

# PROGRAMMATIC AGREEMENT

BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION AND  
THE CONNECTICUT DEPARTMENT OF TRANSPORTATION  
REGARDING THE PROCESSING  
OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID  
HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT (Agreement), made and entered into this 25 day of January 2021, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (FHWA) and the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION (CTDOT or STATE) hereby provides as follows:

## WITNESSETH:

**WHEREAS**, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq., and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 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**, FHWA's 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 CFR 1.81(a)(5));

**WHEREAS**, FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions for certain actions that FHWA has determined do not normally have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS (23 CFR 771.117(c)-(d));

**WHEREAS**, CTDOT is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for CTDOT projects (23 CFR 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**, FHWA regulations implementing the authorities in section 1318(d), are codified in 23 CFR 771.117(g); and

**WHEREAS**, this Agreement supersedes the previous programmatic agreement among FHWA and CTDOT regarding Processing of Certain Categorical Exclusions dated September 8, 2015;

**NOW, THEREFORE**, FHWA and CTDOT enter into this Agreement for the processing of categorical exclusions.

**I. PARTIES**

The parties to this Agreement are FHWA and CTDOT.

**II. PURPOSE AND APPLICABILITY**

The purpose of this Agreement is to authorize CTDOT to determine on behalf of FHWA whether a project qualifies for a CE action specifically listed in 23 CFR 771.117 (listed in Appendix C and D of this Agreement). This Agreement also authorizes CTDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117, but meeting the categorical exclusion criteria in 40 CFR 1501.4 and 23 CFR 771.117(a), qualifies for a categorical exclusion as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS).

A. This Agreement applies to all projects and right-of way actions that involve FHWA funding or approvals. For the purposes of this Agreement, the definition of “highway project” at 23 CFR 773.103 shall be used to define “project”.

B. Projects that require an EA or EIS for compliance with NEPA are not covered by this Agreement and will be reviewed by FWHA in accordance with the procedures of 40 CFR parts 1500-1508 and 23 CFR 771.

C. This Agreement does not apply to any other documentation required under the Connecticut Environmental Policy Act (CEPA), as amended, nor does this Agreement apply to 100% State funded projects that do not require any FHWA approval actions.

**III. AUTHORITIES**

This Agreement is entered into pursuant to the following authorities:

A. National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*;

B. Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012);

C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015);

D. 40 CFR parts 1500 – 1508, *The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ Regulations)* (and any successor order or regulations);

E. Procedures for Considering Environmental Impacts, USDOT Order 5610.1C (and any successor order or regulations); and

F. FHWA Categorical Exclusions regulation, 23 CFR 771.117 (and any successor order or regulations).

**IV. DEFINITIONS**

For the purposes of this Agreement, the following terms are defined:

A. **Categorical Exclusion (CE)**: a category of actions that, in accordance with CEQ regulations (40 CFR §1508.1(d)) and FHWA regulations found in 23 CFR §771.117(a), normally do not involve “significant” environmental impacts. Under this Agreement, there are three types of categorical exclusions: Automatic (CE-A), Programmatic (CE-P), and Individual (CE-I). Categorical exclusions:

1. Do not induce significant impacts to planned growth or land use for the area;
2. Do not require the relocation of significant numbers of people;
3. Do not have a significant impact on any natural, cultural, recreational, historic, or other resource;
4. Do not have significant air, noise, or water quality impacts;
5. Do not have a significant impact on travel patterns; or,
6. Do not otherwise have any significant environmental impacts.

There are three (3) types of Categorical Exclusion decision which may be made under the terms of this agreement:

**Automatic Categorical Exclusion (CE-A)**: a type of CE that does not normally require any NEPA documentation, except as provided in this agreement, or FHWA approval. A specific list of actions that qualify as a CE-A is set forth in 23 CFR 771.117(c) and can also be found in Appendix C of this Agreement.

**Programmatic Categorical Exclusion (CE-P)**: a type of action listed in 23 CFR §771.117(d) that meets the criteria for CEs and normally may be documented and approved by CTDOT on behalf of FHWA. The specific list of actions that qualify as a CE-P can be found in Appendix D of this Agreement.

**Individual Categorical Exclusion (CE-I)**: a type of action not listed in 23 CFR §771.117 (c) or (d), and which meets the definition of a CE; or, an action listed in 23 CFR §771.117 (c) or (d) which includes unusual circumstances. A CE-I requires approval from FHWA, based on CTDOT’s CE certification.

B. **CE Determination Checklist**: a form developed by CTDOT and FHWA for determining what type of CE (Automatic, Programmatic, or Individual) a project is. Used in conjunction with the Detailed Instructions, the CE Determination Checklist provides documentation of the decision process and assembles the supporting documentation. The CE Determination Checklist will be used for every CE determination and is included as Appendix A of this Agreement.

C. **Detailed Instructions**: the instructions accompanying the CE Determination Checklist for guidance to document the process by which the type of CE is identified. The instructions provide guidance on assembling the appropriate supporting documentation and references to the regulatory requirements of NEPA. The Detailed Instructions supplement the CE Determination Checklist and therefore any applicable documentation for a CE project review will be attached. The Detailed Instructions are found in Appendix B of this Agreement.

D. **Project:** means a “*highway project*” as defined in 23 CFR 773.103. It is any undertaking that is eligible for financial assistance under title 23 U.S.C. and for which the FHWA has primary responsibility.

E. **Significant:** as discussed in the CEQ Regulations at 40 CFR §1501.3(b) requires consideration of both the potentially affected environment and degree of effect. The CTDOT Office of Environmental Planning (OEP) staff and FHWA will be able to assist with the determination of whether an impact is significant.

F. **Unusual Circumstances:** as defined in 23 CFR §771.117(b), which states that any action which would normally be classified as a CE, but could involve unusual circumstances, will require FHWA to determine if the CE classification is proper. CTDOT, in cooperation with FHWA, may be required to conduct appropriate environmental studies to determine if the CE classification is proper. If the CE classification is not proper, FHWA will identify the proper level of NEPA evaluation and documentation, which could be an EA or EIS.

## V. RESPONSIBILITIES

This Agreement revises the FHWA and CTDOT procedures for processing CEs. The procedures set forth in this Agreement comply with FHWA regulations entitled, “Environmental Impact and Related Procedures,” 23 CFR Part 771.

A. CTDOT is responsible for:

1. Maintaining adequate organizational and staff capability and expertise or procure through consultant services some or all of the technical expertise needed, to effectively carry out the provisions of this Agreement. This includes, without limitation:
  - a) Using appropriate technical and managerial expertise to perform the functions set forth under this Agreement; and,
  - b) Devoting adequate financial and staff resources to carry out the certification and processing of Projects under this Agreement.
2. Developing preliminary design of a proposed Project to a degree necessary to conduct an interdisciplinary review and complete the CE Determination Checklist. In no instance will CTDOT develop a Project’s final design prior to the completion of the initial NEPA determination and documentation.
3. Ensuring the following process is completed for each Project that qualifies for a CE:
  - a) For actions qualifying for a CE listed in Appendix C (CEs listed in 23 CFR 771.117(c) or Appendix D (CEs listed in 23 CFR 771.117(d)), that do not exceed the thresholds in Section V(A)(3)(b) below, CTDOT may make a CE approval on behalf of FHWA. Prior to the CE approval, CTDOT will identify the applicable CE from Appendix C or D, ensure any conditions or constraints are met, verify that unusual circumstances pursuant to 23 CFR 771.117(b) do not apply, address any and all other environmental requirements as stated per 23 CFR 771.105(a), and complete the review with documentation required by the CE Determination Checklist and Detailed Instructions (Appendices A and B). No separate review or approval of the CE by FHWA is required; however, any Project documentation will be made available to FHWA, in accordance with Section VI of this Agreement, upon request.

b) CTDOT may not approve actions listed in Appendices C & D that exceed the below thresholds, or which do not meet Additional Documentation requirements specified in the CE Determination Checklist or Detailed Instructions. CTDOT may certify to FHWA that the action qualifies for an Individual CE Approval. An action requires FHWA CE review and approval based on CTDOT certification if any of the following conditions exist:

- (1) **Public Involvement:** Project has generated substantial public controversy.
- (2) **Rights-of-Way:** Project involves any of the following: acquisition that results in any residential or non-residential displacement(s); or, acquisition of more than a minor amount of right-of-way; or, early acquisition, including for hardship or protective purposes; or, changes in access control, use, occupancy, or disposal of any portion of the Interstate right-of-way.

A minor amount of right-of-way is defined as 10 percent, or less, of the land area of any parcel for permanent easement or fee taking required by the project. NOTE: Any acquisition requested by a private property owner or required under the Connecticut General Statutes, which result from, but are not required by, the project is generally not alone considered significant.

- (3) **Historic Properties (Section 106):** Project includes adverse effects on historic properties that cannot be resolved via an agreeable Memorandum of Agreement in accordance with Section 106 of the National Historic Preservation Act (36 CFR 800); or proposes an adverse effect on a National Historic Landmark;

- (4) **Section 4(f) Resources:** Project requires an Individual approval in accordance with Section 4(f) of the US Department of Transportation Act of 1966 (49 U.S.C. § 303 / 23 U.S.C. § 138)

- (5) **Section 6(f) Resources:** Project requires the permanent conversion of any portion of property or properties protected by Section 6(f) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. § 200305) into use other than public recreation or portions of any unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property which must be modified.

- (6) **US Army Corps of Engineers (USACE) Section 404 Permit:** Project anticipates the need for an USACE Individual permit, and does not have an Agency Coordination Plan approved by FHWA.

- (7) **US Coast Guard Bridge Permit:** Project requires a U.S. Coast Guard Bridge Permit which will result in a required map change, allow a substantial change in vessel traffic, or anticipates any complete closure of a navigational channel during construction.

- (8) **100-year Flood Plains or Floodways:** Project proposes “significant encroachment” (as defined in 23 CFR 650.105) on a floodplain.

- (9) **Noise:** Project is a Type I project per the Federal noise regulations (23 CFR Part 772), and a noise analysis has concluded that a noise impact exists in the built condition for which abatement is not being provided.

- (10) **Federally Protected Species:** Project is reviewed by US Fish & Wildlife Service, and National Marine Fisheries Service when applicable, and those services



have indicated that the action has the potential to jeopardize the continued existence of any listed species or has the potential to result in the destruction or adverse modification of critical habitat that has been designated under the Endangered Species Act.

(11) **Air Quality and Project Level Conformity:** Project is not exempt from conformity, and is not in a currently approved Statewide Transportation Improvement Program, and conforming Transportation Improvement Program; or required Project Level Analysis has resulted in the potential for the project to contribute additional pollutants at any new or revised signalized intersections.

(12) **Sole Source Aquifers:** Project is within a Sole Source Aquifer, is of the type requiring review by the United States Environmental Protection Agency (USEPA), or has not received a favorable response from USEPA's review of a required submission.

(13) **Environmental Justice:** Project involves disproportionately high and adverse human health or environmental effects to minority or low-income populations.

c) The CTDOT may not approve actions not specifically listed as CEs in Appendices C or D. Instead, if the CTDOT believes that an action meets the requirements of a CE under 40 CFR 1508.1(d) and 23 CFR 771.117(a), the CTDOT may certify that an action will not result in significant environmental impacts if the CTDOT concludes that the action qualifies for a CE, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. The CTDOT shall submit this certification to FHWA for review and subsequent approval prior to the time FHWA contemplates its next approval or grant action for the project.

- (1) CTDOT shall provide a copy of the CE documentation prepared for the actions(s) in accordance with Section VI of this Agreement.
- (2) If any project requires a FHWA action pursuant to 23 U.S.C. §138 and 49 U.S.C. §303, CTDOT shall submit the Section 4(f) documentation for FHWA determination and approval prior to, or concurrent with the certification package.
- (3) CTDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from FHWA once CTDOT has completed its certification that a project is a CE.
- (4) Should the FHWA Division Office object to a CTDOT certification, CTDOT will engage in project-specific review with FHWA to verify that the certification is adequate. This may include consultation with other agencies at the discretion of FHWA.

4. Providing a list of certified actions pursuant to this Agreement (CE-Is) to the Division Office semi-annually. The list of actions certified will contain the following information:

- a) CTDOT Project number and a Project name, Project location and description, including the route number or facility name where the Project will occur;
- b) Identification of the CE action(s) listed in Appendices C or D, or if the action is not listed in 23 CFR 771.117, identification of the action as “uncategorized”;
- c) Status of any consultations or technical analyses required to meet other Federal environmental laws, if applicable; and
- d) Whether the Project included a Section 4(f) exception, *de minimis* or programmatic evaluation.

5. Consulting with FHWA for actions that involve unusual circumstances (23 CFR 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. CTDOT may decide on, or FHWA may require, additional studies to be performed prior to FHWA making a CE approval, or determining that the preparation of an EA or EIS is appropriate.

6. Meeting applicable documentation requirements in Section VI for State CE approvals on FHWA’s behalf and State CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VII, and applicable quality control/quality, monitoring, and performance requirements in Section VIII.

7. Relying only upon employees directly employed by CTDOT to make CE approvals or certifications submitted to FHWA under this agreement. CTDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other CTDOT agency staff).

B. FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to CTDOT, as requested. CTDOT may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.
2. Providing timely input on and review of certified actions. FHWA will base its approval of CE actions on the Project documentation and certifications prepared by CTDOT under this Agreement.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VIII, including applicable monitoring and performance provisions.
4. Performing project-level Tribal Consultation as part of their Government-to-Government responsibilities. CTDOT will provide FHWA with a copy of the required Section 106 consultation documents, and other documentation as required, to facilitate this process.

## **VI. DOCUMENTATION OF CTDOT CE APPROVALS AND CERTIFICATIONS**

A. For State CE approvals and State CE certifications to FHWA for approval, CTDOT shall ensure that it fulfills the following responsibilities for documenting the Project-specific determinations made:

1. For actions listed in Appendices C (CE-As) and D (CE-Ps), CTDOT shall identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements and complete a CE Determination Checklist, including all required attachments.
2. For every CE, the CE Determination Checklist will be prepared, in accordance with the Detailed Instructions, and signed by the Project Engineer, reviewed and signed by the Project Manager, reviewed and signed by the Principal Engineer, and be approved and signed by the Division Manager.
3. In cases of an Individual CE certification, final concurrence and signature by the Transportation Assistant Planning Director, CTDOT Office of Environmental Planning (OEP), is required prior to requesting FHWA approval.

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

1. Any checklists (see Appendix A), 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 of FHWA-approved public involvement policy. If a public hearing was held, CTDOT will send a copy of the hearing transcript, in accordance with 23 CFR §771.111(h), to FHWA prior to or concurrent with completion of NEPA;
3. Any stakeholder communication, correspondence, consultation, or public/ interagency meeting documentation;
4. The name and title of the document approver and the date of CTDOT's approval or FHWA's final approval;
5. Compiled documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate. Supporting documentation that indicates that all the required conditions are satisfied will be contained in the Project file in the prime design unit and this documentation will be made available to FHWA upon request; and,
6. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the Project (when documentation is not necessary).

C. CTDOT will provide any electronic or paper project records maintained by CTDOT to FHWA at its request. CTDOT will 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 CTDOT of any additional Project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

## **VII. NEPA APPROVALS AND RE-EVALUATIONS**



A. Only the office or offices specifically identified below may make CTDOT's CE approvals and CE certifications submitted to FHWA for approval:

1. Approval of Automatic and Programmatic CEs prepared in accordance with Section VI, on behalf of FHWA, is delegated to the appropriate Division Manager, Office of Engineering, within the CTDOT Bureau of Engineering and Construction.
2. Certification of CEs requiring FHWA approval is delegated to the Transportation Assistant Planning Director, Office of Environmental Planning (OEP), within the CTDOT Bureau of Policy and Planning.

B. Re-evaluations for CE-As and CE-Ps will be processed and certified by CTDOT for FHWA and must be included in the Project files. FHWA will be responsible for reviewing and concurring on re-evaluations of CE-Is. If during a re-evaluation, the conditions listed in Appendix A or Appendix B are not met for CE-As or CE-Ps due to the change in scope of work or unforeseen conditions, CTDOT will send the re-evaluation to FHWA for review and a decision on how to proceed. In cases where an Individual CE is re-evaluated and recommended by CTDOT to be a CE-A or CE-P, FHWA concurrence is required in order to certify this recategorization.

C. In accordance with 23 CFR 771.129, CTDOT shall re-evaluate its determinations and certifications for Projects prior to requesting any major approvals or grants. The FHWA and CTDOT agree that CTDOT will follow reevaluation procedures as set forth in this Agreement and the Detailed Instructions. CTDOT will consult with FHWA, and as necessary, prepare additional documentation to ensure that CE determinations are still valid for the requested FHWA action.

1. CTDOT may prepare a written re-evaluation any time a re-evaluation is required, and will prepare written documentation of the re-evaluation when the circumstances described in a) and/or b) below apply.

- a) A written re-evaluation will be prepared when there is a change in the Project limits, a change in the Project's scope, or unforeseen conditions, resulting in the potential to induce impacts that were not previously considered in the CE.

- b) A written re-evaluation will be prepared if three (3) years pass between any major steps to advance the action (e.g. authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) after the approval of a CE or a prior re-evaluation by FHWA or by CTDOT. Typically, the scope of this type of reevaluation will address any developments in legislative or regulatory authorities.

2. CTDOT shall document the outcome of any re-evaluation required in paragraph 1(a) or 1(b) above, and include it in the Project file in the Prime Design Unit and this documentation will be made available to FHWA upon request.

D. Projects processed as CEs under a previous programmatic agreement remain valid in accordance with the terms of the governing programmatic agreement, however, all required re-evaluations will be processed under the provisions of this Agreement.

## **VIII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE**

### **A. CTDOT Quality Control & Quality Assurance**

CTDOT shall 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.

CTDOT, in cooperation with FHWA, will conduct a training session for all CTDOT staff that prepare, review, or approve CEs once this Programmatic Agreement is implemented and it will be recorded. Any new staff will be required to watch the recorded version of this training prior to conducting CEs for CTDOT to ensure this Agreement and NEPA is followed.

### **B. CTDOT Performance Monitoring and Reporting**

1. FHWA and CTDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.

2. CTDOT agrees to annually submit to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement on or before November 1. The report will identify any areas where improvement is needed and what measures CTDOT is taking to implement those improvements. The report will include a description of actions taken by CTDOT as part of its quality control efforts under Section VIII(a).

3. CTDOT shall schedule a follow-up meeting with FHWA at which the parties will discuss CTDOT's performance of this Agreement, and FHWA's monitoring activities after the end of each Federal fiscal year.

### **C. FHWA Oversight and Monitoring**

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

2. FHWA will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. CTDOT and FHWA shall jointly prepare a corrective action plan, to be implemented by CTDOT, to address any findings or observations identified in the FHWA review. CTDOT should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by CTDOT shall be considered 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 CTDOT's performance under this Agreement. FHWA may require CTDOT 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. CTDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

## **IX. AMENDMENTS**

This Agreement and/or its attachments may be amended to expand, delete, or modify contents, by mutual consent of the Division Administrator of FHWA and the Commissioner of CTDOT, or their designees at any time, without affecting the term of the Agreement.

If the parties agree to amend this Agreement, then FHWA and CTDOT 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.

**X. TERM, RENEWAL, AND TERMINATION**

A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. CTDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.

B. This Agreement is renewable for an additional five (5) year term if CTDOT requests renewal, and FHWA determines that CTDOT has satisfactorily carried out the provisions of this Agreement based on CTDOT's monitoring and reporting and FHWA's program review(s) conducted in accordance with Section VIII 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. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.

C. Expiration or termination of this Agreement shall mean that CTDOT 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. This Agreement is effective upon the date of the last signature below.

FEDERAL HIGHWAY ADMINISTRATION

Amy Jackson-Grove

Digitally signed by Amy Jackson-Grove  
Date: 2021.01.25 08:11:33 -05'00'

1/25/2021

---

Amy D. Jackson-Grove  
Division Administrator  
Connecticut Division

---

Date

STATE OF CONNECTICUT,  
DEPARTMENT OF TRANSPORTATION



Digitally signed by Joseph J. Giulietti  
Date: 2021.01.22 14:57:23 -05'00'

1-22-2021

---

Joseph J. Giulietti  
Commissioner

---

Date

**Appendix A**  
**CE Determination Checklist**





**Part 1: Automatic CE Actions:** This section will determine if the project proposes an action that normally qualifies for a Categorical Exclusion listed in 23 CFR §771.117(c). Please check any category below that applies to the **PRIMARY PURPOSE** of your project to determine if the project qualifies as an Automatic CE.

c(1)	This is an activity that does not involve or lead directly to construction	
c(2)	Approval of utility installations (not requiring exceptions under the CTDOT Utility Accommodation Plan) along or across a transportation facility	
c(3)	Construction of bicycle and pedestrian lanes, paths and facilities	
c(4)	An activity included in CTDOT’s “Highway Safety Plan” that is funded by Highway Related Safety Grants (402 Safety Program)	
c(5)	The transfer of Federal lands pursuant to 23 U.S.C. §107(d) and/or 23 U.S.C. §317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA	
c(6)	Installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction	
c(7)	Landscaping	
c(8)	Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, or railroad warning devices where no substantial land acquisition or traffic disruption will occur	
c(9)	Emergency repairs under the Emergency Relief Program <sup>1</sup>	
c(10)	Acquisition of scenic easements	
c(11)	Determination of payback for property previously acquired with Federal-aid participation	
c(12)	Improvements to existing rest areas and truck weight stations	
c(13)	Ridesharing activities	
c(14)	Bus or rail car rehabilitation	
c(15)	Alterations to facilities or vehicles in order to make them accessible to elderly and handicapped persons	
c(16)	Program administration, technical assistance, or operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand	
c(17)	The purchase of vehicles where their use can be accommodated by existing facilities or by new facilities that themselves are within a CE	

<sup>1</sup> The following actions for transportation facilities damaged by an incident resulting in an emergency declaration by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. §5121): a) Emergency repairs under 23 U.S.C §125; and, b) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action: i) occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and, ii) is commenced within a 2-year period beginning on the date of the declaration.

c(18)	Track or rail bed maintenance or improvements carried out within the existing right-of-way
c(19)	Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site
c(20)	N/A
c(21)	Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience? Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
c(22)	The project takes place entirely within the existing operational right-of-way? <sup>1</sup>
c(23)	The project has limited Federal assistance <sup>2</sup> , in that it either (select one): receives less than the specified limit of Federal funds, adjusted annually (~\$5.7 million in 2019); or, is a project with a total estimated cost of not above the annually adjusted limit (~\$34.0 million in 2019), and Federal funds comprising less than 15 percent of the total estimated cost.
c(24)	Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys
c(25)	Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation

<sup>1</sup> Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

<sup>2</sup> Dollar amounts are adjusted annually. When c(23) is selected, attach documentation indicating the annual figures used and total Federal funds, or the Total project cost and Federal percentage, as appropriate. Updates are posted at: [https://www.environment.fhwa.dot.gov/legislation/authorizations/fastact/FAST\\_ACT\\_Section1314\\_Implementation\\_Guide.aspx](https://www.environment.fhwa.dot.gov/legislation/authorizations/fastact/FAST_ACT_Section1314_Implementation_Guide.aspx)

<p><b>Please Note - Actions described in items c(26), c(27), and c(28) below may not be processed as Automatic CE's if they involve:</b></p> <ul style="list-style-type: none"> <li>• An acquisition of more than a minor amount (10% or greater of any one parcel) of right-of-way or that would result in any residential or non-residential displacements.</li> <li>• An action that needs a bridge permit (individual) from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.</li> <li>• A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f)) except for actions resulting in <i>de minimis</i> impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act.</li> <li>• Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions.</li> <li>• Changes in access control (on an interstate highway).</li> <li>• A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.</li> </ul> <p><b>If the project involves one or more of the conditions noted above, do <u>not</u> select c(26), c(27), or c(28). Please refer to Part 2 as the project may qualify as a Programmatic CE under d(13). Proceed to c(29).</b></p>	
<p>c(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g. parking, weaving, turning, climbing)</p>	
<p>c(27) Any highway safety or traffic operations improvement project, including the installation of ramp metering control devices and lighting</p>	
<p>c(28) Bridge rehabilitation, reconstruction or replacement, or the construction of grade separation to replace existing at-grade railroad crossings</p>	
<p>c(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.</p>	
<p>c(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity? (Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.)</p>	

**If any of the Categorical Exclusions listed in Part 1 above is checked, please proceed to Part 3 (conditions section) and Part 4 (unusual circumstances section) to determine if your project qualifies as an Automatic CE or an Individual CE.**

**Part 2: Programmatic CE Actions:** This section will determine if the project proposes an action that normally qualifies for a Categorical Exclusion listed in 23 CFR §771.117(d). If no project type has been selected from Part 1 (c) list above, please select from the list below, any category that applies to the **PRIMARY PURPOSE** of your project to determine if project qualifies as a Programmatic CE.

d(4)	Transportation corridor fringe parking facilities	
d(5)	Construction of new truck weigh stations or rest areas	
d(6)	Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts	
d(7)	Approvals for changes in access control	
d(8)	Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic	
d(9)	Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users	
d(10)	Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic	
d(11)	Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community	
d(12)	Acquisition of land for hardship <sup>1</sup> or protective <sup>2</sup> purposes? Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed for the project action	

---

<sup>1</sup> Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

<sup>2</sup> Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.



<p>d(13) An action described in either c(26), c(27), or c(28) from Part 1 above, and involves one or more of the following:</p> <ul style="list-style-type: none"><li>• Acquisition of more than a minor amount (more than 10% of any one parcel) of right-of-way or that would result in any residential or non-residential displacements.</li><li>• An action that needs a bridge permit (individual) from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.</li><li>• A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f)) except for actions resulting in <i>de minimis</i> impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act.</li><li>• Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions.</li><li>• Changes in access control (on an interstate highway).</li><li>• A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic River.</li></ul>	
--	--

**If any of the Categorical Exclusions listed in Part 2 above is checked, please proceed to Part 3 (conditions section) and Part 4 (unusual circumstances section) to determine if your project qualifies as a Programmatic CE or an Individual CE.**

**Part 3: Conditions for Automatic and Programmatic Categorical Exclusions:** For a project to be an Automatic CE or Programmatic CE, **none** of these conditions can be present. Please check any of the below conditions that apply to the project.

<p>1. <b>Public Involvement</b> – The public involvement process generated substantial public controversy surrounding the project for any reason, including those based on environmental grounds or due to the proposed use of any temporary road, detour or ramp closure?</p>	
<p>2. <b>Right-of-Way Actions</b> - The project involves one or more of the following (check all that apply):  <u>Acquisition</u> – acquisition of more than a minor amount of right-of-way. Minor amount of right-of-way is defined as more than 10% of <b>any</b> parcel for permanent easement or fee taking; or,  <u>Displacements/Relocations</u> – acquisition which results in any residential or non-residential relocations; or,  <u>Early Acquisition</u> - acquisition of land for hardship or protective purposes, or early acquisition pursuant to an Early Acquisition project (23 USC 108, 23 CFR 710); or,  <u>Interstate Right of Way</u> - Involves changes in access control, use, occupancy, or disposal of any portion of the Interstate right-of-way.                      Please note that any acquisitions requested by a property owner or required under the CT General Statutes, which result from, but are not required by the project, do not trigger a CE-I.</p>	
<p>3. <b>Historic Properties (Section 106)</b> – The project includes an “Adverse Effect” finding that cannot be resolved via an agreeable Memorandum of Agreement (MOA) under Section 106 of the National Historic Preservation Act (NHPA); or proposes an Adverse Effect on a National Historic Landmark (NHL).</p>	
<p>4. <b>Section 4(f)</b> – The project requires the completion of an Individual Section 4(f) Evaluation due to the use of properties protected by Section 4(f) of the USDOT Act of 1966 which does not meet the criteria for an Exception, a Programmatic Evaluation, or a <i>de minimis</i> use determination.</p>	
<p>5. <b>Section 6(f)</b> – The project requires the permanent conversion of properties protected by Section 6(f) of the Land and Water Conservation Fund Act.</p>	
<p>6. <b>US Army Corps. Of Engineers (USACE) Section 404 Individual Permit</b> – The project anticipates the need for an USACE Section 404 Individual Permit and does not have an Agency Coordination Plan approved by FHWA.</p>	
<p>7. <b>U.S. Coast Guard Bridge Permit</b> – The project requires a U.S. Coast Guard Bridge Permit which will result in a required map change, allow a significant change in vessel traffic, or anticipates any complete closure of a navigational channel during construction.</p>	
<p>8. <b>100-year Floodplain or Floodways</b> – The project proposes “significant encroachment” (as defined in 23 CFR 650.105) on a floodplain (100-year flood).</p>	
<p>9. <b>Noise</b> – The project is a Type I project per the Federal noise regulations (23 CFR Part 772), and a noise analysis has concluded that a noise impact exists in the built condition for which abatement is NOT being provided.</p>	

<p>10. <b>Federally Protected Species</b> – The project is reviewed by US Fish &amp; Wildlife Service, and National Marine Fisheries Service when applicable, and the those services have indicated that the action has the potential to jeopardize the continued existence of any listed species or has the potential to result in the destruction or adverse modification of critical habitat that has been designated under the ESA.</p>	
<p>11. <b>Air Quality and Project Level Conformity</b>                  The project is not exempt from conformity; <u>and</u>,                  The project is not in a currently approved Statewide Transportation Improvement Program (STIP) and conforming Transportation Improvement Program (TIP); or                  A Project Level Analysis was required and has resulted in the potential for the project to contribute additional pollutants at any new or revised signalized intersections.</p>	
<p>12. <b>Sole Source Aquifers</b> – The project is located within a Sole Source Aquifer, is of the type requiring review by United States Environmental Protection Agency (USEPA) and has not received a favorable response from USEPA’s review of a required submission.</p>	
<p>13. <b>Environmental Justice</b> – The project involves disproportionately high and adverse human health or environmental effects to minority or low-income populations.</p>	
<p>14. <b>Other</b> – The project exceeds another “Unusual Circumstance” threshold identified in the Environmental Review.</p>	

➤ If ANY of the conditions in Part 3 (1 to 14) apply, the project does not qualify as an Automatic or Programmatic CE. An Individual CE approval from FHWA is required.

- See **DETAILED INSTRUCTIONS** for the preparation of an Individual CE.

**Part 4: Unusual Circumstances Review**

FHWA regulation 23 CFR 771.117(b) provides that any action which normally would be classified as a CE but could involve unusual circumstances requires the Department to conduct appropriate environmental studies to determine if the CE classification is proper. Unusual circumstances include actions that involve:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
- Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

**All of the above unusual circumstances have been considered in conjunction with this project.**  
 (Please select one of the following):

Checking this box certifies that **none of the above unusual circumstances are present** and that the project qualifies for a Categorical Exclusion.

Checking this box certifies that unusual circumstances **are involved**. However, the appropriate studies/analysis have been completed, and it has been determined that significant impacts will be avoided, therefore the Categorical Exclusion classification is still appropriate.

This project qualifies for the following type of Categorical Exclusion:

Automatic CE \_\_\_\_\_

Programmatic CE \_\_\_\_\_

Individual CE \_\_\_\_\_

CTDOT has determined that this project does not involve a significant impact on the environment as defined by NEPA, or involve a significant impact resulting from unusual circumstances as defined in 23 CFR §771.117(b) and is excluded from the requirements to prepare an EA or EIS. CTDOT further certifies that all other environmental requirements, such as Air Quality, Historic Preservation (Section 106), Section 4(f), etc., to the extent such requirements apply to this project, also have been satisfied. CTDOT will keep within its project records the documentation to justify support for this Automatic or Programmatic Categorical Exclusion.

Prepared by:

\_\_\_\_\_ Project Engineer Date \_\_\_\_\_

Reviewed by:

\_\_\_\_\_ Project Manager Date \_\_\_\_\_

CE Approval  
Recommended by:

\_\_\_\_\_ Principal Engineer Date \_\_\_\_\_

Automatic or  
Programmatic CE  
Approved by:

\_\_\_\_\_ Division Chief Date \_\_\_\_\_

**OR**

Individual CE  
Recommended for  
FHWA Approval by:

\_\_\_\_\_ Assistant Director - Office of Env. Planning Date \_\_\_\_\_

The following items **must** be included in the CE documentation, regardless of the type of CE:

	Environmental Review Form (refer to Detailed Instructions for Question #1)
	Completed CE Determination Checklist
	Project Description (if not described in CE Determination Checklist)
	Project Location Map
	Appropriate Sheets from Design Plan depicting Proposed Action, if applicable
	Tribal Consultation Coordination (Tribal or FHWA correspondence)
	Section 106 Coordination (OEP or SHPO correspondence)
	Public Involvement Documentation
<p>For Individual CEs, include supporting documentation for the specific “Conditions not met for an Automatic or Programmatic CE” in Part 3 (Conditions 1-14). Use <b>DETAILED INSTRUCTIONS</b> (next section) for additional information on documentation required for these specific conditions.</p>	



**Appendix B**  
**Detailed Instructions for CE**  
**Determination Checklist**

# DETAILED INSTRUCTIONS FOR CATEGORICAL EXCLUSION DETERMINATION CHECKLIST

## **Part 1: Checklist Coversheet**

### **Purpose and Need and Project Description**

**Purpose and Need:** The purpose of a project is a concise statement as to why the project is being proposed. The need explains the existing transportation problem(s) to be addressed and their underlying causes. The purpose and need help define why the expenditure of funds for the project is worthwhile, and justifies why the project is needed to agencies and the public. For all CEs, there should be a purpose and need statement that identifies and specifically describes the transportation or other needs that the project or right-of-way action is intended to satisfy (e.g., provide system continuity, alleviate traffic congestion, correct safety deficiencies, correct geometric deficiencies, etc.).

**Project Description:** Describe the proposed project scope or right-of-way action in sufficient detail as necessary so someone not familiar with the project or action can easily understand the scope. Be sure to also describe the existing conditions and proposed improvements, i.e., lane widths, shoulder widths, bridge widths, etc., as appropriate.

Information about the purpose and need can be found at the following FHWA website page:

- *FHWA – NEPA and Transportation Decision making - Elements of a Purpose and Need:*  
<http://www.environment.fhwa.dot.gov/projdev/tdmelements.asp>

### **Categorical Exclusion or Re-evaluation of Categorical Exclusion?**

It is important to know if the project has a previously approved Categorical Exclusion (CE) or if it is a new project. If it is a new project, then the CE Determination Checklist should always be used. However, if it is a re-evaluation of a previously approved project then a re-evaluation of the CE needs to be completed, and either a new checklist will be required (for projects involving a change in scope or additional impacts have been identified since OEP's last review) or the CE Re-Evaluation form will be completed (for projects requiring a re-evaluation due to time, but there is no scope change nor are there any additional impacts identified since OEP's last review).

## 1. **Re-evaluation of Categorical Exclusion**

Pursuant to 23 CFR 771.129(c), a re-evaluation of the CE project **must occur** before any major approval or grant are issued in order to determine whether the CE remains valid for the FHWA action. At CTDOT's discretion, a written re-evaluation may be prepared any time a re-evaluation is undertaken. A written re-evaluation is required to be completed and included in the project file any time either one of the following two conditions is met:

- If there is a change in the project limits, a change in the scope of work, or unforeseen conditions have surfaced since the Office of Environmental Planning (OEP) last reviewed the project; or,
- If three years have passed between any major steps to advance the action (e.g. authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) after the CE was approved by FHWA or by CTDOT. **Reminder:** The CE must be approved within 3 years of the Environmental Review completion date.

“Major steps” include design approval to proceed into final design; authorization to proceed with right-of-way acquisition; approval of plans, specifications and estimates; or start of construction. If a CE is approved in year 1 and design approval is granted year 2, then the CE re-evaluation would be needed 3 years after design approval is granted if no other major steps have occurred. For example, if a CE is approved 2020 and final design is authorized 2022 (and no other major steps have occurred), then the CE would need to be re-evaluated 3 years after the final design was authorized (in 2025).

In order to complete a written re-evaluation, when one is required, a new Environmental Review Form request needs to be submitted to OEP as well as the previously approved CE, Environmental Review Form, and any supporting documentation. OEP will need to re-evaluate the scope to determine if the project is still expected to qualify as a CE.

If not, the OEP, in conjunction with the appropriate engineering unit, will discuss the National Environmental Policy Act (NEPA) class of action with the Federal Highway Administration (FHWA) to determine whether an Environmental Assessment (EA) or Environmental Impact Statement (EIS) needs to be conducted. This form is important in that it is used to determine at this early stage if the project is expected to qualify as a CE. This form may have been completed several years ago and the scope of work may have changed or unforeseen conditions may have surfaced since then that may warrant either an EA or an EIS. Per internal procedures, CTDOT will update the environmental review form three years after NEPA approval if no major steps have occurred (final design, ROW, etc.) to ensure there have been no changes with regards to resources or laws applicable to resources in the project area.

Additional information on this subject is available at the following FHWA website pages:

- *NEPA Documentation:* <http://environment.fhwa.dot.gov/projdev/pd4document.asp>
- *FHWA Environmental Guidebook:* <http://www.environment.fhwa.dot.gov/guidebook/index.asp>
- *23 CFR Part 771 – Environmental Impact and Related Procedures:* <http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0771.htm>

## 2. Categorical Exclusion

For a new project, the CE Determination Checklist should be completed as information becomes available. The Checklist and supporting documentation will document the answers. If the answer to a question is unknown, more analysis and/or coordination may need to be done.

**All** of the Conditions for an Automatic or Programmatic CE must be met for a project or right-of-way action to qualify as an Automatic CE (CE-A) or Programmatic CE (CE-P). If any of the conditions are not met, the project or right-of-way action may still qualify as an Individual CE (CE-I). In this case, the Connecticut Department of Transportation (CTDOT) must prepare a determination for Federal Highway Administration (FHWA) review and approval. The certified CE-I request must be signed by the Transportation Assistant Planning Director, Office of Environmental Planning (OEP), prior to transmittal to FHWA.

**Part 2 of these Detailed Instructions** provides further explanation of the questions on the CE Determination Checklist and the specific information that needs to be submitted to FHWA for any Condition that requires the project to be requested as a CE-I, or documentation that is needed in the project file for CE-As and CE-Ps.

Please note that projects cannot be processed as Automatic CE's under items **c(26)**, **c(27)**, and **c(28)** if the project involves ANY of the following:

- An acquisition of more than a minor amount (10% or greater of any one parcel) of right-of-way or that would result in any residential or non-residential displacements
- An action that needs a (individual) bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899
- A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act
- Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions
- Changes in access control (on an interstate highway)
- A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

If your project would typically fall under c(26), c(27), or c(28), but it includes one or more of the conditions above, please refer to Part 2 of the checklist as your project may qualify as a Programmatic CE under d(13).

**Part 3 of these Detailed Instructions** provides further explanation for completing the confirmation of unusual circumstances review, required in Part 4 of the Categorical Exclusion Checklist.

**Part 4 of these Detailed Instructions** Please refer to the section of this document on Individual CE for guidance regarding the format of CE-I determination requests and the specific information that needs to be submitted in support of a CE-I request.

## Part 2: Conditions for Automatic and Programmatic Categorical Exclusions

### 1. Public Involvement

Must comply with 23 U.S.C. §128, 23 CFR §771.111(h), and the FHWA-approved CTDOT Public Involvement Procedures.

Simply informing local officials of a proposed project is **not** sufficient public involvement.

Public involvement may include a public hearing, public information meeting, or no public meeting at all. Minimum public involvement normally consists of an information meeting. If CTDOT and local officials believe an informational meeting is not needed, then project records must indicate concurrence by local officials. This may be in the form of a letter from the first selectman, a report of meeting, or perhaps a telephone report.

**If substantial public controversy occurs, then a CE-I must be prepared.** Substantial public controversy may be evident from correspondence on the project, from oral or written comments received during any scoping meetings, or as a result of public meetings or hearings. Please discuss with OEP prior to determining if substantial opposition occurs. OEP may coordinate with FHWA to reach determination on substantial controversy.

Please note that if the project involves work across or adjacent to a designated Wild and Scenic River coordination with NPS will be conducted by OEP and must be concluded prior to obtaining approval of the CE (regardless of type). A record of the coordination must be included in the project file. If the coordination with NPS generates substantial controversy then an Individual CE is required and further coordination is required between CTDOT, FHWA, and the NPS.

If any proposed temporary roads, detours, or ramp closures generate substantial public controversy, describe the proposed methods of maintaining and protecting traffic, the anticipated duration and effects of these methods on the local community (including any vegetation removal, right-of-way acquisition, signing and/or signalization, noise, and traffic congestion), and any measures included in the project to mitigate these effects. Mitigation measures may include the restoration and/or enhancement of the temporary road or detour route, re-planting affected areas, noise abatement, contract provisions to limit the duration of the temporary traffic measures, or any other means identified during coordination with the local community.

Project records for all projects must include a summary of the public involvement process. A summary of the public involvement process includes:

- When news releases were issued and copies of meeting notices, if applicable;
- When public meetings, and/or meetings with public officials were held;
- When concurrence was made by local officials that no public meeting is needed (if applicable);
- Approximate number from the public that attended any public meeting(s);
- Summary of any substantive comments, questions, and concerns raised by the public at any public meeting(s) or written comments received; and,
- Commitments CTDOT/municipality has made in response to the public involvement process.



Transcripts for all public hearings (with public involvement summary) must be sent to FHWA, even if the project qualifies for a CE-A or CE-P. The transcript shall include a certificate that a hearing was held and copies of all written statements received.

For all Individual CEs, CTDOT shall include a copy of the public involvement summary and a transcript (if a public hearing was held). Transcripts may be sent to FHWA in advance of the CE-I determination request.

Additional information on this subject is available at the following FHWA website page:

- *FHWA Public Involvement:* [http://www.fhwa.dot.gov/planning/public\\_involvement/index.cfm](http://www.fhwa.dot.gov/planning/public_involvement/index.cfm)

2. **Right-of-Way Actions** – There are many types of right-of-way actions which may occur during project development, and all property purchased with Title 23 grant funds, or incorporated into a project carried out with grant funding provided under Title 23, typically continues to be subject to Federal approval for right-of-way actions following completion and close-out of a project. Nothing in these instructions is intended to supersede any of CTDOT’s established and approved right-of-way program policies or procedures. CTDOT has a ROW Manual that has been approved by FHWA.

The FHWA/CTDOT Stewardship and Oversight (S&O) Agreement, and accompanying S&O Implementation Manual, details the ROW actions that are delegated to CTDOT and those that are retained by FHWA. Only preliminary acquisition activities, as discussed at 23 CFR 710.203 may occur prior to completion of the CE, while the negotiation process must normally be deferred until NEPA is complete. (including contact with affected property owners for purposes of negotiation and relocation assistance). Regardless of whether CTDOT or FHWA is approving a ROW action, the project CE should be complete prior to approval, unless the project involves Early Acquisition (including advance acquisition for hardship or protective purposes).

An **Individual CE-I** must be prepared if:

- There is a permanent easement or fee taking that requires 10% or greater of any parcel; or,
- If the project requires any residential or non-residential displacements/relocations; or,
- The project involves Early Acquisition, including for hardship or protective purposes; or,
- The project involves changes in access control, use, occupancy, or disposal of any portion of the Interstate right-of-way.

Acquisitions and Displacements/Relocations

Since the CE determination is made relatively early in the design process, precise estimates of the size of permanent easements and/or fee takings may not be possible; therefore, best engineering judgment. may be relied upon to determine the potential for exceeding the “minor amount of right-of-way” threshold, and the potential need for any displacements/relocations. Should the circumstances of the project dictate changes to the assumptions made regarding ROW at the time the CE is executed, this would constitute a change in project scope and require reevaluation.

The “minor amount of right-of-way” threshold, established in the FHWA/CTDOT Cat Ex PA, is defined as 10 percent, or less, of the land area of any parcel for permanent easement or fee taking required by the project. NOTE: Any acquisition requested by a private property owner or required under the Connecticut General Statutes, which results from, but is not required by, the project, is generally not alone considered significant. The 10% limit applies to every individual parcel which requires a permanent easement or fee taking.

Should the threshold be exceeded the CE-I must describe where the permanent easements and fee takings will occur and provide the appropriate sheets from the preliminary design plans that show where the parcels are located that do not meet the 10% limit.

If the project requires any residential or non-residential relocations, then a CE-I must be prepared with a narrative containing the following information:

- a description of the types of properties to be acquired;
- any unique characteristics that will need to be addressed during relocation;
- the findings of the Rights-of-Way Relocation Survey; and,
- all other pertinent information.

Additionally, the narrative must be accompanied by the Rights of Way Relocation Survey as well as the available preliminary design plan sheets that depict parcel locations.

**For either of the above cases, make sure that the following statement is included in the CE-I cover letter: “Property acquisition will be performed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.”**

Additional information on this subject is available at the following FHWA website page:

- *FHWA Realty – Relocation:* [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/)
- *FHWA Realty:* [https://www.fhwa.dot.gov/real\\_estate/](https://www.fhwa.dot.gov/real_estate/)

Non-Highway Use of the ROW - Although 23 CFR §710.405 specifically deals with approval of such actions, a non-highway alternative use of the ROW contemplated by the Department may be eligible as a CE under the applicable section of Appendix A or B of the Cat Ex PA, or potentially as a certified Individual CE (CE-I) for actions not listed. In all cases, CTDOT must assure that such occupancy, use or reservations are in the public interest; are consistent with the continued use, operations, maintenance, and safety of the facility; and, will not impair or interfere with the free and safe flow of traffic. The S&O Agreement and Implementation Manual, Rights-of-Way Program section, should be consulted regarding the approval of such agreement, and the CE, or a re-evaluation including the agreement for Non-Highway Use of the ROW, must be completed prior to approval. An agreement to allow non-highway use along the Interstate requires the preparation of a Certified CE-I for FHWA approval.

Disposal of Excess Right-of-Way - Real property interests determined to be excess to transportation needs may be sold, conveyed, transferred or otherwise disposed of from the State's care, custody and control in accordance with 23 CFR §710.409, the approved CTDOT ROW Manual, and the S&O Agreement and Implementation Manual, Rights-of-Way Program section. The S&O Implementation Manual should be consulted regarding the approval of the disposal action, and the CE, or a revaluation including the disposal, must be completed prior to approval. Disposal of right-of-way on an Interstate requires the preparation of a Certified CE-I for FHWA approval.

Change in Access Control, Use, or Occupancy – Consult the S&O Agreement and the S&O Implementation Manual, Project Development and Construction section & Rights-of-Way Program section, regarding approvals for change in access control or other use or occupancy of acquired real property along the right-of-way. The action must be included in a CE, or reevaluation including the action, prior to approval. Subject actions involving right-of-way on an Interstate require the preparation of a Certified CE-I for FHWA approval.

Early/Advanced Acquisition (including for Hardship or Protective Purposes) - The State may initiate the acquisition of real property at any time it has the legal authority to do so based on program or project considerations. Early acquisition occurs infrequently, and is subject to certain conditions if NEPA review is not complete or if a later request for credit to the State share or for reimbursement is contemplated. Prior to the State obtaining final environmental approval, the Department may request FHWA agreement to provide reimbursement for early acquisition, including advanced acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying) or to alleviate hardship to a property owner or owners on a preferred location (Hardship Acquisition). There are general limiting conditions found within 23 CFR §710.501, 23 CFR §710.503, and 23 CFR 771.117(d)(12). Acquisition of property under this section and under the conditions listed shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location. These types of land acquisitions require the preparation of a certified CE-I for FHWA approval and will qualify for a CE only where the acquisitions will not limit the evaluation of alternatives including shifts in alignment for planned construction projects which may be required in the NEPA process.

Federal Land Transfers - Sections 107(d) and 317 of Title 23 of the United States Code provide for the transfer of lands or interest in lands owned by the United States to a State Department of Transportation or its nominee for highway purposes. The State may file an application with the FHWA, or can make application directly to the land-owning agency if the land owning agency has authority for granting interest in land. Conditions for making such application may be found in 23 CFR §710.601. If the actions meet the criteria in §771.117(a) and do not involve unusual circumstances those actions would qualify as a CE under 23 CFR §771.117(c)(5).

3. **Historic Properties** – Section 106 of the National Historic Preservation Act of 1966 and its implementing regulations (36 CFR Part 800) requires Federal agencies to take into account the effects of their undertakings on historic properties. This includes projects that use FHWA funds and actions that require FHWA approval.

A Section 106 Programmatic Agreement (PA) (May 2018) was signed by FHWA, CTDOT-OEP, SHPO, and the Advisory Council on Historic Preservation (ACHP) that allows qualified OEP staff to make determinations on minor transportation projects that are listed in the Section 106 PA. OEP staff will review the project under Section 106 as part of the Environmental Review process. However, more detail may be needed by OEP after the Environmental Review process to make a final determination.

If the project does not fall within the minor transportation projects listed in the Section 106 PA, as determined by the OEP staff, then OEP will consult with SHPO. SHPO will recommend a determination of effect to FHWA, which will usually be one of the following: “No Historic Properties Affected”, “No Adverse Effect”, or “Adverse Effect”. A copy of OEP’s finding or SHPO’s recommendation must be included with the CE Determination Checklist for ALL projects and must be received prior to signature of a Categorical Exclusion.

For a project involving any historic bridge(s) which requires a Bridge Permit from the US Coast Guard, copy USCG on all correspondence to the State Historic Preservation Officer (SHPO) and consulting parties.

Adverse Effect Determinations - If the project results in an “Adverse Effect” under Section 106 of the National Historic Preservation Act, a Memorandum of Agreement (**MOA**), prepared by CTDOT, must be prepared to indicate what will be done to mitigate the project’s adverse effects on historic properties. If a Memorandum of Agreement (MOA) for the resolution of adverse impacts is developed for a bridge requiring a permit from USCG, provide a draft copy of the MOA to USCG for review and provide a final copy of the MOA to USCG for their records.

**An Individual CE is required if the project includes Adverse Effects that cannot be resolved via an agreeable MOA under Section 106 of the National Historic Preservation Act; or if the project proposes an adverse effect on a National Historic Landmark. Please note that if the project requires an MOA, it must be signed by all parties prior to completion of a Categorical Exclusion.**

**Tribal Coordination Requirements** - FHWA must conduct tribal consultation for each project as part of the Section 106 process. OEP will provide FHWA with a copy of the required consultation documentation. A Tribal Programmatic Agreement exists between FHWA and the Tribes to exempt certain projects from Tribal Review. FHWA will review the information provided by OEP and determine whether Tribal Consultation is needed. If needed, FHWA will initiate consultation with the Tribal Historic Preservation Officers (**THPOs**) for the project. The THPOs have 30 calendar days to respond to the initial consultation information. For some projects, additional information or a site visit may be needed to suffice the concerns of the THPOs. For projects that cannot be resolved through additional information or site visits, the FHWA, as part of the Section 106 process, will work to resolve adverse effects as expeditiously as possible with the Tribes. Once Tribal Consultation is concluded, FHWA will send written correspondence (via email) to OEP staff. This correspondence must be included in the project file and must occur prior to competing a Categorical Exclusion.

Additional information on this subject is available at the following address:

<http://environment.fhwa.dot.gov/histpres/index.asp>

4. **Section 4(f) Resources** – Per Section 4(f) of the U.S. Department of Transportation Act of 1966, FHWA may not approve the use of land from any Section 4(f) property, including publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historic sites, unless a determination is made that:
- There is no feasible and prudent alternative to the use of land from the property; and,
  - The action includes all possible planning to minimize harm to the property resulting from such use; or
  - The use, including any measures to minimize harm (such as avoidance, minimization, or enhancement measures) will have a *de minimis* impact on the property.

Coordination with OEP will be needed to determine if the project will require the use of a Section 4(f) resource, and if so, which is the proper level of Section 4(f) documentation. Typically, this is established during the Environmental Review or shortly thereafter once ROW impacts are known.

**Section 4(f) Documentation and Determinations:**

- **Section 4(f) Exceptions:** Per 23 CFR §774.13, there are exceptions to the requirement for Section 4(f) approval. OEP will prepare a Section 4(f) exception concurrence for the FHWA to review and approval.
- **De Minimis Use Determinations:** A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation, or enhancement measures), results in either:
  1. A Section 106 finding of no adverse effect or no historic properties affected for a historic property; or,
  2. A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).
- **Nationwide Programmatic Section 4(f) Evaluations:** Certain uses of Section 4(f) property may qualify for application of one of the various Nationwide Programmatic Section 4(f) Evaluations.
- **Individual Section 4(f) Evaluations:** If a project does not meet the criteria for a Section 4(f) Exception, a Nationwide Programmatic 4(f) Evaluation, or a *de minimis* use determination, then an Individual Section 4(f) Evaluation will need to be prepared. OEP staff will assist with the preparation of the Individual Section 4(f) Evaluation as specific elements must be included in the evaluation.

Only an Individual Section 4(f) document will trigger the requirement for an Individual CE. Section 4(f) exceptions, Section 4(f) *de minimis* impacts findings, and Programmatic Section 4(f) evaluations do not alone trigger the need for an Individual CE.

For an Individual Section 4(f) Evaluation:

- There is a **45-day comment period** on the draft individual section 4(f) evaluation; and,
- There is a **30-day review period** for FHWA legal sufficiency for the final individual section 4(f) evaluation.

Keep these review times in mind during project scheduling.

**A copy of the approved Section 4(f) documentation must be included with the Individual CE determination request.** Please note that FHWA’s signed approval of all Section 4(f) documentation must be included in the project file and must be received prior to completing a Categorical Exclusion (regardless of type).

**References:**

- 23 CFR Part 774
- FHWA Section 4(f) Policy Paper: <http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>.

- 5. Section 6(f)** – Section 6(f) of the Land and Water Conservation Fund Act applies to projects that impact recreational lands purchased or improved with Land and Water Conservation Funds. CTDOT must receive approval from the National Park Service (NPS) for any conversion of property covered under this Act to a use other than public, outdoor recreational use. During the Environmental Review, OEP staff will identify any 6(f) resources in the project area and, if necessary, OEP staff will coordinate with CTDEEP and/or NPS to determine if the project results in a conversion of any Section 6(f) property

**If the project requires the conversion of any Section 6(f) property, an Individual CE is required.** Individual CEs involving the conversion of any Section 6(f) property must include a copy of the approval letter from CTDEEP or the NPS prior to submission of the Individual CE to the FHWA for review and approval.

Additional information on this subject is available at the following Internet web site address:

<http://www.nps.gov/lwcf/>

- 6. U.S. Army Corps of Engineers - Individual Permit** – If an Individual Permit from the USACE is required, and the project does NOT have an Agency Coordination Plan approved by FHWA, then an **Individual CE is required**. OEP will be able to assist with determining the type of permits needed for the project when the Permit Needs Determination Form is filled out and submitted. The Individual CE should include the approximate area of wetland impact and the appropriate sheets from the preliminary design plans that show the wetland locations.

Additional information on this subject is available at the following Internet web site address:

<http://www.environment.fhwa.dot.gov/ecosystems/wetlands.asp>

<http://www.nae.usace.army.mil/Missions/Regulatory.aspx>

- 7. U.S. Coast Guard - Coordination & Bridge Permit** – Note: Typically, bridge maintenance and minor bridge repairs do not require a Bridge Permit from the Coast Guard unless the proposed work affects the approved navigation clearances, configuration of the bridge, or navigation channel. For all projects which involve any work on or over a navigable waterway, even when there is no Bridge Construction involved, other project activities may be subject to USCG jurisdiction and require coordination relating to: public notification, aids to navigation, and/or other USCG general construction conditions. It is recommended that a summary of any USCG coordination initiated prior to Design Authorization, be included as an attachment to the CE checklist. Information included with the Project's Public Involvement Summary should include any coordination with the appropriate USCG officials, including the local Marine Safety Office (MSO) and/or local harbormaster, and these individuals should be invited to Public Meetings held for the project. The term "Bridge construction" in this section refers to any proposed construction, reconstruction, rehabilitation, or replacement (including demolition) of a federally aided or assisted bridge. (Note: Retention of a portion of the structure no longer utilized as part of a transportation system will require the approval of the US Army Corp of Engineers.) For projects involving Bridge Construction on a structure which does not span any perennial waterbody or waterway, no documentation of Bridge Permit coordination with FHWA or USCG is required.

For any projects involving Bridge Construction (or abandonment) in or over any perennial waterbody or waterway, there is need to determine if the project requires a USCG Bridge Permit. This determination is not delegated to CTDOT under the S&O Agreement.



Since 2014, the FHWA has employed the updated USCG-FHWA memorandum of agreement (MOA) “To Coordinate and Improve Bridge Planning and Permitting.” A key component of the MOA includes FHWA collaboration with the USCG when determining if bridge construction is exempt from the need to obtain a USCG Bridge Permit as per 23 CFR 650.805 and 23 USC 144(c) [Formerly 23 USC 144(h)]. If CTDOT believes that bridge construction will occur only on or over waters that:

- are not used or susceptible to use in their natural condition by reasonable improvement as a means to transport interstate or foreign commerce; **AND**,
- the bridge is over non-tidal waters; or, if located over tidal waters, then only used by recreational boating, fishing, and other small vessels less than 21 feet in length,

then a completed USCG Bridge Permit Exemption Information Checklist is submitted to FHWA with a request for determination.

If CTDOT has obtained FHWA’s determination that the Bridge Construction is eligible for an exemption from the requirement to obtain a Bridge Permit, a copy of the Checklist and associated correspondence must be included with the CE Determination Checklist, and FHWA’s determination must be received prior to signature of a Categorical Exclusion.

For any project involving Bridge Construction, or operational changes to a movable bridge, over a perennial waterbody or waterway which has not been determined exempt from USCG Bridge Permit requirements by FHWA, CTDOT will prepare a Project Initiation Request for FHWA’s transmittal to USCG. Documentation of coordination with USCG must be incorporated into the project’s Cat Ex documentation. If USCG has issued a determination that proposed bridge construction does not require a USCG Bridge Permit, this, along with any general conditions, construction requirements, or environmental commitments, will complete the documentation. For Bridge Construction requiring a USCG Bridge Permit, the Coast Guard District Bridge Office will typically provide a Coast Guard NEPA decision document prior to the Permit Application Review phase. The Coast Guard NEPA decision document, along with any additional studies or information required or provided by USCG, must be included with the CE Determination Checklist.

**When Bridge Construction, or operational changes to a movable bridge, are anticipated to result in final conditions which will require changes to a NOAA Navigational Chart (i.e.: map change), allow a substantial change in vessel traffic, or anticipates any complete closure of a navigational channel during construction, an Individual CE is required.**

The Individual CE should include a summary of coordination with the U.S. Coast Guard regarding all project activities subject to their jurisdiction.

Additional information on this subject is available at: <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Bridge-Programs/Bridge-Permit-Application-Process/>

8. **100-year Floodplains** – Flood Hazard Areas are delineated on Federal Emergency Management Agency (FEMA) maps which are available for every city and town in the state. The design of the project should have sufficient detail to determine whether work will be required within a regulatory floodway or base floodplain. Provide plans and details depicting overall floodway and floodplain impacts and proposed mitigation to OEP and the Hydraulics and Drainage Unit. The CTDOT Hydraulics and Drainage unit should be contacted regarding the impact to the floodway or floodplain if applicable.

**If the project results in a “significant encroachment” into the 100-year floodplain or floodway, then an Individual CE is required.** “Significant encroachment” is defined in 23 CFR §650.105(q) as the following:

“Significant encroachment” shall mean a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction-or flood-related impacts:

- (1) A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.
- (2) A significant risk, or
- (3) A significant adverse impact on natural and beneficial flood-plain values.

Additional information:

<http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=89>

<http://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

9. **Noise** – A noise analysis must be completed for any project that is considered **Type I** as defined in 23 CFR §772.5. Any proposed noise abatement must be both “reasonable” and “feasible”. Feasibility deals primarily with engineering considerations (e.g., topography, drainage, safety, maintenance, access requirements for driveways and ramps, and the presence of local cross streets). Reasonableness is based on a number of factors, such as the amount of noise reduction that can be achieved, the cost of noise abatement, and the views of the property owners and residents benefitted by the abatement.

Refer to the CTDOT “Highway Traffic Noise Abatement Policy for Projects Funded by the Federal Highway Administration” dated May 2017, (or as amended) for more information.

OEP’s Environmental Resource Compliance Unit will assist in the determination of whether a project is classified as a Type I project and if a noise analysis is needed. **If the project is a Type I project and a required noise analysis concludes that a noise impact exists in the built condition for which abatement is not being provided, an Individual CE is required.** The noise analysis report should be included with the Individual CE for submission to FHWA.

Additional information on this subject is available at the following Internet web site address:

<http://www.fhwa.dot.gov/environment/noise/>



**10. Federally Protected Species** – Federally protected species are those listed as threatened and endangered by the U.S. Fish and Wildlife Service (USFWS) per the Endangered Species Act, or bald and golden eagles, which have special protection under the Bald and Golden Eagle Protection Act. Areas containing known population of occurrences of Federally protected species are depicted on maps provided by CTDEEP’s Natural Diversity Database Unit that are updated every six months. In addition, the USFWS has the Information for Planning and Conservation online database that OEP reviews for the potential presence of Federally protected species. OEP reviews these data sources and reports its findings on the Environmental Review Form.

If there is an indication that there may be a Federally protected species or its critical habitat is present in or near the area of the project, OEP will note this on the Environmental Review Form, and a memorandum is sent to the CTDEEP Natural Diversity Database Unit and informal consultation is conducted with the USFWS. These agencies will reply with guidance, such as a request for a field review of the project by a biologist, special precautions to be taken, or seasonal restrictions for work within the area. If coordination with USFWS and/or National Marine Fisheries (NMF) indicates that the project has the potential to jeopardize the continued existence of any listed species or has the potential to result in the destruction or adverse modification of critical habitat that has been designated under the Endangered Species Act – then an Individual CE is required and must be submitted to FHWA. This will require formal consultation between OEP, FHWA, and the USFWS and/or NMF (as applicable) per Section 7 of the Endangered Species Act to determine a path forward.

Additional information on this subject is available at the following Internet web site address:  
<http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=28>

**11. Air Quality and Project Level Conformity** – The regulations implementing the Clean Air Act (CAA), as amended, require that transportation plans, programs and projects in non-attainment or maintenance areas for transportation-related criteria pollutants (e.g., ozone, PM<sub>10</sub>, PM<sub>2.5</sub>, ) that are funded or approved by FHWA must be in conformity with the State Implementation Plan (SIP). The USEPA has set standards for six criteria pollutants, known as the National Ambient Air Quality Standards (NAAQS). Conformity is determined through the process specified in USEPA’s transportation conformity regulations (40 CFR Part 93). Projects located in attainment areas are not subject to the conformity regulations.

(For information as to which town or city is located for criteria pollutants,, see additional information at [https://portal.ct.gov/DOT/PP\\_Bureau/Documents/Maps](https://portal.ct.gov/DOT/PP_Bureau/Documents/Maps) under miscellaneous maps. Projects in Connecticut are subject to conformity for at least one of the above pollutants unless they are exempt from conformity (per 40 CFR §93.126), or are exempt from a regional emissions analysis (per 40 CFR §93.127). **For all air quality and project level conformity determinations and analyses, please contact the Travel Demand/Air Quality (TD/AQ) Section of the Bureau of Policy and Planning.**

- **Project Level Conformity** – The criteria for determining conformity of a project are contained in 40 CFR §93.109. For projects that are either (a) exempt from Transportation Conformity; (b) exempt from a regional emissions analysis; or, (c) do not otherwise require a project level emissions analysis, an Automatic or Programmatic CE is applicable.

For those projects that do not qualify as an Automatic or Programmatic CE per any of the above-listed three conditions, if the project is included in the applicable Metropolitan Planning Organization’s (MPO’s) current conforming TIP **and** the current conforming STIP, the project is in conformity, and a separate Project Level Conformity determination is not required **unless** a Project Level Emissions analysis is required. For all other projects, if the project is **not** from a conforming plan **and** TIP, a separate Project Level Conformity determination is required.

**An Individual CE must be prepared if:**

- **The project is not exempt from conformity, and is not included in a currently approved STIP or TIP; or**
- **A required Project Level Emissions Analysis results in the potential for the project to contribute additional pollutants at any new or revised signalized intersections.**

Project Level Conformity determinations should be developed in consultation with the TD/AQ Section and must be included with the CE Determination Checklist.

Additional information on this subject is available at the following Internet web site address:

[http://www.fhwa.dot.gov/environment/air\\_quality/conformity/](http://www.fhwa.dot.gov/environment/air_quality/conformity/)

- **Mobile Source Air Toxics (MSATs)** – USEPA has identified a list of hazardous air pollutants that come from mobile sources, known as Mobile Source Air Toxics (MSATs). FHWA has issued interim guidance regarding the consideration of MSATs in NEPA documents (*Interim Guidance Update on Mobile Source Air Toxic Analysis in NEPA, December 6, 2012*, [http://www.fhwa.dot.gov/environment/air\\_quality/air\\_toxics/policy\\_and\\_guidance/qaqintguidmem.cfm](http://www.fhwa.dot.gov/environment/air_quality/air_toxics/policy_and_guidance/qaqintguidmem.cfm)). Through this guidance, FHWA has developed the following tiered approach for analyzing MSATs:

- (a) No analysis for projects with no potential for meaningful MSAT effects;
- (b) Qualitative analysis for projects with low potential for MSAT effects; or,
- (c) Quantitative analysis to differentiate alternatives for projects with higher potential MSAT effects.

For projects that are exempt from conformity requirements under the CAA pursuant to 40 CFR §93.126, no analysis or discussion of MSAT is necessary. The regulations, including a list of exempt project types may be located at:

[https://www.fhwa.dot.gov/environment/air\\_quality/conformity/laws\\_and\\_regs/](https://www.fhwa.dot.gov/environment/air_quality/conformity/laws_and_regs/)

For other projects with no or negligible traffic impacts, no MSAT analysis is recommended.

**However, the supporting documentation for any non-exempt CE action (including relevant CE-As and CE-Ps) should document the basis for the determination.**

**12. Sole Source Aquifers** – Sole Source Aquifers are Federally regulated areas where groundwater protection is of the utmost importance, due to the fact that residents in the area rely upon this water resource as their sole source of drinking water. There are currently only two Federally designated sole source aquifers in Connecticut:

- the Pootatuck Aquifer in the Newtown/Monroe area; and,
- the Pawcatuck Basin Aquifer System in the Stonington/North Stonington area.

**An Individual CE is required if a project takes place within a Sole Source Aquifer, is the type of project requiring review by the U.S. Environmental Protection Agency (USEPA) and has not received a favorable response from USEPA’s review of a required submission. OEP will provide project information to FHWA** for any necessary coordination with USEPA’s Region 1 Drinking Water Quality and Protection Unit so they are given the opportunity to ensure that Federally assisted projects will not adversely affect groundwater resources. All Categorical Exclusions for projects taking place within an SSA must include the coordination with FHWA, and USEPA if FHWA determines USEPA coordination is required. The Individual CE must include documentation of the required coordination with the USEPA as appropriate.

Additional information on this subject is available at the following Internet web site address:

<https://www.epa.gov/dwssa>

**13. Environmental Justice and Title VI** – Environmental Justice (EJ) calls for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Executive Order No. 12898 requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse impacts on minority and low-income populations. As a recipient of Title 23 funds, CTDOT is required to comply with EO 12898 by incorporating EJ principles into its transportation decision-making processes.

Although similar, there are some distinctive differences between EJ and Title VI of the Civil Rights Act. Title VI prohibits discrimination on the basis of race, color or national origin (as well as gender, age, and persons with disability through other federal and state nondiscrimination authorities), whereas EJ is directive to federal agencies to achieve environmental justice by addressing disproportionately high and adverse effects of activities on minority and low-income populations. Title VI prohibits discrimination by law, and EJ mandates a process for inclusive decision-making.

When the Environmental Review identifies EJ considerations, a narrative report is required to identify any project specific requirements for Public Involvement and document the potential for any disproportionately high and adverse impacts, including displacements, on minority and low-income populations affected by the project. Where no such potential is identified; the supporting documentation shall be included with the Cat Ex checklist. **When the potential for such impacts is identified, the project requires an individual CE, and the documentation should include an analysis of all measures that will be taken to avoid, minimize, and mitigate identified impacts.**

Additional information on this subject is available at the following Internet web site address:

[http://www.fhwa.dot.gov/environment/environmental\\_justice/](http://www.fhwa.dot.gov/environment/environmental_justice/)

### **Part 3: UNUSUAL CIRCUMSTANCES**

This section of the Detailed Instructions will guide the completion of Part 4 of the CE Determination Checklist. An action **cannot** be categorically excluded unless there are no unusual circumstances in which a normally excluded action may have a significant effect. In the case where an unusual circumstance exists, but appropriate study shows there will not be significant effects, the CE classification may be proper. (For the purposes of this section the terms “effect” and “impact” are used interchangeably.) The Environmental Review is intended to identify the majority of instances in which “unusual circumstances” need to be addressed. Completion of this portion of the checklist will document that no other unusual circumstances have been identified, or that, if identified, have been found not to induce significant effects or impacts.

In addition to the conditions described in Part 2 of these Detailed Instructions, other less common, but potentially significant, environmental impacts to the natural and human environment, as well as inconsistencies with any Federal or State law, requirement, or administrative determination, relating to the environmental aspects of the action should be addressed in an Unusual Circumstances review. These environmental impacts will typically be evaluated by the Office Environmental Planning and documented in the Environmental Review. If Unusual Circumstances are identified, additional documentation requirements will be noted in the NEPA Recommendation Section of the Environmental Review including any required associated studies, and any potential outcomes necessitating FHWA concurrence on the CE classification which are not addressed under existing thresholds.

#### *CEs with No Unusual Circumstances*

The NEPA Recommendation section of the ER Form will indicate if there are any anticipated Unusual Circumstances or not. If OEP has indicated there are no anticipated Unusual Circumstances, then select the first checkbox in Part 4 of the CE Checklist. If the project does not include any of the conditions (1-14) identified in Part 3 of the CE Determination Checklist, it will qualify as either an Automatic CE or a Programmatic CE, based on the action selected in Part 1 or Part 2 of the CE Determination Checklist. Automatic and Programmatic CEs may be approved by appropriate CTDOT staff. However, if the project involves one or more of the conditions listed in Part 3 of the checklist, it will have to be processed as an Individual CE and will require approval from FHWA.

#### *CEs with Unusual Circumstances*

If the ER Form has indicated that there are potential Unusual Circumstances, it will indicate what additional documentation (ie: studies) will be required to determine if there are significant impacts associated with the Unusual Circumstances, and any potential outcomes requiring FHWA concurrence on the CE classification which are not addressed under existing thresholds. If the appropriate studies have found that any potentially significant impacts are avoidable, and all recommended measures to avoid significant impacts will be incorporated into the project, then please select the second checkbox in Part 4 of the CE Checklist. If the project does not include any of the conditions (1-14) identified in Part 3 of the CE Determination Checklist, it will qualify as either an Automatic CE or a Programmatic CE, based on the action selected in Part 1 or Part 2 of the CE Determination Checklist, and may be approved by appropriate CTDOT staff. Supporting documentation must include the unusual circumstances studies, including commitments for including recommended avoidance measures. However, if the project involves one or more of the conditions listed in Part 3 of the checklist, it will have to be processed as an Individual CE and will require approval from FHWA.

If an unusual circumstances review is indicated for a project and appropriate studies have found, for one or more unusual circumstance, that it is not feasible or practicable to avoid significant impacts, the CE Determination Checklist cannot be completed. The project will require further coordination between OEP and FHWA to determine the appropriate class of action. Whenever any newly identified “unusual circumstances” are to be addressed through a re-evaluation, this would be considered an unforeseen circumstance relative to the project.

## **Part 4: FORMAT FOR INDIVIDUAL CATEGORICAL EXCLUSIONS**

When preparing Individual CE documentation to go to FHWA for approval, use the following guidelines in formatting the request for CE concurrence. Questions may be directed to the FHWA Connecticut Division Environmental Protection Specialist at (860) 494-7577.

Request for CE-I Concurrence Memo (C-15) link: [C-15 Individual Cat Ex-FHWA Concurrence Request.docx](#)

### **General:**

- Send the request to FHWA in letter format.
- Send a signed scanned copy of the letter addressed to the FHWA Division Administrator.
- Send the Individual CE Request and supporting documentation to the official FHWA Connecticut Division Mailbox at [Connecticut.FHWA@dot.gov](mailto:Connecticut.FHWA@dot.gov).

### **Subject:**

- State project number (and construction number, if different)
- Federal project number
- Short description and location, such as “Reconstruction of Commerce Drive – Fairfield”
- **“REQUEST FOR CATEGORICAL EXCLUSION CONCURRENCE” “REQUEST FOR CONCURRENCE ON CATEGORICAL EXCLUSION RE-EVALUATION”**

### **Purpose and Description:**

- Identify and specifically describe the transportation or other needs that the project or right-of-way action is intended to satisfy (e.g., provide system continuity, alleviate traffic congestion, correct safety deficiencies, correct geometric deficiencies, etc.).
- Describe the proposed project scope in sufficient detail as necessary so someone not familiar with the project or action can easily understand the scope. Be sure to also describe the existing conditions and proposed improvements, i.e., lane widths, shoulder widths, bridge widths, etc., as appropriate.
- 

### **The following attachments must be included with all CE-I Requests:**

- Completed and Signed CE Determination Checklist.
- Environmental Review Form (must be completed within three years of requesting CE concurrence).
- Location map that shows project limits and legible street names and route numbers.
- Public Involvement Documentation; refer to the specific instructions for detailed information on documentation required (Item #3).
- HazMat Screening response (Task 100) (from Environmental Compliance)
- Any interagency coordination meeting minutes where project was presented.
- Section 106 Determination of Effect letter; or in cases of an Adverse Effect Determination, the Memorandum of Agreement or project-level Programmatic Agreement (OEP or SHPO).
- Tribal Consultation Documentation, provided by FHWA through OEP.

- Supporting documentation only for the Condition(s) of Automatic/Programmatic CE that are not met (Part 3, Questions 1 to 13) and require the project to be requested as a CE-I; no backup documentation needs to be included to substantiate the CE conditions that are met; refer to the DETAILED INSTRUCTIONS for specific information on documentation required.
- Clearly establish why the associated potential impacts are not considered to be “Significant” – see **Section IV of existing 2020 Agreement** for a discussion of “significant”.
- Air Quality Memorandum (if analysis performed) (from OEP Air Quality Unit)
- Appropriate sheets from the preliminary design plans that shows area affected by the Programmatic CE condition(s) not met.
- Photographs (when appropriate) to further describe existing conditions.
- Endangered Species, EFH determination form (from OEP)

**Appendix C**  
**Actions included in 23 CFR 771.117(c)**

## Appendix C – “C”-List Actions

**Automatic Categorical Exclusions (CE-A)**: Are actions listed in 23 CFR §771.117(c) which meet the criteria for CEs and normally do not require any further NEPA approvals by FHWA under this agreement. CTDOT may approve such actions on behalf of FHWA so long as they retain documentation for FHWA’s inspection that (1) evaluates project impacts, (2) demonstrates that the conditions listed in **Part 3 of the CE Determination Checklist** are not present, and (3) indicates in **Part 4 of the CE Determination Checklist** that unusual circumstances are not present.

The CTDOT prime design unit will maintain a project record which documents the determination that the project activity was contained in 23 CFR §771.117(c), meets the conditions in Section V of this Agreement and by law, and that unusual circumstances were not present as described in 23 CFR §771.117(b). This record will be made available to FHWA upon request, and the date of the determination will be referenced as part of the annual report prepared by CTDOT under Section VIII of this Agreement. Under this Programmatic Agreement these actions are only those CE-As now or hereafter designated by FHWA in 23 CFR §771.117(c), including the following:

- 1) Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
- 2) Approval of utility installations, unless requiring exceptions under the CTDOT Utility Accommodation Plan, along or across a transportation facility.
- 3) Construction of bicycle and pedestrian lanes, paths and facilities.
- 4) Activities included in the CTDOT’s "Highway Safety Plan" funded by Highway Related Safety Grants (402 Safety Program, 23 U.S.C. §402).
- 5) Transfer of Federal lands pursuant to 23 U.S.C. §107(d) and/or 23 U.S.C. §317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- 6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- 7) Landscaping.
- 8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.



- 9) The following actions for transportation facilities damaged by an incident resulting in an emergency declaration by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. §5121):
  - a) Emergency repairs under 23 U.S.C §125; and
  - b) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
    - i) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and,
    - ii) Is commenced within a 2-year period beginning on the date of the declaration.
- 10) Acquisition of scenic easements.
- 11) FHWA determination of payback under 23 U.S.C. §156 for property previously acquired with Federal-aid participation.
- 12) Improvements to existing rest areas and truck weigh stations.
- 13) Ridesharing activities.
- 14) Bus and rail car rehabilitation.
- 15) Alterations to facilities or vehicles in order to make them accessible to elderly and handicapped persons.
- 16) Program administration, technical assistance activities, and operating assistance to transit authorities, to continue existing service or increase service to meet routine changes in demand.
- 17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- 18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.
- 19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- 20) Promulgation of rules, regulations, and directives. [This does not apply to CTDOT.]

- 21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
- 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 means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, -areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.
- 23) A Federally-funded project<sup>1</sup>:
  - a) That receives less than \$5,000,000 of Federal funds; or,
  - b) With a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated cost.
- 24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
- 25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. §§1341; 1342)) carried out to address water pollution or environmental degradation.
- 26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in 23 CFR §771.117(e).
- 27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in 23 CFR §771.117(e).

---

<sup>1</sup> Dollar amounts are adjusted annually. Updates are posted at [https://www.environment.fhwa.dot.gov/legislation/authorizations/fastact/FAST\\_ACT\\_Section1314\\_Implementation\\_Guide.aspx](https://www.environment.fhwa.dot.gov/legislation/authorizations/fastact/FAST_ACT_Section1314_Implementation_Guide.aspx)

- 28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in 23 CFR §771.117(e).
- 29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- 30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

**Appendix D**  
**Actions included in 23 CFR 771.117(d)**

## Appendix D – “D”-List Actions

**Programmatic Categorical Exclusions (CE-P):** Are actions listed in 23 CFR §771.117(d) which meet the criteria for CEs and normally do not require any further NEPA approvals by FHWA under this agreement. CTDOT may approve such actions on behalf of FHWA so long as they retain documentation for FHWA’s inspection that (1) evaluates project impacts, (2) demonstrates that the conditions listed in **Part 3 of the CE Determination Checklist** are not present, and (3) indicates in **Part 4 of the CE Determination Checklist** that unusual circumstances are not present.

The CTDOT prime design unit will maintain a project record which documents the determination that the project activity was contained in 23 CFR §771.117(d), meets the conditions in Section V of this Agreement and by law, and that unusual circumstances were not present as described in 23 CFR §771.117(b). This record will be made available to FHWA upon request, and the date of the determination will be referenced as part of the annual report prepared by CTDOT under Section VIII of this Agreement. Under this Programmatic Agreement these actions are only those CE-Ps now or hereafter designated by FHWA in 23 CFR §771.117(d), including the following:

**(1 to 3 are reserved per the regulations.)**

- 4) Transportation corridor fringe parking facilities.
- 5) Construction of new truck weigh stations or rest areas.
- 6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
- 7) Approvals for changes in access control.
- 8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- 9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- 10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
- 11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

- 12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
  - i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
  - ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
- 13) An action described in 23 CFR 771.117 paragraph c(26), c(27), or c (28) that does not meet the constraints in 23 CFR 771.117(e)