

## CDOT/FHWA Categorical Exclusion List as of November 5, 2014

\*Note that this is the current list of Categorical Exclusions available for use to CDOT based on the recently completed MAP-21 rulemaking and the FHWA/CDOT Categorical Exclusion Programmatic Agreement. These updates are not in the current version of the NEPA Manual, but will be incorporated during the next update.

### **23 CFR 771.117 FHWA categorical exclusions.**

#### Paragraph a:

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: 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 involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

#### Paragraph b:

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

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

#### Paragraph c (“c list”):

\*The “c list” contains the programmatic CatExs that do not require FHWA signature. Note that for c(22)-c(30), you should coordinate with FHWA when using these categories until at least the end of 2014. They are tracking the use of these new categories and also want to make sure they’re being used appropriately. Also, in order to use c(26), c(27), and c(28), the constraints listed in Part e must be satisfied and documentation must be included in the project file to show that the constraints have been satisfied. At this time, there is no standard way to do this, but a suggestion is to pull the constraints out as a checklist that gets included in the project file.

(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and §771.117(a) and normally do not require any further NEPA approvals by the FHWA:

c(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.

c(2). Approval of utility installations along or across a transportation facility.

c(3). Construction of bicycle and pedestrian lanes, paths, and facilities.

c(4). Activities included in the State's highway safety plan under 23 U.S.C. 402.

c(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.

c(6). The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

c(7). Landscaping.

c(8). Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

c(9). The following actions for transportation facilities damaged by an incident resulting in an emergency declared 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; and

(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.

c(10). Acquisition of scenic easements.

c(11). Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

c(12). Improvements to existing rest areas and truck weigh stations.

c(13). Ridesharing activities.

c(14). Bus and rail car rehabilitation.

c(15). Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

c(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.

c(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.

c(18). Track and railbed maintenance and improvements when carried out within the existing right-of-way.

c(19). Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

c(20). Promulgation of rules, regulations, and directives.

c(21). Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

c(22). Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose.

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

c(23). Federally-funded projects:

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

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

c(24). Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

c(25). Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

c(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.

c(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.

c(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.

c(29). Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

c(30). Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

FHWA/CDOT Categorical Programmatic Agreement (August 4, 2011):

\*The FHWA/CDOT Categorical Exclusion Programmatic Agreement expands the list of Programmatic CatEx projects to include some from the "d list" and adds an additional list, called the "P list". These are actions that based on anticipated project activities and past experience, satisfy the definition of CatExs in 23 CFR 771.117(a) and (23 CFR 771.117(b)). The Programmatic Agreement includes evaluation criteria that must be satisfied in order to proceed as a programmatic Categorical Exclusion. This Programmatic Agreement will be updated to incorporate the MAP-21 rulemaking and will be changing. Until the update is completed, the existing Programmatic Agreement is still valid.

d(6). Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts (Non-Interstate).

d(7). Approvals for changes in access control (Non-Interstate).

d(9). Rehabilitation or reconstruction of existing rail and bus buildings and ancillary buildings where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.

d(10). Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

P1. Adding or lengthening turning lanes (including continuous turning lanes), intersection improvements, channelization of traffic, or dualizing lanes at intersections and interchanges, or adding or lengthening bus queue-jumps

P2. Flattening slopes; improving vertical and horizontal alignments

P3. Installation of ramp metering control devices, freeway traffic surveillance and control systems, motorist aid systems, highway information systems, computerized traffic signalization systems or roadway lighting including purchase and installation of equipment for Traffic Operations Centers

P4. Restoring, replacing, or rehabilitation of culverts, inlets, drainage pipes and drainage systems, including safety treatments to improve these features

- P5. Preventive maintenance activities, such as joint repair, pavement patching, crack sealing, skid hazard treatments, striping, and shoulder repair
- P6. Restoration, rehabilitation or resurfacing of existing pavement; the removal and replacement of old pavement structure; or changes to the pavement such as installation of rumble strips
- P7. Upgrading, removal or addition of guardrail, median barrier or impact attenuators
- P8. Railroad crossing elimination by closure and railroad overpass removal within existing right-of-way
- P9. Clear zone safety improvements, such as fixed object removal or relocation
- P10. Screening unsightly areas
- P11. Restoration and rehabilitation of existing bridge structures, including painting, crack sealing, joint repair, scour repair, scour counter measures, bridge rail or bearing pad placement, seismic retrofit, deck rehabilitation or replacement, or upgrade of bridge end approaches and guardrail transitions or other minor modifications
- P12. Widening of substandard bridge structures to provide shoulders
- P13. Acquisition of scenic or historic sites
- P14. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian and bicycle trails)
- P15. Historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including railroad facilities and canals)
- P16. Control and removal of outdoor advertising
- P17. Aesthetic treatments and other scenic beautification
- P18. Mitigation of water pollution due to highway runoff
- P19. Maintenance and/or replacement of existing noise barrier panels and/or posts
- P20. Perfection of title for right-of-way when the subsequent action is in support of an action that is not otherwise subject to FHWA review under NEPA (note: for Federal land transfers, use c(5)-Transfer of Federal lands pursuant to 23 USC 317 when the subsequent action is not an FHWA action [23 CFR 771.117(c)(5)])

- P21. Restoration, rehabilitation or replacement of retaining walls or slope protection
- P22. Restoration, rehabilitation or modification of truck escape ramps
- P23. Installation, restoration, rehabilitation or replacement of rockfall mitigation measures
- P24. Geotechnical and other subsurface investigation
- P25. Installation of communication lines or other quasi-utilities structures along or across a transportation facility

Paragraph d (“d list”):

\*The “d list” is the list of non-programmatic CatExs that require FHWA signature. Note that some may fall under the “c list” based on CDOT’s Programmatic Agreement with FHWA.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

d(1), d(2), and d(3). [Reserved] \*Note, these categories are now c(26), c(27), and c(28) and are no longer valid. If c(26), c(27), or c(28) are not applicable because the constraints listed in paragraph (e) are not met, d(13) may be used (or another category if appropriate).

d(4). Transportation corridor fringe parking facilities.

d(5). Construction of new truck weigh stations or rest areas.

d(6). Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts. (Interstate) \*Note this category is programmatic for Non-Interstate per the Programmatic Agreement.

d(7). Approvals for changes in access control. (Interstate) \*Note this category is programmatic for Non-Interstate per the Programmatic Agreement.

d(8). Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

d(9). Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users. \*Note this category is programmatic per the Programmatic Agreement.

d(10). Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic. \*Note this category is programmatic per the Programmatic Agreement.

d(11). Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

d(12). Acquisition of land for hardship 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(13). Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

Paragraph e ("constraints"):

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment, other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.