Documentation Requirements and Approval Procedures for Federal-Aid Projects Classified as Categorical Exclusions

US Department of Transportation
Federal Highway Administration
North Carolina Division Office

and

North Carolina Department of Transportation

Approved:

1/27/17
Date

Michael L. Holder, PE, Chief Engineer
NCDOT, Division of Highways

1/27/17
Date

John F. Sullivan, III, PE, Division Administrator
Federal Highway Administration

PROGRAMMATIC AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINSTRATION, NORTH CAROLINA DIVISION AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT ("Agreement") made and entered into this 27th day of January 2017, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE of North Carolina, acting by and through its North Carolina Department of Transportation ("NCDOT") 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 NCDOT 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 NCDOT 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 NCDOT 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 NCDOT enter into this Agreement for the processing of categorical exclusions.

I. Parties

The Parties to this Agreement are the FHWA and the NCDOT.

II. Purpose

FHWA regulations address three classes of actions: Environmental Impact Statement - EIS; Categorical Exclusion - CE; and Environmental Assessment - EA. The purpose of this document is to define documentation requirements and approval procedures for Federal-aid projects funded by the FHWA in North Carolina that are classified as a CE. This Agreement also authorizes NCDOT to either approve or certify CEs that meet requirements under Section V of this agreement, and identifies reporting requirements under Section VII.

III. Authorities

This Agreement is entered into pursuant to the following authorities:

A. National Environmental Policy Act, 42 U.S.C. § 4321 et seq.
B. Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
C. Fixing America's Surface Transportation Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
D. 40 CFR parts 1500 - 1508
E. DOT Order 5610.1C
F. 23 CFR 771.117

IV. CE Documentation Types

Projects that qualify as a CE may be processed with the following documentation types:

Type I(A) (Appendix A): These are primarily activities listed under 23 CFR 771.117(c) that do not meet or exceed threshold criteria identified in Appendix C.

Type I(B) (Appendices A and C): Similar to Type I(A) projects, these actions primarily involve activities listed under 23 CFR 771.117(c). However, threshold criteria identified in Appendix C are met or exceeded.

Type II(A) (Appendix B): These actions may be designated as CEs and are primarily activities listed under 23 CFR 771.117(d) that do not meet or exceed threshold criteria identified in Appendix C.

Type II(B) (Appendices B and C): Similar to Type II(A) projects, these actions primarily involve activities listed under 23 CFR 771.117(d). However, threshold criteria identified in Appendix C are met or exceeded.

Type III (Appendix D): These are actions not identified as Type I or II as described above. This includes, but is not limited to, highway widening projects that add an additional through lane (automobile capacity increases) or modify an interchange access point.

V. *Responsibilities*

A. NCDOT 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 Appendix B (CEs established in 23 CFR 771.117(d)), that do not exceed the thresholds listed in Appendix C, the NCDOT may make a CE approval on behalf of FHWA. The NCDOT will identify the applicable listed CE; ensure any conditions or constraints are met; verify that unusual circumstances do not apply; address any and all other environmental requirements; and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.
      (b) Actions listed in Appendices A and B that exceed the thresholds listed in Appendix C may not be approved by the NCDOT. The NCDOT may certify to FHWA that the action qualifies for a CE. These certified actions require review and approval by FHWA.
      (c) The NCDOT may not approve actions not specifically listed as CEs in 23 CFR 771.117, but meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, the NCDOT shall certify that an action will not result in significant environmental impacts if the NCDOT 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. These certified actions require review and approval by FHWA.
         (i) NCDOT shall provide a copy of the CE documentation prepared for the action(s) in accordance with Section VI of this Agreement.
         (ii) If any project requires a Section 4(f) *de minimis* determination, or programmatic or individual evaluation and approval by FHWA, the NCDOT shall submit the 4(f) documentation.
         (iii) The FHWA Division Office's objection to a NCDOT certification may not constitute a disapproval of the action, but signifies that FHWA will need to engage with NCDOT to confirm the NEPA Class of Action, which may include consultation with other agencies.
         (iv) The NCDOT may request notice to proceed with final design, acquisition of right of way, or construction from FHWA once the CE has been approved by the NCDOT or FHWA, as specified above.
      (d) A public involvement process is applicable for CEs. The NCDOT will determine the level of public involvement necessary on a project-by-project basis. Public meetings and/or contact with local civic groups and citizens may be appropriate for a project classified as a CE.
   2. Providing a list of approved and/or certified actions, pursuant to this Agreement to the FHWA Division office annually and by no later than February 1. The list of actions approved and/or certified will contain the following information:
      (a) The NCDOT project number and a project name: the federal aid number (if applicable); and the route number and/or facility name where the project will occur.
      (b) Identify the CE action listed in the regulation, or if the action is not listed in 23 CFR 771.117, identify the project as "CE not categorized."
      (c) Consultations or technical analyses that are pending (if applicable); and
      (d) Whether the project included a 4(f) *de minimis,* programmatic, or individual evaluation.

3. Consulting with FHWA for actions that involve unusual circumstances (23 CFR § 771.117(b)), to determine the appropriate NEPA Class of Action for environmental analysis and documentation. The NCDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
4. Meeting applicable documentation requirements in Section VI and applicable approval and reevaluation requirements in Section VII for both CE approvals made by NCDOT on FHWA's behalf and NCDOT CE certifications to FHWA as well as applicable quality assurance/quality control, monitoring, and performance requirements in Section VIII.
5. Relying only upon qualified NCDOT staff to make CE approvals or certifications submitted to FHWA under this agreement. The NCDOT 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 NCDOT, as requested.
2. Providing timely input and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by NCDOT under this Agreement.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VIII, including applicable monitoring and performance provisions.

VI. Documentation of NCDOT CE Approvals and Certifications

A. For State CE approvals and State CE certifications to FHWA for approval, the NCDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:

For actions listed in Appendices A and B, the NCDOT shall: identify the applicable action; ensure any conditions specified in FHWA regulations are met; verify that unusual circumstances do not apply; address all other environmental requirements; and complete the review of documentation (Categorical Exclusion Action Classification Form, included in Appendix E) with a signature by a qualified NCDOT employee evidencing approval.

B. The NCDOT should maintain a project file 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 documentation and exhibits that summarize the consideration of project effects and unusual circumstances;
2. A summary of public involvement complying with the requirements of NCDOT's current process;
3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
4. The name and title of the CE approver and the date of NCDOT's approval or FHWA's final approval;
5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).

C. Any electronic or paper project records maintained by the NCDOT should be provided to FHWA at their request. The NCDOT should retain those records, including all letters

and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve NCDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VII. NEPA Approvals and Consultations

A. NCDOT's approval of CEs listed in Appendix A and B and certification of CEs submitted to the FHWA Division Office for individual approval has only been delegated to and may only be made by qualified NCDOT staff.

A consultation is a brief review that the Categorical Exclusion is valid or that additional analysis is required. In accordance with 23 CFR 771.129, consultations are required if more than one year has elapsed between approval of the CE and right of way authorization and/or construction authorization. NCDOT shall reevaluate its determinations and certifications for any of the following three scenarios:

1. For ground-disturbing Type I and Type II CEs where no FHWA approval was previously required, NCDOT will determine if any of the seven threshold criteria identified in Appendix C that were previously not met or exceeded are now met or exceeded. If there is no change, NCDOT will document as a memo to the project file. If thresholds have been met or exceeded, NCDOT will prepare and certify the consultation form for FHWA approval.
2. For Type I and Type II CEs where FHWA approval was previously required, NCDOT will certify the determination that a CE is still appropriate to the project file. However, if an individual 4(f) is required, or an additional threshold(s) has been met or exceeded, NCDOT will prepare and certify the consultation form for FHWA approval.
3. For Type III CEs, NCDOT shall prepare and certify a consultation form for FHWA approval.

B. Regardless of the need to prepare a written consultation for projects processed as CEs, the qualified NCDOT representative(s) is responsible for performing two tasks:
   1. Updating the project's involvement with Threatened and Endangered species, as per the current U. S. Fish and Wildlife Service list for North Carolina (as Section 7 requirements must be fulfilled, per the current species list, prior to right of way or construction authorization by FHWA);
   2. Reviewing the list of environmental commitments contained in the Categorical Exclusion Action Classification Form and coordinating with the appropriate design and/or construction individuals to ensure that these environmental commitments have been incorporated into the project.

VIII. Quality Assurance/Quality Control, Monitoring & Performance

A. NCDOT Quality Assurance & Quality Control (QA/QC)
   1. The NCDOT agrees to carry out regular QA/QC activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable laws and this Agreement. It is anticipated that reviews will take place for each highway division and unit that prepare CEs. NCDOT will develop sampling procedures and process improvement criteria. This program will include a sampling of NCDOT Division and other NCDOT units for 10 percent of Type I, 10 percent of Type II, and 10 percent of Type III CEs.
   2. NCDOT QA/QC activities will include an annual review to evaluate CEs signed under this agreement that did not require FHWA signature. NCDOT will record the

number and types of CEs signed. NCDOT will conduct and summarize QA/QC results for each division and unit, as applicable. NCDOT will also document any issues and corrective actions that have taken place as a result of the QA/QC review.

B. NCDOT Performance Monitoring and Reporting
   1. The FHWA and NCDOT should cooperate in monitoring performance under this Agreement and work to assure quality performance.
   2. The NCDOT shall submit annually, by February 1st, to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement. The NCDOT shall report on the number of Type I (A and B), Type II (A and B), and Type III CEs in addition to documenting the start (PE funding authorized) and completion dates (CE signature date).
   3. The Annual report will also identify reviews conducted, areas where improvements are identified, and what measures NCDOT is taking to implement those improvements. The report will include a description of actions taken by NCDOT as part of its quality control efforts under Section VIII.

C. FHWA Oversight and Monitoring
   1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of NCDOT, as well as NCDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of NCDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of NCDOT staff and consultants, and the effectiveness of NCDOT's administration of its internal CE approvals.
   2. FHWA will conduct one or more program reviews as part of its oversight activities during the term of this Agreement. NCDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. NCDOT should draft the corrective action plan within 60 days of FHWA finalizing its review. The results of that review and corrective actions taken by NCDOT 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 NCDOT's performance under this Agreement. The FHWA may require NCDOT to perform other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
   4. The NCDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

IX. Amendments

If the parties agree to amend this Agreement, then FHWA and NCDOT 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.

X. Term, Renewal, and Termination

A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. The NCDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.

B. This Agreement is renewable for additional five (5) year terms if NCDOT requests renewal and FHWA determines that NCDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate

the effectiveness of the Agreement and its overall impact on the environmental review process.

C. The effective date of this Agreement is the date of its signature with any CE approvals finalized three(3) months after that time being subject to the terms of this agreement.

D. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.

E. Expiration or termination of this Agreement shall mean that the NCDOT is not able to make CE approvals on FHWA's behalf.

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

Appendix A: Type I(A) Actions classified as Categorical Exclusions in 23 CFR 771.117(c)

Actions determined by CEQ & FHWA to be classified as Categorical Exclusions:
Type I Actions
These actions (23 CFR 771.117(c) and other similar actions) were pre-approved by the FHWA because they are minor and, based on past experience with similar actions, do not involve significant impacts. They normally do not require any further NEPA approval by the FHWA. No further NEPA documentation is required except for completion of the Categorical Exclusion Action Classification included in Appendix E.

1. Activities which do not involve or lead directly to construction (program activities), such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
2. Approval of utility installations along or across a transportation facility.
3. Construction of bicycle and pedestrian lanes, paths, and facilities.
4. Activities included in the State's "highway safety plan" under 23 USC 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):
   a) Emergency repairs under 23 U.S.C. 125; and
   b) 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:
      i) 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
      ii) 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 CFR Part 480 for property previously acquired with Federal-aid participation.
12. Improvements to existing rest areas and truck weigh stations.
13. Ridesharing activities.
14. Bus and rail car rehabilitation.
15. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
16. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

17. The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
18. Track and 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. Promulgation of rules, regulations, and directives (Not applicable to NCDOT).
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, which would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.
23. Federally-funded projects:
    a) 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) of Federal funds; or
    b) 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) and Federal funds comprising less than 15 percent of the total estimated project cost.
    https://www.environment.fhwa.dot.gov/projdev/FAST_ACT_Section1314_Final_Memo.asp
    https://www.environment.fhwa.dot.gov/projdev/FAST_ACT_Section1314_Implementation_Guide.asp
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 listed in 23 CFR 771.117(e)(1-6).
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 23 CFR 771.117(e)(1-6).

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 23 CFR 771.117(e)(1-6).
29. Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.
30. Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

Appendix B: Type II(A) Actions classified as Categorical Exclusions in 23 CFR 771.117(d)

Actions determined by CEQ & FHWA to be classified as Categorical Exclusions: Type II Actions

Type II actions (23 CFR 771.117(d) and other similar actions) may be designated as CEs and are approved by NCDOT. Documentation, which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result, is required (23 CFR 771.117 (a) and (b)). Type II actions include:

1-3. [Reserved]
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.
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.
    a) 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.
    b) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
13. Actions described in paragraphs 26, 27, and 28 of Appendix A that do not meet the constraints in 23 CFR 771.117(e)(1-6).

Appendix C: Type I(B) and Type II(B) Categorical Exclusion Actions Requiring FHWA Approval

Actions determined by CEQ & FHWA to be classified as Categorical Exclusions: Type IB and IIB Actions

Type I(B): Similar to **Type I(A)** projects, these actions primarily involve activities listed under 23 CFR 771.117(c). However, at least one of the threshold criteria listed below are met or exceeded. FHWA approval is required for Type I(B) projects.

Type II(B): Similar to **Type II(A)** projects, these actions primarily involve activities listed under 23 CFR 771.117(d). However, at least one of the threshold criteria listed below are met or exceeded. FHWA approval is required for Type II(B) projects.

Type I(B) and IIB Actions Project Impacts Thresholds

If any of these threshold criteria are met or exceeded, FHWA review and approval is required. A threshold is met or exceeded when questions 1-7 are marked "yes".

1. Does the project require formal consultation with USFWS or NMFS;
2. Does the project result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act;
3. Does the project generate substantial controversy or public opposition, for any reason, following appropriate public involvement;
4. Does the project cause disproportionately high and adverse impacts relative to low-income and/or minority populations;
5. Does the project involve a residential or commercial displacement, or a substantial amount of right of way acquisition;
6. Does the project require an Individual Section 4(f) approval;
7. Does the project include adverse effects that cannot be resolved with a Memorandum of Agreement under Section 106 of the National Historic Preservation Act or have an adverse effect on a National Historic Landmark?

Appendix D: Type III Categorical Exclusion Actions

Type III Actions

For those projects which are not listed as Type I and Type II Actions (Appendix A and B) and meet the conditions and criteria established in 23 CFR 771.117 for CEs, the Categorical Exclusion Action Classification Form (Appendix E) will be utilized to document the results. If additional information on Need and Purpose, Alternatives Selection process, Independent Utility, or Logical Termini is required, this information will be included in Appendix F. If the evaluation concludes that the project will not have significant environmental impacts, the NCDOT will certify and FHWA will approve the project as a CE.

Type III Actions Project Impacts with Unusual Circumstances
These actions are not listed under Type I and Type II and require FHWA signature approval. NCDOT and FHWA will coordinate to determine whether a CE is appropriate.

23 CFR 771.117(b) states:
"Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:
(1) Significant environmental impacts;
(2) Substantial controversy on environmental grounds;
(3) Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action."

Examples of this may include, but are not limited to, highway widening projects that add an additional through lane (automobile capacity increases) or modifications to an interchange access point.

Appendix E: Categorical Exclusion Action Classification Form

STIP Project No. _____

WBS Element _____

Federal Project No. _____

A. Project Description: (Include project scope and location, including Municipality and County. Refer to the attached project location map and photos.)

B. Description of Need and Purpose:

C. Categorical Exclusion Action Classification: (Check one)

_____ TYPE I

_____ TYPE II

_____ TYPE III

D. Proposed Improvements – Include ALL Type I and Type II Action Classifications. For Type III CEs, leave blank.

E. Special Project Information: (Provide a description of relevant project information, which may include: vicinity map, costs, alternative analysis (if any), traffic control and staging, and resource agency/public involvement).

F. Project Impact Criteria Checklists:

Type I - Non-Ground Disturbing Action		Yes	No
If the proposed improvement (described above in Sections C & D) is a Non-Ground Disturbing Type I Action for 1, 4, 5, 10, 11, 13, 14, 15, 16, 17, 19, 20, &/or 29 then answer questions 1, 2, & 3. If question 3 is marked "yes," FHWA approval is required.			
1	Is the project not consistent with the State Transportation Improvement Program?	☐	☐
2	Is the project located within a Historic District? If yes, FHWA coordination is required to determine the effects of the project on the district. FHWA signature (Section I of this Form) on the CE may not be required (see Question 3).	☐	☐
3	Does the project include adverse effects that cannot be resolved with a Memorandum of Agreement under Section 106 of the National Historic Preservation Act or have an adverse effect on a National Historic Landmark?	☐	☐

Type I & II - Ground Disturbing Actions		Yes	No
FHWA APPROVAL ACTIVITIES THRESHOLD CRITERIA (FHWA Signature Required If "Yes" Selected)			
If the proposed improvement (identified above in Sections C & D) is a: • Type I Action for #s 2, 3, 6, 7, 8, 9, 12, 18, 21, 22, 23, 24, 25, 26, 27, 28, &/or 30; &/or • Type II Action then answer the threshold criteria questions (below) and questions 8 - 31 for ground disturbing actions. In addition, if any of questions 1-7 are marked "yes" then the CE will require FHWA approval.			
1	Does the project require formal consultation with U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS)?	☐	☐
2	Does the project result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act (BGPA)?	☐	☐
3	Does the project generate substantial controversy or public opposition, for any reason, following appropriate public involvement?	☐	☐
4	Does the project cause disproportionately high and adverse impacts relative to low-income and/or minority populations?	☐	☐
5	Does the project involve a residential or commercial displacement, or a substantial amount of right of way acquisition?	☐	☐
6	Does the project require an Individual Section 4(f) approval?	☐	☐
7	Does the project include adverse effects that cannot be resolved with a Memorandum of Agreement (MOA) under Section 106 of the National Historic Preservation Act (NHPA) or have an adverse effect on a National Historic Landmark (NHL)?	☐	☐
If any of questions 8 through 31 are marked "yes" then additional information will be required for those questions in Section G.			
Other Considerations		Yes	No
8	Does the project result in a finding of "may affect not likely to adversely affect" or less for listed species, or designated critical habitat under Section 7 of the Endangered Species Act (ESA)?	☐	☐
9	Does the project impact anadromous fish?	☐	☐
10	Does the project impact waters classified as Outstanding Resource Water (ORW), High Quality Water (HQW), Water Supply Watershed Critical Areas, 303(d) listed impaired water bodies, buffer rules, or Submerged Aquatic Vegetation (SAV)?	☐	☐
11	Does the project impact waters of the United States in any of the designated mountain trout streams?	☐	☐
12	Does the project require a U.S. Army Corps of Engineers (USACE) Individual Section 404 Permit?	☐	☐
13	Will the project require an easement from a Federal Energy Regulatory Commission (FERC) licensed facility?	☐	☐
14	Does the project include a Section 106 of the NHPA effects determination other than a no effect, including archaeological remains?	☐	☐

Other Considerations (continued)		Yes	No
15	Does the project involve hazardous materials and landfills?	☐	☐
16	Does the project require work encroaching and adversely affecting 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?	☐	☐
17	Is the project in a Coastal Area Management Act (CAMA) county and substantially affects the coastal zone and/or any Area of Environmental Concern (AEC)?	☐	☐
18	Does the project require a U.S. Coast Guard (USCG) permit?	☐	☐
19	Does the project involve construction activities in, across, or adjacent to a designated Wild and Scenic River present within the project area?	☐	☐
20	Does the project involve Coastal Barrier Resources Act (CBRA) resources?	☐	☐
21	Does the project impact federal lands (e.g. U.S. Forest Service (USFS), USFWS, etc.) or Tribal Lands?	☐	☐
22	Does the project involve any changes in access control?	☐	☐
23	Does the project have a permanent adverse effect on local traffic patterns or community cohesiveness?	☐	☐
24	Will maintenance of traffic cause substantial disruption?	☐	☐
25	Is the project inconsistent with the STIP or the Metropolitan Planning Organization's (MPO's) Transportation Improvement Program (TIP) (where applicable)?	☐	☐
26	Does the project require the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, Tennessee Valley Authority (TVA), 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?	☐	☐
27	Does the project involve Federal Emergency Management Agency (FEMA) buyout properties under the Hazard Mitigation Grant Program (HMGP)?	☐	☐
28	Does the project include a *de minimis* or programmatic Section 4(f)?	☐	☐
29	Is the project considered a Type I under the NCDOT's Noise Policy?	☐	☐
30	Is there prime or important farmland soil impacted by this project as defined by the Farmland Protection Policy Act (FPPA)?	☐	☐
31	Are there other issues that arose during the project development process that affected the project decision?	☐	☐
Type III Actions		Yes	No
If the proposed improvement is identified as a Type III Class of Action, answer all questions. • The Categorical Exclusion will require FHWA approval. • If any questions are marked "yes" then additional information will be required for those question in Section G.			
1	Does the project involve potential effects on species listed with the USFWS or NMFS?	☐	☐
2	Does the project result in impacts subject to the conditions of the BGPA?	☐	☐
3	Does the project generate substantial controversy or public opposition, for any reason, following appropriate public involvement?	☐	☐

Type III Actions (continued)		Yes	No
4	Does the project cause disproportionately high and adverse impacts relative to low-income and/or minority populations?	☐	☐
5	Does the project involve substantial residential or commercial displacements or right of way acquisition?	☐	☐
6	Does the project include a determination under Section 4(f)?	☐	☐
7	Is a project-level analysis for direct, indirect, or cumulative effects required based on the NCDOT community studies screening tool?	☐	☐
8	Is a project level air quality Mobile Source Air Toxics (MSAT) analysis required?	☐	☐
9	Does the project impact anadromous fish?	☐	☐
10	Does the project impact waters classified as ORW, HQW, Water Supply Watershed Critical Areas, 303(d)-listed impaired water bodies, buffer rules, or SAV?	☐	☐
11	Does the project impact waters of the United States in any of the designated mountain trout streams?	☐	☐
12	Does the project require a USACE Individual Section 404 Permit?	☐	☐
13	Will the project require an easement from a FERC licensed facility?	☐	☐
14	Does the project include Section 106 of the NHPA effects determination other than a no effect, including archaeological remains?	☐	☐
15	Does the project involve hazardous materials and landfills?	☐	☐
16	Does the project require work encroaching and adversely effecting 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?	☐	☐
17	Is the project in a CAMA county and substantially affects the coastal zone and/or any AEC?	☐	☐
18	Does the project require a USCG permit?	☐	☐
19	Does the project involve construction activities in, across, or adjacent to a designated Wild and Scenic River present within the project area?	☐	☐
20	Does the project involve CBRA resources?	☐	☐
21	Does the project impact federal lands (e.g. USFS, USFWS, etc.) or Tribal Lands?	☐	☐
22	Does the project involve any changes in access control?	☐	☐
23	Does the project have a permanent adverse effect on local traffic patterns or community cohesiveness?	☐	☐
24	Will maintenance of traffic cause substantial disruption?	☐	☐

Type III Actions (continued)		Yes	No
25	Is the project inconsistent with the STIP or the MPO's TIP (where applicable)?	☐	☐
26	Does the project require the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, TVA, 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?	☐	☐
27	Does the project involve FEMA buyout properties under the HMGP?	☐	☐
28	Is the project considered a Type I under the NCDOT's Noise Policy?	☐	☐
29	Is there prime or important farmland soil impacted by this project as defined by the FPPA?	☐	☐
30	Are there other issues that arose during the project development process that effected the project decision?	☐	☐

G. Additional Documentation as Required from Section F

H. Project Commitments

I. Categorical Exclusion Approval

STIP Project No. _____

WBS Element _____

Federal Project No. _____

Prepared By:

_____ _____
Date <Name, Title>
<Organization>

Prepared For: _____
<Organization>

Reviewed By:

_____ _____
Date <Name, Title>
<Organization>

☐ **Approved**

- If Type I (Non-Ground Disturbing) Categorical Exclusion with an answer of "no" to question 3.
- If Type I or Type II (Ground Disturbing) Categorical Exclusions with an answer of "no" to all of the threshold questions (1 through 7) of Section F.

☐ **Certified**

- If Type I (Non-Ground Disturbing) Categorical Exclusion with an answer of "yes" to question 3.
- If Type I or Type II (Ground Disturbing) Categorical Exclusions with an answer of "yes" to any of the threshold questions (1 through 7) of Section F.
- If classified as Type III Categorical Exclusion.

_____ _____
Date <Name, Title>
North Carolina Department of Transportation

FHWA Approved: For Projects Certified by NCDOT (above), FHWA signature required.

_____ _____
Date John F. Sullivan, III, PE, Division Administrator
Federal Highway Administration