MEMORANDUM OF AGREEMENT
Between
The United States Coast Guard
and
The Federal Highway Administration
To Coordinate and Improve Bridge Planning and Permitting

I. Parties

The Parties to this Memorandum of Agreement (MOA) are the U.S. Coast Guard (USCG) and the Federal Highway Administration (FHWA).

II. Purpose

The purpose of this MOA is to expedite and coordinate the planning, environmental review and decisionmaking for bridge permits by:

a. Determining which bridge design concepts unreasonably obstruct navigation as soon as practicable and prior to or concurrent with the NEPA scoping process in order to inform project alternatives to be evaluated;

b. Preparing a coordinated environmental document that satisfies both USCG and FHWA NEPA requirements and results in a shared, or joint environmental impact decision documents where practicable and concurrent environmental impact 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 MOA pursuant to the authority of: 14 U.S.C. § 141.

b. FHWA enters into this MOA pursuant to the authority of the Secretary of Transportation to carry out title 23, U.S.C., as delegated to the FHWA Administrator in 49 CFR 1.85, and to carry out the functions of the Secretary under NEPA and related environmental laws, as delegated in 49 CFR 1.81(a)(5).

c. <u>Applicable Programmatic Authorities</u>:

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. National Historic Preservation Act of 1966, Pub. L. No. 89-665, 80 Stat. 915 (*codified as amended by* Pub.L. No. 96-515, 94 Stat. 2987 (1980) *at* 16 U.S.C. § 470).

3. Act of Aug. 18, 1894, c. 299, § 5, 28 Stat. 362; *as amended*; *classified to* 33 U.S.C. § 499.

4. 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").

5. 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").

6. 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").

7. 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").

8. "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").

9. Efficient Environmental Reviews for Project Decisionmaking, 23 U.S.C. § 139.

10. National Bridge and Tunnel Inventory and Inspection Standards, 23 U.S.C. §144.

IV. Definitions

a. State DOT/Highway Agency (HA) means that department, commission, board, or official of any State or Federal agency charged by its laws with the responsibility for highway construction.
b. 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 State DOT/HA. This agency or entity could include a political subdivision of a State, an authority created or authorized under State law, or a private entity

V. USCG/FHWA Coordination

The table below identifies coordination procedures both for actions requiring a USCG bridge permit and projects where FHWA determines that a USCG permit is not required.

For bridges that are determined to be exempt from USCG bridge permitting pursuant to 23 U.S.C. § 144(c), the FHWA will make a preliminary permitting exemption determination during project preplanning or NEPA scoping and inform the USCG in a timely manner so USCG can

make necessary determinations regarding navigation lights and signals required by 14 U.S.C. § 85 and provide timely notice to local mariners of waterway changes.

The steps in the table are not necessarily meant to follow sequentially, but rather provide guidance for what actions FHWA and USCG may need to take, and the role of each agency at each stage.

(FHWA / State DOT/HA) Activities	U.S. Coast Guard Activities
Planning Stage	
During the early planning stage, prior to the NEPA scoping process, establish an appropriate point of contact and notify USCG of projects on plan or State Transportation Improvement Program (STIP), if applicable, that may require a bridge permit and ensure that the State DOTs/HA notify the USCG during the planning phase of a project.	Provide timely review of FHWA/State DOT/HA notifications of projects on plans or STIP and participate in FHWA/State DOT planning and project meetings, as appropriate, providing a USCG point of contact (usually a USCG District Bridge Office).
Project Initiation Stage	
At the initiation of a project requiring a USCG permit, invite USCG to early coordination meetings to discuss issue identification. Consider early site visit with resource agencies.	Participate in early coordination meetings to discuss issue identification. Participate in site visit, as appropriate.
Prior to the NEPA scoping process, determine whether or not a USCG permit is required pursuant to 23 U.S.C. § 144(c) and 23 CFR part 650, Subpart H. FHWA/State DOT/HA should notify USCG in a timely manner of the preliminary determination made so that any necessary coordination with USCG can be accomplished during the environmental review. FHWA/State DOT/HA also should notify USCG whenever the proposed action may substantially affect local navigation to allow for timely notice to mariners of waterway changes and to require the establishment, maintenance, and operation of lights and signals as required under 14 U.S.C. § 85 and 33 CFR part 118.	Consult with FHWA/State DOT/HA early and often on permit jurisdictional issues. USCG will review 23 U.S.C. § 144(c) determinations by FHWA. If USCG identifies issues or concerns with the preliminary determination, USCG should timely notify the FHWA/State DOT/HA so as to not delay project advancement.

When serving as the lead Federal agency and prior to the NEPA scoping process, FHWA will formally request USCG be a cooperating or participating agency in the environmental review process.	When serving as the lead Federal agency and prior to the NEPA scoping process, USCG will formally request FHWA be a cooperating or participating agency in the environmental process.
Upon receipt of invitation from USCG to become a cooperating or participating agency in the environmental analysis process, within 30 days FHWA will provide written acceptance of the appropriate status and work with USCG to prepare NEPA documentation (ROD, FONSI, CE Determination) that satisfies both the FHWA's and the USCG's NEPA requirements.	Upon receipt of invitation from FHWA to become a cooperating or participating agency in the environmental review process, within 30 days USCG will provide written acceptance of the appropriate status and work with the FHWA to prepare NEPA documentation (ROD, FONSI, CE Determination) that satisfies both the FHWA's and the USCG's NEPA requirements.
FHWA will meet and cooperate with USCG whenever requested to resolve problems and avoid unnecessary project delays.	USCG will meet and cooperate with the FHWA/State DOT/HA whenever requested to resolve problems and avoid unnecessary project delays.
Continue coordination with USCG regardless of level of environmental class of action. Based on project information, determine the level of NEPA Environmental Documentation (CE, EA, or EIS). Coordinate with USCG using applicable guidelines. For multi-State bridge projects, make sure that all of the affected State DOT/HAs and responsible jurisdictions and oversight agencies carry out appropriate coordination efforts. For historic bridges requiring Section 106 of the National Historic Preservation Act compliance, copy USCG on all correspondence to the State Historic Preservation Officer (SHPO) and consulting parties. If a Memorandum of Agreement (MOA) for the resolution of adverse impacts is needed, provide a draft copy of the MOA to USCG for review and provide a final copy of the MOA to USCG for their records.	Continue coordination with FHWA regardless of level of environmental class of action. For historic bridges requiring Section 106 compliance, USCG will review copies of FHWA section 106 compliance correspondence to ensure appropriate coverage of USCG bridge permit actions and comment if necessary. USCG will review a draft of any required Memorandum of Agreement (MOA) and comment if necessary. Although USCG typically will not sign the MOA where FHWA has agreed to act as lead agency on USCG's behalf based on the Advisory Council on Historic Preservation (ACHP) policy guidance, if for any reason USCG decides it is in their best interest to sign the MOA, USCG will notify FHWA during review of the draft MOA that they wish to sign the MOA.

For all bridge projects requiring a USCG Bridge Permit, FHWA/State DOT/HA will prior to scoping consult the USCG Bridge Permit Application Guide and meet with USCG to determine the appropriate documentation requirements for a complete bridge permit application. The FHWA/State DOT/HA and USCG will collectively determine at the earliest time practicable what navigational information each agency will provide, in accordance with USCG's guidance, in order to analyze the navigational impacts of the bridge design alternatives and prepare a navigational impact report concurrent with the NEPA scoping process whenever possible.	USCG will work with the FHWA/State DOT/HA/Project Sponsor to identify items needed for a complete bridge permit application and the earliest possible stage of the project planning that the FHWA/State DOT/HA/Project Sponsor should begin submitting permit application materials to the USCG. FHWA/State DOT/HA and USCG will collectively determine at the earliest time practicable what navigational information each agency will provide, in accordance with USCG's guidance. USCG shall provide to the FHWA/State DOT/HA readily available navigational information and points of contact for waterway associations and users to assist in the collection of navigational information by the FHWA/State DOT/HA.
Gather data and receive public comments to prepare navigational impact report prior to or concurrent with the NEPA scoping process to identify which bridge designs unreasonably obstruct navigation and therefore do not require environmental analysis[1]. Compile applicable environmental information for the bridge permit application. Combine, as appropriate, preliminary public notice of project location and evaluation of impacts on navigation as part of the NEPA scoping. Respond to comments received on navigational aspects of highway bridges.	Assist with assessing navigational impacts and environmental documentation requirements. Respond to comments received on navigational aspects of highway bridges. USCG field bridge staff will cooperate with FHWA/State DOT/HA to ensure navigation impacts are adequately addressed. Review the navigational impact report prepared concurrent with the NEPA scoping process, and advise which bridge designs unreasonably obstruct navigation and therefore do not require environmental analysis.

[1] Does not preclude the project sponsor from conducting further analysis at its own risk on an alternative that the USCG has identified as unreasonably obstructing navigation.

When serving as the lead Federal agency under NEPA, FHWA will provide written notice to USCG and to the relevant regulatory agencies and associated consulting parties stating that FHWA 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 other environmental laws. In accordance with Section 1306 of MAP-21, the 180 day timeframe will commence upon the later of the following: 1) A permit application is formally submitted and determined to be complete by the USCG, or 2) A NEPA decision has been issued. FHWA shall furnish USCG with a written statement when it concludes consultations. The NEPA document shall reflect the appropriate mitigation commitments. If the consultations result in the need for additional mitigation or the need to supplement, revise or alter the signed NEPA document, FHWA will coordinate with USCG on a resolution. Significant new information or circumstances that arise and warrant consideration might result in the need to restart the 180-day timeframe in accordance with Section 1306 of MAP-21and associated guidance.	Become involved early in the process upon FHWA/State DOT/HA's request. Cooperate with FHWA/State DOT/HA in determining appropriate level of environmental documentation.
Prepare necessary environmental documentation based on project analysis including the navigational impact report. Within the environmental document, include discussion of bridge potential impacts to the environment and a discussion of results of ongoing coordination with USCG.	Comment on environmental documentation within the environmental document, concentrating on the bridge(s) and approaches' environmental impacts.
Coordinate with USCG to determine if joint efforts for public notices, meetings, and hearing(s), especially in controversial projects, would be appropriate and would promote efficient decision-making.	Participate in joint public notices and meetings when requested by FHWA/State DOT/HA. When sufficient information is available on a given bridge, avoid separate USCG public meeting.

Continue environmental analysis, discuss preferred alternative, and complete environmental documentation. Furnish preliminary environmental documentation to USCG for review and, as appropriate, respond to comments received on environmental aspects of highway bridges. If USCG has not provided comments on aspects of the document related to the bridge permit application, contact USCG and obtain its views on the adequacy of the current bridge permit information.	Upon request, assist in preparing responses to any bridge related comments received on environmental document. Review preliminary environmental documentation and comment, as appropriate.
Coordinate with USCG to provide USCG with the documentation of navigational impacts and compliance with NEPA and other applicable Federal environmental statutes, regulations, and orders, including coordination letters from Federal and State resource and regulatory agencies. Where a combined Final Environmental Impact Statement/Record of Decision (FEIS/ROD) is anticipated under Pub. L. No. 112-141, Sec. 1319, of MAP-21, notify USCG and adjust review process of the FEIS/ROD accordingly. Prepare a consolidated and coordinated NEPA document that satisfies both USCG and FHWA NEPA requirements and issue a shared or joint environmental impact determination. To ensure USCG can adopt the NEPA document for its bridge permit action, the NEPA document should adequately address all comments received from the USCG as a cooperating agency.	If the bridges environmental impacts are adequately addressed in environmental documentation, USCG will adopt the FHWA NEPA documentation. USCG field bridge staff will cooperate with FHWA/State DOT/HA to ensure environmental impacts are adequately addressed. Prepare a consolidated and coordinated NEPA document that satisfies both USCG and FHWA NEPA requirements and issue a shared or joint environmental impact determination. Note: USCG and FHWA signatures on the NEPA document will occur before the USCG will determine the application to be complete. Consultations under other applicable environmental laws must be completed before the USCG can issue a bridge permit. When new navigational or environmental information is received during the permit review process, CG will consider it in accordance with the provisions of this MOA.

As early as practicable, submit application for USCG Bridge Permit. (Permit application(s) may include alternate bridge designs). At the request of USCG, issue certification in accordance with 23 U.S.C. § 139(h)(6)(D) when USCG has provided timely notice of incomplete application. Ensure that the documentation submitted to USCG with the permit application is complete with respect to documenting navigational impacts as well as compliance with NEPA and other required Federal environmental statutes, regulations, and orders. This compliance and documentation is intended to allow USCG to process the permit application as quickly as possible. The documentation shall include all coordination letters from Federal and State resource agencies, as relevant and appropriate, that the OA used to satisfy requirements under NEPA and other applicable Federal environmental statutes, regulations, and orders.	Continuously review permit application materials in order to determine if and when permit application is complete. Prior to determining that an application is complete, conduct concurrent processing of the environmental evaluation and the Bridge Permit application materials, whenever possible, to expedite the bridge permit decision process. USCG will advise FHWA/State DOT/HA/Project Sponsor of determination that application is complete as soon as possible, but no later than 30 days of determination. A formal public notice will be issued upon determination that application is complete. When USCG determines application is not complete, USCG will promptly advise applicant in writing that application is incomplete and provide copy of such notice to FHWA for purposes of 23 U.S.C. § 139(h)(6). When USCG determines an application is complete, in accordance with Section 1306 of MAP-21 and any associated guidance, USCG will recognize that the 180 day timeframe has commenced unless a final NEPA decision has not been issued.
Seek to resolve any outstanding issues prior to permit issuance. Discuss any extenuating circumstances with USCG so as not to delay permit issuance.	Seek to expedite review process where possible. Where disagreements arise over vertical and/or horizontal clearance, the USCG District Bridge Office will involve Headquarters to ensure consistency with Headquarters policy on bridge clearance issues.
Issue Resolution The following is a sequential process for resolving issues that shall apply if the dispute resolution provisions set forth in 23 U.S.C. § 139 are not applicable:	
Staff Level Meeting: hold meeting(s) with the parties that have day-to-day involvement in a project to attempt to resolve the issue(s)	Staff Level Meeting: hold meeting(s) with the parties that have day-to-day involvement in a project to attempt to resolve the issue(s)
If issue(s) not resolved at above level, elevate to Division Administrator.	If issue(s) not resolved at above level, elevate to USCG District Commander.
If issue(s) not resolved at above level, elevate to the Associate Administrator for Planning, Environment, and Realty.	If issue(s) not resolved at above level, elevate to the Director of Marine Transportation Systems.

If issue(s) not resolved at above level, elevate to FHWA Administrator.	If issue(s) not resolved at above level, elevate to USCG Commandant.
If issue(s) not resolved at above level, elevate to DOT Secretary.	If issue(s) not resolved at above level, elevate to DHS Secretary.

VI. Limitations

a. Nothing in this MOA is intended to conflict with current law or regulation or the directives of USCG or FHWA. If a term of this MOA is inconsistent with such authority, that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.

b. This MOA 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 MOA does not direct or apply to any person outside the parties to this MOA.

c. As required by the Antideficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the parties in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, 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 MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

d. This MOA does not limit the signatories from developing programmatic 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.

VII. Commencement/ Duration/ Modification/ Termination

a. This MOA is effective upon the signature of all the parties. This MOA may be extended or modified, at any time by the mutual written consent of the parties. Either party may withdraw from this MOA at any time by providing at least 90 days written notice to the other party.

b. All Memorandums of Agreements or Interagency Agreements made between the parties in furtherance of this MOA shall be made in accordance with the Purpose and subject to all the terms and provisions of this MOA.

IX. 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
Office of Planning, Environment, and Realty
Office of Project Development and Environmental Review
HEPE-30
1200 New Jersey Avenue, SE
Washington, DC 20590
202-366-0116

X. Signatory Authority

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

J. A. Servidio
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy

Date 01/14/2014

Victor M. Mendez
Administrator, Federal Highway Administration

Date 12/20/2013