

February 7, 2000

Agreement No.DTFH71-97-X-00031

Forest Service Agreement No.
00-MU-11083130-040

FOREST HIGHWAY STATEWIDE AGREEMENT

among

DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS
PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY

and

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

and

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE

for the

Administration of the Forest Highway Program
in the Commonwealth of Puerto Rico

Parties to this Agreement:

The Eastern Federal Lands Highway Division, Federal Highway Administration, U.S. Department of Transportation, hereinafter referred to as the FHWA, unless otherwise noted; the Forest Service, U.S. Department of Agriculture, hereinafter referred to as the FS; and the Puerto Rico Highway and Transportation Authority, Department of Transportation and Public Works, hereinafter referred to as the PRHTA.

Purpose:

The purpose of this Forest Highway Statewide Agreement (Agreement) is to set forth the general procedures, mutually acceptable to the Parties hereto, for the cooperative planning, programming, survey, design, construction, and maintenance of Forest Highways in the Commonwealth of Puerto Rico, pursuant to the provisions of Title 23, United States Code (USC), Sections 202, 203 and 204, and the regulations issued thereunder by the Secretary of Transportation and the Secretary of Agriculture. This Agreement also incorporates the public involvement/public hearing requirements of Title 23, Code of Federal Regulations (CFR), Section 771.111 and Title 40, CFR, Parts 1500 through 1508, as well as other associated environmental review procedures under Section 771 and applicable FS requirements.

Under the Federal Lands Highway Program, Congress has authorized funds for the Forest Highways that are within, or provide access to the National Forest System (NFS). Recognizing (1) that substantial benefits will accrue to the Commonwealth and to the Nation from the construction and maintenance of such Forest Highways and (2) that the Forest Highways are under the jurisdiction of a public road authority, and further (3) that the PRHTA has systems planning, maintenance, right-of-way acquisition, and interdisciplinary facilities available to assist in the accomplishment of the work, thereby meeting the requirements of Title 23, CFR, Part 660; it is deemed fitting and desirable to the Parties hereto to express by this Agreement the general terms of their cooperation in order to achieve maximum benefits in the public interest.

As stated in 23 CFR 660.111, the design and construction of Forest Highways projects will be administered by the FHWA unless otherwise provided for in an Agreement approved under that Subpart. Through this Agreement, it is recognized that the PRHTA may administer the design and construction of FH projects in the Commonwealth of Puerto Rico. The Parties may also enter into a specific project agreement which identifies a different design and construct agency for a particular project.

Forest Highway Routes:

This Agreement shall cover the FH routes previously approved for inclusion in the designated FH network, and any approved amendments. The FHWA shall maintain the inventory of the approved designated FH network. The list of such approved routes may be varied from time to time by agreement between the PRHTA and the FS, with the approval of the FHWA, either by adding routes or removing routes or by altering the description of any route to give it proper identity. Each such action shall be indicated by a revised listing showing the effective date of the revision.

Transportation Planning/Management Systems:

It is recognized that Forest Highways are an integral part of the road network in any State. Transportation planning will be performed by the PRHTA. The PRHTA will work with the FS and the FHWA on long-range planning activities of mutual concern. The PRHTA agrees that it will adhere, in performing these functions, to the environmental review/public involvement/public hearing procedures required under the guidelines of 23 CFR 771; and to the statewide and metropolitan planning requirements of 23 CFR 450. The PRHTA agrees to consider for incorporation the long range FH transportation plan into the Commonwealth's long range transportation plan. The PRHTA agrees to share information on FH routes in its bridge, pavement, and safety management systems.

Program of Projects:

A program conference will be held biennially, or more frequently if deemed necessary, which will include the PRHTA, the FHWA, and the FS, in accordance with 23 CFR 660.109(a). After agreement has been reached on the program of proposed projects, the FHWA will prepare the updated program and forward copies to the PRHTA and the FS.

The FHWA will provide the FH project data to the PRHTA prior to the PRHTA's public involvement process on the proposed Statewide Transportation Improvement Program (STIP). After the conclusion and evaluation of the public involvement process, the PRHTA will incorporate the program of projects into its STIP, provided no major concerns are presented. If applicable, the PRHTA will also forward a copy of the program to the appropriate Metropolitan Planning Organization (MPO) for incorporation into its Transportation Improvement Program (TIP).

Development of Projects:

As stated previously, either the PRHTA or the FHWA will be the agency administering the design and construction of FH projects. If it is determined to be in the public interest to have an agency other than the FHWA or the PRHTA be responsible for the administration of the FH project, a specific project agreement will be prepared. Regardless of which agency is administering the project, once projects are included in an approved FH program, the agency administering the project shall proceed promptly, and projects shall be carried forth through completion in accordance with the approved program.

Design standards for the FH projects shall be appropriate to the use of the road, scope of the project and in consideration of the natural and cultural environment. Standards specific to FHs or to a particular project may be established by agreement of the PRHTA and the FS and approval of the FHWA.

It is the intent of the project development process to keep all agencies informed of progress, to request their attendance at the scheduled plan reviews, and to obtain written concurrence of the plans, specifications, and estimate (PS&E) and approval prior to advertisement. If it becomes evident during the development of the project, that the scope of the project or the anticipated construction cost need to be changed, the agency administering the project should initiate coordination with the other parties to obtain their concurrence and approval of the change in the project.

Specifically, if the FHWA is administering the project, the FHWA will coordinate all plan reviews with the PRHTA and the FS and obtain written concurrence in the PS&E prior to advertisement of the project for construction. The FHWA will follow established Federal Lands Highway Program procedures for the development of the project, taking established PRHTA practices into consideration where appropriate.

If the PRHTA is administering the project, the PRHTA will coordinate with the FS during the development of the project, obtain written concurrence of the PS&E from the FS, and submit the advertisement PS&E package with evidence of the FS concurrence to the FHWA for project authorization. Upon FHWA approval that the project was developed in accordance with the approved program, the FHWA will obligate funds and authorize the PRHTA to proceed with the advertisement and construction of the project. Except for the coordination with the FS and FHWA approval and funding authorization, the PRHTA will follow approved Federal-aid procedures in the administration of the project.

Compliance with Environmental Review/Public Involvement/Public Hearing Requirements in Project Development:

Any party administering a project will adhere to the environmental review/public involvement/public hearing procedures required under the guidelines of 23 CFR 771 and appropriate agency implementing procedures and policies. These procedures include providing

early and continuing opportunities during the project development process for the public to be involved in the identification of social, economic and environmental impacts. When the FHWA is administering the project, consideration will be given to following the PRHTA public involvement procedures. When the PRHTA is administering the project, the FHWA Division office will take all formal approval action on the environmental document in accordance with Federal-Aid Procedures.

The National Environmental Policy Act (NEPA) requires all Federal agencies and their agents to evaluate and disclose environmental impacts of their actions. It is the intent under the Council of Environmental Quality (CEQ) regulations for a project to be evaluated by a designated lead agency. Because highways are a statutory responsibility of the FHWA, it is reasonable to expect the FHWA to coordinate and complete the environmental process consistent with all State and Federal regulations.

The role and level of involvement of the FS will vary dependent upon the scope of the proposed action. Many projects will be confined within the limits of existing road rights of way and easements. This work will have minimal off-site impact and minor influence on the management program of the FS. Coordination of this type of project will ensure conformance with the approved FH program of projects and an appropriate level of environmental resource coordination.

Projects that encroach on National Forest System lands need a greater level of FS review of project area resources and potential project impacts, and more detailed documentation by both the agency administering the project and the FS. Each project will be evaluated individually, and the Parties by mutual agreement shall establish which agency will assume the lead role in the environmental process and what responsibility each other party would have in the process and in the preparation of the required documentation. Because the FS is required to conduct an evaluation of the proposed highway action resulting in the transfer of lands to the PRHTA, it is appropriate for them to document the review process and conclusions independently and attach these to the environmental document by appendices. When encroachment of National Forest System lands is anticipated, the agency administering the project and the FS should meet and agree upon the specific scope of the resource surveys, the type and frequency of public involvement actions to be used in the development of the project and the time frame for the FS to complete its decision process for the appropriation of the lands. These procedures will allow both the agency administering the project and the FS to fulfill their obligations in their own documentation formats, yet tie the coordinated reviews in a single NEPA document consistent with Federal guidelines. In coordinating the environmental process and the anticipated Federal land transfer, the intent is to achieve one joint public involvement process. It is understood that this may require advancing some design activities in order to provide more detailed right-of-way information at the NEPA public involvement stage of the project.

Construction of Projects:

Minor changes in grade, alignment, surface course, or structures made necessary by unforeseen contingencies or deemed desirable by conditions developing during the progress of work may be made by the agency administering the construction project without the prior or separate approval of the other parties to this Agreement. It is contingent upon the agency administering the project to ensure that any such changes are not in conflict with any of the environmental and/or design considerations agreed to in the development of the project.

All construction is to be performed by contract entered into by competitive bidding, unless some other method is deemed to be more advantageous and in the public interest. If the project is to be administered by the PRHTA, prior concurrence to perform work by other than competitive means should be obtained from the FHWA Division Office.

Following the award of the construction contract, the agency administering the project will notify the other parties in writing of the award of the construction contract, and invite their attendance to a preconstruction conference. Such meetings will provide an opportunity for all interested parties to discuss their mutual concerns regarding project construction. During construction, the FS (and the PRHTA if the FHWA is administering the project) will consult with the Project Engineer on matters pertaining to project construction and environmental and resource coordination required in the stipulation of special use permits such as clean up, borrow pit seeding, etc.

The FS (and the PRHTA if the FHWA is administering the project) will be invited to participate in the final inspection. FS and PRHTA participation is to ensure that the project was constructed in accordance with the approved FH program.

FHWA will administer projects in accordance with established Federal Lands Highway Program procedures, and in accordance with the applicable Federal acquisition regulations and procedures. The PRHTA will administer projects in accordance with approved Federal-aid procedures.

Funding

When any proposed construction is to be administered by the PRHTA and financed in whole or in part with Federal funds, such circumstances will be set forth in the Project Agreement (PR-2), as amended by the PRHTA, together with a statement of the amount of Federal funds obligated for that project. The expenditure of Federal funds shall not exceed the amount shown on the PR-2, as amended by the PRHTA. If it appears that the project cost may exceed the estimate, and additional Federal funds may be needed, no obligation on the part of FHWA shall occur until the PRHTA requests and receives an approved Modification of Federal-Aid Project Agreement (PR-2A).

As the work progresses, or upon its completion, the PRHTA shall submit vouchers to the FHWA for payment of the Government's pro rata share of the cost of the work. The PRHTA shall send

Form PR-20 to: Eastern Federal Lands Highway Division, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, Virginia, 20166.

When the FHWA is administering projects funded entirely with FH funding or other funding provided directly to the Eastern Federal Land Highway Division, all project financial transactions will be processed in the Sterling office.

If State, local, other Federal-Aid funds or FS funds are made available for a project, the cost responsibilities and procedures to transfer these funds, or to reimburse either the PRHTA or the FHWA for eligible project costs, shall be covered by a specific project agreement. Any unused balance of these funds will be returned to the provider after closure of the financial records. The amount of cooperative funds as set forth in the specific project agreement shall be the maximum commitment to the project, unless a modification of the specific project agreement is executed.

When cooperative and/or FS funds are involved, the agency administering the project shall furnish to the other Parties a summary statement of the cost of the project. The FHWA will provide a statement of the FH portion of the project cost as reported in periodic FH financial reports. All financial information will be available at any time to the Parties to this Agreement upon request.

Project Agreement:

A specific project agreement is to be entered into between the PRHTA and the FHWA for each project for which (1) the survey, construction, acquisition of rights-of-way, or maintenance in connection with a project included in an approved FH program is to be accomplished in a different manner from that set forth in this Agreement, (2) cooperative funds, including Federal funds from programs other than the Federal Lands Highway Program, are to be made available for the project.

Rights-of-Way

Rights-of-way, or other interests in property, are to be acquired by and in the name of the PRHTA. The cost of such rights-of-way or other interests in property are to be at the PRHTA's expense unless otherwise provided in a specific project agreement.

Unless otherwise agreed to by the Parties, the PRHTA will perform the title searches, surveys, write the description, and prepare right-of-way plans. Regardless of whether FHWA or the PRHTA administers the project, the PRHTA will administer the right-of-way acquisition. The PRHTA shall certify to the FHWA that the right-of-way has been acquired in accordance with Federal-Aid procedures.

For Federal land transfers, the agency administering the project will prepare a Highway Easement Deed. All Federal land transfers will be completed in accordance with the Federal-aid procedures which stipulate the coordination process with Federal agency, the PRHTA, and the

FHWA Division and Regional offices to execute the Federal lands transfer. Federal land right-of-way required shall be transferred to the PRHTA.

Access across National Forest Lands needed for such uses as access to gravel or fill sources and temporary use of lands (such as material source sites, stockpile sites, disposal sites, minor sloping, etc.) outside of the right-of-way required for the construction and maintenance of the highway facility, will be authorized by the FS issuance of an appropriate special use permit.

Claims

The agency administering the project is responsible for resolution of any claim that arises as a result of any project design or construction contract. For PRHTA administered projects, reimbursement of the settlement will be made in accordance with established Federal-aid procedures.

Maintenance

On Commonwealth-owned roads, the PRHTA will maintain the FH project, or, by formal agreement with appropriate officials of a county, municipal government, or other public road authority, cause it to be maintained.

Prior to final construction acceptance by the contracting authority, the project shall be inspected by the cooperator, the FS and the FHWA to identify and resolve any mutual concerns.

Amendments to FH Statewide Agreements:

This Agreement together with the environmental review/public involvement/public hearing procedures may be modified by advance notice of 60 days from any of the three parties to the other two.

This Agreement shall be effective as of the ____th day of ____, 19__, and shall supersede all prior existing cooperative agreements for the same routes entered into pursuant to 23 U.S.C. Sections 202, 203, and 204, "Federal Lands Highway Program" except those involving commitment of funds or arrangement for the performance of construction work on projects underway but not yet completed and final settlement made.

DEPARTMENT OF TRANSPORTATION
AND PUBLIC WORKS
PUERTO RICO HIGHWAY AND
TRANSPORTATION AUTHORITY

DEPARTMENT OF AGRICULTURE
FOREST SERVICE
REGION 8

By: _____
Title: _____
Date: _____



By: Ernie Eburne

Title: Regional Forester

Date: 8/1/00

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION

By: Allen W. Burdon

Title: Division Engineer

Date: 8/25/00