CE Programmatic Agreement Revisions

August 2015

The Programmatic Agreement for CEs has been Revised

The Federal Highway Administration (FHWA) recently revised 23 CFR Part 771, its regulations pertaining to Categorical Exclusions (CEs). Due to this, the FHWA Connecticut Division worked with Connecticut Department of Transportation to update the Programmatic Agreement for the Processing of Categorical Exclusions. The purpose of this update was to add the new CE actions; further streamline the programmatic agreement; and clarify sections of the CE agreement, checklist, and instructions so it is easier to understand and use. The new Programmatic Agreement is in effect as of August 27, 2015.

This is a fact sheet summarizing the major changes of the Programmatic Agreement. A detailed training course will be provided in the future by CTDOT and FHWA.

The FHWA Connecticut Division would like to thank those from CTDOT who participated in reviewing and editing this Programmatic Agreement.

New Categorical Exclusions

The FHWA adopted new Categorical Exclusions in 23 CFR 771.117(c):

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

(23) A Federally-funded project: (i) That receives less than $5,000,000 of Federal funds; or, (ii) 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.

(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.

CE Actions that have moved from the Programmatic to the Automatic CE List

In addition to the new CE actions, three CEs that were listed under 23 CFR §771.117(d)(1) to (3) are now listed under 23 CFR §771.117(c)(26) to (28). These are the following:

(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 paragraph (e) of this section.
(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 paragraph (e) of this section.
(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 paragraph (e) of this section.

Note : The constraints discussed are incorporated into the evaluation of whether a project meets the constraints of being an automatic or programmatic CE.

What Changes Were Made to the CE Checklist?

Below is a summary of what has changed with respect to the resource categories on the CE Checklist. Individual CEs no longer have to be prepared if there is a no adverse effect to Section 106 resources. In addition, if the project qualifies for a 4(f) de minimis use or 4(f) exception, FHWA will concur on this finding, and an Automatic or Programmatic CE can be prepared for the project. The requirements regarding an Individual CE have also changed for Floodways and Floodplains, as well as Air Quality conformity. For further information, contact CTDOT's Office of Environmental Planning.

Resource	Old Checklist	New Checklist
ROW Use and ROW Relocations	Two separate questions.	Combined into one question.
Historic Properties (Section 106 Resources)	Automatic and Programmatic CE if "No Historic Properties Affected". Individual CE if "Historic Properties Affected" (Adverse Effect or *No Adverse Effect*).	Automatic or Programmatic CE if: "No historic properties affected" or "No adverse effect". Individual CE if "Adverse Effect".
Tribal Consultation	Was part of Historic Properties Question	Now is a separate question.
Section 4(f) Resources	Automatic and Programmatic CEs could only be prepared if no 4(f) resources used. If there was a "use" or an exception to a "use", then an Individual CE would need to be prepared.	Automatic and Programmatic CEs can be prepared if 4(f) exception or 4(f) de minimis use is concurred upon by FHWA. Put concurrence in project file. Individual CEs needed for Programmatic 4(f) or Full 4(f) evaluations.
Floodways and Floodplains	Individual CE needed if a CLOMR or LOMR needed.	Individual CE needed if there is a "significant encroachment" on a 100-year floodplain or floodway.
Air Quality	If a project level conformity analysis (air quality assessment) is completed, then an Individual CE is required.	If a project level conformity analysis (air quality assessment) is completed and the project is found to be in conformity, then an Automatic or Programmatic CE can be prepared. An Individual CE would be needed if the project is determined to be in non-conformity based on the analysis.

Changes to the Approval Page of the CE Checklist

In addition to the changes to the checklist, we have made changes to the approval page of the CE Checklist for clarity.

There is space for the names of the project engineer, project manager, principal engineer, and division manager to be added to the signature block. Please utilize these, as it is sometimes hard to read signatures, especially once they have been photocopied.

If the project is an Automatic or Programmatic CE, the Division Manager will sign the fourth line.

If the project is an Individual CE, the Division Manager will sign the fifth line, and it will be sent to FHWA for approval.

CE Determination Checklist
State Project Number (Construction):_____

This project qualifies for the following type of Categorical Exclusion:

Automatic CE _____
Programmatic CE _____
Individual CE _____

CTDOT has determined that this project does not individually or cumulatively have a significant impact on the environment as defined by NEPA, or involve 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:

_____ Manager _____ Date
Division of Bridges / Division of Highway Design / Division of Traffic Engineering / Division of Facilities and Transit

OR

Individual CE Recommended for FHWA Approval by:

_____ Manager _____ Date
Division of Bridges / Division of Highway Design / Division of Traffic Engineering / Division of Facilities and Transit

cc: Thomas Maziarz – Mark Alexander

CE Determination Checklist 10 Rev. August 2015

CE Checklist Detailed Instructions

The CE Checklist Detailed Instructions have also been revised throughout to clear up areas that have led to confusion in the past. Plus, new information has been added where the evaluation of resources has changed since 2012. Below are some of the highlights:

- A new sub-heading has been added describing what the Purpose and Need is versus the Project Description.
- The section discussing Re-evaluations has been updated to provide clarity as to when a re-evaluation is needed for a project.
- Language has been added to the Right-of-way Acquisition/Use and Relocations section that needs to be included in the cover letter for all right-of-way acquisitions, easements, and relocations.
- The 100-year Floodplains and Floodways section has been updated, with the definition of "significant encroachment", which is now what triggers and Individual CE.
- The Sole Source Aquifer section has been updated; please allow the FHWA CT Division to coordinate with the USEPA on this resource.
- MSATs information has been updated in the Air Quality Section.
- Information has been updated in the U.S. Coast Guard Bridge Permit section.

What's Next?

FHWA and CTDOT will be working on developing a short training course for everyone who fills out the CE checklists to attend, including consultants. At this course, we will discuss the CE checklist and detailed instructions. We will also discuss the resources being evaluated in the CE, and what new changes have recently occurred to the resource evaluation based on changes to laws, regulations, policies, etc. This course will be recorded so that new employees can review this information when they start at CTDOT.

In the meantime, if you have any questions, please contact the Office of Environmental Planning to assist you.

CTDOT Office of Environmental Planning:

Stephen Delpapa: 860-594-2941
Thomas Doyle: 860-594-2944
Kevin Fleming: 860-594-2924

PROGRAMMATIC AGREEMENT

BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION AND
THE CONNECTICUT DEPARTMENT OF TRANSPORTATION
FOR PROCESSING OF
CATEGORICAL EXCLUSIONS

September 2015

Section 1: Parties

The parties to this Agreement are the Federal Highway Administration (FHWA), Connecticut Division, and Connecticut Department of Transportation (CTDOT).

Section 2: Purpose of Agreement

The purpose of this Agreement is to authorize CTDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR §771.117 (refer to **Section 8** 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 (CE) criteria in 40 CFR §1508.4 and 23 CFR §771.117(a), qualifies for a CE 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).

Section 3: Authorities

This Agreement is entered into pursuant to the following authorities:

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

Section 4: Background

This Programmatic Agreement revises FHWA and CTDOT procedures for processing CEs. These procedures comply with FHWA regulations entitled, "Environmental Impact and Related Procedures," 23 CFR Part 771. This agreement also reflects the terms within the FHWA Joint Stewardship and Oversight Agreement signed by FHWA and CTDOT.

Section 5: Applicability

This Programmatic Agreement applies to all projects that involve FHWA funding or approvals. This Programmatic 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 FHWA approval.

Section 6: Responsibilities

FHWA will rely upon the results of CTDOT's processing of actions that meet the criteria in this Programmatic Agreement to fulfill its review and approval obligations set forth in the Council on Environmental Quality (**CEQ**) regulations (40 CFR Parts 1500-1508) and FHWA's regulations (23 CFR §771.117). CTDOT will document that the project satisfies the conditions identified in this Programmatic Agreement; will not result in significant social, economic, and environmental impacts; and, is therefore categorically excluded from the requirement to prepare an EA or EIS. For those projects that meet the activities listed in 23 CFR §771.117(c) or (d) that have unusual circumstances (as defined in **Section 7, Part C**) or do not satisfy the conditions listed in **Section 8, Part A** of this Agreement, an Individual CE will be prepared and submitted to FHWA for review and approval. In addition, actions not listed in 23 CFR §771.117(c) or (d) but meet the criteria for a CE under 23 CFR §771.117 will require an Individual CE to be prepared and submitted to FHWA for review and approval.

At the time CTDOT submits a Fiscal Management Information System (**FMIS**) authorization to move from preliminary design to final design, right-of-way acquisition, or construction, CTDOT shall document whether the proposed project is an Automatic, Programmatic, or Individual CE and the date it was approved. **The CE must be approved prior to Design Approval** for a project, per the CTDOT memorandum entitled *Implementation of FHWA Policy on Permissible Project Related Activities during the NEPA Process*, dated May 22, 2012.

FHWA will perform Tribal Consultation as part of their Government-to-Government responsibilities. CTDOT will provide FHWA with a copy of the required Section 106 consultation documents to facilitate this process.

Section 7: Definitions

A. **Categorical Exclusions** are actions that, in accordance with CEQ regulations (40 CFR §1508.4) and FHWA regulations found in 23 CFR §771.117(a), individually or cumulatively do not involve "significant" environmental impacts. Categorical exclusions:

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

B. **Significant** as used in NEPA requires consideration of both context and intensity, and is defined in 40 CFR §1508.27.

- **Context** – The significance of an action varies with the setting.
- **Intensity** – This refers to the severity of the impact.

The Office of Environmental Planning (**OEP**) staff and FHWA will be able to assist with the determination of whether an impact is significant.

C. <u>Unusual circumstances</u> are discussed 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 CTDOT, in cooperation with FHWA, 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. Unusual circumstances include the following:

- Significant environmental impacts to the natural and human environment;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the USDOT Act of 1966, or Section 106 of the National Historic Preservation Act; or,
- Inconsistencies with any Federal or State law requirement or administrative determination relating to the environmental aspects of the action.

Section 8: Categorical Exclusion Types

There are three types of categorical exclusions: Automatic (CE-A), Programmatic (CE-P), and Individual (CE-I). Automatic and Programmatic CEs may be processed by CTDOT, who may then make a CE approval on FHWA's behalf. FHWA will conduct a quarterly audit to ensure projects processed as CE-As and CE-Ps are compliant with NEPA, all other federal laws, and the conditions of this agreement. Projects processed as CE-As and CE-Ps must meet all the conditions listed in Section A below.

A. <u>Conditions for Automatic and Programmatic Categorical Exclusions</u>

A proposed project may be processed as an Automatic or Programmatic CE, if **all** of the following conditions listed below are met.[1] If one or more conditions are not met, the proposed project must be evaluated and individually approved by FHWA as an Individual CE (**CE-I**).

1. **Public Involvement** – no substantial public opposition to the proposed project for any reason, including those based on environmental grounds or due to the proposed use of any temporary road, detour or ramp closure.

2. **Rights-of-Way** – the project does not require any residential or non-residential displacements, OR does not require acquisition or use of more than 10 percent of any parcel for permanent easement or fee taking.

3. **Hazardous Materials/Waste Sites** – no known Superfund sites are located within or adjacent to the project.

4. **Historic Properties (Section 106 Consultation)** – consultation with the OEP and/or State Historic Preservation Office (**SHPO**) has resulted in a finding of "**No Historic Properties Affected**" or "**No Adverse Effect**" for all properties listed, or eligible for listing, in the

[1] From *FHWA Memorandum – Categorical Exclusion (CE) Documentation and Approval*, March 30, 1989 and supplemented.

National Register of Historic Places (**NRHP**) within the Area of Potential Effect (**APE**) of the proposed project.

5. **Tribal Consultation** – Tribal consultation must be completed for the project by the FHWA with documentation (in the form of a response from the Tribes or an email from FHWA stating that the 30-day Tribal consultation period is concluded), and no significant religious or cultural properties of concern are identified by the Tribes.

6. **Section 4(f) Resources -** does not require the use of any property or properties protected by Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. §303). Note: if the FHWA concurs with a 4(f) exception or *de minimis* impact finding, then the project can be processed as a CE-A or CE-P.

7. **Section 6(f) Resources** – does not require the use of any property or properties protected by Section 6(f) of the Land and Water Conservation Fund Act.

8. **U.S. Army Corps of Engineers (USACE) Section 404 Permit** – the project does not require an individual USACE Section 404 Permit.

9. **100-year Floodplains or Floodways** – no "significant encroachment" (as defined in 23 CFR §650.105)[1] on a floodplain.

10. **Sole Source Aquifers** – no construction in a sole source aquifer (Note: the installation or replacement of signs, pavement markings, and rumble strips, as well as pothole filling, crack sealing, and joint repair does not require an Individual CE as long as there is very minimal ground disturbance.)

11. **Wild and Scenic Rivers** – no construction in, across or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers.

12. **Noise** – the project is not a Type I or Type II project per the federal noise regulations (23 CFR Part 772), and a noise analysis is not required.

13. **Air Quality and Project Level Conformity** – The proposed project is in a currently approved Statewide Transportation Improvement Program (**STIP**) and conforming Transportation Improvement Program (**TIP**); AND there are no violations of the National Ambient Air Quality Standards (**NAAQS**) at any new or revised signalized intersections: AND the project is either exempt from conformity, or the air quality assessment determined the project is in conformity.

14. **Federally Protected Species** – Based on information from the Connecticut Department of Energy and Environmental Protection (**CTDEEP**) Natural Diversity Database and the US Fish and Wildlife Service (**USFWS**), the project will have "no effect" or is "not likely to adversely effect" federally protected species or critical habitat.

[1] See Detailed Instructions for definition of significant encroachment.

15. **Title VI and Environmental Justice** – does not result in a disproportionately high and adverse human health or environmental effects to minority or low-income populations.

16. **U.S. Coast Guard Bridge Permit** – does not require a U.S. Coast Guard Bridge Permit, this includes projects that can be exempted from U.S. Coast Guard permitting by FHWA under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (**STURAA**).

B. **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. CTDOT may approve these actions on behalf of FHWA so long as they retain for FHWA's inspection documentation that evaluates (1) project impacts, (2) indicate that unusual circumstances are not present as described in 23 CFR §771.117(b), and (3) demonstrate that the conditions listed above in Section 8, Part A, are met. CTDOT Prime Design Unit will maintain a record which documents the determination that the project activity was contained in 23 CFR §771.117(c), meets the Conditions for CE-As in Section 8 of this Agreement and by law, and that unusual circumstances were not present. This record will be made available to FHWA upon request. Under this 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):
   (i) Emergency repairs under 23 U.S.C §125.
   (ii)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:
      (A) 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,
      (B) 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 refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area include the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

23. A Federally-funded project: (i) That receives less than $5,000,000 of Federal funds; or, (ii) 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). (Note, the constraints listed in 23 CFR §771.117(e) are incorporated in **Section 8, Part A**, Conditions for CE-A and CE-P.)

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). (Note, the constraints listed in 23 CFR §771.117(e) are incorporated in **Section 8, Part A**, Conditions for CE-A and CE-P.)

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). (Note, the constraints listed in 23 CFR §771.117(e) are incorporated in **Section 8, Part A**, Conditions for CE-A and CE-P.)

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.

C. <u>Programmatic Categorical Exclusions (CE-P):</u> 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. 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) indicate that unusual circumstances are not present as described in 23 CFR §771.117(b), and (3) demonstrate that the conditions listed above in **Section 8, Part A**, are met. 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 4 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 during the quarterly CE audit. 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.

D. <u>Individual Categorical Exclusions (CE-I)</u>: are actions listed in 23 CFR §771.117(c) and (d) which would normally be classified as CEs, but involve unusual circumstances or do not meet the Conditions for Automatic or Programmatic CEs listed in **Section 8, Part A**. Also, this includes actions not listed in 23 CFR §771.117(c) or (d) that meet the criteria for a CE under 23 CFR §771.117. CTDOT is responsible for gathering additional information and/or performing studies and providing project documentation to FHWA for review. FHWA will determine if the CE classification if appropriate and make CE determination in accordance with 23 CFR §771.117.

If a CE-I determination is requested of FHWA, FHWA shall consider the information contained in any records provided by CTDOT. Those requests shall be addressed with the following FHWA action:

1. If adequate, approval will be granted and notification shall be sent to CTDOT in a timely manner.
2. If inadequate or incomplete, FHWA shall request any additional information required.
3. If ineligible, the CE will be denied and the recommendation to CTDOT will be made regarding further NEPA evaluations.

Section 9: Re-evaluations of Categorical Exclusions

CTDOT shall prepare a re-evaluation whenever a re-evaluation is required based on the circumstances described in (a) and (b) below.

(a) A re-evaluation must occur when there is a change in the scope or location of the project, and new impacts may occur that were not previously considered in the CE.

(b) A re-evaluation must occur if 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) have not occurred within three (3) years after the CE was approved by FHWA or by CTDOT.

The purpose of the re-evaluation is to ensure that all CE determinations remain valid pursuant to 23 CFR §771.129 and NEPA. CTDOT shall document the outcome of any re-evaluation and include it in the project file in the Prime Design Unit and this documentation will be made available to FHWA upon request. 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 Section 8 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.

Section 10: CTDOT Procedures and Performance Requirements for Processing Actions that are Categorical Exclusions

A. CTDOT Procedures

1. CTDOT will develop preliminary design of a proposed project to a degree necessary to conduct an interdisciplinary review and complete the attached CE Determination Checklist. In no instances will CTDOT develop a project's final design prior to the completion of NEPA.

2. CTDOT will summarize the public involvement conducted to date. 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. For a CE-I, CTDOT will provide a summary of the public involvement meeting to FHWA.

3. CTDOT will document Automatic and Programmatic CE approvals on FHWA's behalf with the CE Determination Checklist. The Checklist will be prepared by the Project Engineer, reviewed by the Project Manager, reviewed by the Principal Engineer, and approved by the Division Manager. 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.

4. CTDOT will develop documentation for all projects that qualify as CEs (Automatic, Programmatic, and Individual). CTDOT OEP will maintain a list of the CE approvals on FHWA's behalf (for CE-A and CE-P projects) and certifications (for CE-I projects) made and provide that list to FHWA quarterly.

5. Actions that do not satisfy the conditions for an Automatic or Programmatic CE may still qualify as an Individual CE, if FHWA agrees. In this case, the CTDOT will send a CE-I request to FHWA for review. The request must include a copy of the CE Determination Checklist with supporting documentation that evidences that the project will not have significant impacts. See the attached Detailed Instructions and Individual CE Submission Requirements regarding format and content of Individual CEs.

6. FHWA reserves the right to review CE documentation on specific projects at its discretion.

7. CTDOT will conduct re-evaluations for projects. A re-evaluation must occur if the scope of work has changed or unforeseen conditions have occurred, or if 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) have not occurred within three (3) years after the CE was approved by FHWA or by CTDOT. CTDOT will complete a re-evaluation to determine if the CE is still valid. Re-evaluations will be included in the project file the Prime Design Unit and this documentation will be made available to FHWA upon request.

8. CTDOT may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.

9. CTDOT shall provide a letter and documentation similar to the SHPO letter for FHWA to provide to the THPO for Tribal Consultation under Section 106.

B. <u>CTDOT Performance Requirements</u>

1. CTDOT must maintain 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. CTDOT shall carry out regular quality control activities to ensure that its CE approvals are made in accordance with applicable law and this Agreement.

3. CTDOT shall monitor its processes relating to project approvals, environmental analysis, and project file documentation, and check for errors and omissions. CTDOT shall take corrective action as needed. CTDOT shall document its quality control activities and any corrective actions taken.

4. CTDOT, in cooperation with the 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.

5. FWHA and CTDOT shall cooperate in monitoring performance under this Agreement and each party shall modify its practices as needed to assure quality performance by CTDOT and FHWA.

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

Section 11: Agreement Revisions and Dissolution

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. This Agreement may be reviewed after five (5) years, based on adequate performance measured through FHWA audits to ensure it meets the needs of the CTDOT and FHWA. CTDOT shall post and maintain the current version of this Agreement on its web site, available to the public. Termination of this Agreement by either party may occur at any time with a 30-day written notice. Termination of this Agreement shall mean that CTDOT is not able to make CE approvals on FHWA's behalf. Periodic reviews of the implementation of this Agreement will be conducted as deemed necessary by FHWA to verify that CTDOT has satisfactorily carried out the provisions of this Agreement.

Section 12: Approval of Agreement

Accordingly, this Programmatic Agreement which shall become effective on the last date indicated below.

James P. Redeker
Commissioner
Connecticut Department of Transportation

9/1/15
Date

Amy D. Jackson-Grove
Division Administrator
Federal Highway Administration

9/8/15
Date

CATEGORICAL EXCLUSION DETERMINATION CHECKLIST

(See Detailed Instructions for information on how to fill out this checklist.)

State Project # (**Design**): _____	State Project # (**Construction**): _____
Federal-aid Project # (**Design**): _____	Route/Road: _____
Project Manager: _____	Project Engineer: _____
P.M. Telephone Number: _____	P.E. Telephone Number: _____
P.M. Email: _____	P.E. Email: _____

Project Name and Town Location: _____

Purpose and Description of Project (**an attachment is acceptable**):

Part 1: CE or CE Re-evaluation?[1]		
	YES(✓)	**NO (✓)**
Has there been a change in project scope, unforeseen conditions, change in law/regulation since OEP recommended on CTDOT's Environmental Review Form that the project be classified as a CE?	☐	☐
Has it been three years since the CE was approved and no major steps to advance the project have occurred?	☐	☐
➢ If **YES to either question**, STOP filling out this CE Checklist and submit a request to OEP for an update of the Environmental Review Form. See Detailed Instructions regarding re-evaluations. ➢ If **NO to both questions**, proceed to Part 2: Conditions for AUTOMATIC and PROGRAMMATIC Categorical Exclusions on page 2.		

[1] See **Detailed Instructions** for further explanations of the questions and documentation requirements.

Part 2: Conditions for Automatic and Programmatic Categorical Exclusions: For a project to be an Automatic or Programmatic CE, **none** of these conditions can be present.

	YES(✓)	NO (✓)
1. **Public Involvement** – Did the public involvement process generate substantial opposition to 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?	☐	☐
2. **ROW Relocations or Acquisition/Use** – Does the project involve the use of more than 10% of **any** parcel for permanent easement or fee taking, or require any residential or non-residential relocations?	☐	☐
3. **Hazardous Waste** – Has the Office of Environmental Compliance determined that there are known Superfund sites nearby that may affect the project?	☐	☐
4. **Historic Properties (Section 106)** – Has an "Adverse Effect" finding been made, in consultation with the State Historic Preservation Officer (**SHPO**), for any properties listed, or eligible for listing, in the National Register of Historic Places, within the Area of Potential Effect (**APE**) of the proposed project?	☐	☐
5. **Tribal Consultation** – Have the Tribes determined that the project would impact potentially significant religious and cultural resources?	☐	☐
6. **Section 4(f)** – Does the project require the use of properties protected by Section 4(f) of the USDOT Act of 1966? *(Note: a project such as those listed in 23 CFR §774.13 with an approved 4(f) exception concurred upon by the FHWA CT Division can be processed as a CE-A or CE-P. In addition, a project with an approved 4(f) de minimis finding signed by the FHWA CT Division can also be processed as a CE-A or CE-P.)*	☐	☐
7. **Section 6(f)** – Does the project require use of properties protected by Section 6(f) of the Land and Water Conservation Fund Act?	☐	☐
8. **USACE Individual Permit** – Will the USACE require an Individual Permit for the work as proposed?	☐	☐
9. **100-year Floodplain or Floodways** – Does the project have a "significant encroachment" on a floodplain (100-year flood) or floodway?	☐	☐
10. **Sole Source Aquifers** – Does the project involve construction in a sole source aquifer? (*Note: the installation or replacement of signs, pavement markings, and rumble strips, as well as pothole filling, crack sealing, and joint repair is allowable so long as there is very minimal ground disturbance.)*	☐	☐
11. **Wild and Scenic Rivers** – Does the project involve construction in, across or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers?	☐	☐

State Project Number: _____

	YES(✓)	NO (✓)
12. **Noise** – Is the project classified as Type I or II, requiring a noise analysis?	☐	☐
13. **Air Quality** – Are there any NAAQS violations for the project, or did the individual Project Level Conformity assessment (if required) find the project to be in non-conformity?	☐	☐
14. **Federally Protected Species** – If construction is proposed in an area known to have populations of any federally listed endangered or threatened species or critical habitat, is it USFWS's and/or CTDEEP's conclusion that the project "is likely to adversely affect" any of these resources?	☐	☐
15. **Title VI and Environmental Justice** – Does the project involve disproportionately high or adverse human health or environmental effects to minority or low-income populations?	☐	☐
16. **U.S. Coast Guard Bridge Permit** – Will a U.S. Coast Guard Bridge Permit be required for the project?	☐	☐
17. **FHWA ROW Office Determinations** – Will FHWA have to make a determination regarding: • Occupancy, Use, and Reservation of Airspace Rights? • Disposal of Excess Right-of-way (purchased with or maintained with Federal Funding)? • Change in Access Control? • Federal Land Transfers? • Acquisition of Land for Hardship or Protective Purposes?	☐	☐

- If **YES** for any one of Questions 1 to 17, 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.
- If **NO** for all of Questions 1 to 17, the project may qualify as an Automatic (Questions 18 to 47) or Programmatic CE (Questions 48 to 56).

  Proceed to **Part 3: Automatic CE Section** on page 4.

Part 3: <u>Automatic CE Actions</u>: This section will determine if the project qualifies for an Automatic CE [Found in 23 CFR §771.117(c)].

	YES(✓)	NO (✓)
18. Is this an activity that does not involve or lead directly to construction?	☐	☐
19. Is the primary purpose of the project the approval of utility installations (not requiring exceptions under the CTDOT Utility Accommodation Plan) along or across a transportation facility?	☐	☐
20. Is the primary purpose of the project the construction of bicycle and pedestrian lanes, paths and facilities?	☐	☐
21. Is the primary purpose of the project 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?	☐	☐
22. Is the project an activity included in CTDOT's "Highway Safety Plan" that is funded by Highway Related Safety Grants (402 Safety Program)?	☐	☐
23. Is the primary purpose of the project the installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction?	☐	☐
24. Is landscaping the primary purpose of the activity?	☐	☐
25. Is the primary purpose of the project the 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?	☐	☐
26. Is the primary purpose of the project emergency repairs under the Emergency Relief Program?	☐	☐
27. Is the primary purpose of the project the acquisition of scenic easements?	☐	☐
28. Is this activity a determination of payback for property previously acquired with Federal-aid participation?	☐	☐
29. Is the primary purpose of the project improvements to existing rest areas and truck weight stations?	☐	☐
30. Is the project a ridesharing activity?	☐	☐
31. Is the project a bus or rail car rehabilitation?	☐	☐
32. Is the primary purpose of the project to make alterations to facilities or vehicles in order to make them accessible to elderly and handicapped persons?	☐	☐
33. Does the activity consist of program administration, technical assistance, or operating assistance to transit authorities?	☐	☐
34. Does the activity consist of the purchase of vehicles where their use can be accommodated by existing facilities or by new facilities which themselves are within a CE?	☐	☐
35. Is the primary purpose of the project track or rail bed maintenance or improvements carried out within the existing right-of-way?	☐	☐

	YES(✓)	NO (✓)
36. Is the primary purpose of the project the purchase and installation of operating or maintenance equipment to be located within a transit facility and with no significant impacts off the site?	☐	☐
37. Does the activity consist of the promulgation of rules, regulations and directives?	☐	☐
38. Does the project consist of the 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.	☐	☐
39. Does the project take place entirely within the existing operational right-of-way?[4]	☐	☐
40. Does the project have limited federal assistance, in that it either: (i) receives less than $5,000,000 of Federal funds; or, (ii) It is a project 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?	☐	☐
41. Is the primary purpose of the project 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?	☐	☐
42. Is the primary purpose of the project 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?	☐	☐

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

	YES(✓)	NO (✓)
43. Is the primary purpose of the project the modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g. parking, weaving, turning, climbing)?	☐	☐
44. Is the primary purpose of the project a highway safety or traffic operations improvement project including the installation of ramp metering control devices and lighting?	☐	☐
45. Is the primary purpose of the project bridge rehabilitation, reconstruction or replacement, or the construction of grade separation to replace existing at-grade railroad crossings?	☐	☐
46. Is the primary purpose of the project the 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?	☐	☐
47. Is the primary purpose of the project the 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.)	☐	☐

- The project is an Automatic CE if:
  - **NO** for all Questions 1 to 17 in Part 2, AND
  - **YES** for <u>any</u> one of Questions 18 to 47 in Part 3, AND,
  - The project <u>does not</u> include any substantial work in addition to the above, or involve unusual circumstances [see 23 CFR §771.117(b)].

  Include the Checklist and supporting documentation in the project file.

- If **NO** for all of Questions in Part 3 (Questions 18 to 47), the project does not qualify as an Automatic CE.

  Proceed to **Part 4: Programmatic CE Section (Questions 48 to 56)** on page 7.

Part 4: <u>Programmatic CE Actions</u>: This section will determine if the project qualifies for Programmatic CE [Found in 23 CFR §771.117(d)].

	YES(✓)	NO (✓)
48. Is the primary purpose of the project transportation corridor fringe parking facilities?	☐	☐
49. Is the primary purpose of the project the construction of new truck weigh stations or rest areas?	☐	☐
50. Is the primary purpose of the project the 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?	☐	☐
51. Is the primary purpose of the project the approvals for changes in access control?	☐	☐
52. Is the primary purpose of the project the 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?	☐	☐
53. Is the primary purpose of the project 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.	☐	☐
54. Is the primary purpose of the project 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?	☐	☐
55. Is the primary purpose of the project the 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?	☐	☐
56. Is the primary purpose of the project the 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.	☐	☐

- The project qualifies as a Programmatic CE if
  - NO for all Questions 1 to 17 in Part 2, AND,
  - If **YES** for <u>any</u> one of Questions 48 to 56 in Part 4, AND,
  - The project <u>does not</u> include any substantial work in addition to the above, or involve unusual circumstances [see 23 CFR §771.117(b)]

  Include this Checklist and supporting documentation in the project file.

- If **NO** for all Questions in Part 4 (Questions 48 to 56), the <u>project does not qualify for a Programmatic CE</u>. See **DETAILED INSTRUCTIONS** for the preparation of an Individual CE.

This project qualifies for the following type of Categorical Exclusion:

Automatic CE ☐
Programmatic CE ☐
Individual CE ☐

CTDOT has determined that this project does not individually or cumulatively have a significant impact on the environment as defined by NEPA, or involve 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:

_____ Manager _____ Date
Division of Bridges / Division of Highway Design / Division of Traffic Engineering / Division of Facilities and Transit

OR

Individual CE Recommended for FHWA Approval by:

_____ Manager _____ Date
Division of Bridges / Division of Highway Design / Division of Traffic Engineering / Division of Facilities and Transit

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 Checklist
☐	Project Description (if not described in CE 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
For Individual CEs, include supporting documentation for the specific “Conditions not met for an Automatic or Programmatic CE” in Part 2 (Questions 1-17). Use DETAILED INSTRUCTIONS (next section) for additional information on documentation required for these specific conditions.	

DETAILED INSTRUCTIONS FOR CATEGORICAL EXCLUSION DETERMINATION CHECKLIST

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 helps 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 Decisionmaking - Elements of a Purpose and Need:* http://www.environment.fhwa.dot.gov/projdev/tdmelements.asp

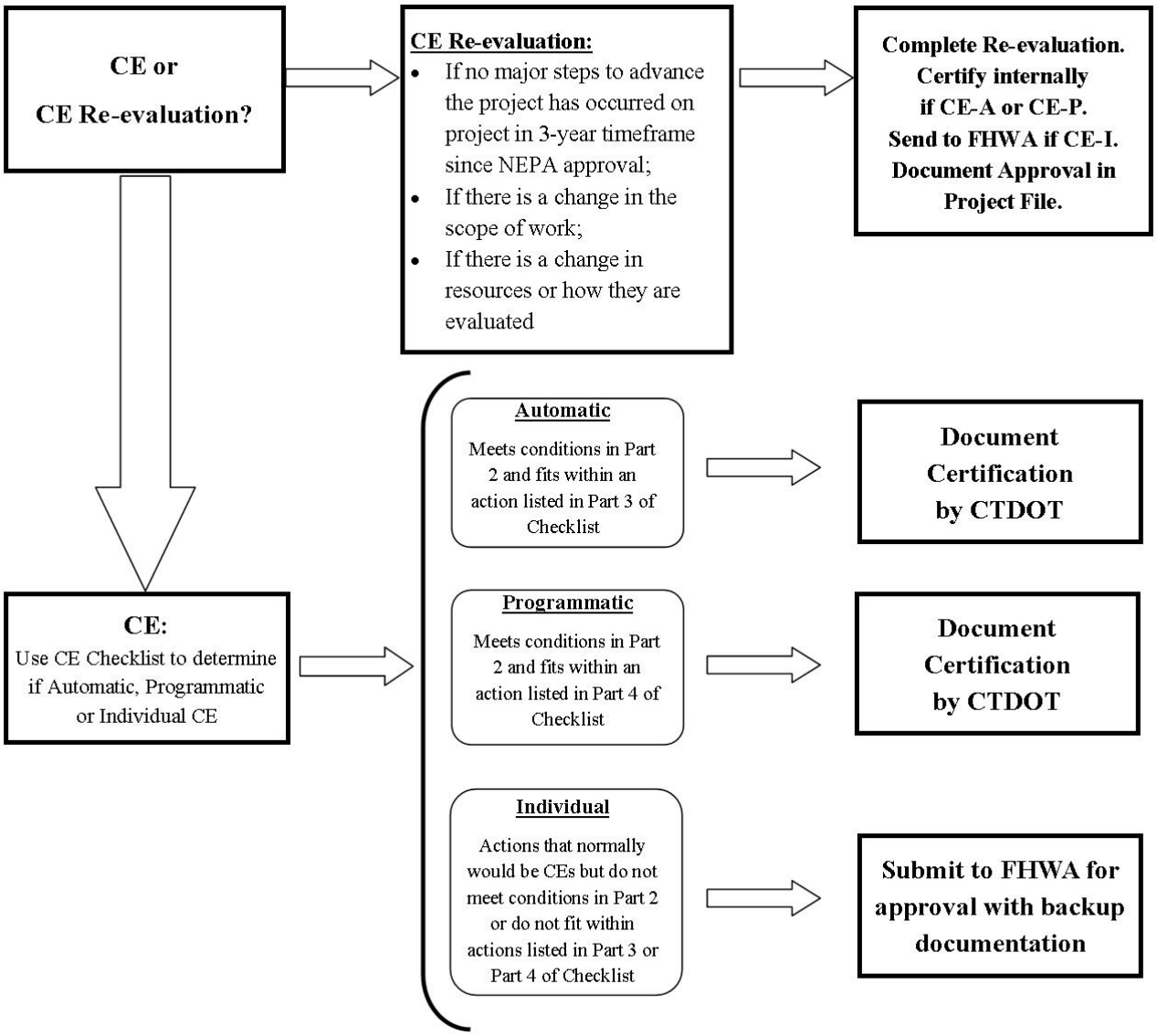
Part 1: Categorical Exclusion or Re-evaluation of Categorical Exclusion?

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 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. The CE Process is outlined in the flow chart on the next page.

1. Re-evaluation of Categorical Exclusion

A Re-evaluation of the project **must occur** if either of the following two conditions is met:

- If the scope of work has substantially changed or unforeseen conditions have surfaced since the Office of Environmental Planning (OEP) last reviewed the project; or,
- If 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) have not occurred within three (3) years after the CE was approved by FHWA or by CTDOT.



"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 2012 and final design is authorized 2014 (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 2017).

In order to do the Re-evaluation, 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 and 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 submit a CE-I determination request to the Federal Highway Administration (FHWA) for approval.

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 (below) 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.

Part 2: Conditions for Automatic and Programmatic Categorical Exclusions

1. **Public Involvement** – Public involvement must comply with 23 U.S.C. §128, 23 CFR §771.111(h), and the FHWA-approved CTDOT Public Involvement Procedures (http://www.ct.gov/dot/lib/dot/documents/dplans/PIP.pdf). 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. **Simply informing local officials of a proposed project is <u>not</u> sufficient public involvement.**

Substantial opposition 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. If substantial opposition occurs, then a CE-I must be prepared.

If any proposed temporary roads, detours, or ramp closures generate substantial opposition, 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.

<u>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.</u> The transcript shall include a certificate that a hearing was held and copies of all written statements received.

For <u>all</u> 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

2. **Right-of-Way Acquisition/Use and Relocations** – Since the CE determination is made relatively early in the design process, precise estimates of the amount of permanent easements of fee takings may not be available; therefore, use best engineering judgment. The 10% limit applies to every individual parcel which requires a permanent easement or fee taking.

> An **Individual CE-I** needs to 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 relocations.

If a permanent easement or fee taking will require 10% or greater of any parcel, then a CE-I must be prepared. 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. **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."

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. **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:* http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/index.cfm
- *FHWA Realty:* http://www.fhwa.dot.gov/realestate/index.htm

3. **Hazardous Waste/Material Sites** – Contact the Office of Environmental Compliance to determine if there are any sites classified by the U.S. Environmental Protection Agency (**USEPA**) as Superfund sites located nearby which may have an effect on the project. If so, then a CE-I is required. If the Superfund site is not within the project limits but near the project, provide a location map depicting the Superfund site and a description of the interaction or lack thereof between the two sites. Provide the appropriate sheets from the preliminary design plans that show where the Superfund sites are located in relation to the project and describe how they may affect the project. Location data can be derived from the USEPA Enviromapper:

http://www.epa.gov/emefdata/em4ef.home.

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

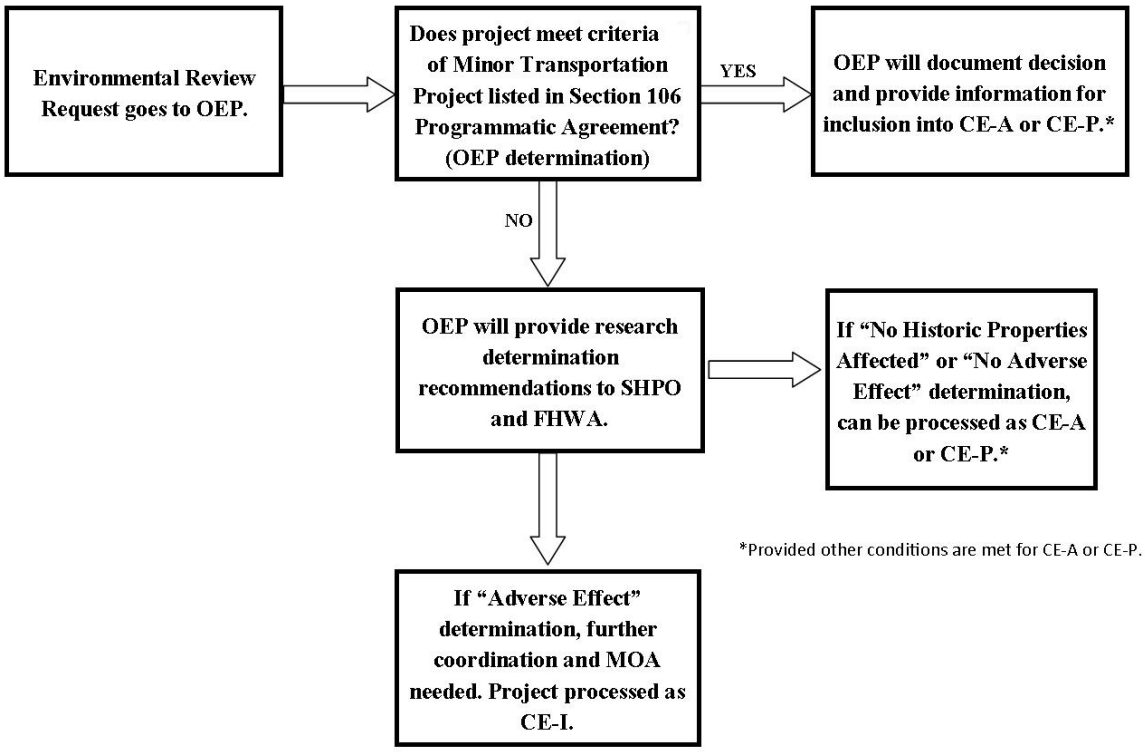
- *FHWA Hazardous Materials/Waste Sites Resources:* http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=46

4. **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.

The Section 106 Programmatic Agreement (October 2012) was signed by FHWA, CTDOT-OEP, SHPO, and the Advisory Council on Historic Preservation (**ACHP**) that allows the OEP staff to make determinations on minor transportation projects that are listed in this agreement. OEP staff will review the project to see if it qualifies for the projects listed in the Programmatic Agreement as part of the Environmental Review Form process. More detail may be needed later on by OEP for further coordination with SHPO, FHWA, and ACHP.

If the project is determined to fall within the minor transportation projects listed in Section 106 Programmatic Agreement, then documentation from OEP staff should be attached to the CE Determination Checklist, regardless of CE type (automatic, programmatic, or individual).

Section 106 Process



If the project does not fall within the minor transportation projects listed in the Section 106 Programmatic Agreement, as determined by the OEP staff, then OEP will consult with SHPO. SHPO recommends a determination of effect to FHWA, which will usually be one of the following: "No Historic Properties Affected", "No Adverse Effect", or "Adverse Effect" "The Historic Properties condition is only satisfied if a **NO HISTORIC PROPERTIES AFFECTED or NO ADVERSE EFFECT** recommendation is received in writing from the SHPO or OEP – all other recommendations of effect require an CE-I.

Section 106 Documentation Requirements: The documentation standards for Section 106 findings are detailed in 36 CFR §800.11. For **Adverse Effect recommendations**, one copy of the required documentation must be submitted by CTDOT to FHWA. This documentation should include appropriate sheets from the preliminary design plans that show how historic properties may be affected as well as original photographs of these properties. **A copy of OEP's finding or SHPO's recommendation must be included with the CE Checklist for <u>ALL</u> projects.**

Adverse Effect Determinations: If SHPO issues an "adverse effect" recommendation, FHWA must notify the ACHP of the adverse effect recommendation. This notification must be accompanied by the draft Section 106 documentation required by 36 CFR §800.11(e). The ACHP will then have 15 calendar days to advise the FHWA whether or not the ACHP wishes to participate in the Section 106 consultation process. Other parties may also be consulted, as deemed appropriate by FHWA, CTDOT, SHPO, or ACHP. In addition, the public must be afforded an opportunity to provide comments on the draft Section 106 finding in accordance with CTDOT's Public Involvement Procedures. Specifically, there must be a notice in the newspaper stating that there is an adverse impact and that FHWA has made a draft Section 106 finding that is available for review by the public for 15 days and that any comments should be addressed to the following: Environmental Protection Specialist, FHWA CT Division, 628-2 Hebron Avenue, Suite 303, Glastonbury, CT 06033. If there is a public meeting in association with the project, the public meeting notice should state this and the documentation should be at the meeting for review. Any comments will be addressed and the draft Section 106 finding will be finalized after that time.

A Memorandum of Agreement (**MOA**), prepared by CTDOT, is required to indicate what will be done to mitigate the adverse effects of the project on historic properties. The Individual CE request **should not be submitted to FHWA** until coordination with the ACHP is complete and the MOA has been signed by all parties. FHWA will notify CTDOT when this process is completed and the CE-I can be submitted for approval. **A copy of the signed MOA should be included with the Individual CE determination request.**

NOTE: *Section 106 is a <u>completely separate process</u> from Section 4(f). Section 106 involves evaluating the effects of a federal undertaking on historic properties and offering the ACHP, SHPO, Tribes, and the public an opportunity to comment. Section 4(f) is focused on the "use" or incorporation of a property from a historic resource for transportation purposes. Transportation projects must not "use" property*

from a historic resource unless avoidance is not feasible and prudent. This entails consideration of alternatives to avoid the use of historic properties for transportation purposes as well as measures to minimize harm to these properties (see Number 6 below, Section 4(f)).

For additional guidance, contact OEP staff and/or FHWA.

Additional information on this subject is available at the following Internet web site address: http://environment.fhwa.dot.gov/histpres/index.asp

5. **Tribal Consultation** – Tribes are sovereign nations, and thus, the 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 and the project can proceed.

6. **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:

a. There is no feasible and prudent alternative to the use of land from the property; and,
b. The action includes all possible planning to minimize harm to the property resulting from such use.

"Use" is defined as a fee taking, a permanent easement or "constructive use" of the affected Section 4(f) property. Section 4(f) does not generally apply to temporary construction easements provided certain conditions are satisfied (*see FHWA's Section 4(f) Policy Paper, http://environment.fhwa.dot.gov/4f/4fpolicy.asp*). However an exception package will need to be signed by FHWA for temporary easements from Section 4(f) properties. "Constructive use" occurs when the proximity impacts of the project to the Section 4(f) property are so great that the purpose(s) for which the Section 4(f) property exists are substantially impaired.

Per 23 CFR §774.17, the term "historic site" includes any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that are included in, or are eligible for inclusion in, the NRHP.

Section 4(f) Determinations: If the applicability of Section 4(f) for a specific property is not clear, FHWA should be consulted. For those situations where a determination is provided in writing by FHWA that Section 4(f) does not apply, **a copy of this determination should be included with the CE Checklist**.

- **Section 4(f) Exceptions:** Per 23 CFR §774.13, there are exceptions to the requirement for Section 4(f) approval. OEP staff will be able to determine if the project meets the criteria for a Section 4(f) exception. OEP will prepare a Section 4(f) exception concurrence for the FHWA to review. If FHWA agrees with the exception, they will sign the concurrence and send it back to OEP. The signed concurrence must be included as part of the CE documentation. **The CE can be processed as a CE-A or CE-P if FHWA concurs with the exception.**

- **Nationwide Programmatic Section 4(f) Evaluations:** Many uses of Section 4(f) property may qualify for application of one of the following Nationwide Programmatic Section 4(f) Evaluations:
  (a) Independent Walkway and Bikeways Construction Projects;
  (b) Use of Historic Bridges;
  (c) Minor Involvement with Historic Sites;
  (d) Minor Involvement with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges; and,
  (e) Net Benefits to a Section 4(f) Property.

  More information about these Nationwide Programmatic Section 4(f) Evaluations can be found at the following link:
  http://www.environment.fhwa.dot.gov/4f/4fnspeval.asp.

  Nationwide Programmatic Section 4(f) Evaluations must be submitted to FHWA for approval and should include plans of the proposed project (with property boundary lines clearly shown) and original photographs that show how the Section 4(f) properties may be affected. OEP staff can determine whether a project will qualify for a Nationwide Programmatic Section 4(f) Evaluation, and assist with the preparation of this document for review by the FHWA. A CE-I must be prepared if a Nationwide Programmatic Section 4(f) Evaluation is used.

- ***De Minimis* Use Determinations:** The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) allowed for streamlining of the Section 4(f) process where the project would have a "*de minimis*" impact on the 4(f) resource. According to the Section 4(f) Policy Paper, 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).

OEP staff will be able to determine if the project fits within the *de minimis* impact determination and will prepare a *de minimis* determination request for FHWA to review and approve. If the Section 4(f) resource is a historic property, SHPO will need to be notified of the intent to issue the *de minimis* finding. If the Section 4(f) resource is a publicly owned park, recreation area, or wildlife/waterfowl refuge, FHWA will inform the officials with jurisdiction over the property they intend to make a *de minimis* finding and a public review/comment period is required. The officials with jurisdiction over the property must concur "that the use of the property will not have an adverse effect on the features or activities that qualify the resource for Section 4(f) protection." Once the public review/comment period ends, if no substantial comments are received contrary to the *de minimis* use finding, FHWA will sign the determination and send it back to OEP. The signed concurrence must be included as part of the CE documentation. If FHWA signs the determination, the CE can be processed as a CE-A or CE-P.

- **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 Draft Individual Section 4(f) Evaluation as specific elements must be included in the evaluation. The Draft Individual Section 4(f) Evaluation must be forwarded to FHWA to circulate for review and comment (minimum 45 days) to the National Park Service (**NPS**), and, as appropriate, to the U.S. Department of Housing and Urban Development and/or the U.S. Department of Agriculture. The Final Section 4(f) evaluation must be reviewed for legal sufficiency (30-day review period) by FHWA legal counsel before final approval.

  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.

  The Individual CE determination request should not be submitted to FHWA until after the required Section 4(f) documentation has been completed by CTDOT and approved by FHWA. **A copy of the approved Section 4(f) documentation should be included with the Individual CE determination request.**

If a Section 4(f) *de minimis* finding, programmatic evaluation, or individual evaluation is completed for the project, the public must be notified of the impacts, and coordination with the property owner must take place, in accordance with CTDOT's Public Involvement Procedures.

NOTE: *Section 4(f) is a completely separate process from Section 106 (see section "Detailed Instructions for CE Checklist #7).*

References:

(a) 23 CFR Part 774
(b) FHWA Technical Advisory T 6640.8A, entitled, "Guidance for Preparing and Processing Environmental and Section 4(f) Documents," dated October 30, 1987. http://environment.fhwa.dot.gov/projdev/impta6640.asp
(c) FHWA Section 4(f) Policy Paper: http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp.

Additional information on this subject is available at the following Internet web site address: http://www.environment.fhwa.dot.gov/4f/index.asp

For additional guidance, contact OEP and/or FHWA.

7. **Section 6(f)** – The purpose of Section 6(f) of the Land and Water Conservation Fund Act is to preserve, develop, and assure the quality of outdoor recreation resources for present and future generations. This 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. To determine if there is a Section 6(f) property within or adjacent to a project area, please review the grant listing at http://waso-lwcf.ncrc.nps.gov/public/index.cfm. CTDEEP has a designated staff member responsible for Section 6(f) coordination. Please send information to the following:

CTDEEP Deputy Commissioner
Outdoor Recreation and Natural Resources
79 Elm Street, 3rd Floor
Hartford, CT 06106-5127

If the project requires the conversion of any Section 6(f) property or improvements, an Individual CE is required. FHWA can assist you in this process if needed. Individual CEs must include a copy of the approval letter from CTDEEP or the NPS prior to submission 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/

8. **U.S. Army Corps of Engineers - Individual Permit** – If an Individual Permit from the USACE is required, then an **Individual CE is required**. 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. 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.

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

9. **100-year Floodplains and Floodways** – 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 and whether this work will have an adverse effect. 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 severity of the adverse effect, if applicable. If the project would result in a "significant encroachment" into the 100-year floodplain or floodway, then an Individual CE would be 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 on this subject is available at the following Internet web site addresses:
http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=89
http://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping

10. **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.

Information must be provided to FHWA to coordinate 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. The designation has no direct effect on land use decisions made at the state or local level, but if the project has any Federal funding, coordination with USEPA is necessary. Contact OEP for assistance when dealing with projects in a sole source aquifer. If a project is in a sole source aquifer recharge area, an Individual CE is required. *Note: the installation or replacement of signs, pavement markings, and rumble strips, as well as pothole filling, crack sealing, and joint repair does not require an Individual CE as long as there is very minimal ground disturbance. Other minimal ground disturbance activities may be included later once an MOA is established between FHWA and USEPA*. The Individual CE must include documentation of the required coordination with the USEPA.

Additional information on this subject is available at the following Internet web site address:
http://www.epa.gov/region1/eco/drinkwater/pc_solesource_aquifer.html

11. **Wild and Scenic Rivers** – The purpose of the Wild and Scenic Rivers Act is to preserve and protect wild and scenic rivers and immediate environments for the benefit of present and future generations. CTDOT must coordinate with the NPS and CTDEEP if the project includes construction in, across, or adjacent to a river designated or proposed for inclusion in the National System of Wild and Scenic Rivers, and an Individual CE must be prepared.
There are two wild and scenic rivers in Connecticut:

- The upper **Farmington River** (a 14-mile section of the **West Branch**) is protected from immediately below the Goodwin Dam in Hartland through Barkhamsted and New Hartford down to the downstream end of the New Hartford/Canton town line. For further information, see http://www.rivers.gov/rivers/farmington.php.

- **Eightmile River** (a total of 25.3 stream miles) in southeastern Connecticut is designated as scenic, including the entire main stem of the river from Lake Hayward Brook to the Connecticut River, as well as portions of the following tributaries of Eightmile River: East Branch; Harris Brook; Beaver Brook, and Falls Brook. For further information, see http://www.rivers.gov/rivers/eightmile.php.

Wild and Scenic River coordination should be addressed to the following person:

National Park Service
Attn: New England Team Leader
Northeast Region Rivers Program
15 State Street
Boston, MA 02109

Results of this coordination should be included in the Individual CE. For additional information, contact OEP staff or FHWA.

12. Noise – FHWA regulations (23 CFR Part 772) require the identification of noise impacts and the consideration of noise abatement that would substantially reduce noise impacts. A noise analysis must be completed for any project that is considered **Type I** or **Type II** 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 July 2011, (or as amended) for more information.

OEP will assist in the determination of whether a project is classified as a Type I or Type II project and if a noise analysis is needed. If a noise analysis is required, an Individual CE is also 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/

13. 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_{10}, $PM_{2.5}$, CO) 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. However, as of July 2, 2014, the entire state of Connecticut is in non-attainment for ozone, and three regions are in maintenance for CO. However, the CO maintenance periods will end in these areas on the following dates:

- Hartford-New Britain-Middletown in 2015
- New Haven-Meriden-Waterbury in 2018
- Southwestern Connecticut in 2020

(For information as to which town or city is located in these areas, see additional information at http://www.ct.gov/dot/lib/dot/documents/dpolicy/policymaps/ref/COAreas.pdf). 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 Emissions Analysis** – This type of analysis (a.k.a., "hot-spot" analysis) applies to CO and PM_{10} concentrations. In Connecticut, the following projects require a CO "hot-spot" analysis [see 40 CFR §93.123(a)]:

  (a) Projects that affect intersections currently at Level of Service (**LOS**) D, E, or F, or will change to LOS D, E, or F because of increased traffic volumes related to the project.

  Projects may fall within the CO categorical hot-spot finding, per guidance issued February 12, 2014. FHWA's website regarding the CO categorical hot-spot analysis finding can be used to determine if the project fits within the parameters. (http://www.fhwa.dot.gov/environment/air_quality/conformity/policy_and_guidance/cmcf/index.cfm)

  PM hot-spot quantitative analyses is required for the following projects (per 40 CFR §93.123(b)(1):

  (a) New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;
  (b) Projects affecting intersections that are at Level-of-Service D, E, or F with a significant number of diesel vehicles, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;
  (c) New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;
  (d) Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and,
  (e) Projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

  The TD/AQ Section staff will be able to assist in determining whether a project level emissions analysis is required for the project. **If applicable, a copy of the Air Quality Assessment memorandum must be included with the Categorical Exclusion Checklist.** If there are any violations of the NAAQS resulting from this project, an Individual CE is required.

  Additional information on this subject is available at the following Internet web site address: http://www.fhwa.dot.gov/environment/air_quality/

- **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. A list of exempt projects can be found in 40 CFR §93.126 and 40 CFR §93.127.

  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 Level Emissions analysis results in a finding of non-conformity for the project. If the Project Level Emissions analysis finds that the project is in conformity, then an Automatic or Programmatic CE can be prepared.**

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

  Additional information on this subject is available at the following Internet web site address:
  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, which are known or suspected to cause adverse health and environmental effects, 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/aqintguidmem.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 automatic CEs (Part 3 of the CE Checklist) found in 23 CFR §771.117(c), or exempt from conformity requirements under the CAA pursuant to 40 CFR §93.126, no analysis or discussion of MSAT is necessary. For other projects with no or negligible traffic impacts, no MSAT analysis is recommended. **However, the**

supporting documentation for the CE should document the basis for the determination, and have a brief description of the factors considered using the prototype language found in Appendix A of the Interim Guidance.

Projects with low MSAT effects require a qualitative analysis. These are the types of projects that serve to improve operations of highway, transit or freight without adding substantial new capacity, or without creating a facility that is likely to meaningfully increase MSAT emissions. Types of projects can include the following: minor widening projects; new interchanges; replacing a signalized intersection on a surface street; or, projects where the design year traffic is projected to be less than 140,000 to 150,000 average annual daily traffic (AADT). **Appendix B of the Interim Guidance has prototype language that must be included in the CE.**

Projects with higher potential MSAT effects are those that would do the following:

- Create or significantly alter a major intermodal freight facility that has the potential to concentrate high levels of diesel particulate matter in a single location, involving a significant number of diesel vehicles for new projects or accommodating with a significant increase in the number of diesel vehicles for expansion projects; or,
- Create new capacity or add significant capacity to urban highways such as interstates, urban arterials, or urban collector-distributor routes with traffic volumes where the AADT is projected to be in the range of 140,000 to 150,000 or greater by the design year; and also,
- Proposed to be located in proximity to populated areas.

If the project meets these criteria, then coordination with FHWA must occur. For additional guidance, contact TD/AQ Section of Planning for assistance.

14. **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 (IPaC) 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 the project is not located in or near an area with these resources, an Automatic or Programmatic CE is applicable. In addition, if OEP views that the project will have "no effect" to a federally protected species or critical habitat, an Automatic or Programmatic CE can be used.

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 the project "is not likely to adversely effect" these resources, an Automatic or Programmatic CE is applicable. If a federally protected species is "likely to be adversely affected", then formal consultation will occur between OEP, FHWA, and the USFWS per Section 7 of the Endangered Species Act, and an Individual CE must be submitted to the FHWA.

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

15. **Title VI and Environmental Justice** – Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin. Executive Order No. 12898 requires federal agencies to identify and address, as appropriate, disproportionately high and adverse impacts on minority and low-income populations. A narrative is required to analyze any disproportionate impacts on minority and low-income populations affected by the project that cannot be avoided, minimized or mitigated.

Additional information on this subject is available at the following Internet web site address:
http://www.fhwa.dot.gov/environment/environmental_justice/

16. **U.S. Coast Guard Bridge Permit** – For projects involving bridges over navigable waterways, if a Bridge Permit from the U.S. Coast Guard is required, 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, including navigation lighting. If the project can be exempt from a bridge permit by the FHWA under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) exemption, then an Automatic or Programmatic CE can be prepared. Contact OEP Wetlands and Natural Resources Staff for further information about whether a bridge qualifies for a STURAA exemption.

Additional information on this subject is available at the following Internet web site address:
http://www.uscg.mil/hq/cg5/cg551/BPAG_Page.asp

17. **ROW Office Determinations**

A. **Occupancy, Use & Reservation of Airspace Rights** - Although 23 CFR §710.405 specifically deals with approval of actions concerning air rights on the interstates, any use of airspace contemplated by the Department must assure that such occupancy, use or reservations are in the public interest and will not impair or interfere with the free and safe flow of traffic. The temporary or permanent occupancy, reservation or use of air rights must be approved by the FHWA unless delegation of this authority is covered by the Utility Accommodation Manual (2/2009). Approvals actions for the occupancy, reservations or use of air rights must not have significant environmental effects and/or adverse effects on the environment

to satisfy conditions or criteria for CEs.

B. **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 §710.403(d). The State shall specify in the ROW Operations Manual, procedures for the rental, leasing, licensing, maintenance and disposal of real property acquired with Title 23 of the United States Code funds. Chapter IV in the State's Manual of Organization Functions and Procedures specify the steps necessary for disposal of excess right of way. If the disposal requires approval from FHWA then the State shall submit documentation that demonstrates specific conditions or criteria for CEs are satisfied and that significant environmental effects will not result.

C. **Change in Access Control** - For any change in access control or other use or occupancy of acquired real property along the **Interstate**, the Department shall secure an approval from FHWA for such change or use. Changes in access control which do not individually or cumulatively have significant environmental effects may meet the criteria for a CE. The State seeking administrative approval from the FHWA shall submit documentation that demonstrates such criteria satisfying the conditions for a CE that demonstrate no significant environmental impacts resulting from the change in access control activities.

D. **Acquisition of Land 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 (but such acquisition 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 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 §710.503. 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 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.

E. **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(c) and do not involve unusual circumstances those actions would qualify as a CE under 23 CFR §771.117(c)(5).

Part 2: FORMAT FOR INDIVIDUAL CATEGORICAL EXCLUSIONS

When submitting Individual CEs 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.

General:

- Send the request to FHWA in letter format.
- Send a signed scanned copy of the letter or an original on CTDOT letterhead to FHWA, 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.

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).
- Section 106 Consultation (OEP or SHPO).

- Tribal Consultation (from FHWA through OEP).
- Supporting documentation only for the Condition(s) of Automatic/Programmatic CE that are not met (Part 3, Questions 1 to 17) 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 ***Definitions, Conditions, and Classifications of Categorical Exclusions*** for a discussion of "significant".
- Air Quality Memorandum (if analysis performed).
- Appropriate sheets from the preliminary design plans that shows area affected by the Programmatic CE condition(s) not met. Fold oversize sheets to 8½" x 11".
- Photographs (when appropriate) to further describe existing conditions.