

**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
(March 2025)**

PCE “Kickouts” (Pages 3-4):

- 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.

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PCE Consult Clauses (Pages 4-5):

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.

Full copy available at:

https://www.oregon.gov/odot/GeoEnvironmental/Docs_NEPA/ODOT_FHWA_PCE_Agreement.pdf