U.S. Department of Transportation
Federal Highway Administration

Texas Division

300 E. 8th Street, Rm 826
Austin, TX 78701
(Tel) 512-536-5900
(Fax) 512-536-5990
www.fhwa.dot.gov/txdiv

January 16, 2014

In Reply Refer To:
HPP-TX

MAP-21 CE 1316 & 1317 Final Rule Effective Date Notification
Categorical Exclusion Memorandum of Understanding Execution

Mr. Carlos Swonke, P.G.
Director, Environmental Affairs Division
125 E. 11th Street
Austin, Texas 78701

Dear Mr. Swonke:

The Federal Highway Administration (FHWA) has published the subject final rule in the January 13, 2014, Federal l Register (FR). Based on the FR notice, the new categorical exclusions required in Section 1316 and 1317 of MAP-21 will become effective on February 12, 2014. As per the Memorandum of Understanding for Categorical Exclusions (CEMOU) between the FHWA Texas Division and the Texas Department of Transportation, the CEMOU will be in full force and effect on that same day.

The CEMOU assigns to TxDOT certain roles and responsibilities for conducting environmental reviews, consultations, and related activities for Federal-aid highway projects. For projects determined to be categorical exclusions (CEs), TxDOT is assigned FHWA's responsibilities for consulting with all Federal resource and regulatory agencies and for complying with all applicable Federal regulations with the exception of those project noted in the CEMOU in Appendix B. Pursuant to the MOU. TxDOT is deemed to be a Federal agency in carrying out the functions described therein. FHWA cannot interfere or serve as a broker between agencies and TxDOT, for projects that FHWA has assigned to TxDOT.

The only exception where FHWA may insert itself in a project assigned to TxDOT is in regards to government-to-government consultations with federally-recognized Indian tribes. The FHWA retains responsibility for conducting formal government-to-government consultation with federally-recognized Indian tribes, which is required under the listed laws and executive orders. TxDOT will continue to handle routine consultations with the tribes and understands that a tribe has the right to request direct consultation with the FHWA. TxDOT also may assist the FHWA with formal consultations, with consent of a tribe, but the FHWA remains responsible for the consultation.

The secondary purpose of this letter is to inform you of the details resulting from the FHWA/FTA Final Rule that adds the two new CEs. The first CE is for any project located within an existing operational right-of-way, and the second CE is for any project that receives less than $5 million of Federal funds **or** with a total estimated cost of not more than $30 million and Federal funds comprising of less than 15 percent of the total estimated cost, respectively. Again, please note that the CEMOU and these new CEs are effective on February 12, 2014. The link to the Final Rule is at: https://www.federalregister.gov/articles/2014/01/13/2014-00370/environmental-impact-and-related-procedures
The specific language of the new regulations is as follows:

§ 771.117 FHWA categorical exclusions.

(c) * * *

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

(23) Federally-funded projects:

(i) That receive less than $5,000,000 of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000.00 and Federal funds comprising less than 15 percent of the total estimated project cost.

If you have any questions, please contact Tom Bruechert at 512-536-5948 or me at 512-536-5940.

Sincerely,

Michael T. Leary
Director of Planning and Program Development

Cc: Owen Lindauer, Environmental Protection Specialist, FHWA-HEPE
Salvador Deocampo, District Engineer, FHWA Texas Division
Gregory S. Punske, P.E., District Engineer, FHWA Texas Division