

**STEWARDSHIP AND OVERSIGHT PLAN
FOR THE
RECREATIONAL TRAILS PROGRAM (RTP)**

**BETWEEN THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND
CONSERVATION
AND
THE FEDERAL HIGHWAY ADMINISTRATION,
TENNESSEE DIVISION**

Section 1: Introduction

1. Overview

This Stewardship and Oversight Plan outlines the roles and responsibilities of both the Federal Highway Administration (FHWA) and the Tennessee Department of Environment and Conservation (TDEC) in the accomplishment of oversight and administration of the Recreational Trails Program, an assistance program of the FHWA.

The purpose of the Plan is to provide guidance in clarifying actions, preventing misinterpretations, and avoiding time delays. The Stewardship and Oversight Plan is intended to be a living document that can be modified when needed to incorporate additional legislation, additional processes, or other changes to improve program and project delivery in the State of Tennessee. The Stewardship and Oversight Plan will be reviewed approximately once every two years, and upon enactment of a transportation authorization bill, by TDEC and FHWA to determine if any changes need to be made.

While TDEC can assume the responsibility for FHWA in many Title 23 USC actions, some Title 23 USC requirements remain FHWA responsibilities. These program elements include, but are not limited to:

- Waivers to Buy America requirements
- Environmental approvals
- Tribal consultation
- Federal air quality conformity determinations required by the Clean Air Act
- Obligation of funds
- Final vouchers

2. Delegation of Authority to Local/State/Federal Agencies

The TDEC may, pursuant to 23 C.F.R. §1.11 and §635.105, delegate certain Federal-aid project authorities to a well-qualified and suitably equipped local/State/Federal public

agency. The TDEC is responsible for ensuring that appropriate procedures and guidelines are in place to facilitate the compliance of local/State/Federal public agency administered Federal-aid projects. FHWA will review and approve these practices and procedures for Federal-aid projects. The TDEC will determine if the local/State/Federal agency is well qualified and adequately staffed to administer projects before delegation of any activities. The TDEC will review the local/State/Federal agency's ability to administer Federal-aid projects or specific activities on a case-by-case basis, and the extent of delegation will be dependent on their current staffing level and experience, and past performance. An Agency Agreement will be executed between TDEC and the local/State/Federal agency to outline the responsibilities of both TDEC and the agency.

The TDEC retains responsibility under Federal law and regulations for all delegated activities. The TDEC will have written procedures established for the local/State/Federal agency that provide the necessary processes, approvals, oversight, and review that ensures the delegated projects receive adequate supervision and inspection, and are completed in conformance with approved plans and specifications and applicable Federal requirements. While TDEC will offer any training, advice, or other assistance as may be needed by a local/State/Federal agency to aid it in successfully completing its Federal-aid project, it is understood that the project is implemented by the local/State/Federal agency, with TDEC oversight. As such, if the local/State/Federal agency is not following prescribed requirements, TDEC's recourse would be, in consultation with FHWA, to remove Federal-aid funds from the project. FHWA will approve all TDEC processes, training materials, and any other activity that uses Recreational Trails Program funds.

TDEC will not delegate the following program elements to local/State/Federal/non-profit grantees:

- Project Authorization
- NEPA approval
- Sole Source Approval
- Approval of Grantee Staff Workforce
- Approval of Engineering Plans
- Approval of Buy America waivers
- Final Inspection
- Project Acceptance

3. Overview of the Recreational Trails Program (From the FHWA web site, FHWA guidance and TDEC guidance)

The Recreational Trails Program (RTP) provides funds to the States to develop and maintain recreational trails and trail-related facilities for both nonmotorized and motorized recreational trail uses. Examples of trail uses include hiking, bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

The RTP is an assistance program of the U.S. Department of Transportation's Federal Highway Administration (FHWA). Each State administers its own program, usually

through a State resource or park agency. In Tennessee, the Tennessee Department of Environment and Conservation, Recreation Educational Services Division administers the program, and has developed procedures to solicit and select projects for funding. TDEC also has a State Recreational Trail Advisory Committee, the Commissioner's Council on Greenways and Trails, to assist with the program.

Recreational Trails Program funds may be used for:

- Maintenance and restoration of existing trails
- Development and rehabilitation of trailside and trailhead facilities and trail linkages
- Purchase and lease of trail construction and maintenance equipment
- Construction of new trails (with restrictions for new trails on Federal lands)
- Acquisition of easements or property for trails
- Assessment of trail conditions for accessibility and maintenance
- Development and dissemination of publications and operation of educational programs to promote safety and environmental protection related to trails (including supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training) (limited to 5 percent of a State's funds)
- State administrative costs related to this program (limited to 7 percent of a State's funds)

Types of trail projects that are eligible for funding include:

- Multi-Use trails
- Hiking Trails
- Water Trails
- Equestrian Trails
- Bicycle/Mountain Bike Trails
- Off-Road Motorcycle Trails
- Off-Road All-Terrain Vehicle (ATV) Trails
- Off-Highway Four-Wheel Drive Trails
- Walking and Interpretive Trails

FHWA encourages States to enter into contracts and cooperative agreements with qualified youth conservation or service corps. The State may sole-source contracts and cooperative agreements to qualified youth service and conservation corps for work undertaken for the Recreational Trails Program. Section 1524(b)(2) of MAP 21 exempts such contracts and cooperative agreements from Federal-aid highway program contracting requirements under 23 U.S.C. §112. Since the FAST Act continues the program, this exemption from the 23 U.S.C. §112 contracting requirements is continued.

States must use 30 percent of their funds for motorized trail uses, 30 percent for nonmotorized trail uses, and 40 percent for diverse trail uses. Diverse motorized projects (such as snowmobile and motorcycle) or diverse nonmotorized projects (such as pedestrian and equestrian) may satisfy two of these categories at the same time. States are

encouraged to consider projects that benefit both motorized and nonmotorized users, such as common trailhead facilities. Tennessee gives credit in their selection criteria to projects that benefit multiple trail uses.

Recreational Trails Program funds may not be used for:

- Property condemnation (eminent domain)
- Constructing new trails for motorized use on National Forest or Bureau of Land Management lands unless the project is consistent with resource management plans
- Facilitating motorized access on otherwise nonmotorized trails
- Costs associated with patrol vehicles
- Equipment used only to construct trails in the short term then used for non-trail uses. Equipment should be rented if not used primarily for ongoing maintenance and operation specific to the proposed trail project
- Park pavilions and amenities unrelated to trail use
- Brochure printing, environmental education buildings, or classrooms, unless the use is predominantly intended for educational programs to promote safety and environmental protection related to trails

These funds are intended for recreational trails; they may not be used to improve roads for general passenger vehicle use or to provide sidewalks along roads unless the sidewalks are critical and necessary to complete a trail link.

A project proposal solely for trail planning would not be eligible (except a State may use its administrative funds for statewide trail planning). However, some project development costs may be allowable if they are a relatively small part of a particular trail maintenance, facility development, or construction project. States may allow some project development costs to be credited toward the non-Federal share.

Tennessee makes grants to municipal, county, State, and Federal government agencies. Tennessee also makes grants to private organizations that are State of Tennessee chartered non profit organizations, have 501(c)(3) status, and have a written agreement for trail work with the public agency. Also, these projects must take place on publicly owned land.

In Tennessee, the governor has appointed TDEC-RES to be the agency responsible for administering apportionments under the Recreational Trails Program. TDEC is also responsible for assuring that all Federal-aid projects with RTP funds administered by local/State/Federal/non-profit grantees comply with all Federal and State requirements (23 U.S.C. §206(c)).

Some funds for motorized trails are credited to the Tennessee Wildlife Resources Agency (TWRA). This agency uses the funds to develop and maintain motorized trails and to administer and enforce the provisions of the Tennessee Off-Highway Vehicle Act (T.C.A. §70-9-101 *et seq.*). A 2010 Memorandum of Agreement (MOA) between TWRA and TDEC for the Operation of an Off-Highway Vehicle Grant Program establishes an amount of \$225,000 of RTP funds to be awarded to TWRA in FY 2011 - 2012, with that amount

increasing in subsequent years based on the average consumer price index, but not to exceed 75% of the total motorized funds received from the RTP. If TWRA desires to receive additional funds over the limits set in the MOA, the agency may apply for and be awarded grants in addition to the maximum amounts.

4. Regulations, Guidance, Agreements and Manuals

Federal

- FAST Act, Section 1109, Surface Transportation Block Grant Program
- The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- 23 U.S.C. §104(h), Recreational Trails Program Apportionments
- 23 U.S.C. §106, Project Approval and Oversight
- 23 U.S.C. §112, Letting of Contracts
- 23 U.S.C. §113, Prevailing Wage Rates (Davis-Bacon Act)
- 23 U.S.C. §114, Convict Labor
- 23 U.S.C. §206, Recreational Trails Program
- 2 C.F.R. §200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 C.F.R. §1.36, Compliance with other Federal Laws and Regulations
- 23 C.F.R. §172, Administration of Engineering and Design Related Service Contracts
- 23 C.F.R. §635.410, Buy America Requirements
- 23 C.F.R. §771, Environmental Requirements
- Recreational Trails Program Interim Guidance (FHWA)
- Final Guidelines for Outdoor Developed Areas, United States Access Board, September 26, 2013
- 2 C.F.R. §200 Implementation Guidance, FHWA, December 4, 2014
- Programmatic Agreement between FHWA and TDEC Regarding the Processing of Actions Classified as Categorical Exclusions for Recreational Trails Programs Projects, July 7, 2016 (Attachment A)
- Recreational Trails Program (RTP) Close-Out Process for TDEC-RES and FHWA, Tennessee Division (Attachment B)
- Programmatic agreement letter regarding conditional Buy America waivers for the purchase of on-road vehicles, trail grooming vehicles and mechanized equipment primarily constructed with steel or iron, dated February 24, 2015 (Attachment C)

State

- Tennessee Code, Title 70, Chapter 9, Tennessee Off-Highway Vehicle Act
- RTP Educational Funds – Standard Operating Procedure
- Recreational Trails Program 2014 Project Manual, TDEC RES
- RTP Grant Application and Scoring Criteria (TDEC)
- Tennessee 2020: A Vision for Parks, People, & Landscapes (TDEC)

Consultant services funded in whole, or in part, with Federal-aid highway program funds shall be procured and administered in accordance with the requirements of the Uniform Administrative Requirements (2 C.F.R. §200). In addition, contracts for engineering and design related services which utilize Federal-aid highway program funds and are directly related to an ultimate construction project must also comply with the requirements established in 23 U.S.C. §112 and 23 C.F.R. §172. Engineering and design related services are defined as "program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services" (as specified in 23 U.S.C. §112(b)(2)(A) and 23 C.F.R. §172.3).

Note that the provisions of the Davis-Bacon Act and the convict labor provisions of 23 U.S.C. §114 are only applicable on construction projects that are within the right-of-way of a Federal-aid highway, and not to non-highway projects or to projects outside of a Federal-aid highway. A Federal-aid highway is defined as a highway on the Federal-aid highway system (the National Highway System (NHS) and interstates) and all other public roads not classified as local roads or rural minor collectors.

5. Required Contract Provisions

Form FHWA-1273 (revised May 1, 2012) must be physically incorporated in each construction contract funded under Title 23. The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts. Certain provisions will only apply under specific conditions; therefore each provision has an applicability section. Form FHWA-1273 provisions include:

- a. Nondiscrimination – this provision ensures fair treatment of all persons regardless of race, religion, sex, color, national origin, age, or disability. The authority for this provision is Title VI of the Civil Rights Act. The nondiscrimination provision is applicable to all Federal-aid contracts and subcontracts with a prime contract value greater than \$10,000.
- b. Non-segregated facilities – this provision prevents the use of segregated facilities, and is applicable to all Federal-aid contracts and subcontracts with a prime contract value greater than \$10,000.
- c. Davis-Bacon and Related Act Provisions – this provision enforces the Davis-Bacon Act (payment of fair wages) and the Copeland Act (prevention of kickbacks required from employees). This provision is applicable on all Federal-aid projects with a prime contract value greater than \$2,000 that are constructed within the right-of-way of a Federal-aid highway, excluding roadways functionally classified as local roads or rural minor collectors.
- d. Contract Work Hours and Safety Standards Act – this provision applies to any Federal-aid construction contract with a prime value greater than \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.
- e. Subletting or Assigning the Contract – this provision requires the contractor to perform at least 30% of the work and is applicable to all Federal-aid construction contracts on the National Highway System.

- f. Safety – Accident Prevention – this provision ensures compliance with construction safety standards and is applicable to all Federal-aid construction contracts and to all related subcontracts.
- g. False Statements Concerning Highway Projects – this provision derives from an anti-fraud statute contained in the Federal-aid Road Act of 1916 and is applicable to all Federal-aid construction contracts and to all related subcontracts.
- h. Implementation of Clean Air Act and Federal Water Pollution Control Act – this provision prevents the use of facilities (such as asphalt or concrete plants) that do not meet air and water quality standards. It is applicable to all Federal-aid construction contracts and to all related subcontracts.
- i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - this provision requires the contractor to certify as to their current eligibility status. This provision is applicable to all Federal-aid construction contracts of \$25,000 or more.
- j. Certification Regarding Use of Contract Funds for Lobbying – this provision carries out a law which prohibits Federal funds from being expended to influence, or attempt to influence, a Federal agency or Congress in connection with the awarding of any Federal contract or grant. It is only applicable to Federal-aid construction contracts of \$100,000 or more.

Examples of situations where the Form FHWA-1273 provisions are required to be included in the contract:

1. TDEC has a grant contract with a local/State/Federal government or non-profit grantee, and the grantee's forces will perform the work – the Form FHWA-1273 provisions will be included in the grant contract between TDEC and the grantee.
2. TDEC has a grant contract with a local/State/Federal government or non-profit grantee, and the grantee hires a contractor to perform the work – the Form FHWA-1273 provisions will not be included in the grant contract between TDEC and the grantee, but will be included in the construction contract between the grantee and the construction contractor, and will also be included in any construction sub-contracts.
3. TDEC has a grant contract with a local/State/Federal government or non-profit (grantee). Some of the work will be performed by the grantee's forces, and the grantee will hire a contractor to perform some of the work – the Form FHWA-1273 provisions will be included in the grant contract between TDEC and the grantee, as well as in the construction contract between the grantee and the construction contractor, and will also be included in any construction sub-contracts.

Examples of situations where the Form FHWA-1273 provisions are not required to be included in the contract:

1. TDEC has a grant contract that does not involve construction, as defined in 23 U.S.C. §101(a)(4). Examples would be land acquisition, development of a trail safety program, trail design and maintenance training and statewide trail planning. Contracts for projects that do not involve construction do not need to include the Form FHWA-1273 provisions.

6. Other Federal Requirements

These Federal requirements are in addition to those listed on Form FHWA-1273, and will be included in contracts as noted:

- a. Buy America – The FHWA's regulations implementing the Buy America provisions require domestic manufacturing processes for steel and iron products that are permanently incorporated in a Federal-aid project. The regulations include a minimal use criteria and waiver provisions where appropriate (see 23 C.F.R. §635.410). Trail grooming vehicles and mechanized equipment primarily constructed with steel or iron must comply with Buy America requirements or TDEC must request a waiver. Refer to Attachment C.
See the Federal Highway Administration website for RTP Guidance at <http://www.fhwa.dot.gov/environment/rectrails/guidance.htm>. TDEC submitted a programmatic agreement letter to the Division Office on February 24, 2015, which outlines the requirements to receive a conditional Buy America waiver for the purchase of on-road vehicles, trail grooming vehicles, and mechanized equipment primarily constructed with steel or iron. The programmatic agreement is incorporated as part of this Stewardship and Oversight Plan. The February 24, 2015 programmatic agreement will be included in all applicable contracts.
- b. Disadvantaged Business Enterprise – this requirement sets goals for the use of disadvantaged businesses. The lead State Agency (Tennessee Department of Transportation) has the responsibility for meeting the 10% goal.
- c. Suspension and Debarment – refer to 2 C.F.R. §200.212. TDEC includes suspension and debarment provisions in all grant contracts.
- d. Audits – refer to 23 U.S.C. §112, 48 C.F.R. §31, and 2 C.F.R. §200.500 through §200.520. This is for information only and does not need to be included in contracts.
- e. Records Retention – TDEC should include the records retention requirement in the contract with the local/State/Federal/non-profit (grantee). “Financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report”. Refer to 2 C.F.R. §200.333. The non-Federal entity (local or State government grantee), or Federal grantee, is responsible for complying with this requirement, along with all other requirements of the Federal award. Refer to 2 C.F.R. §300(b).
- f. Section 4(f) – The RTP Legislation in 23 U.S.C. §206(h)(2) exempts the RTP from the requirements of Section 4(f) of the Department of Transportation Act of 1966 (23 U.S.C. §138; 49 U.S.C. §303). This allows the USDOT/FHWA to approve RTP projects which are located on land within publicly owned parks or recreation areas without requiring a waiver or other Section 4(f) documentation. Section 206(h)(2) does not exempt the RTP from requirements under Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. §306108). It also does not exempt the RTP from requirements under Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. §200301 *et seq.*, 36 C.F.R. 59.3). This information does not need to be included in contracts.

7. FAST Act

The Fixing America's Surface Transportation Act (FAST) was enacted on December 4, 2015. The FAST Act is the first Federal law in over 10 years to provide long-term funding certainty for surface transportation. The FAST Act authorizes \$305 billion over Fiscal Years 2016 through 2020 for the Department's highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology and statistics programs. Funding for the RTP is a set-aside from the Transportation Alternatives funds for those States that choose not to opt out of the program. The Governor may opt out of the RTP by notifying FHWA not later than 30 days prior to apportionments being made in any fiscal year. Under the FAST Act, Tennessee will receive funding for FY 2016 in an amount equal to the State's FY 2009 RTP apportionment, or \$1,640,613. From this amount, 1%, or \$16,406, is returned to the FHWA for administration, for a net amount of \$1,624,207. This section will be updated and revised as needed by FHWA without requiring either party to re-sign the document.

8. Rescissions of Federal-aid Funds

Several Federal legislative acts have rescinded Federal-aid highway program funds. FHWA issues Notices to the States to comply with these acts (see <http://www.fhwa.dot.gov/legregs/directives/notices.htm>; go to the N4510 series). The Tennessee Department of Transportation (TDOT) is responsible for complying with these rescissions, which may affect the RTP. TDEC will coordinate rescissions of RTP funds with TDOT.

Section 2: Responsibilities

1. FHWA Responsibilities

The FHWA is ultimately accountable for all Federal-aid projects. The FHWA Tennessee Division will fulfill its stewardship role at a project level as follows:

- a. Involvement on RTP Projects – At its discretion, the FHWA may become involved with any Federal-aid project, including those administered under the Recreational Trails Program. Additionally TDEC may request FHWA involvement. The FHWA will provide engineering support for project development activities and technical assistance as requested.
- b. Non-Title 23 Responsibility – FHWA will continue to be responsible for the oversight of applicable non-Title 23 requirements. Such oversight will be conducted through a combination of both project and program level activities. Applicable non-Title 23 requirements include, but are not limited to:
 - National Environmental Policy Act (NEPA) of 1969
 - National Historic Preservation Act
 - Clean Water Act
 - Endangered Species Act

- Civil Rights Act of 1964
- Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970
- Disadvantaged Business Enterprise Program (DBE)
- Clean Air Act Amendments of 1990

The FHWA will manage and provide oversight of Tennessee’s Federal-Aid programs in various ways. Some of the methods used include:

- Routine day-to-day program actions and other interaction
 - TDEC from time to time may ask for Division participation on TDEC teams, committees, reviews, attendance at TDEC meetings and conferences, etc.
 - The Division Office will assess the financial aspects of programs and projects
 - FHWA will process payment vouchers within two weeks of receipt.
- c. Opt out Provision – On or about August 1st of each year, the FHWA will send a letter to the Commissioners of both TDOT and TDEC to inquire if the State desires to opt out of the RTP. If the State chooses to opt out, this agreement is no longer in effect.
- d. Tribal consultation – the Chickasaw Nation has requested that correspondence and consultation regarding Federal-aid projects be exclusively between FHWA and the tribe. TDEC will forward project information to FHWA for consultation with the Chickasaw Nation. If the Chickasaw Nation responds, FHWA will forward the response to TDEC. If no response is received within a 30-day time period, FHWA will notify TDEC that there has been no response from the tribe. FHWA will provide TDEC with updated Tribal consultation areas and tribal contact information as that information is revised.

2. TDEC Responsibilities

In accordance with 23 U.S.C. §206(c)(1), the governor has designated the Tennessee Department of Environment and Conservation (TDEC) as the agency responsible for administering apportionments made to the State. The Recreation Educational Services (RES) Division manages the grants for TDEC.

TDEC hereby advises FHWA that it wishes to assume project oversight responsibilities in accordance with the following:

- a. Recreational Trails Projects – TDEC assumes oversight responsibility for the right-of-way approval, utility approval, design approval, plans, specifications, estimates, contract award, and inspection of projects. RTP projects are required to be designed, constructed, operated, and maintained in accordance with State law, regulations, directives, safety standards, design standards, and construction standards, in lieu of many Title 23 U.S.C. requirements. Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not

limited to, procurement of professional services, Davis-Bacon wage rates (on projects constructed in Federal-aid highway right-of-way on highways functionally classified as arterials or collectors), advertising for bids, award of contracts, use of convict produced materials, Buy America Act provisions and other requirements. All RTP projects must also comply with Federal requirements not found in Title 23 U.S.C.

- b. Local/State/Federal/non-profit Agency Projects – TDEC is responsible for assuring that all Federal-aid projects administered by local/State/Federal/non-profit agencies comply with all applicable Federal and State requirements, and must monitor performance schedules of grantees to assure they are achieved. TDEC is not relieved of this responsibility even though the project may be delegated to the local/State/Federal agency. In accordance with 23 C.F.R. §1.11 and §635.105, TDEC is responsible for ensuring that the local/State/Federal agency is qualified and equipped to administer the project and has processes in place to ensure compliance with Federal requirements.
- c. TDEC agrees to submit invoices to FHWA a minimum of once every two months. Invoices will include itemized reimbursement amounts.

For those projects for which TDEC has agreed to assume oversight responsibility, TDEC will follow all applicable FHWA policies, regulations, Title 23, and non-Title 23 requirements as if FHWA were involved.

Section 3: Stewardship roles and responsibilities for specific program areas

1. State Advisory Committee

TDEC agrees to continue the State Recreational Trails Advisory Committee that represents both motorized and nonmotorized recreational trail users, and agrees to certify each year that the Committee shall meet not less often than once per fiscal year. The Tennessee RTP advisory committee is the TDEC Commissioner’s Council on Greenways and Trails (the Council). TDEC agrees to invite the FHWA program manager for the Recreational Trails Program to attend the meetings as an Ex-Officio member, and agrees to supply meeting information to the program manager by handouts, mail or electronically.

The major functions provided by the Council include setting goals and priorities for projects and providing direction and review for the RTP grant process.

2. Tennessee Department of Transportation Involvement

As with FHWA, TDEC agrees to invite a representative of the Tennessee Department of Transportation (TDOT) to be an Ex-Officio member on the Commissioner’s Council on Greenways and Trails and to supply that person with all Council information via handouts, mail or electronically. TDOT has received quarterly reports concerning greenway and trail activities and accomplishments. TDEC agrees to meet monthly with TDOT to discuss and resolve bicycle and pedestrian issues that impact greenways and trails.

3. Project Eligibility

TDEC determines project eligibility by referencing the most currently available Recreational Trails Program guidance provided by FHWA. TDEC uses this guidance in the creation of each grant cycle application. TDEC also references Title 23 United States Code (23 U.S.C.), Section 206 - Recreational Trails Program. FHWA has the final authority to make determinations of project eligibility, and will reject authorization of funds to any project it deems ineligible. On projects for which eligibility is unclear, TDEC agrees to collaborate early in the process with the FHWA RTP program manager to determine eligibility.

4. Diverse, Motorized, and Nonmotorized Minimum Requirements

For the apportionments made to a State for a fiscal year to carry out the RTP;

- 40% shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use
- 30% shall be used for uses relating to motorized recreation; and
- 30% shall be used for uses relating to nonmotorized recreation

TDEC agrees to provide documentation to FHWA demonstrating that the 40-30-30 requirements are met or that the State has set aside, for future obligation, the amount of funds necessary to meet the requirements. This will be done every two years, with each new grant cycle.

5. State Recreational Plan

23 U.S.C. §206(d)(1)(B) notes that funds apportioned to a State to carry out the Recreational Trails Program shall be obligated for recreational trails and related projects that are identified in, or further a specific goal of, a recreational trail plan. TDEC agrees to develop and maintain this plan. Currently, this is the “Tennessee 2020: Vision for Parks, People & Landscapes”, which may be found on line at http://www.tn.gov/environment/recreation/recreation_tennessee-2020-plan.shtml .

6. Project Applications

State, Federal and local government agencies are eligible to apply for funding through the Recreational Trails Program. Private, non-profit organizations may apply in partnership with a government agency. These partnerships must be official and in writing. Private applicants may be considered without a public partner if there are insufficient applications submitted within a specific category.

TDEC agrees to maintain the grant application for RTP funds on the TDEC – RES web site and to make it available to potential applicants when requested in writing.

Once the applications are received by TDEC, a committee chooses the recipients by reviewing the applications received against an established criteria listed in the open project selection process.

7. Grant Contract

Once the grantees are chosen, and FHWA has authorized the project, TDEC will contract with the grantee in order to receive the allocated grant funds. These contracts are developed by the RES Grants Administrator. Except for budget revisions, any change to any part of a grant requires a contract amendment.

In most cases, the grantee will have no more than three years from the approval date of the grant contract to complete the scope of a development project. Construction must begin within 120 days of the signing of the contract.

A mandatory grant procedures workshop is required for all grant recipients after grant award.

8. Matching Funds Requirements

An RTP grant provides 80% of the total project cost, requiring a 20% matching share from the applicant. Eligible matching sources are as follows:

- Cash
- Grantee Staff Workforce
- in-kind services (Donations by a 3rd party of volunteers, materials, and equipment use costs)
- legislative line item appropriations and other State/Federal grants
- the appraised value of a land acquisition or permanent conservation easement acquired by the grantee no earlier than the first day of the grant term
- the appraised value of donated real property

The RTP continues to allow other Federal program funds to provide the non-Federal share, and RTP funds may be used to match other Federal funds. There is a requirement that 5% of the project funds must come from a non-Federal source. Only planning and environmental assessment costs incurred less than 18 months prior to project approval may be counted toward the non-Federal share. Other costs incurred prior to project approval may not be used as a match. The value of donations for a match is determined by the nature of the donation. If it is land, for example, it is determined by a fair market value land appraisal. If it is materials, the value is determined by the normal rate for the particular material in that area. If it is routine (non-professional) labor, it is valued at Federal minimum wage. TDEC will specify to FHWA the source of the non-Federal matching funds on each RTP project. This will be shown on the obligating POFA document.

9. Environmental Process

In accordance with 23 U.S.C. §139, the FHWA is the lead Federal agency in integrating the full range of environmental requirements under a single, unified process that results in effective and sound transportation decisions. These laws and regulations include:

- NEPA and implementing regulations of the Council on Environmental Quality (CEQ) 40 C.F.R. §1500 and FHWA 23 C.F.R. §771;
- Section 4(f) of the Department of Transportation Act and implementing regulations (23 C.F.R. §774);
- Section 106 of the National Historic Preservation Act and implementing regulations (36 C.F.R. §800);
- Section 404 of the Clean Water Act; and
- Section 7 of the Endangered Species Act, as well as others.

The Recreational Trails Program is legislatively exempt from the Section 4(f) requirement. For all projects that require an action be taken by FHWA, the Tennessee Division and TDEC will work together to ensure compliance with NEPA and other applicable laws. The level of involvement is commensurate with the level of the environmental impacts or project complexity and will depend on the project environmental documentation class.

Recreational Trails Program projects must document compliance with the National Environmental Policy Act (NEPA) and other Federal environmental laws and executive orders. Each project is reviewed individually to ensure it does not have a significant impact on the environment.

Environmental documentation for recreational trails projects is generally in the form of Categorical Exclusions (CE), and most often fits under 23 C.F.R. §771.117(c)(3), construction of bicycle and pedestrian lanes, paths, and facilities. The actions described in this section normally do not require approval by FHWA.

The processing of Categorical Exclusions for RTP projects is defined by the “Programmatic Agreement between FHWA and TDEC Regarding the Processing of Actions Classified as Categorical Exclusions for Recreational Trails Program Projects”. While the CEs normally do not require FHWA approval, the Programmatic Agreement lists nine thresholds, which, if any are met by a project, requires TDEC to forward the CE to FHWA for review and approval. Refer to Attachment A. FHWA will review the document within 30 days.

Technical studies required to complete the CEs are submitted to TDEC by the grantees. After receipt of all applicable studies, TDEC then prepares the final environmental documentation. The CEs are stored in TDEC’s project files, and are subject to FHWA review at any time. FHWA has provided a standard template to be used for preparation of environmental documentation for the “c list” CEs. In addition, a random sampling of TDOT and TDEC CEs are reviewed once per year.

Many RTP projects are exempt from air quality conformity requirements under the Clean Air Act Amendments of 1990. New parking areas or motorized trails within air quality nonattainment or maintenance areas may be subject to the air quality conformity rule, and must be identified in a conforming transportation plan and Transportation Improvement Program. All projects in a PM 2.5 non-attainment or maintenance area must undergo a PM 2.5 hot-spot analysis, which includes an interagency consultation. TDEC coordinates this review with the TDOT environmental section.

Grantees generally choose consultants to prepare the required environmental documentation. TDEC requires that grantees use their own locally adopted consultant procurement process. If there is not a locally adopted procurement process, the State's process must be used. Per State law, professional services do not have to be bid.

10. Project Authorization

The TDEC grant cycle occurs every other year, and TDEC agrees to forward a funding list to FHWA. Once the environmental process is completed and approved for projects on the funding list, TDEC will send an RTP obligation form (POFA) for project authorization to the FHWA Division Office. Authorization is completed by the Tennessee Division Financial Team, and the project is entered into the Fiscal Management Information System (FMIS). Projects will not be advertised nor will work by the grantee staff workforce begin prior to FHWA project authorization.

11. Right-of-Way Issues

The majority of projects involving RTP funds do not require the acquisition of right-of-way. Most projects are on land that is already publicly owned, or are in permanent easement situations.

TDEC agrees to ensure that for projects that do involve the Uniform Act, the procedures are being followed. TDEC agrees that a yellow book appraisal is required, and that a certified State appraiser provides a 2nd level review of the appraisal. TDEC agrees to provide the landowner with written documentation stating that their property cannot be taken by condemnation and that they can receive fair market value for the land to be acquired.

To protect property acquired or developed with RTP funds, the grantee will record the Notice of Limitation of Use (NLU) against the deed prior to requesting reimbursement. This protects the property for public outdoor recreation use. A 25 year commitment is required if the project is located on public or private lands that includes an easement or lease.

12. Grant Management

RTP projects not located within a public highway right-of-way must use procurement procedures under 2 C.F.R. §200.317 through §200.326. Procurement for an RTP project within a public highway right-of-way must use procedures under 23 C.F.R. Parts 635 and

636, including projects that are administered by an agency other than the TDOT. Where Parts 635 and 636 mention State, State Transportation Department, or STD, this may be interpreted as meaning the State agency administering the RTP.

13. Design Issues

Design standards for most projects conform to the agency specifications for the specific type of trail development or maintenance project being undertaken. Agencies with design standards include the U.S. Forest Service, National Park Service, Tennessee State Parks and the Tennessee Division of Forestry. TDOT bicycle and pedestrian trail standards are used for hard-surfaced greenway trails. FHWA refers to several manuals and guides at www.fhwa.dot.gov/environment/rectrails/manuals.htm.

RES also references design guidelines developed by other organizations such as equestrian guidelines from Clemson University, the International Mountain Bicycling Association (IMBA), Appalachian Trail Conservancy (ATC), and the Student Conservation Association (SCA) when those types of trail projects are developed. TDEC also refers applicants to their “Pathways to Trail Building” booklet (<http://www.tn.gov/environment/recreation/docs/pathways.pdf>) for design ideas and techniques, as well as to their booklet Greenways 101 – General Advice for the Development of a Hard-Surfaced Greenway Project (<http://www.tn.gov/environment/recreation/docs/greenways-101.pdf>), which was designed to give local communities tips and advice on developing multi-use greenway trails.

All designs are submitted to TDEC for approval. Prior to beginning construction, there is a preconstruction meeting between the grant recipient and the principal RES, Parks and Recreation Technical Assistance Service (PARTAS) consultant for the project. Design and construction issues are discussed at this meeting. Progress inspections are performed throughout the process. If any changes are made to the design, a request for a project scope change has to be submitted and approved. No final reimbursement or closeout will occur until the project passes a final inspection conducted by the principal PARTAS consultant.

14. Trail Accessibility

TDEC-RES stipulates that all grantees have their facilities comply with the Americans with Disabilities Act (ADA) standards and specifications. If non-compliance is found through project inspections, the grantee is contacted and required to bring the item in question into compliance. Some trails, particularly backcountry trails and mountain bike trails, are not possible to construct to ADA compliance. TDEC agrees to seek opportunities to construct trails that can be used by the disabled, and agrees that barriers should not be erected.

TDEC references the United States Access Board’s “Final Guidelines for Outdoor Developed Areas”, published September 26, 2013 (<https://www.access-board.gov/guidelines-and-standards/recreation-facilities/outdoor-developed-areas/final-guidelines-for-outdoor-developed-areas/text-of-the-guidelines>). While these guidelines

apply specifically to projects on Federal lands or projects constructed by a Federal agency, FHWA recommends using them on Federal-aid projects, as they are the best guidelines available for recreational trails. TDEC includes representative ADA specification drawings for restrooms and trailhead support facilities in the grant application manual. A section on ADA accessible trails is included in TDEC's "Pathways to Trail Building".

FHWA recognizes the need for the transportation system to be accessible to all users, and includes guidance on the Civil Rights web page at <http://www.fhwa.dot.gov/civilrights/programs/ada.cfm>.

15. Permits

The grant applicant requests all environmental clearances and permits after the grant is awarded. Permits are not often required; however, when they are, the project cannot proceed until they are acquired.

16. Construction Monitoring and Inspection

TDEC reviews the contracts, gives written concurrence on the contracts and concurs in the award of the projects.

Project inspections are performed by the PARTAS consultant. All projects receive project inspections. The consultant prepares written inspection reports, and these reports are included in the project file. Types and frequency of inspections are as follows:

- a. There is an on-site inspection that occurs during the grant selection process.
- b. During the construction phase there is one, sometimes more, progress inspections. These are performed on an as-needed basis.
- c. When the project is complete there is a final inspection conducted. The PARTAS consultant inspects all items in place, including required signs.
- d. Post Completion Inspections are conducted every five years after project completion.

Upon completion of the project, the grantee submits a Project Completion Certification Form (PCC), which triggers the final inspection.

A computer reminder alerts the RES staff that the 5-year inspections are due, and an arrangement is made for the inspections to be carried out.

17. Other Construction Issues

Materials are discussed at the pre-design conference. TDEC uses the latest requirements in the selection of materials for trails projects. TDEC also reviews the materials selection when they develop the grant contract. Also, the grantee's contract states that the grantee shall comply with the applicable Federal statutes, including the Buy America provision.

FHWA encourages States to use the Youth Conservation Corps program to assist with construction of projects. Further information may be found on FHWA's Transportation Alternatives Program web page at http://www.fhwa.dot.gov/environment/transportation_alternatives/guidance/cncs_service.cfm

18. Civil Rights

TDOT is responsible for the State's oversight of the Disadvantaged Business Enterprise (DBE) program for all Federal-aid transportation funds received in the State. There is no need for special DBE compliance under the RTP as a separate program. TDEC places an emphasis on contacting and contracting with DBEs at the grant workshops and in the grant manual. Small business participation is also an item of discussion in the pre-design conference.

The RTP is a small program, and its DBE numbers would likely be quite small as compared to the overall TDOT budget. Generally on RTP projects, there is only one contractor, with no sub-contractors, or the project is constructed with the grantee's own staff (grantee staff workforce).

19. Financial Issues

Under 23 U.S.C. §118(b)(2), the "period of availability" for obligation of apportioned funds is four fiscal years: the current year, plus 3 years. The funds are treated in a "first in, first out" manner; older year funds are considered obligated before newer year funds. The unobligated balance of funds will be withdrawn if the unobligated balance exceeds the sum of the apportionments issued for the current fiscal year and the three prior fiscal years. A State may use up to 7% of its RTP apportionments for administrative costs, and up to 5% for educational programs. Administrative costs include costs to administer the program, including staff time, meetings of the advisory committee, attendance at meetings or conferences, newsletters and websites, supplies/equipment, travel, and statewide trail planning. Educational costs include educational programs that promote safety and environmental protection as they relate to the use of recreational trails. This includes development and operation of trail safety and environmental education programs, and the production of trail-related educational materials. TDEC agrees to provide FHWA with a funding list near the beginning of each two-year grant cycle.

TDEC submits a Federal-Aid Project Approval and/or Authorization form (POFA) to FHWA for authorization of funds. Project agreements in FMIS must include a "Period of Performance", which includes a start and end date for the project. The start date is the date of authorization, which will be effective upon the final signature by the FHWA Financial Manager. The end date must be included by TDEC on the POFA, and is based on the estimated project schedule, including the required processes to ensure all Federal requirements have been satisfied. The end date is the date after which no new costs can be incurred by the State. Any work performed after the end date is not eligible for reimbursement. The end date may be extended under certain circumstances, such as

documented revisions to project schedules. Other items required on the POFA include the indirect cost rate and the Catalog of Federal Domestic Assistance (CFDA) number.

Financial transactions are processed directly thru the Financial Team at the Tennessee Division Office of FHWA. TDOT is not involved in the financial transactions with this program. At TDEC, the Grants Administrator tracks the available funds.

Some funds for motorized trails are credited to the Tennessee Wildlife Resources Agency (TWRA). This agency administers and enforces the provisions of the Tennessee Off-Highway Vehicle Act (T.C.A. Section 70-9-101 to Section 70-9-107).

Cost principals are obtained from 2 C.F.R. §200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

TDEC's Division of Internal Audit conducts audits on grantees.

The grantee is responsible for maintaining an accounting of the project according to the "Accounting Manual for the Recipients of Grant Funds in the State of Tennessee".

20. Project Close-Outs

Recreational trail projects are closed out in accordance with 2 C.F.R §200.343 and the RTP close-out procedures. Refer to Attachment B. TDEC will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed. TDEC will ensure that the grantee submits, no later than 90 calendar days after the end date of the period of performance, all financial, performance and other reports as required by the terms and conditions of the Federal award. Also, unless an extension is given to the grantee, the grantee must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance. All close-out actions must be completed no later than one year after receipt and acceptance of all required final reports.

21. Records

Project information may also be kept on the RES Grants Database. When the grant is closed it goes into permanent files and/or is placed on microfilm. Invoices are disposed of 3 years after project close-out. These project files are subject to FHWA inspection at any time.

Each project requires a Maintenance Plan to assure that projects are managed in a safe and attractive manner. Maintenance Plans are turned in as part of the grant application.

22. Communication

TDEC and FHWA agree to meet quarterly to discuss any issues related to the RTP. TDEC and FHWA agree to respond to all inquiries within 5 days of receipt. Phone calls, US mail, email, and face to face meetings are all acceptable forms of communication.

Section 4: Implementation of the Oversight Agreement:

FHWA and TDEC enter into this agreement to conduct project oversight activities for the Recreational Trails Program in accordance with the above stipulated agreement elements and parameters.

The Stewardship and Oversight Plan outlines responsibilities and accountability for FHWA and TDEC. The purpose of the Plan is to clarify actions, prevent misinterpretations, and avoid time delays. The Stewardship and Oversight Plan is intended to be a living document that can be modified when needed to incorporate additional legislation, additional processes, or other changes to improve program and project delivery in the State of Tennessee. The Stewardship and Oversight Plan will be reviewed approximately once every two years, and upon enactment of a transportation authorization bill, by TDEC and FHWA to determine if any changes need to be made.

The Division Administrator of FHWA Tennessee Division or the Commissioner of TDEC may initiate amendments to this Agreement and/or changes to the Stewardship and Oversight Plan should essential modifications become apparent to either party.



Pamela M. Kordenbrock
Division Administrator
Tennessee Division
Federal Highway Administration



Robert J. Martineau, Jr.
Commissioner
Tennessee Department of
Environment and Conservation

8/3/16
Date

7/20/16
Date

ATTACHMENT A

Programmatic Agreement between FHWA and TDEC Regarding the Processing of
Actions Classified as Categorical Exclusions for Recreational Trails Programs Projects,
July 7, 2016

**PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, TENNESSEE DIVISION
AND
THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL
EXCLUSIONS FOR RECREATIONAL TRAILS PROGRAM PROJECTS**

THIS PROGRAMMATIC AGREEMENT (“Agreement”), made and entered into this 7th day of July 2016, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of TENNESSEE, acting by and through its DEPARTMENT OF ENVIRONMENT AND CONSERVATION (Tennessee Department of Environment and Conservation, or “TDEC”) hereby provides as follows:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321-4370h (2014), and the Regulations for Implementing the Procedural Provisions of NEPA (40 C.F.R. parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

Whereas, the Federal Highway Administration’s (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

Whereas, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA’s primary responsibilities (49 C.F.R. §1.81(a)(5));

Whereas, the FHWA’s NEPA implementing procedures (23 C.F.R. §771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

Whereas, the Tennessee Department of Environment and Conservation is a State agency that undertakes Recreational Trails Program projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for TDEC projects (23 C.F.R. §771.109);

Whereas, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA;

Whereas, the FHWA developed regulations in 23 C.F.R. §771.117(g) implementing the authorities in section 1318(d), effective November 6, 2014;

Now, therefore, the FHWA and the TDEC enter into this Programmatic Agreement (“Agreement”) for the processing of categorical exclusions.

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (“FHWA”) and the Tennessee Department of Environment and Conservation (“TDEC”).

II. PURPOSE

The purpose of this Agreement is to authorize the TDEC to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 C.F.R. §771.117.

III. AUTHORITIES

This agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. §§4321 - 4370
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. 40 C.F.R. parts 1500 - 1508
- D. DOT Order 5610.1C
- E. 23 C.F.R. §771.117

IV. RESPONSIBILITIES

A. The TDEC is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:
 - a. For actions qualifying for a CE listed in 23 C.F.R. §771.117(c) (the “c list”) that do not exceed the thresholds in Section IV(A)(1)(b) below, the TDEC may make a CE approval on behalf of FHWA. The TDEC will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.
 - b. Actions listed in 23 C.F.R. §771.117(c) that exceed the thresholds may not be approved by the TDEC. FHWA review and approval is required if the action:

- i. Involves acquisitions of more than a minor amount of right-of-way, defined as 1.0 acre;
 - ii. Involves acquisitions that result in any residential or non-residential displacements;
 - iii. Results in a determination of adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act;
 - iv. Results in the loss of 0.5 acres or more of waters of the U.S. (including wetlands);
 - v. Requires a U.S. Coast Guard bridge permit;
 - vi. Requires work encroaching on a regulatory floodway or work adversely affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 C.F.R. §650 subpart A. This includes:
 - An action that may result in an increase in the designated regulatory floodway;
 - An action that may result in an increase of more than 1 foot of surface water elevation in the base floodplain when no regulatory floodway is designated, or;
 - An action that may increase the risk of damage to property and loss of human life, or may result in modification of a watercourse.
 - vii. Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture; or
 - viii. May affect, is likely to adversely affect federally listed species or designated critical habitat, or results in impacts subject to the conditions of the Bald and Golden Eagle Protection Act;
 - c. For actions not specifically listed as CEs in 23 C.F.R. §771.117, but meeting the requirements of a CE under 40 C.F.R. §1508.4 and 23 C.F.R. §771.117(a), TDEC agrees to contact FHWA to collaboratively determine the CE classification.
2. Consulting with FHWA for actions that involve unusual circumstances (23 C.F.R. §771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. The TDEC may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
 3. Meeting applicable documentation requirements in Section V for State CE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section

VI, and applicable quality control/quality assurance, monitoring, and performance requirements in Section VII.

4. Relying only upon employees directly employed by the State (not consultants contracted by the State to act on the State's behalf) to make CE approvals submitted to FHWA under this agreement. While third parties (i.e., consultants, local government staff, and other State agency staff) may prepare NEPA documents on behalf of the TDEC in accordance with this agreement, the TDEC may not delegate its responsibility for CE approvals to third parties.

B. The FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to the TDEC, as requested.
2. Providing timely input and review of CEs, with reviews completed within 30 days. FHWA will base its approval of CE actions on the project documentation prepared by the TDEC under this Agreement.
3. All correspondence and Native American tribal consultation with the Chickasaw Nation, using project documentation provided by the TDEC.
4. Conducting an annual program review as part of its oversight activities, by reviewing a sampling of "c list" CEs produced and approved during the previous federal fiscal year.
5. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF TDEC CE APPROVALS

A. For State CE approvals, the TDEC shall insure that it fulfills the following responsibilities for documenting the project-specific determinations made:

1. For "c list" CEs (23 C.F.R. §771.117(c), the TDEC should identify the applicable action, ensure any conditions specified in FHWA regulations are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a TDEC signature evidencing approval. TDEC should use the CE forms that have been approved by FHWA to document NEPA impacts of RTP projects.

B. The TDEC should maintain a project record for CE approvals it makes on FHWA's behalf and for each CE submitted to FHWA for approval. This record should include at a minimum:

1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;

2. A summary of public involvement complying with the requirements noted in the “Open Project Selection Process Scoring Criteria (OPSP)”, located in the RTP Application Manual;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name and title of the document approver and the date of TDEC’s approval or FHWA’s final approval; and
 5. For cases involving re-evaluations, any written re-evaluation (when required) or a statement that a re-evaluation was completed for a project but that a written re-evaluation was not necessary.
- C. Any electronic or paper project records maintained by the TDEC should be provided to FHWA at their request. The TDEC should retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve the TDEC of its project or program recordkeeping responsibilities under 2 C.F.R. §200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-REVALUATIONS

- A. The TDEC’s CE approvals and CEs submitted to FHWA for approval may only be made by officers or offices specifically identified below:
1. Review of “c list” CEs is delegated to Rachel Jakubovitz, Grants Analyst, TDEC Recreation Educational Services.
 2. Approval of “c list” CEs is delegated to Gerald Parish, Director, TDEC Recreation Educational Services.
- B. In accordance with 23 C.F.R. §771.129, the TDEC shall re-evaluate its determinations for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. TDEC Quality Control & Quality Assurance

The TDEC agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.

B. TDEC Performance Monitoring and Reporting

1. The FHWA and the TDEC should cooperate in monitoring performance under this Agreement and work to assure quality performance.

C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of the TDEC, as well as the TDEC's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of the TDEC's CE approvals, CE submissions to FHWA for approval, adequacy and capability of the TDEC staff and consultants, and the effectiveness of the TDEC's administration of its internal CE approvals.

FHWA will conduct an annual program review as part of its oversight activities, during the term of this Agreement. By November 30 of each year, the TDEC will provide to the Division Office a list of actions ("c list" CEs) produced during the previous federal fiscal year (October 1 through September 30). The list of actions will contain the following information:

- a. the Federal project number
- b. the project location (name of community or park) and County in which the project is located
- c. the project name

The Division Office will select approximately 10% of the documents for review (minimum of 2 RTP projects). TDEC will provide the selected documents and all backup information in electronic form to the Division Office by January 15. The Division Office will complete a review of the selected documents to determine, at a minimum, whether:

- a. The project was correctly processed as a "c list" CE.
- b. The project was in the TIP/STIP (with the TIP/STIP sheet included in the electronic file).
- c. The appropriate United States Fish and Wildlife Service (USFWS) letter was attached.
- d. The appropriate State Historic Preservation Office (SHPO) letter was attached.

After the review is completed, the Division Office will prepare a report, which will be forwarded to the TDOT Environmental Division by March 1, with an email to the TDEC if there are any findings, required actions or observations to discuss.

2. The TDEC shall prepare and implement a corrective action plan to address any findings, required actions or observations identified in the FHWA review. Consideration of the results of the review and corrective actions taken by the TDEC shall occur at the time this Agreement is considered for renewal.
3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to the TDEC's performance under this Agreement. The FHWA may require the TDEC to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
4. The TDEC agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS


If the parties agree to amend this Agreement, then FHWA and the TDEC may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

IX. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature.
- B. This Agreement is renewable for additional five (5) year terms if the TDEC requests renewal and FHWA determines that the TDEC has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time by giving at least a 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that the TDEC is not able to make CE approvals on FHWA's behalf.

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation.

 6-23-16
Robert J. Martineau, Jr. Date
Commissioner
Tennessee Department of Environment and Conservation

 7/7/16
Pamela M. Kordenbrock Date
Division Administrator, Tennessee Division
Federal Highway Administration

ATTACHMENT B

Recreational Trails Program (RTP) Close-Out Process for TDEC-RES and FHWA,
Tennessee Division

Recreational Trails Program (RTP) Close-Out Process
for
The Tennessee Department of Environment and Conservation,
Recreation Educational Services Division
and the
Federal Highway Administration, Tennessee Division

TDEC will complete the RTP Project Close-Out Checklist, certifying that the project was completed in accordance with the grant agreement, that all Federal requirements were met, and that TDEC retains adequate records in the project files to clearly justify all expenditures on the project. The Checklist will include known project information from the file, and will be signed by TDEC before submission. Copies of information from the file, as noted below, will be forwarded to the Division Office. All project information shall be retained by TDEC so it is available for FHWA review, in accordance with the Federal retention requirements. In addition, TDEC will prepare a POFA so that the Division Office can close out the project in FMIS. If there are any funds remaining in the project, the POFA will serve to both de-obligate the funds and close out the project. TDEC may use the original POFA (or equivalent instrument), with the applicable de-obligation information and close-out statement (“POFA for project close-out” or “POFA for funds de-obligation and project close-out”) written in, rather than creating a new POFA. The Checklist, POFA and supporting documentation will be submitted to the FHWA Tennessee Division Office. The Division Office will enter the information in FMIS and will close out the project.

The following supporting documentation will be submitted to the Division Office for RTP project close-out:

1. RTP Project Close-Out Checklist
2. POFA
3. Completed TDEC Final Inspection Form
4. Final voucher (final “Request for Reimbursement” form)

ATTACHMENT C

Programmatic agreement letter regarding conditional Buy America waivers for the purchase of on-road vehicles, trail grooming vehicles and mechanized equipment primarily constructed with steel or iron, dated February 24, 2015



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Recreation Educational Services
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0748
(615) 532-0732 FAX

February 24, 2015

Ms. Pamela M. Kordenbrock, Division Administrator
Federal Highway Administration
Tennessee Division Office
Building 200, Suite 508
404 BNA Drive
Nashville, TN 37217

Dear Ms. Kordenbrock:

This letter outlines the requirements to receive a conditional Buy America waiver for the purchase of on-road vehicles, trail grooming vehicles and mechanized equipment primarily constructed with steel or iron (hereinafter, "applicable equipment") using funds authorized under the Recreational Trails Program (RTP). This request is in response to Federal Register/Vol.78, No. 116 published on Monday, June 17, 2013, that established a partial waiver from the 100 percent domestic content requirement that applies to Federal-aid highway projects under Buy America as it applies to vehicle projects.

The Tennessee Department of Environment and Conservation (TDEC) requests that the partial waiver apply to the State of Tennessee's RTP program for the purchase of applicable equipment.

Should TDEC select a project to be funded that includes purchase or lease of applicable equipment, TDEC shall submit information (project location and description, description of equipment, and cost of project) to the FHWA Tennessee Division. The Tennessee Division will submit a list of waiver requests to FHWA Headquarters on a quarterly basis. FHWA will post a notice of intent to process waiver requests on the FHWA Construction Contract Administration web page following the last day of each calendar quarter. After a 15 day public comment period, the FHWA will then evaluate the comments and prepare a Federal Register notice regarding the FHWA's final decision regarding the waiver, which would become effective on the date of publication in the Federal Register. The RTP project will not be authorized until the waiver is published in the Federal Register.

Ms. Pamela M. Kordenbrock, Division Administrator
February 24, 2015
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To demonstrate compliance with Buy America, TDEC agrees that all applicable RTP projects shall comply with the following:

- For project contracts that include the acquisition of applicable equipment, TDEC shall require that project sponsors include a provision in their purchase order indicating that the project contract language requires the manufacturer to identify the location of the product's final assembly.
- Project contracts will include a clause that TDEC will require and will receive the manufacturer's certification that the product's final assembly occurred in the United States. This certification shall include the city and state in which the product's final assembly occurred.

TDEC intends that this letter serve as a programmatic agreement between the FHWA Tennessee Division Office and the Tennessee Department of Environment and Conservation for all RTP projects that are approved for the Buy America conditional waiver.

This letter will also serve as TDEC's demonstration of a good faith effort to determine that the final assembly of an on-road vehicle, trail grooming vehicle or mechanized equipment purchased with RTP funds occurs in the United States.

Please let me know if you have any questions or need additional information.

Sincerely,



Gerald Parish
Director, Recreation Educational Services Division

cc: Gary Fottrell, FHWA Tennessee Division
Robert (Bob) Richards, Greenways and Trails Coordinator, TDEC-RES
Alice Burke, Grants Administrator, TDEC-RES