



## Programmatic CE Agreement



# AMENDED PROGRAMMATIC AGREEMENT FOR PROCESSING OF CERTAIN CATEGORICAL EXCLUSIONS

BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION AND  
THE CONNECTICUT DEPARTMENT OF TRANSPORTATION  
August, 2012

On August 12, 1997, the Federal Highway Administration (**FHWA**) and the Connecticut Department of Transportation (**CTDOT**) entered into a "Programmatic Agreement for Approval of Certain Categorical Exclusions," hereinafter referred to as the "Original Agreement." As the result of a joint Process Review conducted by the two agencies in 2004, it was recommended that the Original Agreement be amended to improve the process of documenting categorical exclusions.

This Amended Agreement establishes the revised FHWA and CTDOT procedures for processing Categorical Exclusions (**CE**) for Federal-aid actions under the National Environmental Policy Act (**NEPA**). These procedures comply with FHWA regulations entitled, "Environmental Impact and Related Procedures," 23 CFR 771. This amendment also reflects agreements within the FHWA Joint Stewardship and Oversight Agreement signed by FHWA and CTDOT (11/23/2010).

This Amended Agreement applies to all projects that involve FHWA funding or approvals. This Amended Agreement does not apply to any other documentation required under Connecticut's Environmental Policy Act (**CEPA**), as amended, nor does this Amended Agreement apply to 100% state funded projects that do not require FHWA approval.

FHWA will rely upon the results of CTDOT's processing of actions that meet the criteria in this agreement to fulfill its review and approval obligations set forth in the Council on Environmental Quality regulations [40 CFR 1500-1508] and FHWA's regulations [23 CFR 771.117]. CTDOT's processing would result in a certification to FHWA that a project which satisfies certain conditions identified in this Amended Agreement will not result in significant social, economic, and environmental impacts, and is therefore categorically excluded from the requirement to prepare an Environmental Assessment (**EA**) or Environmental Impact Statement (**EIS**). This Amended Agreement also revises procedures for submitting an Individual CE to FHWA for FHWA review.

At the time CTDOT submits a 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.

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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. FHWA will then initiate consultation parallel to CTDOT consultation with the State Historic Preservation Office (SHPO).

### Definitions, Conditions, and Classifications of Categorical Exclusions

#### **Definitions**

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

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

Significant as used in NEPA requires consideration of both context and intensity.

Context – The significance of an action varies with the setting. In the case of a highway project, for example, the impact of removing twenty large trees in a heavily forested rural area with hundreds of trees of the same size and type may not be regarded as significant. The impact of removing twenty large trees from a tree-lined urban street may be regarded as significant.

Intensity – This refers to the severity of the impact. For example, a highway project with a perpendicular encroachment on a floodplain that raises the 100-year flood elevation by 0.1 inch may not be regarded as significant. A project with a longitudinal encroachment on the same floodplain that raises the 100-year flood elevation by eight inches may be regarded as significant.

Other agencies may need to be consulted regarding "significance" of impact.

Unusual circumstances 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: Environmental Assessment (EA) or Environmental Impact Statement (EIS). Unusual circumstances include:

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

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### **Conditions for Automatic and Programmatic Categorical Exclusions**

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

- 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;
- Rights of Way – the project does not involve the use of more than 10% of any parcel for permanent easement or fee taking;
- Rights of Way – the project does not require any residential, commercial or industrial displacement;
- Hazardous Material – no known Superfund sites within or adjacent to the project;
- Historic Properties (Section 106) – consultation with the SHPO / Tribal Historic Preservation Officer (THPO) has resulted in a finding of “No Historic Properties Affected” for all properties listed, or eligible for listing, in the National Register of Historic Places within the Area of Potential Effect (APE) of the proposed project;
- Section 4(f) and Section 6(f) – does not require the use of any property or properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), including a de minimis impact, or Section 6(f) of the Land and Water Conservation Fund Act;
- Army Corps of Engineers (ACOE) Section 404 Permit – does not require an individual ACOE 404 Permit (CAT III);
- Floodways – no adverse impact on a regulatory floodway nor base floodplain (100-year flood) elevations of water course or water body (if a Letter of Map Revision is required an individual CE will be required);
- Sole Source Aquifers – no construction in or near a sole source aquifer;
- 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;
- Noise – a noise analysis is not required;
- Air Quality – the proposed project is in the currently approved Statewide Transportation Improvement Program (STIP) or conforming TIP, and there are no violations of the National Ambient Air Quality Standards (NAAQS) at any new or revised signalized intersections;

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- Project Level Conformity – the project is either exempt from conformity or does not require either a regional emissions analysis or a project level emissions analysis;
- Endangered Species – Connecticut Department of Energy and Environmental Protection (CTDEEP) has determined that the project will not have an adverse effect on any federally listed endangered or threatened species or critical habitat if construction is proposed in an area known to have these resources;
- Title VI and Environmental Justice – the project does not involve disproportionate impacts to minority or low-income populations;
- U.S. Coast Guard Bridge Permit – the project does not require a U.S. Coast Guard Bridge Permit.

### **Categories**

**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. CTDOT may certify such actions to FHWA and retain documentation for FHWA's inspection that evaluates potential impacts so long as unusual circumstances are not present as described in 23 CFR 771.117(b). CTDOT Prime Design Unit will maintain a record which documents the determination that the action was contained in 23 CFR 771.117(c), meets the Conditions of CE in this Agreement and by law, and that unusual circumstances were not present. This record will be made available to FHWA upon request. Under this Amended Programmatic Agreement these actions are only those CEs now or hereafter designated by FHWA in 23 CFR 771.117(c), including:

1. Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities; 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 CT DOT 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).
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.

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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. FHWA determination of payback 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 rail bed 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. 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 locators, automated passenger counters, computer-aided dispatching systems, radio communications, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

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Programmatic Categorical Exclusions (CE-P): Are actions listed in 23 CFR 771.117(d) that FHWA has identified as meeting the criteria for a CE. CTDOT may certify such actions to FHWA and retain documentation for FHWA's inspection that evaluates potential impacts so long as unusual circumstances are not present as described in 23 CFR 771.117(b). CTDOT Prime Design Unit will maintain a record which documents the determination that the action was contained in 23 CFR 771.117(d), meets the Conditions of CE in this Agreement and by law, and that unusual circumstances were not present. This record will be made available to FHWA for periodic review and upon request. Under this Amended Programmatic Agreement these actions are only those CEs now or hereafter listed as examples in 771.117(d), including:

1. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
2. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
3. Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
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.

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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.

Individual Categorical Exclusions (CE-I): Are actions listed in 23 CFR 771.117(c&d) which would normally be classified as CEs, but involve unusual circumstances or do not meet the Conditions for Automatic and Programmatic CEs; also actions not listed in 771.117(c) or (d) that meet the criteria for a CE under 771.117. This requires additional information and/or studies be performed by CTDOT and provided to FHWA for review and concurrence. FHWA will determine if the project can be classified as a CE in accordance with 23 CFR 771.117.

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

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

### **CTDOT Procedures and Performance Requirements for Processing Actions that are Categorical Exclusions**

#### **CTDOT Procedures**

1. CTDOT will design the proposed project to a degree necessary to conduct an interdisciplinary review and complete the attached CE Determination Checklist.
2. CTDOT will summarize the public involvement conducted to date. If a public hearing was held, CTDOT will send a copy of the public hearing transcript, in accordance with 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 classifications with the CE Checklist. The Checklist will be signed off by the Project Engineer, Project Manager, Principal Engineer, and 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 document all CE certifications (Automatic, Programmatic, and Individual) made. CTDOT Office of Environmental Planning (OEP) will maintain a list of the CE certifications made and provide that list to FHWA semi-annually.
5. Actions that do not satisfy the conditions for an Automatic or Programmatic CE may still qualify as a CE, but an Individual CE with FHWA concurrence is required. In this case, CTDOT will send a CE-I request to FHWA for review. The request must include a copy of

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the Checklist with supporting documentation that clearly establishes 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 may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.
8. 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.

### **CTDOT Performance Requirements**

1. CTDOT shall prepare a re-evaluation (redo the Environmental Review Form by OEP) whenever a re-evaluation is required based on the circumstances described in (a) and (b) below. The purpose is to ensure that all CE classifications remain valid pursuant to 23 CFR 771.129. 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.
  - a) A re-evaluation must occur when there is a change in the scope or location of the project such that new impacts may occur that were not previously considered.
  - b) A re-evaluation must occur when at least 3 years have passed since the date the CE designation was approved by FHWA or by CTDOT.
2. 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.
3. CTDOT shall carry out regular quality control activities to ensure that its CE certifications are made in accordance with applicable law and this Agreement.
4. CTDOT shall monitor its processes relating to project certifications, 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.
5. If CTDOT implements training to meet the capability requirements of this Agreement or as a corrective action, CTDOT shall be responsible for the training. CTDOT shall provide notice of the training to FHWA.

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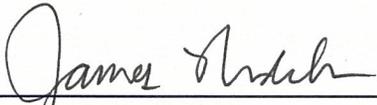
6. FHWA and CTDOT shall cooperate in monitoring performance under this Agreement and each party shall modify its practices as needed to assure quality performance by CTDOT and FHWA.
7. CTDOT shall schedule a follow-up meeting with FHWA at which the parties will discuss and report CTDOT's performance of this Agreement, and FHWA's monitoring activities.

### Agreement Revisions and Termination

This Amended Agreement and/or its attachments may be expanded, deleted, or modified, by mutual consent of the Division Administrator of FHWA and the Commissioner of CTDOT or their legally authorized designees at any time. This Agreement shall be reviewed after five (5) years to ensure it meets the needs of the CTDOT and the FHWA. CTDOT shall post and maintain an executed copy of this Agreement on its web site, available to the public. Termination of this Amended Agreement by either party may occur at any time with a 30-day written notice. Periodic reviews of the implementation of this Amended Programmatic Agreement will be conducted as deemed necessary by FHWA to verify that CTDOT has satisfactorily carried out the provisions of this Agreement.

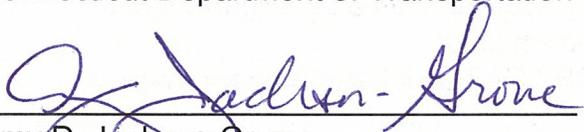
### Approval of Agreement

Accordingly, the original "Programmatic Agreement for Approval of Certain Categorical Exclusions," dated August 12, 1997, is hereby mutually declared to be null and void and superseded by this Amended Agreement which shall become effective on October 1, 2012.



James P. Redeker  
Commissioner  
Connecticut Department of Transportation

8/23/12  
Date



Amy D. Jackson-Grove  
Division Administrator  
Federal Highway Administration

8/23/2012  
Date

CE Determination Checklist

State Project Number (Construction): \_\_\_\_\_

YES(✓) NO (✓)

CATEGORICAL EXCLUSION DETERMINATION CHECKLIST

State Project # (Design): \_\_\_\_\_

State Project # (Construction): \_\_\_\_\_

Federal-aid Project # (Design): \_\_\_\_\_

Route/Road: \_\_\_\_\_

Project Manager: \_\_\_\_\_

P.M. Telephone Number: \_\_\_\_\_

Project Engineer: \_\_\_\_\_

P.E. Telephone Number: \_\_\_\_\_

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

Four horizontal lines for writing the purpose and description of the project.

CE vs. EA/EIS<sup>1</sup>?

YES(✓) NO (✓)

1. Have there been any changes in project scope since the Office of Environmental Planning (OEP) recommended on CTDOT's Environmental Review Form that the project be classified as a CE? Or, has it been 3 years since certification of the CE? .....

.....

- If YES for Question 1, STOP filling out this Checklist and submit a request to OEP for a re-evaluation (redo of the Environmental Review Form)
→ If NO for Question 1, proceed to Question 2 below.

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

**CE Determination Checklist**

**State Project Number (Construction):** \_\_\_\_\_ **YES(✓) NO (✓)**

**CONDITIONS for AUTOMATIC and PROGRAMMATIC Categorical Exclusions:**

- 2. **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?..... \_\_\_\_\_
  
- 3. **ROW Use** – Does the project involve the use of more than 10% of any parcel for permanent easement or fee taking?..... \_\_\_\_\_
  
- 4. **ROW Relocations** – Does the project require any residential, commercial or industrial relocations?..... \_\_\_\_\_
  
- 5. **Hazardous Waste** – Has the Office of Environmental Compliance determined that there are any known Superfund sites nearby that may affect the project? \_\_\_\_\_
  
- 6. **Historic Properties (Section 106)** – Has a “Historic Properties Affected” (Adverse Effect or No Adverse Effect) finding been made, in consultation with the State Historic Preservation Officer (**SHPO**) and/or the Tribal Historic Preservation Officer (**THPO**), 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?  
..... \_\_\_\_\_
  
- 7. **Section 4(f)** – Does the project require the use of properties protected by Section 4(f) of the 1966 USDOT Act? \_\_\_\_\_
  
- 8. **Section 6(f)** – Does the project require the use of properties protected by Section 6(f) of the Land and Water Conservation Act? ..... \_\_\_\_\_
  
- 9. **ACOE Individual Permit** – Will the ACOE require an Individual Permit (CAT III) approval for the work as proposed?..... \_\_\_\_\_
  
- 10. **Floodways** – Will the project cause an adverse impact on a regulatory floodway or base floodplain (100-year flood) elevations of water course or water body? If a Letter of Map Revision is required an Individual CE will be required. \_\_\_\_\_
  
- 11. **Sole Source Aquifers** – Does the project involve construction in or near a sole source aquifer? ..... \_\_\_\_\_
  
- 12. **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? ..... \_\_\_\_\_
  
- 13. **Noise** – Is a noise analysis required? ..... \_\_\_\_\_

CE Determination Checklist

State Project Number (Construction): \_\_\_\_\_ YES(✓) NO (✓)

- 14. Air Quality – Are there any NAAQS violations at any new or revised signalized intersections?
15. Project Level Conformity – Is an individual Project Level Conformity determination required?
16. Endangered Species – If construction is proposed in an area known to have populations of any federally listed endangered or threatened species, is it USFWS's and/or CTDEEP's conclusion that the project will have an adverse effect on any of these resources?
17. Title VI and Environmental Justice – Does the project involve disproportionate impacts to minority or low-income populations?
18. U.S. Coast Guard Bridge Permit – Will the U.S. Coast Guard require a Bridge Permit?
19. FHWA ROW Office determinations – Will FHWA have to make a determination regarding:
• Occupancy, Use & 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 2-19, the project does not qualify as an Automatic or Programmatic CE and an Individual CE approval from FHWA is required. See DETAILED INSTRUCTIONS for the format of an Individual CE.
→ If NO for all of Questions 2-19, the project may qualify as an Automatic (20-39) or Programmatic (40-51) CE. Proceed to Questions 20-39.

AUTOMATIC CE1?

- 20. Is this an activity that does not involve or lead directly to construction?
21. Is the primary purpose of the project the approval of utility installations (not requiring exceptions under the CT DOT Utility Accommodation Plan) along or across a transportation facility?

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

### CE Determination Checklist

**State Project Number (Construction):** \_\_\_\_\_ **YES(✓) NO (✓)**

- 22. Is the primary purpose of the project the construction of bicycle and pedestrian lanes, paths and facilities? ..... \_\_\_\_\_
- 23. 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? \_\_\_\_\_
- 24. Is the project an activity included in CTDOT's "Highway Safety Plan" funded by Highway Related Safety Grants (402 Safety Program)? \_\_\_\_\_
- 25. Is the primary purpose of the project the installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction?  
..... \_\_\_\_\_
- 26. Is landscaping the primary purpose of the activity?..... \_\_\_\_\_
- 27. 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? \_\_\_\_\_
- 28. Is the primary purpose of the project emergency repairs under the Emergency Relief Program? ..... \_\_\_\_\_
- 29. Is the primary purpose of the project the acquisition of scenic easements? \_\_\_\_\_
- 30. Is this activity a determination of payback for property previously acquired with Federal-aid participation?..... \_\_\_\_\_
- 31. Is the primary purpose of the project improvements to existing rest areas and truck weigh stations? ..... \_\_\_\_\_
- 32. Is this project a ridesharing activity? ..... \_\_\_\_\_
- 33. Is this project a bus and rail car rehabilitation? ..... \_\_\_\_\_
- 34. 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? ..... \_\_\_\_\_
- 35. Does the activity consist of program administration, technical assistance, or operating assistance to transit authorities? ..... \_\_\_\_\_
- 36. 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?  
..... \_\_\_\_\_

## CE Determination Checklist

**State Project Number (Construction):** \_\_\_\_\_ **YES(✓) NO (✓)**

37. Is the primary purpose of the project track or rail bed maintenance or improvements carried out within the existing right-of-way? ..... \_\_\_\_\_
38. 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? ..... \_\_\_\_\_
39. Is the primary purpose of the project 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 locators, automated passenger counters, computer-aided dispatching systems, radio communications, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.  
..... \_\_\_\_\_

→ If **YES** for any one of Questions 20-39 **AND** if the project does not include any substantial work in addition to the above, or involve unusual circumstances [see 23 CFR 771.117(b)] and meets the Conditions for Automatic/Programmatic CE (Questions 2-19), the project qualifies as an Automatic CE. Include this Checklist in the project file.

→ If **NO** for all of Questions 20-39, the project does not qualify as an Automatic CE, but may qualify as a Programmatic CE. Proceed to Questions 40-51.

**PROGRAMMATIC CE<sup>1</sup>?**

40. 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)?  
..... \_\_\_\_\_
41. 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?  
..... \_\_\_\_\_
42. 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? ..... \_\_\_\_\_

<sup>1</sup> See Detailed Instructions for further explanations of the questions and documentation requirements.

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**State Project Number (Construction):** \_\_\_\_\_ **YES(✓) NO (✓)**

43. Is the primary purpose of the project transportation corridor fringe parking facilities? \_\_\_\_\_
44. Is the primary purpose of the project the construction of new truck weigh stations or rest areas? \_\_\_\_\_
45. 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? \_\_\_\_\_
46. Is the primary purpose of the project the approvals for changes in access control? \_\_\_\_\_
47. 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? \_\_\_\_\_
48. Is the primary purpose of the project the 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? \_\_\_\_\_
49. Is the primary purpose of the project the 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? \_\_\_\_\_
50. 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? \_\_\_\_\_
51. 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. \_\_\_\_\_



**CE Determination Checklist**  
(Continued)

**State Project Number (Construction):** \_\_\_\_\_

This project qualifies for the following type of **Categorical Exclusion**:

Automatic CE .....	_____
Programmatic CE.....	_____
Individual CE required.....	_____

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.

Prepared by: \_\_\_\_\_  
Project Engineer Date

Certification  
Recommended by: \_\_\_\_\_  
Project Manager Date

Certification  
Recommended by: \_\_\_\_\_  
Principal Engineer Date

Certification  
Recommended by: \_\_\_\_\_  
Manager  
Bridge Design / Highway Design /  
Traffic Engineering / Maintenance Date

cc: Thomas Maziarz – Mark W. Alexander

**CE Determination Checklist**  
(Continued)

**State Project Number (Construction):** \_\_\_\_\_

The following items must be provided to FHWA when requesting a CE-I determination:

- THPO Letter
- SHPO Letter
- Public Involvement Documentation
- CE Checklist
- Environmental Review Form
- Supporting Documentation for the specific Condition(s) for Automatic/Programmatic Certification not met under Questions 2-19; see DETAILED INSTRUCTIONS for additional information on documentation required
- Location Map
- Air Quality Memorandum (if analysis performed)
- Appropriate Sheets from Design Plan, if applicable

# DETAILED INSTRUCTIONS FOR CATEGORICAL EXCLUSION DETERMINATION CHECKLISTS

The 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/Programmatic Categorical Exclusion (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 a CE. In this case CTDOT must submit an Individual CE (CE-I) determination request to 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.

The following provides further explanation of the questions on the CE 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:

**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.

**CE vs. EA/EIS?** – Early in the planning process the Office of Environmental Planning (OEP) completes the CTDOT Environmental Review Form and may recommend that the project be classified as a CE. 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 may have changed or unforeseen conditions may have surfaced since then that may warrant either an EA or an EIS. If the scope has substantially changed or unforeseen conditions have surfaced since OEP last reviewed the project, or if more than 3 years has passed since certification of the CE, then OEP will need to reevaluate the project to determine if the project is still expected to qualify as a CE.

## Detailed Instructions for CE Checklist

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

<http://environment.fhwa.dot.gov/projdev/pd4document.asp>

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

<http://www.environment.fhwa.dot.gov/guidebook/chapters/v2ch7.asp>

2. **Public Involvement** – Public involvement must comply with 23 USC 128, 23 CFR 771.111(h), and the FHWA-approved CTDOT public involvement plan. 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 information 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 not 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 the project does not qualify for a CE-A or CE-P and 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, ROW 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, public meetings, and/or meetings with public officials were held,
- When concurrence was made by local officials that no public meeting is needed (if applicable),
- Approximate number from the public that attended any public meeting(s),
- Summary of any substantive comments, questions, and concerns raised by the public at any public meeting(s) or written comments received, and
- Commitments CTDOT/municipality has made in response to the public involvement process.

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

## Detailed Instructions for CE Checklist

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

Additional information on this subject is available at the following Internet web site address:  
<http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=38>

3. **ROW Use** – Since the CE determination is made relatively early in the design process, precise estimates of the amount of permanent easements or fee takings may not be available, therefore, use engineering judgment. The 10% limit applies to every parcel which requires a permanent easement or fee taking. If a permanent easement or fee taking will require 10% of any parcel, then a CE-I must be sent to FHWA. Describe in the CE-I 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.

Additional information on this subject is available at the following Internet web site address:  
<http://www.fhwa.dot.gov/realestate/index.htm>

4. **ROW Relocations** – If the project requires any residential, commercial or industrial relocations, then a CE-I must be sent to FHWA and a narrative for this question must be included that contains the following: 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.

Additional information on this subject is available at the following Internet web site address:  
<http://www.fhwa.dot.gov/realestate/relocat.htm>

5. **Hazardous Waste** – Contact the Office of Environmental Compliance to determine if there are any U.S. EPA 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 provide a location map depicting the Superfund site and a description of the interaction or lack thereof between the two sites. If the Superfund site is within the project limits provide the appropriate sheets from the preliminary design plans depicting the Superfund site and describe how this may affect the project.

Additional information on this subject is available at the following Internet web site address:  
<http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=46>

6. **Historic Properties** – Section 106 of the National Historic Preservation Act of 1966 and its associated regulations (36 CFR 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 Connecticut State Historic Preservation Officer (**SHPO**) / Tribal Historic Preservation Officer (**THPO**) are consulted

## Detailed Instructions for CE Checklist

and recommend a determination of effect. The determination will usually be one of the following: **“NO HISTORIC PROPERTIES AFFECTED”**, **“HISTORIC PROPERTIES AFFECTED (Adverse Effect)”** or **“HISTORIC PROPERTIES AFFECTED (No Adverse Effect).”** The Historic Properties condition is only satisfied if an unconditioned **NO HISTORIC PROPERTIES AFFECTED** recommendation is received in writing from the SHPO/THPO – all other determinations of effect require a CE-I.

**Tribal Consultation** - CTDOT will provide FHWA with a copy of the required Section 106 consultation documentation. FHWA will then initiate consultation parallel to CTDOT’s consultation with the SHPO.

**A copy of SHPO’s/THPO’s recommendation must be included with a CE-I determination request.**

**Section 106 Documentation Requirements:** The documentation standards for Section 106 findings are detailed in 36 CFR 800.11. For **Adverse Effect and No Adverse Effect determinations**, 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.

**Adverse Effect Determinations:** If an “adverse effect” determination is recommended by the SHPO, FHWA must notify the Advisory Council on Historic Preservation (**ACHP**) of the adverse effect finding. This notification must be accompanied by the documentation required by 36 CFR 800.11 (e). ACHP will then advise FHWA whether or not they wish to participate in the Section 106 consultation process. Other parties may also be consulted, as deemed appropriate. A Memorandum of Agreement (**MOA**), prepared by CTDOT, is required to indicate what will be done to resolve the adverse effects of the project on historic properties. The Individual CE determination request should not be submitted to FHWA until coordination with ACHP is complete and the MOA has been concluded.

**A copy of the MOA should be included with the CE-I determination request.**

**NOTE (1):** Section 106 is a completely separate process from Section 4(f). Section 106 involves evaluating the effects of a federal undertaking on historic properties and offering the ACHP an opportunity to comment. Section 4(f) is focused on the “use” or incorporation of 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 added detail below).

**NOTE (2):** As of the date of this Amended Programmatic Agreement, one or more draft Section 106 Programmatic Agreements are in development to modify the Section 106 consultation process with SHPO/THPO. As a result, certain actions currently taken by SHPO/THPO may be delegated to CTDOT accordingly. Therefore, if and when proposed Section 106 Programmatic Agreements are concluded and fully implemented, the above instructions concerning the various recommendations made regarding any Effect

## Detailed Instructions for CE Checklist

Determination shall also apply to any recommendations made by CTDOT, in accordance with current and any subsequent terms set forth in those Programmatic Agreements.

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

Additional information on this subject is available at the following Internet web site address:  
<http://environment.fhwa.dot.gov/guidebook/chapters/v2ch10.asp>

7. **Section 4(f)** – Section 4(f) of the 1966 DOT Act requires that special consideration be given regarding the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site. These properties are referred to collectively as “Section 4(f) properties.”

Per 23 CFR 774.17, Definitions. For purposes of this part, the term “historic site” includes any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. 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 National Register.

FHWA may not approve the use of land from any Section 4(f) property 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 set forth in §§774.11 and 774.13, a “use” of Section 4(f) property occurs:

(1) When land is permanently incorporated into a transportation facility;

(2) When there is a temporary occupancy of land that is adverse in terms of the statute's preservation purpose as determined by the criteria in §774.13(d); or

(3) When there is a constructive use of a Section 4(f) property as determined by the criteria in §774.15

Section 4(f) does not generally apply to temporary construction easements provided certain conditions are satisfied [see FHWA’s Section 4(f) Policy Paper]. FHWA will make all constructive use determinations.

### **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 Categorical Exclusion Checklist.**

## Detailed Instructions for CE Checklist

### **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) Minor Involvement with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges;
- (b) Minor Involvement with Historic Sites
- (c) Use of Historic Bridges; and
- (d) Net benefit to the Section 4(f) property

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.

### **Negative Declaration / Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects, dated May 23, 1977:**

For those projects that only require the use of recreation or park areas for independent bikeway or pedestrian walkway construction, the above cited Negative Declaration issued by FHWA may be applicable. A copy of this Negative Declaration may be found at the following Internet website: <http://environment.fhwa.dot.gov/guidebook/vol2/doc15m.pdf>.

### **Section 4(f) “De Minimis Impact” Determinations**

If there is a use of a Section 4(f) property and the impact of that use does not adversely affect the activities, features, and attributes that qualify that property as a Section 4(f) property [and the use is not a “constructive use”], then FHWA may make a De minimis impact determination so long as:

- (a) for historic or archeological sites, the Section 106 finding is either “no historic properties affected” or “no adverse effect,” the SHPO and or THPO and the ACHP (if they are participating) concur in this finding and do not object to the use by FHWA of the Section 106 finding to make a De Minimis Impact determination.
- (b) for a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, and after public notice and an opportunity for comment, if the “officials with jurisdiction” over that park, recreation area, or refuge agree with FHWA that the “use” does not adversely affect the activities, features, and attributes that qualify that property as a Section 4(f) property, then FHWA may make a De Minimis Impact determination.
- (c) All efforts to minimize harm to the Section 4(f) property have been implemented via avoidance, minimization, mitigation, and enhancement efforts.
- (d) If the Section 4(f) “use” is a De Minimis Impact, the requirements of Section 4(f) are deemed satisfied and it is not necessary to consider alternatives that would avoid a Section 4(f) use.

## Detailed Instructions for CE Checklist

- (e) The documentation of the qualities and significance of the property that define it as a Section 4(f) property, the project's "use" of the property, any required public notice and opportunity for comment, the comments of the officials with jurisdiction over the Section 4(f) property, and the FHWA De Minimis Impact determination must be included with the project records.

### **Individual Section 4(f) Evaluations:**

If a project does not satisfy the criteria for a Nationwide Programmatic 4(f) evaluation or if the use is greater than a De Minimis Impact, an Individual Section 4(f) evaluation will need to be prepared. A draft of the Individual Section 4(f) evaluation must be forwarded to FHWA to circulate for comment (minimum 45 days) to the Department of Interior, and, as appropriate, to the Department of Housing and Urban Development and/or the Department of Agriculture. The final Section 4(f) evaluation must be reviewed for legal sufficiency (30-day review period) by FHWA before final approval.

The CE-I 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 CE-I determination request.**

**NOTE:** Section 4(f) is a completely separate process from Section 106

### **References:**

- (a) 23 CFR 774.17
- (b) FHWA Technical Advisory T 6640.8A, entitled, "Guidance for Preparing and Processing Environmental and Section 4(f) Documents," dated October 30, 1987
- (c) FHWA Section 4(f) Policy Paper (latest revision)

Additional information on this subject is available at the following Internet web site address:  
<http://environment.fhwa.dot.gov/guidebook/chapters/v2ch15.htm>

For additional guidance, contact the Office of Environmental Planning and/or FHWA.

- 8. **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 get approval from the U.S. Department of Interior (DOI) for any conversion of property covered under this Act to a use other than public, outdoor recreational use.

If the project requires the conversion of any Section 6(f) property or improvements, a CE-I is required. The Connecticut Department of Energy and Environmental Protection (CTDEEP) has a designated staff member responsible for Section 6(f) coordination with DOI. Individual CEs must include a copy of the approval letter from the DOI.

## Detailed Instructions for CE Checklist

Additional information on this subject is available at the following Internet web site address:  
<http://www.ncrc.nps.gov/lwcf/>

9. **ARMY CORPS OF ENGINEERS - Individual Permit** – If an Individual Permit (CAT III) from the Army Corps of Engineers is required, an Individual CE is required. The CE-I request should include the approximate area of wetland impact and the appropriate sheets from the preliminary design plans that show the wetland locations.

Additional information on this subject is available at the following Internet web site address:  
<http://environment.fhwa.dot.gov/guidebook/chapters/v1ch11.htm>  
<http://www.nae.usace.army.mil/reg/>

10. **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. If a Letter of Map Revision is required, then a CE-I is required. Provide plans and details depicting overall floodway and floodplain impacts and proposed mitigation with the CE-I request.

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/>

11. **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 such areas in the state: the Pootatuck Aquifer in the Newtown/Monroe area, and the Pawcatuck Basin Aquifer System in the Stonington/North Stonington area. These aquifers are federally-designated in order to provide the U.S. Environmental Protection Agency (EPA) the opportunity to ensure that federal-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 EPA is necessary. Contact CTDOT's Office of Environmental Planning for assistance when dealing with projects within a Sole Source Aquifer. If a project is in or near a sole source aquifer, a CE-I is required. The CE-I must include documentation of the required coordination with EPA.

Additional information on this subject is available at the following Internet web site address:  
<http://cfpub.epa.gov/safewater/sourcewater/>

12. **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 National Park Service of the U.S. Department of Interior and with the U.S. Department of Agriculture 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.

## Detailed Instructions for CE Checklist

The upper **Farmington River** (a 14 mile section of the **West Branch**) is currently the only designated Wild and Scenic River in Connecticut. The river 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. There are certain limitations, setbacks, and requirements that must be followed in accordance with the CTDOT Water Resources Coordination and Permit Processing Manual. Contact CTDOT's OEP for assistance early in the project development stage to access these requirements. CTDEEP will take into consideration in the permit process, the location of the project in relation to the river, and the effect it may have on the river. If any of these limitations, setbacks, or requirements are imposed, a CE-I is required. These requirements should be included in the CE-I request. If the Responsible Federal agency has a finding of direct or adverse effects it may require further NEPA evaluation which may lead to FHWA not approving or providing Federal assistance with the project.

NPS initiated a study in 2002; on May 8, 2008, the **Eightmile River** in southeastern Connecticut was as designated as "Scenic". Also see: <http://www.rivers.gov/wsr-eightmile.html>

Additional information on this subject is available at the following Internet web site address: <http://www.environment.fhwa.dot.gov/guidebook/results.asp?selSub=101>

13. **Noise** – FHWA regulations (23 CFR 772) require the identification of noise impacts and the consideration of noise abatement that would substantially reduce noise impacts. Any proposed noise abatement must be "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 more subjective. It is based on a number of factors, such as, the increase of future noise levels over existing levels, the amount of noise reduction that can be achieved, the cost of noise abatement, and the views of affected residents. Refer to CTDOT's "Highway Traffic Noise Impact Analysis and Abatement Policies and Procedures" dated April 14, 2011 and USDOT FHWA-HEP-10-025 July 2010 for more information

Noise abatement is usually only feasible on limited access roadways. Also, significant noise impacts typically occur only if the project involves construction on new location or an existing roadway is to undergo a physical alteration that significantly changes either the horizontal or vertical alignment or increases the number of through lanes.

Therefore, a noise analysis is typically only required when the project consists of a limited access roadway on new location or when additional through lanes are proposed near sensitive receptors. If a noise analysis is required, a CE-I is also required. A summary of the noise analysis should be included with the CE-I.

Additional information on this subject is available at the following Internet web site address: <http://environment.fhwa.dot.gov/guidebook/chapters/v1ch8.htm>

## Detailed Instructions for CE Checklist

14. **Air Quality** – The regulations implementing the Clean Air Act, as amended, require that transportation plans, programs and projects in non-attainment or maintenance areas for transportation-related criteria pollutants (e.g., ozone, PM<sub>10</sub>, CO) that are funded or approved by FHWA must be in conformity with the State Implementation Plan (**SIP**). Conformity is determined through the process specified in EPA's transportation conformity regulations (40 CFR Part 93). Projects located in attainment areas are not subject to the conformity regulations, however, in Connecticut, as of 2005, the entire State is in non-attainment for ozone and three regions are in maintenance for CO, thus most 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).

**Project Level Emissions Analysis** – This type of analysis (a.k.a., "hot-spot" analysis) applies to CO, PM<sub>10</sub>, and PM<sub>2.5</sub> concentrations (NOTE: PM<sub>2.5</sub> regulations were recently issued by EPA on June 14, 2004, however, as of the date of this Amended Programmatic Agreement, if a PM analysis is required, only a qualitative analysis is required until after DEC 2012 when the use of EPA's Motor Vehicle Emissions Simulator (MOVES) a protocol for preparing a quantitative PM analysis for PM<sub>10</sub> and PM<sub>2.5</sub> becomes effective. In Connecticut, the following projects require a CO "hot-spot" analysis (see 40 CFR 93.123):

- (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.

**NOTE:** If there are any violations of the NAAQS resulting from this project, an Individual CE is required.

**If applicable, a copy of the Air Quality Assessment memorandum must be included with the CE-I determination request.**

Additional information on this subject is available at the following Internet web site address:  
<http://www.fhwa.dot.gov/environment/aqupdate/index.htm>

15. **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 CE is applicable if all other CE criteria are satisfied. Copies of the current regulations (40 CFR 93.126 and 40 CFR 93.127) concerning exemptions are attached to these Instructions.

For those projects that do not meet any of the above 3 conditions, if the project is included in the applicable MPO's current conforming transportation plan, conforming TIP, and the current conforming statewide transportation improvement program (**STIP**), the project is in conformity, and a separate Project Level Conformity determination is not required unless a Project Level Emissions analysis is required.\*\*\* **Projects that require a Project Level Emissions analysis require a separate Project Level Conformity determination and an Individual CE.**

## Detailed Instructions for CE Checklist

If the project is not from a conforming LRT plan and **TIP** and does not meet the conditions listed above, a separate Project Level Conformity determination must be completed prior to the submission; also the project will be processed as an Individual CE.

**Project Level Conformity determinations should be developed in consultation with the OEP and must be included with the CE-I determination request.**

Additional information on this subject is available at the following Internet web site address:  
<http://environment.fhwa.dot.gov/guidebook/chapters/v1ch1.htm>

\*\*\*Reasons (1) Significant change in project design or project scope, (2) New project that does not fall under an exemption.

16. **Endangered Species** – Areas containing known populations or occurrences of Federal Threatened. Candidate or Endangered Species are depicted on maps provided by **CTDEEP** that are updated every six months. OEP reviews these maps and reports its findings on the Environmental Review Form, and a memorandum is sent to CTDEEP Natural Diversity Database unit. If the project is not located in or near an area with these resources, a Programmatic CE may be applicable.

If there is an indication that there may be a Federal endangered species present in or near the area of the project, CTDEEP will reply with guidance, such as a request for a field review of the project by a biologist from CTDEEP, special precautions to be taken, or seasonal restrictions for work within the area. If CTDEEP concludes that the project will have no impact on these resources, a Programmatic or Automatic CE may be applicable. Otherwise, if CTDEEP concludes that these species will be adversely affected, a CE-I must be submitted to FHWA.

Additional information on this subject is available at the following Internet web site address:  
<http://environment.fhwa.dot.gov/guidebook/chapters/v1ch4.htm>

17. **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 sufficiently to eliminate any disproportionately high and adverse effects.

Additional information on this subject is available at the following Internet web site addresses:  
<http://www.fhwa.dot.gov/environment/ej2.htm>  
<http://environment.fhwa.dot.gov/guidebook/chapters/v2ch16.htm>

18. **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 CE-I request should include a summary of coordination with the U.S. Coast Guard regarding all project activities subject to their jurisdiction, including navigation lighting.

## Detailed Instructions for CE Checklist

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

<http://www.uscg.mil/hq/g-o/g-opt/g-opt.htm>

<http://environment.fhwa.dot.gov/guidebook/chapters/v2ch3.htm>

### 19. **ROW Office Determinations**

#### **Occupancy, Use & Reservation of Airspace Rights**

Although 23 C.F.R. 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.

#### **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 C.F.R. 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.

#### **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.

#### **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 C.F.R. 710.503. Acquisition of property under this section and under the conditions listed shall not influence the environmental assessment

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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.

### **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 C.F.R. 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 C.F.R. 771.117 (c)(5).

### **Automatic / Programmatic Categorical Exclusions**

20-39. **Automatic CE (CE-A)** – These questions refer to the types of projects that may be processed automatically because experience has shown that they never, or almost never, cause significant environmental impacts. The activity must not include any substantial amount of additional work other than what is listed in the questions. If the scope of the project includes other work, a CE-P or CE-I determination would be more appropriate. See the Programmatic Agreement for more information.

If a project qualifies for a CE-A, this does not exempt the project from having to satisfy other environmental requirements, such as Air Quality, Historic Preservation (Section 106), Section 4(f), etc. (Questions 2-19 on the Checklist).

40-51. **Programmatic CE (CE-P)** – These questions refer to additional actions which meet the criteria for a CE as listed in 23 CFR 771.117(d) and the CEQ regulations (40 CFR 1508.4). The applicant shall document the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.

If a project qualifies for a CE-P, this does not exempt the project from having to satisfy other environmental requirements, such as Air Quality, Historic Preservation (Section 106), Section 4(f), etc. (Questions 2-19 on the Checklist).

## **INDIVIDUAL CATEGORICAL EXCLUSION LETTER SUBMISSION FORMAT**

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

### **General:**

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

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### 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"**

### 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:

- CE Determination Checklist
- Environmental Review Form
- 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
- SHPO/THPO letter
- Supporting Documentation only for the Condition(s) of Automatic/Programmatic CE that are not met 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 specific instructions for detailed information on documentation required
- Clearly establish why the associated potential impacts are not considered to be "significant" – see Programmatic CE Agreement 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