

# **FHWA and MoDOT Environmental Partnering Agreement**

## **I. MoDIV FHWA (FHWA) and MoDOT Roles and Responsibilities**

A. FHWA's Role is to ensure the Environmental Program is conducted in accordance with federal laws and regulations while implementing FHWA's Performance Plan and required stewardship and oversight. FHWA will:

1. Offer invitations to MoDOT for meetings where topics of mutual interest will be discussed;
2. Provide federal oversight of the Environmental Program through program reviews, project reviews, spot checks, and other practical methods;
3. Collaborate with MoDOT on the possibility of at least one program review or process improvement effort each year; and
4. Work with MoDOT during the development of FHWA's performance plan to ensure it aligns with any measures in the current transportation legislation.

B. MoDOT's Role is to ensure the Environmental Program is conducted in accordance with state and federal laws and regulations while implementing the Mission, Values, and Tangible Results outlined in MoDOT's Tracker. MoDOT's central office environmental and historic preservation section has primary responsibility for this and also functions as a liaison between FHWA and MoDOT district offices, local governments, and/or project consultants. MoDOT will:

1. Offer invitations (with appropriate notice) to FHWA for meetings when topics of mutual interest will be discussed;
2. Maintain a complete project file;
3. Involve FHWA in changes to environmental policies affecting federal aid projects prior to implementation;
4. Provide consistent stewardship and oversight to the LPAs;
5. Cooperate and participate in program and project spot check reviews;
6. Confer with FHWA Division environmental staff when issues, questions, and concerns arise within the Environmental Program;
7. Address all substantive comments made by FHWA in the environmental documents and by documented discussion between the two agencies,

8. Collaborate with FHWA on the possibility of at least one program review or process improvement effort each year;

and

9. Participate in FHWA risk assessment and determine if any performance action(s) are warranted and work with FHWA on the refinement of MoDOT’s department or division Tracker to ensure it aligns with any measures in the current transportation legislation.

C. The Environmental Program tasks in the table below are considered the most important. MoDOT and FHWA will work as true partners to ensure success.

ACTIVITIES		RESPONSIBILITIES and ACTIONS		
Approval Action	Reference Document	Approving Agency, Review Timeframe	MoDOT	FHWA
Programmatic Categorical Exclusion (PCE)	23 CFR 771 Programmatic Agreement for CEs	FHWA, 3 days	1) Central office notifies district of approval action (consult FHWA as needed) 2) Central office prepares report for FHWA (quarterly)	Verifies use of the Programmatic CE when requested  Reviews quarterly submittal for risk-based stewardship and oversight purposes
Documented Categorical Exclusion (CE2)	23 CFR 771	FHWA, 2 weeks	Provides a completed CE2 and related source documents (such as surveys, studies, PI material, etc.) to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
Environmental Assessment (EA)	40 CFR 1500 23 CFR 771 TA 6640.8A	FHWA, 4 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
Finding of No Significant Impacts	40 CFR 1500 23 CFR 771 TA 6640.8A	FHWA, 4 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT

<b>ACTIVITIES</b>		<b>RESPONSIBILITIES and ACTIONS</b>		
<b>Approval Action</b>	<b>Reference Document</b>	<b>Approving Agency, Review Timeframe</b>	<b>MoDOT</b>	<b>FHWA</b>
NEPA Coordination Plan	SAFETEA-LU Section 6002 FAST Act Section 1304	FHWA, 2 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information and provides comments to MoDOT
Purpose and Need	40 CFR 1500 23CFR 771 TA 6640.8A	FHWA, 4 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information and provides comments to MoDOT
Environmental Impact Statement (EIS) and FEIS/ROD combined	40 CFR 1500 23 CFR 771 TA 6640.8A	FHWA, 8 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
Record of Decision	40 CFR 1500 23 CFR 771 TA 6640.8A	FHWA, 4 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
EA, EIS, 4(f) revised to address FHWA comments	40 CFR 1500 23 CFR 771 23 CFR 774 TA 6640.8A	MoDOT, 3 weeks*  FHWA, 4 weeks	Provides revised copies that clearly indicate the changes that were requested from receipt of complete information from districts	Provides comments or approval to MoDOT including legal sufficiency review when appropriate
CE and EA/EIS Reevaluations	23 CFR 771	FHWA, 2 & 4 weeks, respectively	Provides a complete submittal to the FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT

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<b>Approval Action</b>	<b>Reference Document</b>	<b>Approving Agency, Review Timeframe</b>	<b>MoDOT</b>	<b>FHWA</b>
Section 106 Compliance	36 CFR 800	FHWA, 4 weeks	Provides a complete submittal to the FHWA prior to needed action	Provides documentation to the Advisory Council on Historic Preservation and other consulting parties (tribes, historic organizations, etc.) requesting consultation determination and reviews and approves MOAs.
Section 4(f) de minimis	23 CFR 774	FHWA, 2 weeks	Provides a complete submittal to the FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
Programmatic Section 4(f)	23CFR 774	FHWA, 4 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information; provides comments or approval to MoDOT
Individual Section 4(f) Evaluation	23 CFR 774	FHWA, 6 weeks	Provides a complete submittal to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
Biological Assessment (BA) under ESA for LAA	ESA	FHWA, 2 weeks	Provides complete submittal to FHWA prior to needed action	Requests additional information, provides comments to MoDOT for revision and submits to US FWS
PEL Coordination Review Points	23 CFR 450 23 USC 168 PEL Questionnaire	FHWA, 2 weeks	Provides complete submittal to FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT

ACTIVITIES		RESPONSIBILITIES and ACTIONS		
Approval Action	Reference Document	Approving Agency, Review Timeframe	MoDOT	FHWA
Final PEL Documentation	23 CFR 450 23 USC 168 PEL Questionnaire	FHWA, 4 weeks	Provides a complete submittal to the FHWA prior to needed action	Requests additional information, provides comments or approval to MoDOT
NEPA document public involvement material for EA/EISs	EPG 129	Concurrent with MoDOT review and determined by current schedule	Include FHWA on all correspondence outlined in the EPG	Provide comments or approval to MoDOT

*\*from receipt of complete information from districts*

- II. Ground Rules** MoDOT and FHWA agree to concentrate efforts in improving our work by following these ground rules: We will respect each agencies’ roles and responsibilities, by valuing the opinions of others and maintaining an open mind to suggestions. In addition, we will actively participate in scheduled meetings and collaborate on issues regarding MoDOT procedures and improvement projects.
- A. We will communicate with each other using a “no surprise philosophy” by telephone, mail, e-mail, and in face-to-face conversations. Any direct communication from legislators, district offices, consultants, regulatory or resource agencies, and the general public regarding issues of mutual concern will be communicated immediately to the other agency.
  - B. We will participate in meetings, as needed, to discuss items of mutual interest and complex or controversial projects. Also as needed, we will participate in joint field visits to projects or to project related meetings.
  - C. It is understood that MoDOT district staff and consultants are not to ask FHWA environmental staff for approvals, NEPA classification decisions, or questions on any other environmental issue without involvement of MoDOT’s central office staff. FHWA environmental staff, if contacted directly by MoDOT district staff or consultants, will redirect this submitted information to MoDOT central office environmental staff. Every effort should be made to ensure that MoDOT information provided to FHWA has the concurrence of both MoDOT districts and MoDOT central office.
  - D. FHWA may ask MoDOT to provide project priorities when more than one EA or EIS or multiple CEs come in for review within the same timeframe. FHWA and MoDOT

will strive toward producing high quality research and documented submittals, correspondence, and reviews. MoDOT will perform quality assurance/quality control reviews of documents for environmental and cultural resource compliance, accurate and best available information, logical conclusions, and ease of understanding. FHWA will conduct timely and thorough reviews of documents on the first submittal to ensure that the comments are consistent and documents meet all environmental requirements. No supplemental comments will be provided on subsequent document submittals, unless it is imperative that laws or regulations or agency or public comments be addressed.

- E. Complete environmental submittals to FHWA will mean appropriate forms and adequate documentation addressing all required environmental review and impact area details and documents how conclusions were reached.
- F. FHWA and MoDOT will hold a partnering meeting at least twice a year and will revisit this agreement on an annual basis to assess its effectiveness and to make revisions as necessary.
- G. MoDOT and FHWA recognize that each agency often has limited resources to process projects through environmental document development and review. When a request is made for projects to be expedited, MoDOT and FHWA will meet to review and arrange review schedules to meet emergency projects while arranging for the deferring of the reviews and approvals of other less urgent projects.

**III. Conflict Resolution** In case of conflict, MoDOT and FHWA understand that it is not personal and will resolve it at the lowest level closest to the issue and work through the issue of interpretation and execution of the regulations. If an agreement cannot be reached within 30 calendar days, we agree to immediately elevate the issue in the following manner:

- A. MoDOT Environmental and Historic Preservation Manager/FHWA Environmental Specialist
- B. MoDOT Assistant State Design Engineer/FHWA Program Development Team Leader
- C. MoDOT State Design Engineer /FHWA Assistant Division Administration

**IV. Performance Evaluation** MoDOT and FHWA will measure our partnering progress and success by the following performance indicators:

- A. All actions described in Section I are completed within the specified time frames at least 80 percent of the time as tracked by FHWA's Sharepoint Site.
- B. FHWA and MoDOT will continually seek out opportunities for programmatic agreements and other streamlining opportunities.

- C. Every other year, or more often as needed, we will participate in an interagency meeting with coordinating agencies to discuss upcoming projects and issues, including document timeframes and streamlining efforts.

**V. Communicating with Management** MoDOT and FHWA will keep management informed of our activities and how our agreement to partner is working by communicating important or controversial issues to management immediately. We will use the “no surprise philosophy” by providing management with updates as needed.

DATE:           XX-XX-XXXX          

Travis Koestner           XXXXXX XXXXXXXXX            
MoDOT State Design Engineer

Tymli Frierson           XXXXXX XXXXXXXXX            
FHWA Program Development Team Leader

Melissa Scheperle           XXXXXXXX XXXXXXXXXX            
Environmental and Historic Preservation

Taylor Peters           XXXXXX XXXXXXX            
FHWA Environmental Specialist