

## PROGRAMMATIC CATEGORICAL EXCLUSIONS

### For Use on Federal-Aid Highway Program Projects Authorized Under 23 U.S.C. 327

May 2021

The DOT&PF Regional Environmental Manager (REM) is authorized to determine whether a project qualifies for a Categorical Exclusion (CE) specifically listed in 23 CFR 771.117(c) or (d). The REM may complete a project review and make a CE approval only for projects that meet the terms of the NEPA Assignment MOU under 23 USC 327 and do not exceed the conditions listed below.

Distinct types of projects are authorized by each Programmatic Approval (Approval):

- Programmatic Approval 1 - certain projects processed under 23 CFR 771.117(c)
- Programmatic Approval 2 - certain projects processed under 23 CFR 771.117(c) or (d)
- Programmatic Approval 3 - certain Right of Way actions under 23 CFR 771.117(d)(6)

The REMs may only approve projects that meet the conditions specified in the applicable Programmatic Approval and meet each of the General Programmatic Approval Conditions.

#### General Programmatic Approval Conditions:

- a. No significant environmental impacts as described in 23 CFR 771.117(a);
- b. No unusual circumstances as described in 23 CFR 771.117(b);
- c. No more than minor amounts of permanent right of way are acquired (no acquisition of an entire parcel, or no more than 25 partial parcels);

**Note:** A right-of-way acquisition is defined as any interest acquired (e.g., leases, easements, permits, etc.), temporary and permanent. For the purposes of this condition, a permanent right of way acquisition is any interest held beyond the completion of construction that is not a revocable permit or other temporary agreement.

- d. No displacements will occur;

**Note:** This includes temporary displacements, regardless if an owner, tenant, or other displaced party. An example of a temporary displacement would be one that occurs due to noise impacts during construction.

- e. No change in access control;

**Note:** A change in access control includes either acquisition or disposal of access control for a controlled access facility.

- f. No determination of adverse effect under Section 106 of the National Historic Preservation Act;
- g. None of the following situations involving Section 4(f): *de minimis* impact determinations, programmatic evaluations, adverse temporary occupancy, constructive use determinations, or individual evaluations;

**Note:** Section 4(f) exceptions (23 CFR 774.13) are excluded from this condition.

- h. No conversion of use of a property protected by Section 6(f) of the Land and Water Conservation Fund

Act or other unique areas or permanent acquisition of special lands that were acquired in fee, leasehold, or permanent easement with public-use money and have deed restrictions or covenants on the property;

**Note:** Other programs include, but are not limited to, the Federal Aid in Sport Fish Restoration (Dingell-Johnson) and Federal Aid in Wildlife Restoration (Pittman-Robertson) Acts managed by the Alaska Department of Fish & Game.

- i. No action out of conformity to the State Implementation Plan (SIP) in air quality non-attainment or maintenance areas;
- j. No construction in, across, or adjacent to a river designated as a component of the National System of Wild and Scenic Rivers;

**Note:** Maintenance or repair of existing facilities that do not increase the facility footprint is not construction.

- k. No actions involving more than 10 acres of U.S. Army Corps of Engineers jurisdictional wetlands or waters of the U.S.;
- l. No actions requiring an individual U.S. Coast Guard bridge permit;

**Note:** A 144(c) exception or Advanced Approval are not individual permits.

- m. No actions encroaching on a regulatory floodway, or work affecting the base floodplain (100-year flood) elevation of a watercourse or lake, pursuant to Executive Order 11988 and 23 CFR §650 subpart A;

**Note:** “Work affecting the base floodplain” is defined as a one foot or greater increase to the base flood elevation. Functionally-dependent uses that encroach on a regulatory floodway and that do not result in a change to the conveyance capacity of the floodway are excluded from this condition.

- n. No actions defined as a “Type I project” per 23 CFR 772.5;
- o. No actions with a “may affect, likely to adversely affect” determination for federally-listed or candidate species, or proposed or designated critical habitat;
- p. No actions that may adversely affect Essential Fish Habitat;
- q. No actions that would require an Incidental Harassment Authorization under the Marine Mammal Protection Act; and
- r. No acquisition of property involving a known hazardous material site.

**Note:** An acquisition could include either permanent or temporary interests (see note for General Programmatic Approval Condition c).

The DOT&PF REM shall make the project-specific approval and provide the Statewide Environmental Office a copy of signed Programmatic Categorical Exclusions (PCEs) in accordance with the DOT&PF Categorical Exclusion procedures in the *Alaska DOT&PF Environmental Procedures Manual*.

The DOT&PF REM shall also specify the applicable Approval and certify on the “*Project Information Document*” that the proposed action meets all requirements of the applicable Approval.

Approval of actions under 23 CFR 771.117(c)(26), (c)(27), and (c)(28) also require documentation that the conditions in 23 CFR 771.117(e) are met.

## Programmatic Approval 1

This Approval is only applicable to activities identified in 23 CFR 771.117(c). Projects processed under this Approval may be completed with the preparation and approval of an Expedited CE Documentation Form.

In addition to the General Programmatic Approval Conditions, projects processed under this Approval must meet the following conditions:

- a. No permanent acquisition of right of way;

**Note:** A right-of-way acquisition is defined as any interest acquired (e.g., leases, easements, permits, etc.), temporary and permanent. For the purposes of this condition, a permanent right of way acquisition is any interest held beyond the completion of construction that is not a revocable permit or other temporary agreement.

- b. No projects that require an U.S. Army Corps of Engineers Individual Permit, General Permit, Letter of Permission, or Nationwide Permit 23;
- c. Project has no effect on a federally-listed or candidate species or proposed or designated critical habitat;
- d. No work involving marine mammals; and
- e. No expectation of encountering hazardous waste or contaminated sites.

If the action does not meet all of the above conditions, including all General Programmatic Approval Conditions, Programmatic Approval 1 **does not** apply, and completion of a CE Documentation Form is required before the activity can be approved as a “c” list CE.

## Programmatic Approval 2

This Approval is applicable to:

- Activities identified in 23 CFR 771.117(c) that cannot be processed under Programmatic Approval 1; and
- Activities identified in 23 CFR 771.117(d), except those activities identified in 23 CFR 771.117(d)(6) which can be processed under Programmatic Approval 3.

Projects processed under Programmatic Approval 2 require preparation and approval of a CE Documentation Form and must meet all General Programmatic Approval Conditions.

## Programmatic Approval 3

Consistent with 23 CFR 771.117(d)(6), the DOT&PF REM may approve certain proposals for the disposal of excess right of way or for the joint or limited use of right of way. This approval may only occur where the proposed use does not have significant adverse impacts.

In addition to the General Programmatic Approval Conditions, the following conditions must be met for CE approvals for right of way actions under 23 CFR 771.117(d)(6):

- a. No U.S. Army Corps of Engineers jurisdictional wetlands involvement;

- b. No disposal of property involving a documented hazardous material site; and
- c. No effect on federally-listed or candidate species, or proposed or designated critical habitat.

The DOT&PF REM must certify on DOT&PF Expedited CE Approval Form that a proposed action requested under an encroachment permit application falls within the bounds of Programmatic Approval 3.