

MEMORANDUM OF UNDERSTANDING
Between the
U.S. Coast Guard
and
Federal Highway Administration
and
Federal Transit Administration
and
Federal Railroad Administration
To Coordinate and Improve Bridge Planning and Permitting

I. Parties

The Parties to this Memorandum of Understanding (MOU) are the U.S. Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Railroad Administration (FRA) (FHWA, FTA, and FRA are referred to collectively as the Operating Administrations (OAs)).

II. Purpose

The purpose of this MOU is to expedite and coordinate the planning, environmental review, and decision-making for bridge permits by:

- a. Determining which bridge design concepts unreasonably obstruct navigation as soon as practicable and prior to or concurrent with the scoping process carried out pursuant to the National Environmental Policy Act (NEPA) in order to inform project alternatives to be evaluated;
- b. Preparing a coordinated environmental document that satisfies both the USCG and OAs NEPA implementing procedures and results in a shared or joint environmental decision document, where practicable, and concurrent decision documents at all other times; and
- c. Concurrently conducting the environmental evaluation and processing of the Bridge Permit application materials, whenever possible.

III. Authorities

- a. USCG enters into this MOU pursuant to 14 U.S.C. § 141.
- b. FHWA, FTA, and FRA enter into this MOU pursuant to 49 U.S.C. § 301.
- c. Programmatic Authorities, where applicable:
 1. National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190, 83 Stat. 852 (1970), *as amended; classified to* 42 U.S.C. §§ 4321-4347.

2. Act of Aug. 18, 1894, c. 299, § 5, 28 Stat. 362; *as amended; classified to 33 U.S.C. § 499.*
3. Act of March 3, 1899, c. 425, § 9, 30 Stat. 1151; *as amended; classified to 33 U.S.C. § 401, 406, 502 (commonly referred to as the: "Rivers and Harbors Appropriations Act of 1899").*
4. Act of March 23, 1906, c. 1130, § 1, 34 Stat. 84; *as amended; classified to 33 U.S.C. § 491-498 (commonly referred to as the: "General Bridge Act of 1906").*
5. Act of June 21, 1940, c. 409, 54 Stat. 497; *as amended; classified to 33 U.S.C. §§ 511-524; (commonly referred to as the: "Truman-Hobbs Act").*
6. Act of August 2, 1946, 60 Stat. 847; *as amended; classified to 33 U.S.C. §§ 525-533 (commonly referred to as: "the General Bridge Act of 1946").*
7. "An Act to give the consent of Congress to the construction of certain international bridges, and for other purposes," Pub. L. No. 92-434 (H.R. 15577), 86 Stat. 731-733 (September 26, 1972); *as amended; classified to 33 U.S.C. §§ 535-535i (commonly referred to as: "the International Bridge Act of 1972").*
8. Efficient Environmental Reviews for Project Decisionmaking, 23 U.S.C. § 139.
9. Coast Guard Aids to Navigation, 14 U.S.C. §§ 81 and 85.
10. National Bridge and Tunnel Inventory and Inspection Standards, 23 U.S.C. §144.

IV. Definitions

For the purposes of this MOU, the definitions contained in the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508) and the following definitions are applicable:

- a. Bridge means a structure erected across navigable waters of the United States, including waters shared by Canada and Mexico, and includes causeways, approaches, fenders, and other appurtenances thereto. See 33 U.S.C. § 535 and 33 CFR § 114.05.
- b. Bridge Permit means the approval by USCG of the location and plans of a bridge, pursuant to the Federal Bridge Statutes listed in Section III.c.2-7, and Acts of Congress authorizing the construction of bridges, including international bridges. This does not include bridges covered by 23 U.S.C. § 144(c). Bridge permits are approvals subject to the provisions of 23 U.S.C. § 139.
- c. Navigable Waters of the United States means the following except where Congress has designated otherwise: "(1) Territorial seas of the United States; (2) Internal

waters of the United States that are subject to tidal influence; and (3) Internal waters of the United States not subject to tidal influence that: (i) Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage; or (ii) A governmental or non-governmental body, having expertise in waterway improvement, determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with others waters, as highways for substantial interstate or foreign commerce.” 33 CFR § 2.36(a).

- d. Project Sponsor means an agency or entity seeking Federal transportation funds and responsible for initiating and carrying forward the planning, design, environmental review, and construction of a project in conjunction with the OA. This agency or entity could include a political subdivision of a State, an authority created or authorized under State law, or a private entity such as a railroad.

V. **Responsibility of Operating Administrations (OAs)**

For any project that may require a Bridge Permit, it is the responsibility of the relevant OA in cooperation with the Project Sponsor, as appropriate, to take the following actions:

- a. Initiate early engagement with USCG, no later than commencement of the NEPA scoping process, and maintain continuing coordination throughout project development in accordance with the project plan described in (b) below.
- b. Cooperatively with the Project Sponsor and prior to starting the NEPA scoping process, consult the latest published edition of the USCG Bridge Permit Application Guide as well as regulations, orders, and guidance related to the USCG and OA NEPA processes and prepare a project plan for successful completion of the NEPA and Bridge Permit processes. This project plan will serve as a framework for both the OA and USCG throughout the project development process, and should be informed by early engagement meetings between USCG and the OA. The project plan may be integrated with the project’s coordination plan or other project management tools as appropriate. The project plan should:
 - 1. Summarize areas of lead responsibility for the OA and USCG;
 - 2. Identify issues and concerns specific to the project that could affect the Bridge Permit decision;
 - 3. Identify the need for one or more OA and USCG public meetings and hearing opportunities, and consider joint public meetings and hearings where appropriate.
 - 4. Identify the requirements for a complete Bridge Permit application and identify the earliest possible stage of the project that the Project Sponsor should submit

specific Bridge Permit application materials to USCG to allow adequate time for a reasonable review, comment, response, and revision process.

5. Include a project schedule with milestones for document submission and specific time frames for review periods and document turnaround.
- c. Acquire the information necessary to prepare a navigation impact report concurrent with the NEPA alternatives analysis.
 - d. Analyze the navigational impacts of bridge design alternatives and based on this analysis, prepare a navigational impact report concurrent with the NEPA alternatives analysis. The OA will use this information to inform the alternatives advanced for further consideration under NEPA. The OA will consider unreasonable obstruction to navigation as a reason to eliminate alternatives from further consideration in the environmental review.
 - e. When serving as the Lead Agency and prior to the NEPA scoping process, invite USCG to become a Cooperating Agency in the environmental review process. Prepare the appropriate NEPA document(s)—a Categorical Exclusion (CE), Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI), or Environmental Impact Statement (EIS)/ Record of Decision (ROD)— in a manner that satisfies both the OAs' and USCG's NEPA implementing procedures to the maximum extent practicable.
 - f. Provide written notice to USCG and to the relevant regulatory agencies (e.g. U.S. Army Corps of Engineers or the U.S. Fish and Wildlife Service) and associated consulting parties stating that the OA will act as the lead Federal agency on behalf of USCG, as appropriate, for coordination with the U.S. Army Corps of Engineers and compliance with applicable environmental laws. The OA will furnish USCG with a written statement when it concludes all required consultations.
 - g. When new information or facts become known to the OA that may result in a reevaluation or supplemental NEPA document in accordance with the OA's NEPA implementing procedures, share with USCG the new information or facts and results from any reevaluation already developed or additional coordination performed with resource agencies. Where both the OA and USCG concur that a supplemental NEPA document is required, the roles and responsibilities of Lead and Cooperating Agencies will remain the same as for the preparation of the original NEPA document in order to prepare a single supplemental NEPA document that satisfies both the USCG's and OA's NEPA implementing procedures to the maximum extent practicable.
 - h. Work with USCG in reviewing and responding to comments and issues raised by the public during public comment and notice under NEPA and the Bridge Permit application process.

- i. Coordinate with the Project Sponsor to review and update as necessary the navigational impact report at the completion of the NEPA process and advise USCG of any new information or facts relevant to the navigational impacts.
- j. In accordance with 23 U.S.C. § 139, FTA and FHWA will work with the Project Sponsor and USCG to provide any additional information necessary for USCG to make its permit decision in a timely manner. FHWA and/or FTA will provide “no fault certifications” when appropriate under 23 U.S.C. § 139(h)(6).

VI. Responsibility of the Coast Guard (USCG)

When a project that is administered by or federally funded under the authority of one or more of the OAs requires a Bridge Permit, it is the responsibility of USCG to take the following actions:

- a. Work closely with the OAs and Project Sponsor in all stages of the project, including planning, development of purpose and need, NEPA scoping, and navigation impact evaluations to ensure that the OA and Project Sponsor are aware of and address the navigational and environmental impacts of the bridge necessary for the USCG to expeditiously process the Bridge Permit application.
- b. Work with the OA and Project Sponsor to develop a project plan for successful completion of the NEPA and Bridge Permit processes. This project plan will serve as a framework for both the OA and USCG throughout the project development process, and should be informed by early engagement meetings between USCG and the OA. Refer to Section V.b. for the project plan content.
- c. Assist the OA and Project Sponsor in acquiring the information necessary to prepare a navigational impact report concurrent with the NEPA alternatives analysis.
- d. Review the navigational impact report and advise the OA and the Project Sponsor as to which bridge designs unreasonably obstruct navigation prior to or concurrent with the NEPA alternatives analysis.
- e. Upon receipt of invitation to become a Cooperating Agency in the environmental review process, promptly provide written acceptance of the appropriate status and work with the OA to prepare environmental documentation that satisfies both the OA’s and the USCG’s NEPA implementing procedures to the maximum extent practicable.
- f. Review any new environmental information or facts identified by the OA subsequent to the completion of the NEPA documents to determine if the USCG’s NEPA requirements necessitate a supplemental NEPA document. To the maximum extent practicable USCG will work with the OA to prepare a single supplemental NEPA document that satisfies both the USCG’s and OA’s NEPA implementing procedures

where both the OA and USCG concur that a supplemental NEPA document is required.

- g. Assist the OA and the Project Sponsor in reviewing and updating as necessary the navigational impact report at the completion of the NEPA process.
- h. Where it is necessary for USCG to hold a meeting or public review of the navigational aspects of the proposal following receipt of a complete permit application, the USCG public notice will make reference to the OA environmental documentation and navigational impact report. The USCG notice will limit public comment to the navigation impacts of the proposed bridge.
- i. Determine permit application completeness within the time agreed upon as part of the project plan. USCG will notify the OA as soon as it determines that additional information is required or new information or circumstances arise that will delay a USCG permit decision. For projects subject to 23 U.S.C. § 139, CG will coordinate with FHWA or FTA to determine if the additional information or circumstances would support a no fault certification under 23 U.S.C. § 139(h)(6). When warranted, USCG will provide any information needed for FHWA or FTA to issue the no fault certification.

VII. Issue Resolution Process

- a. Conflict resolution is intended to identify and resolve issues as early as possible and to elevate issues as soon as the parties determine that they cannot resolve the issues in accordance with the most current conflict resolution guidance.¹
- b. The OAs and USCG will seek to resolve issues by discussion at the lowest possible organizational level. If an issue cannot be resolved through meetings between the parties that have day-to-day involvement in a project, then project-level staff should notify the appropriate OA, USCG, and Project Sponsor personnel having regional management responsibilities (e.g., USCG District Commander, OA Division or Regional Administrator or Program Official, Executive Director representing the Project Sponsor). Should those further discussions fail to achieve resolution in a timely fashion, the issues should be elevated incrementally to the next organizational level. Such elevation will continue until the issues reach the Secretarial level of each of the Departments with oversight of the agencies involved. Although this process does not supersede the formal issue resolution process for FHWA or FTA projects under 23 U.S.C. § 139(h)(5), it may be used as an alternative to the formal process.

VIII. Limitations

¹ See, e.g., CEQ-OMB Joint Environmental Conflict Resolution Memorandum, signed 9-7-12, DOT Order 5611.1A “U.S. Department of Transportation National Procedures for Elevating Highway and Transit Disputes,” or other applicable guidance. See also, 23 U.S.C. § 139(h)(5) for projects subject to the environmental review process under section 139.

- a. Nothing in this MOU is intended to conflict with current law or regulation or the directives of USCG or OAs. If a term of this MOU is inconsistent with such authority, that term is invalid, but the remaining terms and conditions of this MOU remain in full force and effect.
- b. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, against the United States, any party, their officers or employees, or any other person. This MOU does not direct or apply to any person outside the parties to this MOU.
- c. As required by the Antideficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the parties in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates the parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
- d. This MOU does not limit the signatories from developing agreements for specific procedures and processes to improve efficiencies and effectiveness related to interactions between the agencies to focus on unique issues and concerns in order to facilitate permit decision making and improved project delivery. Any agreements made between the parties in furtherance of this MOU must be consistent with Section II and subject to all of the terms and provisions of this MOU.

IX. Commencement/ Modification/ Discontinuation

This MOU is operative upon the signature of all the parties. This MOU may be modified at any time by the mutual written consent of the parties. Any party may withdraw from this MOU at any time by providing at least 90 days written notice to the other parties.

X. Revocation

This MOU hereby replaces the 1981 *U.S. Coast Guard/Federal Highway Administration Memorandum of Understanding on Coordinating the Preparation and Processing of Environmental Documents* and subsequent amendments.

XI. Points of Contact

United States Coast Guard
Office of Bridge Programs (CG-BRG)
US Coast Guard Stop 7418
2703 Martin Luther King Jr Ave, SE
Washington, DC 20593-7418
202-372-1511

Federal Highway Administration (FHWA)
Office of Planning, Environment & Realty
1200 New Jersey Ave SE
East Building – 7th Floor
Washington, DC 20590
(202) 366-0116

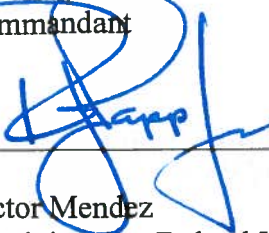
Federal Transit Administration (FTA)
Office of Planning and Environment (TPE)
1200 New Jersey Ave., SE
East Building - 4th Floor
Washington, DC 20590
(202) 366-4033

Federal Railroad Administration (FRA)
Office of Railroad Policy and Development
Office of Passenger and Freight Programs
Division of Environment and Systems Planning
1200 New Jersey Avenue, SE, MS-20
Washington, DC 20590
(202) 493-6381

XII. Signatory Authority

This MOU is approved and authorized on behalf of each party by:

R. J. Papp, Jr.
Admiral, U.S. Coast Guard
Commandant



Date: 14 JAN 2014

Victor Mendez
Administrator, Federal Highway Administration



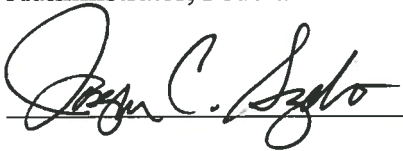
Date: 12/13/2013

Peter Rogoff
Administrator, Federal Transit Administration



Date: 12/12/13

Joseph Szabo
Administrator, Federal Railroad Administration



Date: 12/12/13