

**PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, KANSAS DIVISION
AND
THE KANSAS DEPARTMENT OF TRANSPORTATION**

**REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL
EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

MARCH 2019

(SUPERSEDES FEBRUARY 22, 1982 AGREEMENT - GUIDANCE AND PROCEDURES FOR
IDENTIFYING ACTIONS THAT QUALIFY AS CATEGORICAL EXCLUSION)



Johnson County Gateway Project – I-435 • I-35 • K-10

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THIS PROGRAMMATIC AGREEMENT ("Agreement"), made and entered into this April day of 2019, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE OF KANSAS, acting by and through its DEPARTMENT OF TRANSPORTATION ("KDOT") hereby provides as follows:

WITNESSETH:

Whereas, the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, 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;

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;

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));

Whereas, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions ("CE") 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 (23 CFR 771.117(c)-(d));

Whereas, the Kansas Department of Transportation ("KDOT") 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 KDOT projects (23 CFR 771.109);

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;

Whereas, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014 (23 CFR 771.117(g));

Whereas, the FHWA and KDOT have designated additional CEs for the State and identified them in this programmatic agreement pursuant to section 1315 of the Fixing America's Surface Transportation ("FAST") Act, Pub. L. 114-94, 129 Stat. 1312 (Dec. 4, 2015), 40 CFR 1508.4 and 23 CFR 771.117(g);

Now, therefore, the FHWA and KDOT enter into this Programmatic Agreement ("Agreement") for the processing of categorical exclusions.

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration ("FHWA") and the Kansas Department of Transportation ("KDOT") ("the Parties").

II. PURPOSE

The purpose of this Agreement is to authorize KDOT to determine on behalf of FHWA whether a project qualifies for a CE action specifically listed in 23 CFR 771.117 (listed in Appendix A of this Agreement). This Agreement also authorizes KDOT to certify to FHWA that an action that it cannot approve on behalf of FHWA according to the terms of this Agreement, 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, Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315
- D. 40 CFR parts 1500 - 1508
- E. DOT Order 5610.1C
- F. 23 CFR 771.117

IV. RESPONSIBILITIES

A. KDOT 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 (d)), that do not exceed the thresholds in Section IV(A)(1)(b) of this Agreement, KDOT may make a CE approval on behalf of FHWA. KDOT will identify the applicable listed CE, verify conditions or constraints are met, verify that unusual circumstances do not apply, address 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. These are designated as Class IIA actions by KDOT.
 - b. KDOT may not approve actions listed in Appendix A that exceed the thresholds listed below in Section IV(A)(1)(b)(i)-(xvii). KDOT may certify to FHWA that the action qualifies for a CE. These are designated as Class IIB actions by KDOT. A Class IIB action requires FHWA CE review and approval based on KDOT certification if the action:
 - i. Involves acquisitions of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements. This includes no removal of major property improvements. Examples of Major improvements

include residential and business structures, garages, or the removal of other features which would change the functional utility of the property. Removal of minor improvements, such as fencing, landscaping, sprinkler systems, and mailboxes would be allowed;

- ii. Results in capacity expansion of a roadway by addition of through lanes. Auxiliary lanes and turn lanes less than a mile in length are not considered capacity-adding actions. Center turn lanes, regardless of length, are not considered capacity-adding actions;
- iii. Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions. A temporary traffic and access disruption would not be considered major if it meets the following conditions:
 - A. Duration of the detour or temporary access is less than a total of 135 working days (a typical construction season);
 - B. Designated detours would result in adverse (out-of-direction) travel less than 5 miles in urban areas or 25 miles in rural areas;
 - C. Provisions are made for access by local traffic and so posted;
 - D. Through-traffic dependent businesses will not be adversely affected;
 - E. The detour or ramp closure will not interfere with any local special event or festival;
 - F. The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action;
 - G. The action will not result in the complete closure of access to residential properties greater than 10 working days, closure of business access during operational hours or access restrictions to emergency service facilities or providers.
 - H. There is no unresolved controversy associated with the temporary road, detour, or ramp closure
- iv. A permanent traffic and access disruption cannot:
 - A. permanently close a roadway, roadway intersection, or interstate ramp
 - B. create new intersections
 - C. convert a local street into a higher classification of roadway
 - D. permanently change the functional utility of the property;
- v. Involves changes in access control that result in change to the functional utility of adjacent properties;
- vi. Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);
- vii. Requires the use of properties protected by Section 4(f) (49 U.S.C. § 303/23 U.S.C. § 138) that cannot be documented with an FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation;
- viii. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in

Wildlife Restoration Act (16 U.S.C. 669-669i; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;

- ix. Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit or a General Permit;
 - x. Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);
 - xi. Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A;
 - xii. Requires 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 published by the U.S. Department of the Interior/U.S. Department of Agriculture;
 - xiii. Is defined as a "Type I project" per 23 CFR 772.5 and the KDOT Highway Traffic Noise Program for purposes of a noise analysis;
 - xiv. May affect federally listed or candidate species, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act;
 - xv. Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(d));
 - xvi. Does not conform to the State Implementation Plan which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas;
 - xvii. Is not included in or is inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program; or
- c. KDOT may not approve actions not specifically listed as CEs in Appendix A. Instead, if KDOT believes that an action meets the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a), KDOT may certify that an action will not result in significant environmental impacts if KDOT concludes that the action qualifies for a CE, and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. KDOT shall submit this certification as a Class IIB action to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project.
- i. KDOT shall provide a copy of the CE documentation prepared for the actions(s) in accordance with Section V of this Agreement.
 - ii. If any project requires a Section 4(f) *de minimis* determination or programmatic evaluation, KDOT shall submit the 4(f) documentation for FHWA determination and approval.
 - iii. KDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from FHWA once KDOT has completed its certification that a project is a CE.

- iv. The Division Office's objection to a KDOT 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 certification is adequate, which may include consultation with other agencies.
 - 2. Providing a KDOT Project Authorization (DOT Form No. 883) and the Final Status of Projects Environmental Concerns memorandum for each CE action approved by KDOT in accordance with Section IV(A)(1)(a) of this Agreement to the Division Office. FHWA will use this documentation as described in Section VII(C) to monitor KDOT CE approvals for quality control purposes. These documents of actions certified will contain the following information:
 - a. The KDOT project number and a project name, including the route number or facility name where the project will occur;
 - b. Identification of the CE action as "Class IIA or Class IIB" as defined in Section IV(A)(1);
 - c. Consultations or technical analyses that are pending (if applicable); and
 - d. Whether the project included a Section 4(f) *de minimis* or programmatic evaluation.
 - 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. KDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval as a "Documented CE", or the preparation of an EA or EIS.
 - 4. Meeting applicable documentation requirements in Section V for State CE approvals on FHWA's behalf and State CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
 - 5. Relying only upon employees directly employed by KDOT to make CE approvals or certifications submitted to FHWA under this agreement. KDOT may not delegate its responsibility for CE approvals or 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 KDOT, as requested.
 - 2. Providing timely input on and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by KDOT 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 KDOT CE APPROVALS AND CERTIFICATIONS

- A. For State CE approvals and State CE certifications to FHWA for approval, KDOT shall fulfill the following responsibilities for documenting the project-specific determinations made:

1. For actions listed in Appendix A, KDOT shall identify the applicable action, verify any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a KDOT signature evidencing approval.
 2. In addition, for actions listed in 23 CFR 711.117(d), KDOT shall prepare documentation that supports the CE determination and that no unusual circumstances as described in Section IV(A)(1)(b) of this Agreement exist that would make the CE approval inappropriate.
 3. For actions KDOT certifies as IIBs per Section IV(A)(1)(b), KDOT shall prepare documentation that supports the CE determination and submit a Design Summary Document (DSD) to the FHWA Kansas Division for review and concurrence.
- B. KDOT shall 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 KDOT'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); and
 6. Evidence documenting KDOT's review and determination that the project has independent utility, logical termini and does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
- C. Any electronic or paper project records maintained by KDOT shall be provided to FHWA at its request. KDOT shall 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 KDOT 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. KDOT's Type IIA CE approvals and Type IIB CE certifications submitted to FHWA for approval may only be made by officials from the offices specifically identified below:
1. Approval of Type IIA CEs is delegated to the KDOT Bureaus of Road Design, Transportation Safety and Technology, Transportation Planning, and Local Projects.
 2. Certification of Type IIB CEs is delegated to the KDOT Bureaus of Road Design, Transportation Safety and Technology, Transportation Planning, and Local Projects.

- B. In accordance with 23 CFR 771.129, KDOT shall re-evaluate its determinations and certifications for projects, consult with FHWA, and as necessary, prepare additional documentation to verify that determinations are still valid. Before further approvals may be granted, a written re-evaluation of a CE shall be conducted by KDOT for the following circumstances:
1. The project scope has changed since the last CE determination;
 2. The project impacts to social, economic or environmental concerns have significantly changed since the last CE determination;
 3. Regulatory changes occur that would influence the project or necessitate a re-evaluation of impacts;
 4. There are new circumstances or information relevant to social, economic, or environmental concerns with bearing on the proposed actions or its impacts.
- C. KDOT shall document re-evaluations using a memorandum to the file or the re-evaluation block on the CE form, commensurate with the action. The signature authority for re-evaluations will be the same as for the original CE document unless the re-evaluation indicates a change in the level of document is needed. It is the responsibility of KDOT to verify that the conditions of the project have not changed and the NEPA determination remains valid for the action.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. KDOT Quality Control & Quality Assurance

1. KDOT shall carry out regular quality control and quality assurance activities to verify that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.

B. KDOT Performance Monitoring and Reporting

1. The FHWA and KDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. KDOT agrees to submit to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement annually no later than September 30th. The report will contain all Type IIA and IIB CE determinations made during the state fiscal year based on the date of the project Design Summary. The report will identify any areas where improvement is needed and what measures KDOT is taking to implement those improvements. The report will include a description of actions taken by KDOT as part of its quality control efforts under Section VII(A).

C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of KDOT, as well as KDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of KDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of KDOT staff and consultants, and the effectiveness of KDOT's administration of its internal CE approvals.

2. FHWA will conduct regular reviews of KDOT's submitted Form 883s and Final Status of Projects Environmental Concerns memorandum of approved CEs as part of its oversight activities, during the term of this Agreement. KDOT shall prepare and implement a corrective action plan to address any findings or observations identified by FHWA in its review. KDOT should draft a corrective action plan to address any deficiencies found during FHWA's review within 45 days of notification by FHWA. The results of this review and corrective actions taken by KDOT 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 KDOT's performance under this Agreement. The FHWA may require KDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to demonstrate compliance with applicable Federal laws and regulations.
4. KDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

VIII. AMENDMENTS

If the parties agree to amend this Agreement or the Appendices, then FHWA and KDOT 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. Minor non-substantive changes to the Appendices may be made through appropriate clarification guidance to better refine implementation of the agreement based on experience. This will not require re-execution of the Agreement, but would require the written consent of both parties.

IX. TERM, RENEWAL & TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. KDOT shall post and maintain an executed copy of this Agreement on its web site, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if KDOT requests renewal and FHWA determines that KDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement, compliance with the terms of the agreement, and its overall impact on the environmental review process.
- C. At least six (6) months prior to the end of each term, KDOT and FHWA shall meet to discuss the results under the Agreement and consider amendments to this Agreement. If the parties do not renew the Agreement, then it shall expire at the end of the term then in effect.
- D. Either party may terminate this Agreement at any time by giving at least a 30-day written notice to the other party.
- E. Expiration or termination of this Agreement shall mean that KDOT is not able to make CE approvals on FHWA's behalf.

Signatures

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.

Richard E. Backlund

Richard E. Backlund, Division Administrator
Federal Highway Administration, Kansas Division

3/26/2019

Date

Julie Lorenz

Julie Lorenz, Secretary
Kansas Department of Transportation

4/4/2019

Date



APPENDIX A: 23 CFR 771.117(c) and (d) – CRITERIA FOR PROGRAMMATIC CEs

Programmatic Categorical Exclusions apply to the types of projects listed below and do not exceed thresholds defined in Section IV(A)(1)(b) of this Agreement.

1. Activities that 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 that 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 that 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 means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.
23. Federally funded projects:
 - i. That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) of Federal funds; or
 - ii. With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) 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), if the action meets the constraints in paragraph (e) of this section.
27. Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

28. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.
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 that 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.
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.
39. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
 - i. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
 - ii. Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.