

**PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, NEW HAMPSHIRE DIVISION
AND
THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL
EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

THIS PROGRAMMATIC AGREEMENT (“Agreement”), made and entered into this 3rd day of May, 2021, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of NEW HAMPSHIRE, acting by and through its DEPARTMENT OF TRANSPORTATION (“NHDOT”) hereby provides as follows:

WITNESSETH:

WHEREAS, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370h (2014), and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded; and

WHEREAS, the Federal Highway Administration’s (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA; and

WHEREAS, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA’s primary responsibilities (49 CFR 1.81(a)(5)); and

WHEREAS, the FHWA’s NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CEs) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS; and

WHEREAS, the NHDOT is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for the NHDOT projects (23 CFR 771.109); and

WHEREAS, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA; and

WHEREAS, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014;

NOW, THEREFORE, the FHWA and NHDOT enter into this Programmatic Agreement (“Agreement”) for the processing of CEs.

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (“FHWA”) and the New Hampshire Department of Transportation (hereinafter “NHDOT”).

II. PURPOSE

The purpose of this Agreement is to authorize NHDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR 771.117 (listed in Appendix A). This Agreement also authorizes NHDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117, but meeting the 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).

III. 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
- F. Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (December 4, 2015);

IV. RESPONSIBILITIES

- A. The NHDOT is responsible for:
 - 1. Ensuring the following process is completed for each project that qualifies for a CE:
 - a. For actions qualifying for a CE listed in Appendix A (CEs established in 23 CFR 771.117(c) and 23 CFR 771.117(d)), that do not exceed the thresholds in Section IV(A)(1)(b) below, the NHDOT may make a CE approval on behalf of FHWA. Prior to the CE approval, the NHDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.

- b. Actions listed in Appendix A that exceed the thresholds below may not be approved by the NHDOT. In these cases, NHDOT will certify to FHWA that the action qualifies for a CE. An action requires FHWA CE review and approval based on NHDOT's certification if the action:
- i. Involves residential or non-residential displacements, or acquisition of property rights to an extent that impairs the functions of the affected property;
 - ii. Results in capacity expansion of a roadway by addition of through lanes;
 - iii. Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions. Major traffic disruption is defined as a case-by-case scenario, when the NHDOT, in consultation with FHWA, agree that the project scope will interrupt traffic patterns beyond normal project conditions;
 - iv. Involves changes in access control that pertain to interstate, or where NHDOT concludes that an access modification may have wide-reaching ramifications;
 - v. Uses CE Action Number 26, 27, or 28 and results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act;
 - vi. Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with a FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation, other than the programmatic evaluation for the use of historic bridges;
 - vii. Requires the acquisition or conversion of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965;
 - viii. Requires a US Army Corps of Engineers Individual Section 404 permit pursuant to the Clean Water Act, and/or a Section 10 permit pursuant to the Rivers and Harbors Act of 1899;
 - ix. Requires a US Coast Guard bridge permit;
 - x. Requires work encroaching on a regulatory floodway, or requires work affecting the base floodplain (100-year flood) elevations of a watercourse or lake, pursuant to Executive Order 11988 and 23 CFR § 650 subpart A, in such a way that results in a more than nominal increase in base flood elevations;
 - xi. Results in significant or adverse impact on floodplain values, or creates a significant risk to human life or property;

- xii. Will have more than a negligible impact on water quality, meaning that water quality cannot be made measurably worse by the action.
 - xiii. Uses CE Action Number 26, 27, or 28 and requires any work below the ordinary high water mark of:
 - A river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the US Department of the Interior/US Department of Agriculture; or
 - A tributary of a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the US Department of the Interior/US Department of Agriculture.
 - xiv. Is defined as a “Type I project” per 23 CFR 772.5 and any NHDOT noise manual for purposes of a noise analysis;
 - xv. May affect, likely to adversely affect, federally listed or candidate species, or proposed or designated critical habitat of species protected by the Endangered Species Act, and is not included in an approved Biological Opinion for a FHWA Programmatic Agreement,
 - xvi. Results in impacts subject to the conditions of the Bald and Golden Eagle Protection Act;
 - xvii. Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. 108(d));
 - xviii. Does not conform to the State Implementation Plan which is approved or promulgated by the US Environmental Protection Agency in air quality non-attainment areas;
 - xix. Is not included in, or is inconsistent with, the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program;
 - xx. Causes or contributes to violations of the National Ambient Air Quality Standards (NAAQS);
 - xxi. Is not consistent with the State’s Coastal Zone Management Plan; or
 - xxii. Involves unusual circumstances that would require additional environmental studies to determine if the action would qualify for processing programmatically.
- c. The NHDOT may not approve actions not specifically listed as CEs in Appendix A, but meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, the NHDOT shall certify to FHWA, in accordance with Section IV (A)(1)(c)(i), that an action will not result in significant environmental impacts, and that the action qualifies for a CE and does not involve unusual circumstances that

warrant the preparation of an EA or EIS. The FHWA shall either agree in writing that the action qualifies for a CE or direct NHDOT to prepare an EA or EIS.

- i. The NHDOT shall prepare an individual CE, for FHWA CE approval unless otherwise directed by FHWA.
 - ii. If any project requires a Section 4(f) determination, the NHDOT shall submit the 4(f) documentation for FHWA determination and approval.
 - iii. The FHWA Division Office's objection to a NHDOT CE certification may not constitute a disapproval of the action, but signifies that FHWA will need to engage in project-specific review to verify that the requested classification is adequate, which may include consultation with other agencies.
 2. Maintaining a log of approved CEs for review by FHWA. A copy of the log will be provided to FHWA on a quarterly basis. At a minimum, the log will contain the following information:
 - a. The NHDOT project name and number;
 - b. The CE action number;
 - c. Whether the project included a Section 4(f) *de minimis* evaluation, or a programmatic Section 4(f) evaluation; and
 - d. The NEPA start date and NEPA completion date.
 3. Consulting with FHWA for actions that involve unusual circumstances (23 CFR 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. The NHDOT may decide, or FHWA may require, additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
 4. Meeting applicable documentation requirements in Section V for State CE approvals on FHWA's behalf, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality assurance, monitoring, and performance requirements in Section VII.
 5. Relying only upon employees directly employed by the State to make CE approvals or certifications submitted to FHWA under this Agreement. The NHDOT may not delegate its responsibility for CE approvals or CE certifications to third parties (i.e., consultants, local government staff, and other State agency staff).
- B. The FHWA is responsible for:
1. Providing timely advice and technical assistance on CEs to the NHDOT, as requested.
 2. Providing timely input and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by NHDOT under this Agreement.

3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF NHDOT CE APPROVALS

- A. For CE approvals made on behalf of FHWA, the NHDOT shall prepare documentation included in Appendix B, identifying the applicable action, ensuring any conditions specified in FHWA regulation are met, verifying that unusual circumstances do not apply, addressing all other environmental requirements, and completing the review with a NHDOT signature evidencing approval.
- B. The NHDOT should maintain a project record for CE approvals it makes on FHWA's behalf and each CE submitted to FHWA for approval. This record should include at a minimum:
 1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name and title of the document approver and the date of NHDOT's approval or FHWA's final approval; and
 5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).
- C. Any electronic or paper project records maintained by the NHDOT should be provided to FHWA at their request. The NHDOT should retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve NHDOT of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-EVALUATIONS

- A. The NHDOT's CE approvals, and certification of CEs submitted to FHWA for approval, may only be made by officers or offices specifically identified below:
 1. The Administrator of the Bureau of Environment.
 2. A Bureau of Environment Section Chief, in the absence of the Bureau of Environment Administrator.
 3. The Director of Project Development, in the absence of the Bureau of Environment Administrator and both of the Bureau of Environment Section Chiefs.

- B. In accordance with 23 CFR 771.129, the NHDOT shall re-evaluate its determinations for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. NHDOT Quality Control & Quality Assurance/Monitoring and Performance

- 1. The NHDOT agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals, and CE submissions to FHWA for approval, are made in accordance with applicable law and this Agreement.
- 2. The FHWA and NHDOT should cooperate in monitoring performance under this Agreement and work to assure quality performance.

B. FHWA Oversight and Monitoring

- 1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of NHDOT, as well as NHDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of NHDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of NHDOT staff, and the effectiveness of NHDOT's administration of its internal CE approvals.
- 2. FHWA will conduct one or more program reviews as part of its oversight activities during the term of this Agreement. The NHDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. The NHDOT should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by the NHDOT shall be considered at the time this Agreement is considered for renewal.
- 3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to NHDOT's performance under this Agreement. The FHWA may require NHDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
- 4. The NHDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and NHDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

IX. TERM, RENEWAL, AND TERMINATION

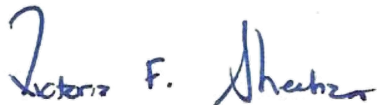
- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. The NHDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if NHDOT requests renewal and FHWA determines that NHDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that the NHDOT is not able to make CE approvals on FHWA’s behalf.

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

Patrick A. Bauer: Division Administrator
Federal Highway Administration
NH Division

5-3-2021

Date



4/29/2021

Victoria F. Sheehan:
Commissioner
NHDOT

Date

Appendix A: CE Actions Applicable to this Agreement

Appendix B: Template Categorical Exclusion Programmatic Determination Checklist

Appendix A

CE Actions Applicable to this Agreement

This Agreement applies to a group of actions which, in the collective experience of the signatories, has shown never or almost never causes significant environmental impacts and can be classified as CEs. Such actions include all those listed in 23 CFR 771.117(c) and most of those listed in 23 CFR 771.117(d) as follows:

CEs listed in 23 CFR 771.117(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.
- (2) Approval of utility installations along or across a transportation facility.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (4) Activities included in the State's *highway safety plan* under 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 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.

- (10) Acquisition of scenic easements.
- (11) 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 for 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.
- (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 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.

- (23) Federally-funded projects:
- (i) That receive less than \$5,000,000 (*as adjusted annually by the Secretary of Transportation to reflect any increases in the Consumer Price Index prepared by the Department of Labor*) of Federal funds; or
 - (ii) With a total estimated cost of not more than \$30,000,000 (*as adjusted annually by the Secretary of Transportation to reflect any increases in the Consumer Price Index prepared by the Department of Labor*) and Federal funds comprising less than 15 percent of the total estimated project 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.
- (27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting.
- (28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at grade railroad crossings.
- (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.

CEs listed in 23 CFR 771.117(d)

- (31) Transportation corridor fringe parking facilities.
- (32) Construction of new truck weigh stations or rest areas.
- (33) 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.
- (34) Approvals for changes in access control.
- (35) 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.
- (36) 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.
- (37) 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.
- (38) 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.

Appendix B

Categorical Exclusion Programmatic Determination Checklist



CATEGORICAL EXCLUSION PROGRAMMATIC DETERMINATION CHECKLIST

Action/Project Name: _____
Federal Project Number: _____

State Project Number: _____
CE Action Number: _____

Description of Project:

PROGRAMMATIC CATEGORICAL EXCLUSION (CE) CRITERIA

	NO	YES
1 <u>Right-of-Way</u> – Does the proposed action result in any residential or non-residential displacements, or acquisition of property rights to an extent that impairs the functions of the affected property? Does the proposed action include acquisition of land for hardship or protective purposes?	<input type="checkbox"/>	<input type="checkbox"/>
2 <u>Traffic</u> – Does the proposed action result in capacity expansion of a roadway by addition of through lanes?	<input type="checkbox"/>	<input type="checkbox"/>
3 <u>Roadway Access</u> – Does the proposed action involve the construction of temporary access, or the closure of existing road, bridge, or ramps that would result in major traffic disruptions? Does the proposed action involve changes in access that pertain to interstate highways, or that have wide-reaching ramifications?	<input type="checkbox"/>	<input type="checkbox"/>
4 <u>Cultural Resources</u> – Does the proposed action use CE Action Number 26, 27, or 28 AND have an Adverse Effect on historic properties pursuant to Section 106 of the National Historic Preservation Act?	<input type="checkbox"/>	<input type="checkbox"/>
5 <u>Section 4(f)</u> – Does the proposed action require the use of any property protected by Section 4(f) of the 1966 USDOT Act, that cannot be documented with a <i>de minimis</i> impact determination, or a programmatic Section 4(f) evaluation, other than the programmatic evaluation for the use of historic bridges?	<input type="checkbox"/>	<input type="checkbox"/>
6 <u>Section 6(f)</u> – Does the proposed action require the acquisition or conversion of any land under the protection of Section 6(f) of the Land and Water Conservation Act of 1965?	<input type="checkbox"/>	<input type="checkbox"/>
7 <u>Wetlands/Surface Waters</u> – Does the proposed action require an Army Corps of Engineers Individual Permit pursuant to the Clean Water Act, and/or a Section 10 permit pursuant to the Rivers and Harbors Act of 1899?	<input type="checkbox"/>	<input type="checkbox"/>
8 <u>US Coast Guard</u> – Does the proposed action require a US Coast Guard bridge permit?	<input type="checkbox"/>	<input type="checkbox"/>
9 <u>Floodways/Floodplains</u> – Does the proposed action encroach on the regulatory floodway of water courses or water bodies, resulting in more than a nominal increase in base flood elevation? Does the proposed action have a significant or adverse impact on floodplain values, or create a significant risk to human life or property?	<input type="checkbox"/>	<input type="checkbox"/>
10 <u>Water Quality</u> – Does the proposed action have more than a negligible impact on water quality?	<input type="checkbox"/>	<input type="checkbox"/>
11 <u>Wild and Scenic Rivers</u> – Does the proposed action use CE Action Number 26, 27, or 28 AND require any work below the ordinary high water mark of a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers, or below the ordinary high water mark of a tributary to such river?	<input type="checkbox"/>	<input type="checkbox"/>
12 <u>Noise</u> – Is the proposed action a Type I highway project?	<input type="checkbox"/>	<input type="checkbox"/>
13 <u>Endangered Species</u> – Does the proposed action result in a finding of “ <i>may affect, likely to adversely affect</i> ” threatened or endangered species or critical habitat under the Endangered Species Act, and is not included in an approved Biological Opinion for a FHWA Programmatic Agreement, or result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act?	<input type="checkbox"/>	<input type="checkbox"/>
14 <u>Air Quality</u> – Is the proposed action inconsistent with the State Implementation Plan in air quality non-attainment areas, or the Statewide Transportation Improvement Program, or in applicable urbanized areas the Transportation Improvement Program? Does the proposed action cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS)?	<input type="checkbox"/>	<input type="checkbox"/>
15 <u>CZMA</u> – Is the proposed action inconsistent with the State’s Coastal Zone Management Plan?	<input type="checkbox"/>	<input type="checkbox"/>
16 <u>Other</u> – Are there any unusual circumstances that would require additional environmental studies to determine if the action would qualify for processing programmatically (e.g. substantial environmental controversy, inconsistency with other environmental requirements, or significant sources of contamination)?	<input type="checkbox"/>	<input type="checkbox"/>

❖ If the answer to all of these questions is **NO**, the proposed action **qualifies for classification as a Programmatic Categorical Exclusion.**

❖ If the answer to any of these questions is **YES**, the proposed action **does not qualify for classification as a Programmatic Categorical Exclusion.**

DETAILED DISCUSSION OF PROGRAMMATIC CE CRITERIA

Provide a brief narrative response as to how your project qualifies for a Programmatic Categorical Exclusion.

1. Right-of-Way – Does the proposed action result in any residential or non-residential displacements, or acquisition of property rights to an extent that impairs the functions of the affected property? Does the proposed action include acquisition of land for hardship or protective purposes?

2. Traffic – Does the proposed action result in capacity expansion of a roadway by addition of through lanes?

3. Roadway Access – Does the proposed action involve the construction of temporary access, or the closure of existing road, bridge, or ramps that would result in major traffic disruptions? Does the proposed action involve changes in access that pertain to interstate highways, or that have wide-reaching ramifications?

4. Cultural Resources – Does the proposed action use CE Action Number 26, 27, or 28 AND have an Adverse Effect on historic properties pursuant to Section 106 of the National Historic Preservation Act?

5. Section 4(f) – Does the proposed action require the use of any property protected by Section 4(f) of the 1966 USDOT Act, that cannot be documented with a *de minimis* impact determination, or a programmatic Section 4(f) evaluation, other than the programmatic evaluation for the use of historic bridges?

6. Section 6(f)/Conservation Properties – Does the proposed action require the acquisition or conversion of any land under the protection of Section 6(f) of the Land and Water Conservation Act of 1965?

7. Wetlands/Surface Waters – Does the proposed action require an Army Corps of Engineers Individual Permit pursuant to the Clean Water Act, and/or a Section 10 permit pursuant to the Rivers and Harbors Act of 1899?

If the proposed action includes construction in wetlands, check this box:

8. US Coast Guard – Does the proposed action require a US Coast Guard bridge permit?

9. Floodways/Floodplains – Does the proposed action encroach on the regulatory floodway of water courses or water bodies, resulting in more than a nominal increase in base flood elevation? Does the proposed action have a significant or adverse impact on floodplain values, or create a significant risk to human life or property?

If the proposed action includes construction in Floodplains, check this box:

10. Water Quality – Does the proposed action have more than a negligible impact on water quality?

11. Wild and Scenic Rivers – Does the proposed action use CE Action Number 26, 27, or 28 AND require any work below the ordinary high water mark of a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers, or below the high water mark of a tributary to any such river?

12. Noise – Is the proposed action a Type I highway project?

13. Endangered Species – Does the proposed action result in a finding of “*may affect, likely to adversely affect*” threatened or endangered species or critical habitat under the Endangered Species Act, and is not in an approved Biological Opinion for a FHWA Programmatic Agreement, or result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act?

14. Air Quality – Is the proposed action inconsistent with the State Implementation Plan in air quality non-attainment areas, or the Statewide Transportation Improvement Program, or, in applicable urbanized areas the Transportation Improvement Program? Does the proposed action cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS)?

15. CZMA – Is the proposed action inconsistent with the State’s Coastal Zone Management Plan?

16. Other - Are there any unusual circumstances that would require additional environmental studies to determine if the action would qualify for processing programmatically (e.g. substantial environmental controversy, inconsistency with other environmental requirements, or significant sources of contamination)?

ENVIRONMENTAL COMMITMENTS

List each environmental commitment made for the project, indicating the entity responsible for ensuring successful implementation.

CLASSIFICATION DETERMINATION

- The proposed action qualifies for a Programmatic Categorical Exclusion.
- The proposed action does not qualify for a Programmatic Categorical Exclusion.

Prepared by: _____

Name: _____ Date: _____

Title: _____

Approval
Recommended
By: _____

Section Chief
NHDOT Bureau of Environment _____ Date: _____

Approved by: _____

Administrator
NHDOT Bureau of Environment _____ Date: _____

For use by the Approver of this Programmatic Categorical Exclusion

- The proposed action includes construction in floodplains. Pursuant to Executive Order 11988, this project includes use of the *Programmatic Flood Plains Finding for Categorical Exclusions dated April 21, 2003*.
- The proposed action includes construction in wetlands. Pursuant to Executive Order 11990, and US Department of Transportation Order 5660.1A, this project includes use of the *Programmatic Wetlands Finding for Categorical Exclusions dated September 13, 2001*.
- The proposed action includes a *de minimis* Section 4(f) finding.
- The proposed action includes a programmatic Section 4(f) evaluation.

ACTIVITIES THAT QUALIFY FOR PROGRAMMATIC CATEGORICAL EXCLUSION

CE Action Number	Activity Description (See Appendix A of the Programmatic Agreement for more information)
1	Activities which do not lead directly to construction.
2	Approval of utility installations along or across a transportation facility.
3	Construction of bicycle and pedestrian lanes, paths, and facilities.
4	Activities included in the State's "highway safety plan" under 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	Emergency repairs under 23 U.S.C. 125.
10	Acquisition of scenic easements.
11	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 for 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 located within the transit facility, with no significant impacts off site.
20	Promulgation of rules, regulations, and directives.
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.
22	Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way.
23*	Projects of Limited Federal Assistance pursuant to 23 CFR 771.117(c)(23). Limited Federal Assistance is defined as any project that (A) receives less than \$5,000,000 in Federal funds or (B) has a total estimated cost of less than \$30,000,000, with Federal funds comprising less than 15 percent of the total estimated cost of the project.
24	Localized geotechnical and other investigation for preliminary design and for environmental analyses and permitting purposes.
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).
27	Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting.
28	Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at grade railroad crossings.
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.
31	Transportation corridor fringe parking facilities.
32	Construction of new truck weigh stations or rest areas.
33	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
34	Approvals for changes in access control.
35	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.
36	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.
37	Construction of bus transfer facilities when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic
38	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.

* Dollar amounts are adjusted annually. When CE Action Number 23 is selected, attach documentation indicating the annual figures used and total Federal funds, or the total project cost and Federal percentage, as appropriate. Updates are posted at: https://www.environment.fhwa.dot.gov/legislation/authorizations/fastact/FAST_ACT_Section1314_Implementation_Guide.aspx



STOP HERE IF YOUR PROJECT QUALIFIES FOR A PROGRAMMATIC CATEGORICAL EXCLUSION AND DOES NOT REQUIRE A PUBLIC HEARING.

**FOLLOW-UP ACTION FOR PROGRAMMATIC CATEGORICAL EXCLUSIONS
FOR PROJECTS REQUIRING A PUBLIC HEARING**

Action/Project Name: _____
Federal Project Number: _____

State Project Number: _____

Was a Public Hearing held? Yes No (if no, you do not need to complete this page)

As a result of the Public Hearing, have changes to the proposed action, if any, resulted in impacts/effects that do not meet the Programmatic Categorical Exclusion criteria? Yes No

If the answer to the above question is **YES**, the proposed action **no longer qualifies for classification as a Programmatic Categorical Exclusion**. In such cases, if the impact(s)/effect(s) leading to the disqualification are not significant, the proposed action may be reprocessed as an Individual CE, requiring FHWA's concurrence.

If the answer to the above question is **NO**, the proposed action continues to **qualify for classification as a Programmatic Categorical Exclusion**.

POST - HEARING CLASSIFICATION DETERMINATION

The proposed action continues to qualify as a Programmatic Categorical Exclusion.

The proposed action no longer qualifies as a Programmatic Categorical Exclusion.

If it no longer qualifies, list reasons: _____

Prepared by: _____
Name: _____
Title: _____

_____ Date

Approval
Recommended
By: _____
Section Chief
NHDOT Bureau of Environment

_____ Date

Approved by: _____
Administrator
NHDOT Bureau of Environment

_____ Date

