

**PROGRAMMATIC AGREEMENT
BETWEEN THE
FEDERAL HIGHWAY ADMINISTRATION, CALIFORNIA DIVISION
AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS
CATEGORICAL EXCLUSIONS FOR NON-HIGHWAY PROJECTS**

THIS PROGRAMMATIC AGREEMENT (AGREEMENT), MADE BY AND BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (FHWA), AND THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION (CALTRANS), HEREBY PROVIDES AS FOLLOWS:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 United States Code (U.S.C.) 4321-4370h (2014), and the regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500-1508) 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; and

Whereas, the FHWA's approval of actions pursuant to title 23 of the U.S.C. or other Federal authority may be major Federal actions subject to NEPA; and

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)); and

Whereas, FHWA's NEPA implementing procedures (23 CFR Part 771) list 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; and

Whereas, Caltrans is a State agency that has stewardship and oversight responsibilities for the state highway system within California, which includes federal-aid highways and Interstates and must assist the FHWA in fulfilling its obligations under NEPA for State and local projects in California (23 CFR 771.109), where FHWA's responsibilities have not been assigned to Caltrans; and

Whereas, the FHWA has assigned Caltrans certain responsibilities for compliance with NEPA and other Federal environmental laws pursuant to 23 U.S.C. 326 and 23 U.S.C. 327; and

Whereas, the 23 U.S.C. 326 Memorandum of Understanding (326 MOU) between the FHWA and Caltrans references highway projects; and

Whereas, assignment pursuant to 23 U.S.C. 327 is statutorily limited to highway projects; and

Whereas, as stated in 23 CFR 773.103, “highway project” means “any undertaking that is eligible for financial assistance under title 23 U.S.C. and for which the Federal Highway Administration has primary responsibility”; and

Whereas, numerous FHWA actions subject to NEPA, which may qualify as CEs under 23 CFR 771.117, are not “highway projects” within the meaning of 23 CFR 773.103; and

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, with FHWA retaining responsibility and liability for such decisions; and

Whereas, the FHWA has promulgated regulations (23 CFR 771.117(g)) implementing the authorities in section 1318(d), allowing States to determine and approve whether an action qualifies for a listed CE on behalf of FHWA without further FHWA review and approval.

Now, therefore, the FHWA and Caltrans, pursuant to MAP-21 1318(d) and 23 CFR 771.117(g), enter into this Programmatic Agreement for the processing of Categorical Exclusions (CE) for FHWA activities that do not meet the definition of “highway projects” under 23 CFR 773.103.

I. PARTIES

The Parties to this Agreement are the FHWA and Caltrans.

II. PURPOSE

The purpose of this Agreement is to authorize Caltrans to determine and approve, on behalf of FHWA, whether a FHWA action that does not meet the definition of “highway project” in 23 CFR 773.103 qualifies for a CE listed in 23 CFR 771.117. Such actions include, but are not limited to, NEPA reviews for Highway ROW Use Agreements under 23 CFR Part 710, subpart D.

This Agreement does not delegate any other FHWA responsibility under environmental or other Federal laws.

III. AUTHORITIES

This Agreement is entered into pursuant to, or in consideration of, the following authorities:

- A. NEPA, 42 U.S.C. 4321 – 4370
- B. MAP-21, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)

C. 40 CFR parts 1500 – 1508

D. DOT Order 5610.1C

E. 23 CFR 771.117

IV. RESPONSIBILITIES

A. Caltrans is responsible for:

1. Processing CEs for the FHWA under the terms of this Agreement. In doing so, Caltrans shall utilize the review, quality control/quality assurance, documentation, and approval processes set forth in Section IV, subsections B, D, and H, of the 326 MOU, hereby incorporated by reference.
2. Self-assessing and reporting CEs processed under this Agreement in accordance with the provisions of Section V of this Agreement.
3. Cooperating with the FHWA in all oversight and quality assurance activities undertaken pursuant to this Agreement.

B. The FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to Caltrans, as requested.
2. Overseeing the implementation of this Agreement in accordance with the provisions in Section VI, including applicable monitoring and performance provisions.
3. Nothing in this Agreement prevents the FHWA from undertaking, with written notice to Caltrans, other monitoring or oversight actions, including audits, with respect to Caltrans' performance under this Agreement. The FHWA may require Caltrans, upon written notice, 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.

V. SELF-ASSESSMENT AND REPORTING OF CALTRANS CE APPROVALS

1. Caltrans shall provide a self-assessment report that summarizes its performance under this Agreement. The report will identify any areas where improvement is needed and what measures Caltrans is taking to implement those improvements. The report will include actions taken by Caltrans as part of its quality control efforts under Section IV(A) (1). Following submission of the report to the FHWA (electronically or in hard copy), Caltrans shall schedule a follow-up meeting with the FHWA at which the parties will

discuss the report, Caltrans' performance of this Agreement, and the FHWA's monitoring activities. This self-assessment can be performed and reported simultaneously with any voluntary self-assessment conducted by Caltrans under Section IV(E)(2) of the 326 MOU.

2. Caltrans will report all CE determinations made under this Agreement to FHWA on an annual basis. The report will be appended to Caltrans' list of the CE determinations and Section 4(f) determinations provided every 12 months to FHWA pursuant to Section IV(E)(1) of the 326 MOU, hereby incorporated by reference into this Agreement.

VI. MONITORING

Monitoring of Caltrans' performance under this Agreement shall be conducted simultaneously with, and in the same manner as, any monitoring activities under Section IV(E)(5) of the 326 MOU.

VII. AMENDMENTS

Any amendment to this Agreement shall be by written agreement of the Parties. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

VIII. EFFECTIVE DATE, TERM, RENEWAL, AND TERMINATION

- A. The term of this Agreement will be five (5) years from the effective date unless superseded by a renewed 326 MOU in which FHWA assigns, and Caltrans assumes, authority to make CE determinations for actions that do not meet the definition of "highway project" in 23 CFR 773.103, in which case this Agreement will terminate on the effective date of the renewed 326 MOU.
- B. Caltrans shall post and maintain an executed copy of this Agreement on its website, available to the public.
- C. Unless superseded in accordance with Section VIII.A., this Agreement is renewable for additional five (5) year terms if Caltrans requests renewal and FHWA determines that Caltrans has satisfactorily carried out the provisions of this Agreement.
- D. Either party may terminate this Agreement at any time by giving at least 60 days written notice to the other party.
- E. Expiration or termination of this Agreement shall mean that Caltrans is not able to make CE approvals on FHWA's behalf for actions that do not meet the definition of "highway project" in 23 CFR 773.103, except if terminated on the effective date of a renewed 326 MOU providing such authority pursuant to Section VIII(A) of this Agreement.

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.

Vincent Mammano

Vincent P. Mammano
California Division Administrator
Federal Highway Administration

May 24, 2021

Date

Philip J. Stolarski

Philip J. Stolarski, Chief
Division of Environmental Analysis
Caltrans

May 24, 2021

Date