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## **Agreement for Categorical Exclusions, 2001**

Maine Department of Transportation

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# AGREEMENT FOR CATEGORICAL EXCLUSIONS

MAINE DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION



MAY 2001

**MAINE DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
AGREEMENT FOR CATEGORICAL EXCLUSIONS**

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**MAINE DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
AGREEMENT FOR CATEGORICAL EXCLUSIONS**

**OBJECTIVE and APPLICABILITY**

This Agreement establishes protocol to enable self-certifying and programmatic approval by the Maine Department of Transportation (Maine DOT) of specified actions that qualify under 40 CFR 1508.4 Categorical Exclusion (Appendix I). This protocol will be used to determine applicability of federally funded Maine DOT actions for categorical exclusions (CEs) and allow most applicable actions to be certified earlier and more efficiently. Federally funded actions not eligible under the terms of this Agreement will be processed as Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

**RESPONSIBILITY**

Through this Agreement, the Federal Highway Administration (FHWA) delegates authority and responsibility to Maine DOT for certifying specified actions as CEs. Maine DOT's Bureau of Planning is administratively responsible for coordinating and processing information on eligible actions, and assuring these actions comply with criteria set forth in this Agreement between the FHWA and Maine DOT. Maine DOT will screen actions to determine whether they are eligible to be certified, and documentation will be available upon request to FHWA at any time for review.

**REQUIREMENTS**

All actions covered by this Agreement will comply with 23 CFR 771.115 and .117 (Appendix II). In addition, all actions must conform to the specified criteria that apply to the appropriate level of certification. Records will be kept and updated electronically. Information on actions will be initially recorded and recertified at designated phases of project development, as indicated under the PROCEDURES section of this document. Levels of CE certification include:

**Self-certifying.** These actions appear in 23 CFR 771.117(c), are certified by scope of work, and do not require individual FHWA approval.

**Programmatic.** These actions comply with 23 CFR 771.117(d), include Maine eligible actions and must meet Maine Checklist criteria (see Appendix III) before they can be certified by Maine DOT. They do not require individual FHWA approval.

**Individual.** All other actions conforming to 40 CFR 1508.4 (Categorical Exclusion) must be processed and submitted individually for FHWA approval.

## PROCEDURES

Maine DOT Bureau of Planning staff will review actions. They will coordinate, analyze, and electronically document appropriate interdisciplinary information, and determine the certification level. The process for reviewing actions, and instructions for documenting this information will be drafted by Maine DOT Bureau of Planning in a separate document and approved by FHWA. Applicable screening elements and schedule of certification and review for each level of CE are:

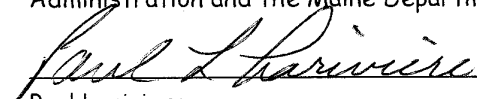
Levels	Self-Certifying	Programmatic	Individual
Screening Elements	40 CFR 1508.4 23 CFR 771.117(c) Work Scope	40 CFR 1508.4 23 CFR 771.117(d) Work Scope Appendix III	40 CFR 1508.4 23 CFR 771.117 23 CFR 772 Work Scope Appendix III
Initial Review	BTIP/STIP	X 13 <sup>1</sup>	X13
Recertification	X16; X24	X16; X24	X16; X24

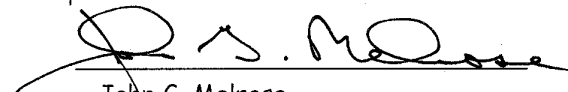
## REVIEW, REVISION, TERMINATION

This agreement and its attachments may be revised or terminated by mutual consent of the Division Administrator, Federal Highway Administration and the Commissioner, Maine Department of Transportation, or designee, at any time.

## APPROVAL

This agreement has been reviewed and approved by the undersigned, who have determined that it complies with laws, regulations and policies that apply to the Federal Highway Administration and the Maine Department of Transportation.

  
Paul Lariviere  
Division Administrator  
Federal Highway Administration

  
John G. Melrose  
Commissioner  
Maine Department of Transportation

May 30, 2001  
Date

<sup>1</sup> Refers to milestone designated during project development within "ProjEx." X13 is Preliminary Design Report/Preliminary Plan Complete. X16 is NEPA Complete, and X24 is Environmental Approvals Complete. See Appendix IV for a complete list of ProjEx milestones.

APPENDIX I  
CODE OF FEDERAL REGULATIONS  
TITLE 40--PROTECTION OF ENVIRONMENT

APPENDIX I  
CODE OF FEDERAL REGULATIONS  
TITLE 40--PROTECTION OF ENVIRONMENT  
Chapter V--Council on Environmental Quality

**SEC. 1508.4 CATEGORICAL EXCLUSION.**

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

[Revised as of July 1, 1999]

APPENDIX II  
CODE OF FEDERAL REGULATIONS  
TITLE 23--HIGHWAYS



APPENDIX II  
CODE OF FEDERAL REGULATIONS  
TITLE 23--HIGHWAYS  
23 CFR 771.115 AND 23 CFR 771.117

**Sec. 771.115 CLASSES OF ACTIONS.**

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

- (1) A new controlled access freeway.
- (2) A highway project of four or more lanes on a new location.
- (3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, auto-mated guideway transit).
- (4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) Class II (CEs). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in Sec. 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to Sec. 771.117(d).

(c) Class III (EAs). Actions in which the significance of the environmental impacts is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

**Sec. 771.117 CATEGORICAL EXCLUSIONS.**

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people; do not have a significant impact on any natural,

cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

**(c) The following actions meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Sec. 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:**

- (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<sup>1</sup> 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.

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<sup>1</sup> Editor's note: For definition of rest area see 23 CFR 752.3

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

- (1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
- (2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
- (3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
- (4) Transportation corridor fringe parking facilities.
- (5) Construction of new truck weigh stations or rest areas.
- (6) 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.
- (7) Approvals for changes in access control.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. 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. Hardship and protective buying will be permitted 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.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

APPENDIX III  
MAINE DEPARTMENT OF TRANSPORTATION  
PROGRAMMATIC CATEGORICAL EXCLUSIONS

APPENDIX III  
MAINE DEPARTMENT OF TRANSPORTATION  
PROGRAMMATIC CATEGORICAL EXCLUSIONS  
Eligible Actions And Maine Checklist

**A. ELIGIBLE ACTIONS**

23 CFR 771.117 (d) (see Appendix II) includes examples of additional actions that meet the criteria for a CE in the Council on Environmental Quality (CEQ) regulations (40 CFR 1508.4), and in 23 CFR 771.117(a). Under this Agreement, Programmatic CEs will include actions under 23 CFR 771.117 (d), as well as the following Maine specific list of actions. These will be eligible to be certified as Programmatic CEs, subject to the Maine Checklist, to assure that significant environmental effects will not result and that an individual CE is not warranted. If a particular type of action repeatedly meets the requirements of a Programmatic CE, Maine DOT and FHWA may agree to add the action to this list.

1. Adding or lengthening turning lanes (including continuous turn lanes), adding through lanes (with the exception of Interstate or "Interstate-like" Freeways), intersection improvements, channelization of traffic, dual lanes at intersections and interchanges, auxiliary lanes, and reversible lanes.
2. Flattening slopes; improving vertical and horizontal sight distance.
3. Replacing an existing at-grade intersection with a grade separated structure.
4. Restoring, replacing and rehabilitating culverts, inlets, drainage pipes, and systems including safety treatments.
5. Increasing existing travelway width and widening/adding shoulders.
6. Widening and maintaining bridges. Includes (but not limited to) wearing surface/deck rehabilitation or replacement, painting, scour repair, scour countermeasures, fender repair, rail or curb retrofit, and seismic retrofit.
7. Upgrading bridge end approaches/guardrail transitions.
8. Replacing, removing, or adding guardrail, where no new bank stabilization is required.
9. Converting existing transportation support buildings and ancillary facilities to new uses that support a definable transportation function, where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

10. Converting rail storage and maintenance facilities to new uses that support a definable transportation function, in areas used predominantly for industrial or transportation purposes.
11. Improving vertical and horizontal alignment of railroad crossing.
12. Removing existing railroad grade separation structures.
13. Upgrading railroad track circuitry.
14. Improving railroad-crossing surface.
15. Improving sight distance at railroad crossing.
16. Eliminating railroad crossing by closure; removing railroad overpass within right-of-way.
17. Ferry boat and locomotive rehabilitation.
18. Scenic Byway actions.
19. Transportation Enhancement actions.
20. Compensatory mitigation activities approved to offset impacts from Federal-aid projects.
21. Clear zone safety improvements, such as fixed object removal or relocation.
22. Vacating or transferring extraneous property having no foreseeable significant adverse impacts on or off site.
23. Screening unsightly areas.
24. General preventive maintenance activities.
25. Roadway skid hazard treatment.
26. Upgrading median barrier.
27. Installing or replacing impact attenuators.
28. Implementing traffic surveillance and control systems.
29. Implementing motorist aid systems.



30. Implementing highway information systems.
31. Implementing computerized traffic signalization systems.

## **B. MAINE CHECKLIST FOR PROGRAMMATIC CATEGORICAL EXCLUSIONS**

A proposed action may be processed as a Programmatic CE if all of the following questions can be answered "No." All other CEs must be individually submitted for approval by FHWA.

1. Public Involvement - Is there substantial public opposition to proposed action?
2. Right-of-Way - Does action include a residential or commercial displacement, or acquisition of property rights that will result in substantial adverse impacts?
3. Hazardous Material - Are there any known State or Federal Uncontrolled Oil and Hazardous Material sites within or adjacent to the action?
4. Cultural Resources (Section 106) - Has the State Historic Preservation Officer (SHPO) determined that the proposed action will have other than "no effect" on the properties eligible for or listed in the National Register of Historic Places?
5. Section 4(f) or 6(f) - Does action require use of any property protected by Section 4(f) of the Department of Transportation Act (except for Transportation Enhancement requisitions and preservation of historic sites), or Section 6(f) of the Land and Water Conservation Fund Act?
6. Wetlands - Does action require an Army Corps of Engineers Programmatic Category III (Individual) Permit?
7. Sole Source Aquifers - Is action over a sole source aquifer?
8. Wild and Scenic Rivers - Is action in, across or adjacent to a river designated as a component or proposed to be included in the National System of Wild and Scenic Rivers?
9. Scenic Byways - If action is proposed on or adjacent to any State or Federal designated Scenic Byway, has Maine DOT determined that the action would have an adverse effect on the Byway (according to the Scenic Byways Coordinator, Scenic Byways Board, and Corridor Management Committee/Plan, as appropriate)?
10. Noise - Do impacts of action fail to conform to the Noise Abatement Criteria levels (23 CFR 772) and Maine DOT Noise Policy?

11. Air Quality - Does the proposed action fail to meet Air Quality and/or Conformity requirements?
12. Endangered Species - If action is proposed in an area known to have Federally listed Endangered or Threatened Species or Critical Habitat, will the action affect any of these resources?
13. Other - Does action adversely impact any known critical or unique natural resource, the quality of adjacent surface water resources, community cohesiveness, planned community growth, or beneficial land use patterns?

APPENDIX IV  
MAINE DEPARTMENT OF TRANSPORTATION  
ProjEx Milestones

APPENDIX IV  
MAINE DEPARTMENT OF TRANSPORTATION  
ProjEx Milestones<sup>2</sup>

X01	PROJECT KICKOFF	This box includes a number designation and a definition for each ProjEx milestone available for project development and implementation. ProjEx is Maine DOT's Program and Project Management System for transportation program development, comprehensive project planning and delivery, and enterprise-wide access to project information. Originally undertaken to improve the Department's program delivery, ProjEx is now available to help plan, schedule and control projects from their early stages as project candidates, through programming and funding approval, and on to design and construction completion. Key
X07	INITIAL TEAM MEETING	
X09	PRELIMINARY PUBLIC MEETING	
X11	PRELIMINARY ALIGNMENT COMPLETE	
X12	DRAFT PRELIMINARY PLAN COMPLETE	
X13	PDR/PRLELIMINARY PLAN COMPLETE	
X15	FORMAL PUBLIC CONTACT	
X16	NEPA COMPLETE	
X17	MIDWAY TEAM MEETING	
X19	HIGHWAY PLAN IMPACTS COMPLETE	
X22	BRIDGE STRUCTURAL PLANS COMPLETE	
X23	UTILITIES CERTIFIED	
X24	ENVIRONMENTAL APPROVALS COMPLETE	
X25	R/W CERTIFIED	
X33	DESIGN PS&E COMPLETE	
X39	PROJECT ADVERTISED	
X43	CONTRACT DATE	
X45	CONSTRUCTION BEGIN	
X47	FINAL TEAM MEETING	
X49	CONSTRUCTION COMPLETE	

project management features have been incorporated into ProjEx to facilitate improved team communication, coordinate work schedules, and assign human resources efficiently. In addition, ProjEx has been fully integrated with numerous Departmental databases to optimize shared information.

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<sup>2</sup> Effective 7/1/01