

**MEMORANDUM OF AGREEMENT (MOA)  
BETWEEN THE  
FEDERAL HIGHWAY ADMINISTRATION GEORGIA DIVISION (FHWA)  
AND THE  
GEORGIA DEPARTMENT OF TRANSPORTATION (GDOT)  
FOR THE IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)  
REEVALUATIONS PURSUANT TO 23 CFR 771.129**

**WHEREAS**, the Federal Highway Administration Georgia Division (FHWA) is responsible for compliance with the National Environmental Policy Act and implementing regulations for the federal-aid highway program in Georgia; and,

**WHEREAS**, the Georgia Department of Transportation (GDOT) is responsible under the Stewardship and Oversight Agreement on Project Assumption and Oversight by and Between the FHWA and GDOT dated May 6, 2015 for ensuring that each environmental report and document is prepared by a qualified subject matter expert (SME), uses standard formats and contents, and meets applicable policies and regulations; and,

**WHEREAS**, a major approval or grant is defined by 23 CFR 771.129(b) as “authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates” and interpreted by this MOA to include authority to undertake right of way acquisition or construction; and

**WHEREAS**, pursuant to 23 CFR 771.129(a-c), evaluation of previously approved NEPA documents or designations is required prior to GDOT requesting that FHWA undertake any major approvals or grants to establish whether or not the approved Draft Environmental Impact Statement (EIS), Final EIS, Record of Decision (ROD), Finding of No Significant Impact (FONSI) or Categorical Exclusion (CE) designation remains valid for the requested Administration action; and,

**WHEREAS**, GDOT and FHWA agree that the consultations required by 23 CFR 771.129(c) shall be documented through the processes contained in this Memorandum of Agreement (MOA).

**WHEREAS**, this MOA supersedes the process outlined in the GDOT letter to FHWA dated January 6, 1999.

**NOW, THEREFORE**, FHWA and GDOT agree to the following reevaluation process to comply with 23 CFR 771.129(a-c) requirements.

## **I. WHEN TO REEVALUATE**

### **A. Draft and Final Environmental Impact Statements**

1. A written evaluation of a draft Environmental Impact Statement (EIS) shall be prepared by GDOT in cooperation with FHWA if an acceptable final EIS is not submitted to the Administration within three (3) years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed (23 CFR 771.129(a)).
2. A written evaluation of a final EIS will be required before further approvals may be granted if major steps to advance the action have not occurred within three (3) years after the approval

of the final EIS, final EIS supplement, or the last major Administration approval or grant (23 CFR 771.129(b)).

B. Records of Decision (RODs), Findings of No Significant Impact (FONSI), or Categorical Exclusion (CE) Designations

1. Programmatic Consultation

- a. For projects to which this programmatic consultation will be applied, GDOT shall maintain information supporting this programmatic determination in the project file and such information (all supporting documentation, correspondence and updated studies) shall be made available to FHWA upon request. GDOT's files shall demonstrate that the project was evaluated for applicability of this programmatic determination within 12 months of the next major federal action.
- b. Projects with No Change: Pursuant to 23 CFR 771.129(c), FHWA and GDOT have consulted pursuant to 23 CFR 771.129(c) and FHWA has determined that the CE determination, FONSI, or ROD is still valid and written reevaluation is not required for projects with no change in laws, regulations or policy and no change in the project scope, affected environment, environmental impacts or mitigation or other commitments, presented in the original environmental document or subsequent written reevaluation(s).
- c. Projects with Minor Changes: GDOT and FHWA have consulted pursuant to 23 CFR 771.129(c) and FHWA has determined that the CE determination, FONSI or ROD is still valid and written reevaluation is not required for projects with the minor changes listed below. FHWA has determined that these minor scope changes would not require supplemental environmental documentation and the environmental document and resultant project decision would still be valid, subject to the conditions listed in Attachment 1.
  - i. Change in funding year provided that project is consistent with STIP/TIP in effect at the time of ROW or CST authorization;
  - ii. Change consisting solely of updating ecology or cultural resources worksheets, memoranda, or reports where no change of effect to resources identified in the environmental decision document or subsequent written reevaluations has occurred. (Updates to address newly protected species or additional or modified cultural resources are *not* covered by this condition.)
  - iii. ROW Limit Changes from that in original CE, FONSI or ROD:
    - ✓ Associated with conversion of ROW to easements (temporary or permanent) or conversion of easements to ROW; or
    - ✓ To accommodate utility relocation; or
    - ✓ Reduction in ROW limits due to design refinements or as a result of ROW negotiations;
  - iv. Realignment of driveways and related drainage features as a result of ROW negotiations;
  - v. Change in length(s) of previously proposed turn lane(s);
  - vi. Changes to project limits or length associated with tapering pavement into existing roadway at the terminus(i) of the project;
  - vii. Bridges:

- ✓ Changes in bridge materials or design where bridge material design or features are not associated with the outcome of Section 106 consultation, including tribal consultation, or Section 7 consultation;
  - ✓ Changes in bridge pier locations or numbers in streams with no protected species or designated or proposed critical habitat;
  - ✓ Extending bridge construction limits to add end rolls/rip rap or provide temporary construction access in streams or other waters with no protected species or designated or proposed critical habitat.
- viii. Refinements to drainage and storm water management design (e.g., change in length of pipe, culvert alignment, storm water management features) provided that such changes do not require agency coordination or contradict environmental commitments;
  - ix. Design refinements involving minor slope changes within proposed right-of-way;
  - x. Addition of traffic signal(s), dynamic message signs, ITS or other electronics, photonics, or information processing systems to a larger project;
  - xi. Minor shifts in horizontal and/or vertical alignment resulting from design refinement;
  - xii. Changes in lane or shoulder width, provided such change is not associated with the addition or elimination of multiuse, bicycle or pedestrian facilities or contradict environmental commitments;
  - xiii. Change in status of completion of environmental commitments;
  - xiv. Addition of stop bars or other safety features to railroad crossings within a larger project;
  - xv. Minor changes in traffic volumes: cannot change the Build or Design year LOS or necessitate updates to technical studies.
2. Written Reevaluation: Written reevaluation of a ROD, FONSI, or CE designation is required:
    - a. If a major federal approval action has not occurred within three (3) years after the approval of the ROD, FONSI or CE designation or the last major FHWA approval or grant; or
    - b. Unless subject to the programmatic consultation described in Section B.1 above, within 12 months of any request for a major FHWA approval or grant.
    - c. For all Transportation Enhancement (TE) projects or other projects administered by GDOT grant. Manuals and guidance provided by GDOT to assist local public agency sponsors regarding the revaluations shall be consistent with this MOA.
  3. GDOT shall consult with FHWA regarding the need for additional NEPA reevaluation if changes to a project occur after FHWA authorization of construction funding. The need for written reevaluation will be determined on a project-specific basis.
  4. Written reevaluations shall be submitted to FHWA for approval.

## II. DOCUMENTATION

A. Scope and Purpose of Reevaluation Process: The purpose of the project reevaluation process is to ascertain whether the original NEPA decision document or a subsequent reevaluation approval of that document is still valid, considering potential changes in the project that may have occurred since the previous approval(s). The following summarize the general topics to be addressed by the reevaluation process. Other changes not listed herein may warrant consideration, depending upon the project and its environmental setting. Reevaluations shall address the project in its entirety as described in the environmental decision document.

1. Change in purpose and need;
2. Consistency with current Metropolitan Planning Organization (MPO) Transportation Improvement Plan (TIP) or State Transportation Improvement Program (STIP);
3. Change(s) in project design and/or scope, including project termini;
4. Changes in right-of-way and easement requirements;
5. Change in or to the affected natural/human/social environment (e.g., new ecological resources, land development, new cultural resources, air quality);
6. New information (e.g., environmental, traffic analyses, locations of construction activities, permits, technical studies, mitigation requirements);
7. New or modified laws, regulations or policies (e.g., local land use plans or transportation plans, new species);
8. New or unusual circumstances not previously considered;
9. Changes to permit or mitigation requirements;
10. Changes to construction methods from those assumed by the CE designation, FONSI or ROD;
11. Changes to environmental commitments and/or special provisions for environmental protection; or
12. Changes in the potential level of public controversy on environmental grounds.

B. Required Documentation

1. Programmatic Consultation: GDOT shall prepare a memorandum to document the use of the programmatic consultation process described in Section I.B.1 of this MOA for projects to which it is applied, provide a copy to FHWA, and maintain a copy in its project file. This memorandum shall be signed by the GDOT Signatory described in Section III of this MOA.
2. Written Reevaluation: GDOT will document the written reevaluation process using a Reevaluation Form approved for use by FHWA. This form may be amended at any time with mutual consent of the parties to this MOA.

### **III. QUALITY ASSURANCE/QUALITY CONTROL**

- A. Programmatic Consultations: For projects to be subject to programmatic consultation pursuant to Section I.B.1 of this MOA, GDOT's project file must clearly demonstrate that the project meets the criteria for use of the programmatic consultation process.
- B. Written Reevaluations
1. GDOT is responsible for the review of all written reevaluations for technical quality, completeness and accuracy prior to submission to FHWA.
  2. GDOT is responsible for the maintenance of complete and accurate project records;
  3. FHWA cannot undertake a major federal action until the reevaluation process described herein and associated documents are complete.
  4. FHWA is responsible for the review and final approval of all written reevaluations required under this MOA and will perform its reviews in accordance with the most recently approved GDOT/FHWA Stewardship and Oversight Agreement and related MOAs.
- C. Signatories: To ensure the proper review and approval of all projects processed under this Agreement, three separate individuals must be signatories to the Reevaluation Form: (1) the Preparer; (2) the technical Reviewer (Reviewer); and (3) the GDOT Approver (signatory).

Preparer:

1. The Preparer will be responsible for determining the technical studies and public involvement warranted for a project and ultimately completing the Reevaluation Form. The Preparer shall communicate with appropriate GDOT staff prior to preparing the Reevaluation Form regarding any questions regarding the scope of the technical analyses and public involvement required. The Preparer should bring any issues to the attention of GDOT prior to the submission of the Reevaluation Form.
2. The Preparer will be responsible and for ensuring that the appropriate technical studies are completed and have been reviewed by the appropriate SMEs.
3. The Preparer will be responsible for ensuring that any public involvement and necessary agency or other coordination related to the project reevaluation process has been completed in accordance with policies, regulations interagency agreements. The Preparer shall be responsible for resolution of all comments received about the project.
4. Copies of all comments received from the public, agencies or other interested parties whether by formal comment, telephone, email or other means of communication shall be included in the project file. A written record of GDOT's response to comments raised about a project must be included in the project file.
5. The Preparer of the written reevaluation shall verify that all required items are contained in the project file prior to submitting the Reevaluation Form for second-level review.

Reviewer:

The Reviewer shall conduct a detailed technical review of the written reevaluation, including supporting documentation (technical studies, correspondence, documentation of determinations of effect, etc.). The purpose of this review is to ensure that the technical quality of documentation supporting the proposed NEPA document validity determination is adequate.

GDOT Approver (Signatory):

The Signatory is the individual in the GDOT NEPA section chain of command who is at least a Section Chief Manager title or higher (to include all Office Heads). The Approver shall be responsible for ensuring that the technical review has been completed by the Reviewer prior to signing or submitting the Reevaluation Form for FHWA approval and is ultimately responsible for the proper completion of the reevaluation process.

## **IV. REEVALUATION APPROVAL**

Written reevaluations prepared for projects involving changes as described in Section II of this MOA shall be submitted to FHWA for review/approval.

## **V. RECORDS MANAGEMENT AND RETENTION**

1. The documentation described in this Agreement will be retained by GDOT and will be accessible to authorized representatives of FHWA and GDOT for a period of at least three (3) years following completion of construction of the project.
2. All accompanying documentation, special studies, and other pertinent material must be retained, either by hard copy or electronically, in GDOT's project file.
3. GDOT will manage project files in accordance with its records management and retention policy.

## **VI. MONITORING**

Monitoring for compliance with this MOA shall be undertaken through annual internal reviews to be conducted by GDOT, and joint reviews to be conducted periodically by FHWA and GDOT.

A. GDOT Internal Process Reviews:

1. Reevaluation Agreement Project Review: GDOT shall annually review at least 10 percent of the projects reevaluated under the stipulations of this MOA during the GDOT fiscal year for consistency with this Agreement, QA/QC requirements, and records retention. Projects reviewed shall include a mix of GDOT-prepared documents and consultant-prepared documents and shall include review of the process for projects with and without changes. Examples of projects prepared for NEPA compliance under the oversight of other GDOT offices (such as the Transportation Enhancement program projects) shall also be subjected to the annual review.
2. FHWA shall be notified when a review is scheduled by GDOT. Copies of the findings associated with GDOT's reviews, along with proposed corrective action(s), if necessary, shall be provided to FHWA within thirty (30) days of completion of the review.

B. Joint Process Reviews:

1. Full compliance with this MOA will be determined through periodic process reviews to be jointly conducted by FHWA and GDOT. The results of such reviews will be used to determine what process improvements and/or Agreement amendments may be appropriate.

2. A joint review by GDOT and FHWA shall occur at least once during the effective period of this MOA. Corrective actions for deficiencies identified during these reviews must be developed within 60 days of the completion of the review.

## VII. MOA AMENDMENTS AND TERMINATION

1. This Agreement will take effect as of the effective date of the signature of the FHWA Georgia Division Administrator, who shall sign the MOA last.
2. This MOA shall be valid for five (5) calendar years from the date it takes effect.
3. Either signatory to this Agreement may request that it be amended at any time, whereupon the parties will consult to reach a consensus on the proposed amendment. Where no consensus can be reached, the Agreement will not be amended.
4. Either signatory to this Agreement may terminate it by providing thirty (30) days written notice to the other party, provided that the parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

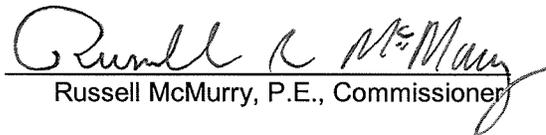
## VIII. DISPUTE RESOLUTION

The Dispute Resolution process described in the current Stewardship and Oversight Agreement between FHWA and GDOT will be implemented in the event of a dispute between the signatory parties to this Agreement.

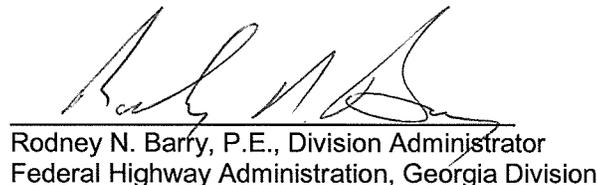
## IX. APPROVAL OF AGREEMENT

The undersigned have reviewed this MOA and determined that it complies with the laws, regulations, and policies applicable to FHWA and the GDOT. Accordingly, it is hereby approved and becomes effective on the last date noted below.

7/19/16  
Date

  
Russell McMurry, P.E., Commissioner

7/19/16  
Date

  
Rodney N. Barry, P.E., Division Administrator  
Federal Highway Administration, Georgia Division

**ATTACHMENT 1**  
**CONDITIONS FOR SECTION B PROGRAMMATIC CONSULTATION**

In order to apply this programmatic consultation determination, the following conditions must apply:

- No change in project purpose and need;
- No changes in traffic projections that could change the Build or Design year LOS or necessitate updates to technical studies;
- No changes in traffic flow patterns;
- No change in project scope or concept, for example:
  - ✓ No change in project termini
  - ✓ No change in scope of intersection improvements
  - ✓ No design modifications resulting in removal of project features (e.g., removing all or portions of pedestrian facilities, removal or alteration of design elements or commitments associated with agency or tribal agreements or stipulations)
  - ✓ No new turn lanes
  - ✓ No new median breaks or elimination of median breaks previously proposed or change in location of median breaks depicted in the CE, FONSI, ROD or subsequent written reevaluations
  - ✓ No new cul-de-sacs or removal of cul-de-sacs previously identified in CE, FONSI, ROD or subsequent written reevaluation
  - ✓ No change in access to local roads
  - ✓ No additions or elimination of multi-use trails, pedestrian facilities or bicycle facilities
  - ✓ No addition of new through traffic lanes or additional pavement to accommodate future through traffic lanes, regardless of whether these lanes would be opened for use upon completion of construction.
- No change in affected environment (e.g., new development, change in land use or plans, species, cultural resources or other resources not previously considered, change in air quality conformity status);
- No change occurring outside of areas previously studied in original document or most recent written reevaluation;
- No inconsistency with current STIP/TIP; next federal authorization must be programmed in STIP/TIP;
- Social/Community Impacts:
  - ✓ No new impacts to residences or businesses, communities, community resources, churches, cemeteries, institutions
  - ✓ No change access to residences, businesses or institutions
  - ✓ No additional displacements
  - ✓ No change in presence/absence of minority or low income populations, characteristics of such populations, or adverse or beneficial affects to previously identified minority or low-income populations.
- No change in regulatory determinations for cultural, ecological, Section 4(f) resources and air quality parameters (PM 2.5 / CO, MSATs, GHC's) considered in CE, FONSI, ROD or subsequent written reevaluations;
- Changes do not warrant Type I noise analysis update, and no changes will occur to noise abatement measures considered likely in the CE, FONSI or ROD or subsequent reevaluation(s);
- No economic impacts not previously considered in CE, FONSI, ROD or subsequent written reevaluation;
- No additional public involvement warranted;
- No new off-site detour or increase in length of off-site detour;

- No changes in bridge construction or maintenance methods from those assumed in the CE, FONSI, ROD or subsequent written reevaluations requiring USACE, NPS, NMFS or USFWS consultation (i.e., addition of use of jetties, temporary work bridges);
- No new or modified impacts to Section 4(f) resource;
- No new involvement with federally encumbered lands;
- No changes to environmental commitments or Special Provisions;
- No change requiring new or continued coordination with:
  - ✓ USACE regarding USACE lands or resources
  - ✓ National Marine Fisheries Service regarding Essential Fisheries Habitat
  - ✓ USFWS or NMFS regarding new listed, proposed or candidate species or mitigation requirements.
- No change requiring a new or expanded public land transfer;
- No change in access to ROW;
- No changes altering consistency determination for Georgia Coastal Zone Management plan for Brantley, Bryan, Camden, Charlton, Chatham, Effingham, Glynn, Liberty, Long, McIntosh and Wayne Counties;
- No changes requiring additional consultation with NCRS regarding Prime Farmland impacts;
- No changes requiring new or additional tribal consultation; or
- No changes to regulatory permits type or mitigation required under permits.