

**PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, DELAWARE DIVISION
AND
THE DELAWARE 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 23 day of October 2018, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of DELAWARE, acting by and through its DEPARTMENT OF TRANSPORTATION (“DelDOT”) hereby provides as follows:

WITNESSETH:

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

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 Delaware Department of Transportation (DelDOT) 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 DelDOT 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 DelDOT 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 DelDOT enter into this Programmatic Agreement ("Agreement") for the processing of categorical exclusions.

I. PARTIES

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

II. PURPOSE

The purpose of this Agreement is to authorize DelDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR 771.117 (listed in Appendix A and B of this Agreement). This Agreement also authorizes DelDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117, but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an EA or an 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) (July 6, 2015)
- C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1403, Sec. 1315 (Dec. 4, 2015)
- D. 40 CFR parts 1500 - 1508
- E. DOT Order 5610.1C
- F. 23 CFR 771.117

IV. RESPONSIBILITIES

- A. The DelDOT 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 in Section IV(A)(1)(b) below, DelDOT may make a CE approval on behalf of FHWA. DelDOT 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 provided here may not be approved by DelDOT. For these projects, DelDOT shall submit documentation to FHWA that demonstrates how/why the action qualifies for a CE. FHWA must review and approve the CE: Thresholds requiring FHWA approval include projects that:
 - i. Involve acquisitions of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as one acre or less per mile of roadway for a reconstruction, resurfacing, or rehabilitation project; or one-half acre or less for any other project.
 - ii. Involve acquisitions that result in any residential or non-residential displacements;
 - iii. Result in capacity expansion of a roadway by addition of through lanes;
 - iv. Involve the construction of temporary access, or the closure of an existing road bridge, or ramp, that would result in major traffic disruptions, or necessitate the need to make other upfront improvements on other facilities.
 - v. Involve the substantive change in access controls along the length of the project.
 - vi. Result in a determination of adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108);
 - vii. Require the use of properties protected by Section 4(f) of the US Department of Transportation Act of 1966 (49 U.S.C. § 303 / 23 U.S.C. § 138) that cannot be documented with an FHWA *de minimis* or temporary use determination;
 - viii. Require 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. Require a U.S. Army Corps of Engineers Section 404 Individual permit other than a Nationwide Permit (33 U.S.C. § 1344);
 - x. Require a U.S. Coast Guard bridge permit (33 U.S.C § 401);

- xi. Require construction in, across (with the exception of bridge deck rehabilitation and stabilization confined strictly to road surface work on the structure), 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;
 - xii. Are defined as a “Type I project” per 23 CFR 772.5 and any DelDOT noise manual for purposes of a noise analysis;
 - xiii. Lead to a finding of “may affect, and is likely to adversely 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 (16 U.S.C. § 668) and the Endangered Species Act (16 U.S.C. § 1531);
 - xiv. Include any Federally-funded acquisition of land for hardship or protective purposes (23 CFR 710.503); or Federally funded early acquisitions of real property interests (23 U.S.C. § 108(d));
 - xv. Do 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;
 - xvi. Are not included in or are inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program; or
 - xvii. Are not consistent with the State’s Coastal Zone Management Plan.
- c. For actions that meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a), but are not specifically listed in 23 CFR 771.117, DelDOT shall submit documentation to FHWA that demonstrates how/why the action qualifies for a CE. FHWA must review and approve the CE. These projects will identify the CE as “CE not categorized.”
2. Providing proper documentation throughout the Project Development Process as follows:
- a. If requested by the Division Office, DelDOT shall provide a copy of the CE documentation prepared for any actions in accordance with Section V of this Agreement.
 - b. If any project requires a Section 4(f) document (including de minimis determination, net benefit determination, programmatic agreement, or Individual 4(f) Evaluation), DelDOT shall submit the 4(f) documentation for FHWA determination and approval prior to approval of the CE by either DelDOT or FHWA as per Section IV.A.1.

- c. DeIDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from FHWA once CE approval is provided by DeIDOT or FHWA as per Section IV.A.1.
 - d. DeIDOT shall perform consultations or technical analyses and provide that documentation to FHWA as requested.
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. DeIDOT may conduct or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
 4. Meeting applicable documentation requirements in Section V for State CE approvals on FHWA's behalf and State CE submittals to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable monitoring and performance requirements in Section VII.
 5. Relying only upon DeIDOT employees to make CE approvals or submittals to FHWA under this agreement. DeIDOT may not delegate its responsibility for CE approvals or submittals 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 DeIDOT, as requested.
2. Providing timely input and review of submittals. FHWA will base its approval of CE actions on the project documentation and submittals prepared by DeIDOT 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 DELDOT CE APPROVALS AND CERTIFICATIONS

- A. For State CE approvals and State CE submittals to FHWA for approval, DeIDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:
1. For actions listed in Appendices A and B and those listed as "CE not categorized", DeIDOT will 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 with a DeIDOT signature or email evidencing approval.
 2. In addition, for actions listed in 23 CFR 711.117(d) and those listed as "CE not categorized", DeIDOT shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.

- B. DelDOT will 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, other documents, and/or 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 DelDOT's approval or FHWA's final approval; and
 5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).
- C. Any electronic or paper project records maintained by DelDOT will be provided to FHWA upon request. DelDOT will 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 DelDOT 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. DelDOT's CE approvals and CEs submitted to FHWA for approval may only be made by officers or offices specifically identified below:
1. Approval of Appendix A CEs is delegated to the DelDOT Environmental Studies Manager and/or Group Engineer for Environmental Stewardship.
 2. Approval of Appendix B CEs delegated for DelDOT approval per Section IV.A.1 is delegated to DelDOT's Assistant Director for Engineering Support.
 3. Approval for submittals of CEs to FHWA for approval per Section IV.A.1 is delegated to the DelDOT Environmental Studies Manager and/or Group Engineer for Environmental Stewardship.
- B. In accordance with 23 CFR 771.129, DelDOT shall re-evaluate its determinations and CE submittals for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE,AND PERFORMANCE MONITORING

A. DelDOT Quality Control and Quality Assurance

DelDOT shall carry out regular quality control and quality assurance activities to ensure that its CE approval and CE submissions to FHWA for approval are made in accordance with applicable laws and this Agreement.

B. DelDOT Performance Monitoring and Reporting.

1. The FHWA and DelDOT shall cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. DelDOT shall submit a report (electronically or hard copy) to FHWA summarizing its performance under this Agreement by October 31st of each calendar year. The report will identify any areas where improvement is needed and what measures DelDOT is taking to implement those improvements. The report will include a description of actions taken by DelDOT 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 DelDOT, as well as DelDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of DelDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of DelDOT staff and consultants, and the effectiveness of DelDOT's administration of its internal CE approvals.
2. FHWA will conduct one or more program reviews as part of its oversight activities per year. Upon receiving DelDOT's Annual Report, a program review will be conducted within 45 days. DelDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. DelDOT should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by DelDOT 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 DelDOT's performance under this Agreement. The FHWA may require DelDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
4. DelDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

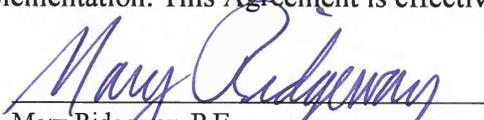
VIII. AMENDMENTS

- A. If the parties agree to amend this Agreement, then FHWA and DeIDOT 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.
- B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decided otherwise.

IX. TERM, RENEWAL, AND TERMINATION

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

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



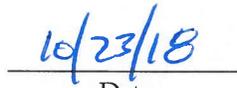
Mary Ridgeway, P.E.
Division Administrator, Delaware Division
Federal Highway Administration



Date



Robert B. McCleary, P.E.
Chief Engineer, Delaware Department of Transportation



Date

Appendix A: CEs listed in 23 CFR 771.117(c)

The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and §771.117(a) of this regulation and normally do not require any further NEPA approvals by the FHWA.

Those actions highlighted with an asterisks shall be processed via e-mail, including information from the Project Initiation Form, the CE Checklist Form and confirmation that no unusual circumstances (23 CFR 771.117(b)) exist that would make the CE approval inappropriate. All other actions will be documented with the appropriate CE Checklist Form.

- (1)* Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
- (2) Approval of utility installations along or across a transportation facility.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- (7) Landscaping.
- (8)* Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- (9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - (i) Emergency repairs under 23 U.S.C. 125; and
 - (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station/bus stop), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration

- (10) Acquisition of scenic easements.
- (11)* Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.
- (12) Improvements to existing rest areas and truck weigh stations.
- (13)* Ridesharing activities.
- (14)* Bus and rail car rehabilitation.
- (15)* Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (16)* Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- (17)* The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- (18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.
- (19)* Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
- (20)* Promulgation of rules, regulations, and directives.
- (21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

- (22) Projects, as defined in 23 U.S.C. 101 that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.
- (23) Federally-funded projects:
- (i) That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.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) 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 listed in **Section IV.A.1.b** of this Agreement.
- (27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints listed in **Section IV.A.1.b** of this Agreement.

- (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 listed in **Section IV.A.1.b** of this Agreement.
- (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: CEs listed in 23 CFR 771.117(d)

Additional actions or projects which meet the criteria for a CE in the CEQ regulations (40 C.F.R. 1508.4) and paragraph (a) of this section may be designated as CEs only after FHWA approval. DelDOT shall submit adequate documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

- (1) Reserved for the Future
- (2) Reserved for the Future
- (3) Reserved for the Future
- (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.

- (i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
 - (ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
- (13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of 23 CFR 771.117 that do not meet the constraints in Section IV.A.1.b of this Agreement.

Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 70 FR 24469, May 9, 2005; 74 FR 12529, Mar. 24, 2009 as amended at 78 FR 8982, Feb. 7, 2013 78 FR 8983, Feb. 7, 2013, as amended at 78 FR 11602, Feb. 19, 2013; 79 FR 2118, Jan. 13, 2014; 79 FR 60116, Oct. 6, 2014, 81 FR 34274, May 31, 2016]

Appendix C: Example Programmatic CE Project Initiation Form

**PROGRAMMATIC CATEGORICAL EXCLUSION
PROJECT INITIATION FORM**

<i>STATE</i>	<i>FEDERAL</i>
PROJECT NO: _____	PROJECT NO: _____
YEAR: _____	FUNDING: _____
COUNTY: _____	PERCENT: <u>80/20</u>
DISTRICT: _____	

PROJECT TITLE: _____

DETAILED LOCATION: _____

DETAILED WORK DESCRIPTION & TYPICAL SECTION: _____

PROJECT JUSTIFICATION: _____

Project Assigned to: _____ Available for: _____ Phase _____

Environmental:

Class I (EIS)
 Class II (CAT. EX)
 (c) (d)
 Class III (EA)
 4(f) de minimis
 4(f) Evaluation Required

Public Involvement:

Level A: <input type="checkbox"/> Public Hearing <input type="checkbox"/> "If" Notice	Level B: <input type="checkbox"/> Public Hearing <input type="checkbox"/> Public Workshop <input type="checkbox"/> "If" Notice	Level C: <input type="checkbox"/> Public Workshop <input type="checkbox"/> Mtg. With adjacent Property owners <input type="checkbox"/> Public Mtg. by Sponsor <input type="checkbox"/> Virtual Workshop	Level D: <input type="checkbox"/> No Public Involvement <input type="checkbox"/> Mtg. With adjacent Property owners <input type="checkbox"/> Public notification and MOT will follow the DE MUTCD
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PCE Conditions:

The project has no substantial public or agency controversy on environmental grounds.

If a roadway improvement project (23CFR771.117(d)(1)) must be less than one mile in length; with the exclusion of Pavement and Rehabilitation projects.

Project conforms to current CTP, STIP and TIP.

This project is exempt from the air quality conformity requirements.

If in New Castle County, the project is exempt from the PM 2.5 conformity determination requirements and is consistent with the projects listed in 40CFR93.126 Table 2.

Chief Engineer/Director Transportation Solutions

Date

Appendix D: Example Programmatic CE Checklist

**PROGRAMMATIC CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Project Title:
State Contract No.:
Federal Aid Project No.:

Right-of-Way (RW) Requirements: (Total RW or PE must be less than one acre, with no use of land from a Section 4(f) property):

- A. Private
- B. Public
- C. 4(f)
- D. 6(f)

None
None
None
None

COMMENTS
Area for comments.

Relocations: (Must have no relocations)

- A. Homes
- B. Businesses
- C. Non-Profit

None
None
None

COMMENTS

Social Impacts:

- A. Local
- B. Regional

None
None

COMMENTS

Environmental Justice (EJ):

- A. Minority
- B. Low-Income

None
None

COMMENTS

**PROGRAMMATIC CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Economic Impacts:

A. Local	<input type="text" value="None"/>	<p align="center">COMMENTS</p>
B. Regional	<input type="text" value="None"/>	
C. Statewide	<input type="text" value="None"/>	

Cultural Resources: (Must have a finding of no historic properties, no adverse effect, or PA)

A. National Register	<input type="text" value="None"/>	<p align="center">COMMENTS</p>
B. State Listing	<input type="text" value="None"/>	
C. Other	<input type="text" value="None"/>	

Air Quality (AQ):

A. Local	<input type="text" value="None"/>	<p align="center">COMMENTS</p>
B. Statewide	<input type="text" value="None"/>	

Noise:

A. Residential	<input type="text" value="None"/>	<p align="center">COMMENTS</p>
B. Commercial	<input type="text" value="None"/>	
C. Sensitive Receptors	<input type="text" value="None"/>	
D. Other	<input type="text" value="None"/>	

Hazardous Material:

A. Hazardous Material	<input type="text" value="None"/>	<p align="center">COMMENTS</p>
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**PROGRAMMATIC CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Water Quality:

A. Surface Water	None	COMMENTS
B. Ground Water	None	

Hydrological Impacts:

A. Stream Relocation	None	COMMENTS
B. Stream Channelization	None	
C. Stream Stabilization	None	
D. Flood Plain	None	

Fish & Wildlife (Must have no adverse effect onto RTE's or critical habitat):

A. Endangered Species	None	COMMENTS
B. Habitat	None	

Wetlands (Total wetland impacts must be less than one acre):

A. Project Area	None	COMMENTS
B. Up and Down Stream	None	

Land Use:

A. Direct	None	COMMENTS
B. Secondary	None	

**PROGRAMMATIC CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Natural Resources:

A. Farm Lands	None	COMMENTS
B. Woodlands	None	
C. Conservation Areas	Probable	
D. Coastal Zone	Probable	

Modal Choice:

A. Maintenance of Traffic	None	COMMENTS
B. Pedestrian	None	
C. Bicycle	None	
D. Mass Transit	None	
E. Public Transit	None	
F. Handicapped	None	

Permits:

A. ACOE	None	COMMENTS
B. Coast Guard	None	
C. DNREC	None	
D. County	None	
E. City or Municipality	None	
F. Other	None	

Certification:

The State had 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 Environmental Assessment or Environmental Impact Study.

Categorical Exclusion Recommendation

per 23CFR771

Concurrence on behalf of the Federal Highway Administration:

DelDOT Environmental Studies Manager

Date

Comments:

Appendix E: Example CE Checklist

**CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Project Title:
State Contract No.:
Federal Aid Project No.:

Right-of-Way (RW) Requirements:

A. Private

None

B. Public

None

C. 4(f)

None

D. 6(f)

None

COMMENTS

Relocations:

A. Homes

None

B. Businesses

None

C. Non-Profit

None

COMMENTS

Social Impacts:

A. Local

None

B. Regional

None

COMMENTS

Environmental Justice (EJ):

A. Minority

None

B. Low-Income

None

COMMENTS

**CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Economic Impacts:

A. Local	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; text-align: center;">COMMENTS</div>
B. Regional	<input style="width: 90%;" type="text" value="None"/>	
C. Statewide	<input style="width: 90%;" type="text" value="None"/>	

Cultural Resources:

A. National Register	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; text-align: center;">COMMENTS</div>
B. State Listing	<input style="width: 90%;" type="text" value="None"/>	
C. Other	<input style="width: 90%;" type="text" value="None"/>	

Air Quality (AQ):

A. Local	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; text-align: center;">COMMENTS</div>
B. Statewide	<input style="width: 90%;" type="text" value="None"/>	

Noise:

A. Residential	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; text-align: center;">COMMENTS</div>
B. Commercial	<input style="width: 90%;" type="text" value="None"/>	
C. Sensitive Receptors	<input style="width: 90%;" type="text" value="None"/>	
D. Other	<input style="width: 90%;" type="text" value="None"/>	

Hazardous Material:

A. Hazardous Material	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; text-align: center;">COMMENTS</div>
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**CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Water Quality:		
A. Surface Water	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; height: 100px;"> <p align="center">COMMENTS</p> </div>
B. Ground Water	<input style="width: 90%;" type="text" value="None"/>	

Hydrological Impacts:		
A. Stream Relocation	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; height: 100px;"> <p align="center">COMMENTS</p> </div>
B. Stream Channelization	<input style="width: 90%;" type="text" value="None"/>	
C. Stream Stabilization	<input style="width: 90%;" type="text" value="None"/>	
D. Flood Plain	<input style="width: 90%;" type="text" value="None"/>	

Fish & Wildlife (Must have no adverse effect onto RTE's or critical habitat):		
A. Endangered Species	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; height: 100px;"> <p align="center">COMMENTS</p> </div>
B. Habitat	<input style="width: 90%;" type="text" value="None"/>	

Wetlands (Total wetland impacts must be less than one acre):		
A. Project Area	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; height: 100px;"> <p align="center">COMMENTS</p> </div>
B. Up and Down Stream	<input style="width: 90%;" type="text" value="None"/>	

Land Use:		
A. Direct	<input style="width: 90%;" type="text" value="None"/>	<div style="border: 1px solid black; padding: 5px; height: 100px;"> <p align="center">COMMENTS</p> </div>
B. Secondary	<input style="width: 90%;" type="text" value="None"/>	

**CATEGORICAL EXCLUSION EVALUATION
PROJECT CHECKLIST AND PROJECT LEVEL DETERMINATION FORM**

Natural Resources:

A. Farm Lands	None	COMMENTS
B. Woodlands	None	
C. Conservation Areas	None	
D. Coastal Zone	None	

Modal Choice:

A. Maintenance of Traffic	None	COMMENTS
B. Pedestrian	None	
C. Bicycle	None	
D. Mass Transit	None	
E. Public Transit	None	
F. Handicapped	None	

Permits:

A. ACOE	None	COMMENTS
B. Coast Guard	None	
C. DNREC	None	
D. County	None	
E. City or Municipality	None	
F. Other	None	

Categorical Exclusion Recommendation

per 23CFR771

Manager, DelDOT Environmental Studies

Date

Concurrence: Federal Highway Administration

Division Administrator

Date