, the official river administering regulatory agency;
 - vii. Results in changes that substantially affect traffic patterns temporarily or permanently;
 - viii. Requires the acquisition of more than minor amounts of right-of-way or displacement of businesses, nonprofit organizations and/or residents;
 - ix. Does not conform to the State Implementation Plan which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas;
 - x. Requires an individual project-level formal consultation under Section 7 of the Endangered Species Act;
 - xi. Requires an exception to Oregon Statewide Planning Goals;
 - xii. Involves capacity expansion by construction of a new highway or local roadway where none existed previously or by addition of new through lanes (excludes bus on shoulder improvements and passing lanes);
 - xiii. Is required by FHWA to be processed as a CE for reasons that are not reflected in the above impact thresholds.
3. Prior to classifying an action listed in 23 CFR 771.117 (c) or (d) as a CE, ODOT must consult with FHWA OR Division to confirm the CE classification is appropriate when the

following thresholds are met or exceeded. An ODOT CE classification (i.e., PCE) requires FHWA consultation if the action:

- a. Is defined as a "Type I project" per 23 CFR 772.5 and the current ODOT Noise Manual for purposes of a noise analysis;
 - b. Will result in more than 1.5 acres of impacts to wetlands and waters.
 - c. Will result in detours of more than 20 minutes out of direction travel for any mode.
 - d. Requires more than 10 percent of a parcel for parcels under 10 acres in size, 1 acre for parcels 10 to 100 acres in size, and 1 percent of the parcel for parcels greater than 100 acres in size, or acquisition will impair existing land functions (such as net loss of parking, and substantial loss of residential front yards).
 - e. Is anticipated to result in controversy on environmental grounds.
4. Meeting applicable documentation requirements in Section V for PCE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality assurance, monitoring, and performance requirements in Section VII.
5. Relying only upon employees directly employed by the ODOT to make PCE approvals. ODOT may not delegate its responsibility for PCE approvals to third parties (i.e., consultants, local government staff, and other State agency staff).
6. Maintaining adequate organizational and staff capability and expertise to effectively carry out the provisions of this Agreement. This includes, without limitation:
 - a. Using appropriate technical and managerial expertise to perform the functions set forth under this Agreement.
 - b. Devoting adequate financial and staff resources for processing and approving of projects under this Agreement.
7. Providing for quality assurance and quality control of consultant-produced documents. The ODOT may procure through consultant services environmental and other technical expertise needed for compliance with this Agreement.
8. Ensuring that the ODOT individuals who prepare and/or approve PCE documentation will, at a minimum:
 - a. Be knowledgeable with and follow the appropriate subsections of 23 CFR 771 through 774, and FHWA and ODOT procedures for environmental analysis and NEPA compliance.
 - b. Have completed Introduction to NEPA and Transportation Decision-making web-based course FHWA-NHI-142052.

- c. Have adequate experience addressing NEPA compliance for transportation projects or until such time, have their work reviewed by staff having the necessary experience.
- 9. Maintaining credentials of individuals responsible for the documentation, and providing any changes in staffing to FHWA, as part of the annual report. Information to be maintained includes:
 - a. Date individual completed course FHWA-NHI-142052;
 - b. Brief statement of the individual's experience.

B. FHWA is responsible for:

- 1. Providing timely advice and technical assistance on PCEs and CE to ODOT, as requested.
- 2. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII.C.

V. DOCUMENTATION OF ODOT PCE APPROVALS

- A. All ODOT CE determinations/approvals made on behalf of FHWA meet the requirements of 23 CFR 771.113(a), including as applicable:
 - 1. Completing the drafting of environmental documentation,
 - 2. completing environmental studies,
 - 3. related engineering studies,
 - 4. agency coordination,
 - 5. public involvement, and
 - 6. Identification of mitigation measures.
- B. The determination/approval of an action as a PCE (23 CFR 771.113(a)(1)) would document compliance with all applicable environmental laws and executive orders and other related requirements. If full compliance is not possible by the time ODOT determines the action as a PCE, ODOT's PCE determination/approval would reflect consultation with appropriate agencies is anticipated and provide reasonable assurance that their requirements can be met. Classification of an action as a PCE constitutes a CE approval by ODOT on behalf of FHWA pursuant to 23 CFR 771.117(g). For PCE approvals, ODOT shall identify the applicable actions from 23 CFR 771.117 (c) and/or (d), ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, and address all other environmental requirements. In accordance with the provisions in Section VII.B, ODOT shall provide to FHWA an Annual Report identifying ODOT's PCE approvals made on FHWA's behalf pursuant to this Agreement.

- C. ODOT shall maintain a project record for PCE approvals it makes on FHWA's behalf. 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;
 2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 3. Interested party and agency communication, correspondence, consultation, or public meeting documentation that supports the environmental review process.
 4. The name and title of the document approver and the date of ODOT's approval; and
 5. For PCEs involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).
- C. ODOT shall provide any electronic or paper project records maintained by ODOT to FHWA at its request. ODOT 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 completion of project construction. This three-year retention provision does not relieve ODOT of its project or program recordkeeping responsibilities under 2 CFR § 200.334-200.338 or any other applicable laws, regulations, or policies, including ORS 192.420—192.505.

VI. NEPA APPROVAL AUTHORITY AND RE-EVALUATIONS

- A. ODOT's approval of PCE approvals may only be made by qualified ODOT staff and Environmental Managers or their qualified ODOT designees.
- B. These approvals will be indicated in a state-defined field in FHWA's Financial Management Information System (FMIS) and will also be reported in the ODOT Annual PCE Report to FHWA. FHWA will use ODOT's reporting in FMIS to determine whether to approve right-of-way or construction phases for projects that meet the conditions of this Agreement. In accordance with 23 CFR 771.129, ODOT shall re-evaluate its PCE determinations and approvals for projects, consult with FHWA and as necessary prepare additional documentation to ensure that determinations and approvals are still valid.
- C. If FHWA does not approve the project authorization for right-of-way or construction due to concerns with NEPA compliance, then FHWA will immediately inform ODOT of the reasons for its decision not to approve these phases.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. ODOT Quality Control and Quality Assurance

1. ODOT agrees to carry out and report on regular quality control and quality assurance activities to ensure that its PCE approvals are made in accordance with applicable law and this Agreement.
2. ODOT will coordinate with FHWA to perform bi-annual quality assurance reviews and invite FHWA to post-review meetings to discuss findings and provide collective recommendations in a written summary.
3. ODOT agrees to provide for quality assurance and quality control of consultant-produced documents. ODOT may procure through consultant services environmental and other technical expertise needed for compliance with this Agreement.

B. ODOT Performance Monitoring and Reporting

1. FHWA and ODOT will cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. ODOT will provide to the FHWA an Annual Report that summarizes ODOT's performance under this Agreement no later than 45 calendar days following the end of each Federal Fiscal Year. The Annual Report will include information and follow a format mutually agreed to between FHWA and ODOT, an example of which is shown in Exhibit A, attached hereto and by this reference made a part hereof. At a minimum, the Annual Report will include:
 - a. Overall summary and listing of projects completed
 - b. Summary of environmental completion times
 - c. Summary of project quality control and program quality assurance activities, including any how recommendations were or will be implemented
 - d. Description of PCE Program's performance-related goals for current Federal fiscal year, progress towards meeting those goals, and performance-related goals for the next Federal fiscal year.

C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of ODOT, as well as ODOT's performance of its PCE processes and functions. Performance considerations include, without limitation, the quality and consistency of ODOT's PCE approvals, project environmental review documentation, CE submissions to FHWA for approval, adequacy and capability of ODOT staff who classify PCEs on FHWA's behalf, and the effectiveness, quality, and consistency of ODOT's administration of its PCE approvals and PCE Validations.
2. FHWA will conduct one or more program reviews as part of its oversight activities during the term of this Agreement. ODOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. ODOT shall draft the

corrective action plan within 45 calendar days of FHWA finalizing its review. The results of that review and corrective actions taken by ODOT shall be considered at the time this Agreement is considered for renewal.

3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to ODOT's performance under this Agreement. FHWA may require ODOT to perform other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
4. ODOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the Parties agree to amend this Agreement, then FHWA and ODOT 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.

IX. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. ODOT 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 ODOT requests renewal and FHWA determines that ODOT 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. At least six (6) months prior to the end of each five-year term, ODOT and FHWA will meet to discuss the results under the Agreement. This meeting may be combined with a meeting to discuss performance under the monitoring provisions of this Agreement.
- D. Either Party may terminate this Agreement at any time only by giving at least 30 days written notice to the other Party.
- E. Expiration or termination of this Agreement shall mean that ODOT is no longer able to make CE approvals on behalf of FHWA.

X. DISPUTE RESOLUTION.

The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement

XI. COUNTERPARTS

This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when

taken together shall constitute one agreement, notwithstanding that all Parties do not sign the same counterpart. Each copy of this Agreement so executed shall constitute an original.

XII. CONTACT PERSONS

- A.** ODOT's contact for this Agreement is Jim Collins, NEPA/Cultural Resources Unit Manager; 4040 Fairview Industrial Dr SE, Salem, OR 97302; 541-414-5080; james.d.collins@odot.oregon.gov, or assigned designee upon individual's absence. ODOT may notify the other Party in writing of any contact information changes during the term of this Agreement.
- B.** FHWA's contact for this Agreement is Thomas Parker, Environmental Program Manager; 530 Center St NE, Suite 420, Salem, OR 97301; 503-316-2549; thomas.w.parker@dot.gov, or assigned designee upon individual's absence. FHWA may notify the other Party in writing of any contact information changes during the term of this Agreement.

XIII. WAIVER; AMENDMENT.

No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that provision or any other provision. This provision survives termination of the Agreement.

XIV. INTEGRATION.

This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

XV. ELECTRONIC SIGNATURES

The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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.

SIGNATORIES:

United States Federal Government, by and
through its **Federal Highway Administration**

By **KEITH LYNCH** Digitally signed by KEITH LYNCH
Date: 2025.03.10 06:50:09 -07'00'
_____, FHWA Oregon Division
Administrator

Date _____

FHWA Contact:


Thomas Parker
Environmental Program Manager
530 Center St NE, Suite 420
Salem, OR 97301
503-316-2549
thomas.w.parker@dot.gov

STATE OF OREGON, by and through its
Department of Transportation

By  Tova PELTZ (Mar 7, 2025 11:02 PST)
_____, Deputy Highway Division
Administrator

Date 03/07/2025

APPROVAL RECOMMENDED

By 
_____, NEPA/Cultural Resources Unit
Manager

Date 03/07/2025

APPROVED AS TO LEGAL SUFFICIENCY

By Jennifer O'Brien, via email dated 03/06/2025
Assistant Attorney General

Date _____

ODOT Contact:

Jim Collins
NEPA/Cultural Resources Unit Manger
4040 Fairview Industrial Dr SE
Salem, OR 97302
james.d.collins@odot.oregon.gov

EXHIBIT A

The following is a formatting example for capturing data for the PCE annual report:

ODOT Key #	Federal Aid #	Project Name	PCE Type (s)	PCE Start Date	PCE Determination Date	PCE Approval Date	PCE Completion Time (in days)	
Project Information Organized by Region								
PCE Start Date – Project Kick-off Date								
PCE Approval Date – Date ODOT finalizes and signs the PCE Determination/Approval Document								
PCE Completion Time – Time from Project Kick-off to PCE Approval Date (in calendar days and months)								
Comments – Include information related to why a PCE has transitioned to a FHWA-approved CE (i.e., scope change; Section 106 effect is now “adverse, etc.) or other information as needed								

CERTIFICATION:

The projects included in this quarterly report have been reviewed under the provisions of the FHWA and ODOT Programmatic Categorical Exclusion Agreement and ODOT has determined that these projects meet the requirements of that Agreement; and that projects submitted in this report are consistent with 23 CFR 771.117 (a) and (b).