

**December 2020 Training Sessions  
Programmatic Agreement for Categorical Exclusions (CE)  
and the Environmental Review Process**

**Supplemental Guidance to CE Roll-out**

The 2015 Programmatic Agreement (PA) between the Federal Highway Administration (FHWA) and the Connecticut Department of Transportation (CTDOT) for Processing of Categorical Exclusions (CEs) expired in September 2020. The FHWA Connecticut Division and CTDOT worked together to update the PA and corresponding CE Checklist which provided an opportunity to further streamline the process and to better document the NEPA process for CE level projects.

In December 2020, the Office of Environmental Planning (OEP) conducted four training sessions to present the revised PA and CE Checklist, Environmental Review Request Form, and Environmental Review Form. This document addresses changes in the process and answers various questions that were posed during the training sessions. This supplemental guidance document will provide an overview of the changes caused by the new PA and it will answer frequently asked questions that were posed in the course of the training roll out.

In addition to the new PA and CE Checklist, OEP has updated the Environmental Review Request Form and the Environmental Review Form. This guidance is organized with subsections on changes that were made to each of the three documents. Each section will contain the Frequently Asked Questions that relate to the specific form or review process.

**1. *When will the new forms go into effect?***

With the signing of the new Programmatic Agreement on January 25, 2021, the new Environmental Review (ER) Request form, Environmental Review form and the CE Checklist went into effect. They can be accessed here at [www.ct.gov/environmentaldocuments](http://www.ct.gov/environmentaldocuments). Links to the updated forms provided below:

- [Programmatic Agreement for Processing Categorical Exclusions including CE Checklist and Detailed Instructions](#) (Revised January 25, 2021)
- [ER Request Form](#) (Revised December, 2020)

**2. *Will the changes in the new Programmatic Agreement affect previously approved CE's?***

No; previously submitted CE determinations will be grandfathered. However, re-evaluations triggered by the passage of time or a change in project scope must be completed using the January 2021 CE Checklist. Potentially, this re-evaluation can result in a different type of CE than what it originally qualified under.

**3. *Is the Training Session Presentation available?***

Yes, a link to the streaming of one of the presentations can be accessed here:

- [Roll-Out Presentation](#)

***A complete list of acronyms used in this document can be found on the last page of this guide.***

## 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. There have been several changes to the thresholds listed in the CE Checklist that elevate a project to an Individual CE (CE-I). By refining these thresholds, it is anticipated that more projects will qualify as either Automatic (CE-A) or Programmatic (CE-P) Categorical Exclusions.

| Resource                            | Old Checklist   | New Checklist  |
|-------------------------------------|---|--|
| Right of Way Actions                | CE-I needed if project involves the permanent use of more than 10% of ANY parcel OR requires any residential or non-residential relocations | Same thresholds, however, if the acquisition is requested by the property owner or required under the CT General Statutes, a CE-I is NOT required. This section has also been combined with FHWA's ROW Office items            |
| Historic Properties (Section 106)   | CE-I required for projects with an "Adverse Effect" finding under Section 106   | CE-I required if "Adverse Effect" cannot be resolved with a Memorandum of Agreement (MOA), or the project results in "Adverse Effect" on a National Historic Landmark. Both of these circumstances are rare.                   |
| Tribal Consultation                 | Stand-alone item  | Now part of the Section 106 item   |
| Section 4(f)                        | CE-I if an Individual 4(f) or Programmatic 4(f) is required   | CE-I if an Individual 4(f) document is required  |
| USACE Section 404 Individual Permit | CE-I required if 404 Permit needed  | CE-I required if 404 Permit is needed <u>AND</u> there is no agency approved coordination plan   |
| U.S. Coast Guard Bridge Permit      | CE-I needed if USCG Bridge Permit is required   | CE-I needed if USCG Bridge Permit is required and project will result in a required map change, allow a significant change in vessel traffic, or anticipate any complete closure of a navigational channel during construction |
| Noise                               | CE-I needed if project is classified as a Type I or II, requiring a noise study   | CE-I needed if project is classified as a Type I and a noise analysis has concluded that a noise impact exists in the build condition for which abatement is NOT being provided  |
| Federally Protected Species         | CE-I needed if the project is "likely to adversely affect" any federal species as determined by USFWS or CTDEEP                             | CE-I needed if project has the potential to jeopardize the continued existence of any listed Federal species or has the potential to result in the destruction or adverse modification of critical habitat                     |

| Resource                      | Old Checklist   | New Checklist  |
|-------------------------------|---|--|
| Federally Protected Species   | CE-I needed if the project is “likely to adversely affect” any federal species as determined by USFWS or CTDEEP | CE-I needed if project has the potential to jeopardize the continued existence of any listed Federal species or has the potential to result in the destruction or adverse modification of critical habitat |
| Sole Source Aquifers (SSA)    | CE-I needed if project involves construction in an SSA  | CE-I needed if the project is located within an SSA, requires EPA review, and has not received a favorable response from EPA   |
| Other – Unusual Circumstances | Not on old checklist  | New section added. CE-I needed if OEP determines the project involves any “unusual circumstances” identified in the Environmental Review   |
| Hazardous Waste               | Stand-alone item. A CE-I is needed if there are any known Superfund sites nearby that may affect the project    | Removed from checklist. Will be considered as part of Public Involvement / Public Controversy  |
| Wild and Scenic Rivers (WSR)  | Stand-alone item. A CE-I is needed if the project involves construction in, across, or adjacent to a WSR        | Removed from checklist. Will be considered as part of Public Involvement / Public Controversy  |

## New Item – Part 4: Unusual Circumstances Review

### *How Do I Know if my Project Involves “Unusual Circumstances”?*

The Environmental Review form issued from OEP to the Project Sponsor has added a new item in the NEPA Recommendation Section of the Environmental Review form.

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

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

To address this, the 2021 CE Checklist now includes a new item: **Part 4: Unusual Circumstances Review**. The information needed to complete this section of the CE Checklist can be found under the NEPA Recommendation section on the environmental review form. If any “Unusual Circumstances” cannot be avoided through mitigation, FHWA will need to be consulted in order to determine if a CE is the appropriate class of action.

## **New Item – OEP to Sign Individual CE Recommendations**

To make the NEPA process a more collaborative effort between Design and OEP for CE level projects, OEP's Transportation Assistant Planning Director will be required to sign all CE-I's prior to submitting to FHWA for approval. OEP will submit CE-I recommendations to FHWA for approval. CE-A's or CE-P's will continue to be signed by engineering as has been done in the past. OEP will not be signing CE-A's or CE-P's.

Once the project manager / project engineer identifies or anticipates that their project will require a CE-I they should contact OEP's CRED Unit to begin coordination through the CE-I process. Depending on the project, it may be a good idea to have a "kick-off" meeting. The goal is to avoid any delays or returns for corrections from FHWA resulting in a streamlined review and approval by FHWA.

Please note that the CE Checklist only applies to FHWA projects. There is no corresponding PA or CE Checklist in place for FTA or FRA projects. Additionally, the checklist is not valid for projects that only have State or State/Local funding and should not be completed in those cases.

The Environmental Review Request and Environmental Review forms, however, are applicable to all projects, regardless of lead Federal agency.

## **Changes to Environmental Review Request Form**

The Environmental Review Request Form was revised to provide a more streamlined form that includes the required information necessary to conduct an accurate and timely environmental review. Redundant items and items that provided little value were removed from the previous form. Notable changes to the form include:

- Project Name was added to the first page
- The date that the completed Environmental Review is requested by was added to the form. This should be filled out only in the context of maintaining the project schedule. Please only request an expedited environmental review if it is required to maintain the project schedule. Keep in mind that OEP is looking to have the environmental review returned to the project team within 6 months.
- The ROW matrix table was removed in favor of a more narrative description of any potential ROW required and a Schedule of Owners is to be included if it exists at this stage
- A summary of public comments/concerns is being requested from any public involvement that has taken place

## **Questions regarding the updated Environmental Review Request Form**

### **4. *What should the project name on the ER Request form consist of?***

The project name should be brief and should match what will be included on the design plan set (e.g. Rehabilitation of Bridge #00123 over Unnamed Brook). The Project Description, on the other hand, should match what is in the Composite Project Database.

**5. When is a new ER (Environmental Review) Request needed?**

A new ER Request is required if 3 years has elapsed between any of the **major milestones** in approvals or grants from FHWA. These milestones include: Design Approval; Obligation of ROW funds; P, S, & E; and Construction. Please note that a new ER Request must also be submitted if the project involves a scope change. Please contact OEP prior to submitting to ensure that any change warrants a new review.

**6. Does the 4 to 6 month estimated timeline to complete the Environmental Review include or exclude SHPO/THPO coordination and review tasks?**

Normally includes this. If there are extenuating circumstances (e.g. an Adverse Effect finding or a request for an archaeological survey) this timeline may extend. You should be notified as soon as one of these situations becomes known so that coordination can begin.

**7. Do resubmitted/updated ER requests get reviewed quicker than original requests?**

Typically, yes. The review time depends on the nature of the resubmittal. If there is no change in project scope or conditions, the re-evaluation can be completed quickly because the planners are only verifying that there has been no significant change in scope or the conditions surrounding the site. Re-evaluations triggered by a major addition or change in the scope will require more time to evaluate.

**8. Regarding projects that have state-funding but anticipate federal funding - how should this be handled?**

If federal funding is anticipated for any phase, indicate it as such on the ER Request. This allows OEP to perform a review under NEPA. Note that FHWA will not sign off on 4(f) impacts or CE checklist unless/until the federal hook (funding) is established. Additionally, time can be saved with anticipation of federalization. Anticipating 4(f) and tribal consultation pre-federal funds can be a time saver. Note that these processes cannot be done, and the CE checklist cannot be signed/approved by CTDOT or FHWA until federal funding is officially in place.

**9. Should we always just click the federal funding box on the ER Request form?**

No, this can be problematic if federal funding does not eventually materialize. It will initiate additional work such as tribal consultation, 4(f) analysis, and air quality compliance that would not be required in a project that was wholly state-funded and has no federal involvement. It causes confusion and inaccurate analyses, documentation, and record-keeping.

**10. How are ER Requests prioritized?**

The "Design Approval" or "Requested Completion Date" in the ER Request form is typically used to prioritize project reviews. However, engineers are encouraged to be the "squeaky wheel" if the environmental review is taking longer than anticipated. If a project needs an expedited environmental review in order to meet the project schedule or as determined by management, please indicate this in the body of the email when submitting the ER Request. **Keep in mind that the "Requested Completion Date" should be completed in the context of maintaining the current project schedule. It is OEP's goal to have all environmental reviews completed within 6 months of the date that the ER Request is circulated.**

**Major Milestones in CE Approvals/Grants**

- CE Designation
- Design Approval
- Authorization to acquire ROW
- Approval of Plans, Specifications & Estimates
- Construction

## Changes to the Environmental Review Form

The Environmental Review Form was revised to better align with the items on the Categorical Exclusion Determination Checklist as well as the requirements of NEPA and CEPA in general. Notable changes to the form include:

- Project Name was added to the first page
- The addition of a review for the impacts of sea level rise. Public Act 18-82 Concerning Climate Change and Resiliency requires municipalities and the state to consider sea level rise in the planning process. OEP will now consult existing Sea Level Rise Affecting Marshes Model (SLAMM) Mapping to determine if the project area has the potential to be affected by sea level rise. SLAMM Mapping is developed and maintained by CTDEEP and UCONN and can be found at the CT ECO website : <https://cteco.uconn.edu/viewers/index.htm>
- The NEPA Recommendation section now includes information related to whether “Unusual Circumstances” are present for each project. This information will be used to complete the corresponding “Unusual Circumstances Review” in Part 4 of the Categorical Exclusion Determination Checklist.

## Questions regarding the updated Environmental Review Form

### **11. How is “major traffic disruption” defined?**

“Major traffic disruptions” is one of the conditions that will prevent an action defined under c(26), c(27) or c(28) in the CE Checklist from being classified as an Automatic CE. Major traffic disruptions are typically identified as a result of controversy of input from the public when the project is presented at Town Coordination, Public Scoping, or Public Information meetings. OEP can typically answer or will consult with FHWA if there is a question on this subject.

### **12. How do 4(f) documents relate to Categorical Exclusions?**

There are 4 types of 4(f) documents – exception, *de minimis*, programmatic, and individual. An Individual 4(f) will always require an CE-I under NEPA. So long as there are no other non-4(f) related impacts that would trigger a CE-I, an exception, *de minimis* and Programmatic 4(f) can typically be categorized as either an Automatic or Programmatic CE under NEPA.

### **13. What is the timeline for 4(f) *de minimis* finding/documentation if minor use of 4(f) properties is anticipated?**

A *de minimis* finding is streamlined with a timeline of around 45-60 days, on average. The biggest hurdle is getting signed confirmation from the officials with jurisdiction over the 4(f) property that there will be no adverse effect to the property. As an example, a Municipality is the Authority with Jurisdiction over a town-owned park. If there is a *de minimis* use of a public park, recreation area, or wildlife refuge, a public comment period will be required of at least 2 weeks.

### **14. Comment - ROW acquisitions may not be determined when CE checklist is prepared.**

The ER form will identify 4(f) properties or others that would be sensitive to ROW impacts. Information regarding ROW may change after ER Request is made, just let OEP know as this information becomes available. If additional ROW acquisitions are required after the CE checklist is completed, the project may require a re-evaluation. Please contact OEP to determine if this is the case. In some cases this may require a project to raise to the level of a CE-I from either a CE-A or CE-P if the ROW changes result in 10% or more of a permanent easement or take of any one parcel.

**15. Does the 10% of a parcel threshold apply to all ROW actions?**

No. The threshold of triggering a CE-I is calculated on 10% of a parcel's permanent easements or acquisitions. This does not apply to temporary easements.

**16. What documentation is needed to demonstrate that property owner requested early ROW acquisition?**

A written request from the Property Owner should accompany the CE checklist documentation and a copy of this request kept the project file.

**17. Does a noise analysis have to be concluded prior to CE sign-off?**

Yes. Noise analysis will need to be completed before CE sign-off. This is consistent with previous practice.

**Acronyms:**

|        |   |
|--------|---|
| CE     | Categorical Exclusion   |
| CE-A   | Automatic Categorical Exclusion   |
| CE-I   | Individual Categorical Exclusion  |
| CE-P   | Programmatic Categorical Exclusion  |
| CRED   | Cultural Resource and Environmental Documents unit<br>(DOT Bureau of Policy & Planning) |
| CTDEEP | Connecticut Department of Energy and Environmental Protection                           |
| EPA    | Environmental Protection Agency   |
| ER     | Environmental Review  |
| FHWA   | Federal Highway Administration  |
| FRA    | Federal Railroad Administration   |
| FTA    | Federal Transit Administration  |
| OEP    | Office of Environmental Planning  |
| PA     | Programmatic Agreement  |
| MOA    | Memorandum of Agreement   |
| ROW    | Right(s) of Way   |
| SLAMM  | Sea Level Rise Affecting Marshes Model (a mapping model)                                |
| SHPO   | State Historic Preservation Office  |
| SSA    | Sole Source Aquifer   |
| THPO   | Tribal Historic Preservation Office   |
| USCG   | United States Coast Guard   |
| USFWS  | United States Fish and Wildlife Service   |
| WSR    | Wild & Scenic Rivers  |