

**DETAILED INSTRUCTIONS**  
**FOR PROGRAMMATIC**  
**CATEGORICAL EXCLUSION**  
**DETERMINATIONS**

The *Categorical Exclusion Determination Checklist* should be completed for each assigned action that meets the “basic” criteria for possible processing as a programmatic categorical exclusion (i.e., the proposed action corresponds to one of the actions listed in the *Programmatic Agreement for Categorical Exclusion Approvals*).

**Description of Project**

Identify and describe the proposed action, including its location, termini and design aspects. This is important, to document the scope of the action at the time the programmatic categorical exclusion determination is made. If available, attach the *Engineering Report* to the checklist.

**Programmatic CE Criteria**

Gather supporting documentation, as appropriate, to address the questions enumerated in the checklist. Respond to each question by checking **YES**  or **NO** . Although a single **YES**  response will disqualify the action for processing as a programmatic CE, complete the responses for all questions. This will provide a full record for future reference, in case the project scope is subsequently revised or the environmental parameters change.

Documentation (letters, memos, forms, etc.), as appropriate, should be attached to the checklist.

**Air Quality** - Actions must meet a two-part test with respect to potential air quality impacts. With regard to conformity, the action must be exempt from the requirement that a conformity determination be made. An action is exempt if it is a type of project listed in Table 2 in the final Transportation Conformity rules (40 CFR 93.126), or if it is in an attainment area but is not considered a “Regionally Significant Project” as defined in the final Transportation Conformity rules (40 CFR 93.101) or in those rules adopted by the New Hampshire Department of Environmental Services in accordance with the interagency consultation provisions required by 40 CFR 93.105. Such actions, when completed, are not expected to result in significant air quality impacts or contribute to violations of the National Ambient Air Quality Standards (NAAQS).

Projects similar to the types listed in Table 3 of the final Transportation Conformity rules (40 CFR 93.127) are exempt from regional emissions analysis requirements. However, their local effects with respect to carbon monoxide (CO) must be considered. A 1-hour microscale analysis is typically performed for these projects. The results of the 1-hour analysis will determine if an 8-hour microscale analysis is required. The need for an 8-hour CO analysis disqualifies the action for programmatic CE processing.

*Note:* The Bureau of Environment’s air quality analyst may be consulted to determine the proper response to the air quality questions.

**Cultural Resources** - Section 106 of the National Historic Preservation Act of 1966 and the Advisory Council on Historic Preservation's implementing regulations (36 CFR 800) require Federal agencies to take into account the effects of federal undertakings on properties eligible for or listed in the National Register of Historic Places. In doing so, these agencies, in cooperation with the State Historic Preservation Office, must make a "Determination of Effect" on all actions that use Federal funds or require Federal licenses, permits or approvals. A determination of "No Historic Properties Affected" qualifies the action for programmatic CE approval.

*Note:* The consultant should contact the State Historic Preservation Office within Division of Historical Resources to determine the proper response to the cultural resources question. In addition, the consultant may utilize the Bureau of Environment's monthly cultural resource meetings to for help in assessing impacts to cultural resources.

**Endangered Species** - The consultant will contact the NH Natural Heritage Inventory (NHNHI) and the US Fish & Wildlife Service (F&WS) to determine if species and/or critical habitat of species protected by the federal Endangered Species Act, the state Endangered Species Conservation Act of 1979 and the state Native Plant Protection Act of 1987 are present within the action area. If species/habitat are present, the consultant will follow up with the appropriate agency(ies) to determine the effect of the action. This may involve field investigations by qualified personnel and identification of special precautions, seasonal restrictions on work activities and/or mitigative measures. If it is concluded that the action will not impact these resources, the programmatic CE will apply.

*Note:* The consultant will need to contact the NH Fish & Game Department only if so directed by the Coordinator of the NH Natural Heritage Inventory Program

**Floodways** - The consultant will review the National Flood Insurance Program maps (Flood Insurance Rate Map [FIRM], Flood Boundary & Floodway Map, or Flood Hazard Boundary Map, as available) to determine if an action is located in a regulatory floodway. If so, a hydraulic analysis is necessary to determine if flood levels will rise or fall. The required level of analysis should be determined through consultation with the engineering staff and confirmed by the NH Office of Emergency Management (OEM) and/or the NH Office of State Planning (OSP). If the analysis concludes there will be no rise in the flood elevation greater than one foot over the established Q 100 floodplain elevation, as confirmed by OEM or the Federal Emergency Management Agency, as appropriate, the action does not encroach and qualifies for programmatic CE approval.

**Noise** - Federal regulations (23 CFR 772) and NHDOT policy require the consideration of noise abatement measures where traffic noise impacts have been identified in conjunction with a Type I highway project. A Type I highway project entail construction on a new location or the physical alteration of an existing highway that significantly changes either the horizontal or vertical alignment or increases the number of through-traffic lanes. To qualify for programmatic CE approval, the proposed action must not be a Type I project.

*Note:* The Bureau of Environment's noise analyst may be consulted to determine the proper response to the noise questions.

**Right-of-Way** - To qualify for programmatic CE approval, actions must meet a two-part test with respect to potential right-of-way impacts. First, the action must not require the acquisition of residences or businesses. The acquisition of unoccupied buildings, including garages, barns, storage facilities, vacant domiciles, vacant commercial establishments, etc., will not preclude the use of the programmatic CE, unless such acquisition is deemed to have a substantial

adverse effect on the value of the property or impedes the operation of business enterprises on the property. Second, if the action requires fee simple acquisition or permanent easements that will impair the function of the property, the programmatic CE will not apply. These right-of-way “tests” are independent of any cultural resource, Section 4(f) or Section 6(f) impact determinations required for programmatic CE.

*Note:* As appropriate, an analysis of the effects of property acquisition should be completed and attached to the checklist.

**Section 4(f)** - Section 4(f) of the US Department of Transportation (USDOT) Act of 1966 does not allow “the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that there is no feasible and prudent alternative to the use of land from the property and the action includes all possible planning to minimize harm to the property resulting from such use.” “Use” is defined as a permanent easement, fee acquisition or “constructive use” of a property. “Constructive use” occurs when the proximity impacts of the action on the property, without acquisition of land, are so great that the purposes for which the 4(f) property exists are substantially diminished. Any use of 4(f) property will disqualify the action for programmatic CE processing.

*Note:* The lead USDOT agency, typically FHWA, determines whether 4(f) applies to an action. The Federal, State or local officials having jurisdiction over the 4(f) property make the significance determination.

**Section 6(f)** - The Land and Water Conservation Fund Act of 1965 provides for the preservation and development of quality outdoor recreation resources. Section 6(f) of the Act states, in part, that no property acquired or developed with funding assistance authorized by this Act shall be converted to non-recreational uses without the approval of the Secretary of Interior. If an action requires such conversion, it will not be eligible for programmatic CE approval.

*Note:* New Hampshire administers the state’s 6(f) lands through the NH Department of Resources and Economic Development (DRED), Division of Parks and Recreation. The State Liaison Officer at DRED should be consulted to determine if actions involve 6(f) lands and whether or not the proposed use of such lands constitutes a conversion.

**Water Quality** - Actions have the potential to impact water quality of both surface and ground waters. Impacts can be temporary (construction phase) and/or longer-term, and they can vary in magnitude. Typically, temporary impacts associated with small projects of short duration can be minimized by the effective use of proper erosion and sedimentation controls and storm-water management measures. These impacts should not result in substantial impairment of water quality. Such actions will normally qualify for programmatic CE approval. However, if the receiving waters are sensitive resources (e.g. Class A waters, as designated by the NH Department of Environmental Services [DES], public water supplies, etc.), the potential for temporary and/or long-term impacts is greater and the programmatic CE will not apply. Similarly, larger projects that affect sensitive resources or have the potential for sustained or cumulative impacts resulting from protracted construction operations or long-term, high-volume runoff will not be eligible for programmatic CE approval.

*Note:* Consult with DES, as necessary, to determine if sensitive water resources are present and to determine the magnitude of potential impacts.

**Wetlands** - Impacts to wetlands (i.e. dredge, fill, drain, etc.) require a permit from the NH Department of Environmental Services, Wetlands Bureau (NHWB), and/or the US Army Corps

of Engineers (ACOE), in accordance with RSA 482-A and/or Section 404 of the Clean Water Act, respectively. To qualify for programmatic CE approval, the action must not require an Individual permit from the ACOE. If the action meets the criteria for the ACOE's State Program General Permit (SPGP), or is not in the ACOE's jurisdiction, it may qualify for programmatic CE approval

*Note:* The consultant will contact the Department of Environmental Services' Wetlands Bureau to determine the potential for impacts to the jurisdictional areas. The consultant may also utilize the Bureau of Environment's monthly natural resource agencies meetings to determine permit threshold and mitigation requirements.

**Other** - There may be other issues of concern that disqualify actions from programmatic CE approval. Such issues may include: substantial public opposition or controversy, excessive hazardous or contaminated materials involvement, impacts to Wild & Scenic Rivers or NH Designated Rivers, incompatibility with scenic roads, inconsistency with the Coastal Zone Management Program, unacceptable impacts to resources under the protection of the Lakes Management Program and/or Comprehensive Shoreland Protection Act, etc. The consultant should determine if these or other issues exist and whether or not the programmatic CE is applicable. Supporting documentation should be attached to the checklist, as appropriate.

*Note:* Consult with appropriate agencies, as necessary, to identify other issues and the magnitude of concern. The consultant may also utilize the Bureau of Environment's monthly natural resource agencies meetings to address pertinent issues.

### **Classification Determination**

Upon completion of the interdisciplinary review process, the consultant indicates on the checklist a recommendation of whether or not the action qualifies for a programmatic CE, by marking the appropriate checkbox and signing the checklist. The checklist should then be forwarded to the appropriate project manager at the NHDOT for review. If, after review, it is determined the project does not qualify as a Programmatic CE, the consultant will be notified and the project will then need to be addressed as an individual CE or other appropriate level of environmental documentation. If it is agreed the project qualifies as a Programmatic CE, the consultant will be notified of concurrence and the documentation will be recorded and placed in the classification file.

### **Environmental Commitments**

Environmental commitments for actions processed as Programmatic CEs will be recorded on the checklist, for future reference.

### **Classification Follow-Up**

If the project requires a Public Hearing, any decisions made as a result of the hearing should be reviewed to determine if the project will change in such a way as to disqualify it from Programmatic Categorical Exclusion classification. Post-hearing reviews are documented on page 3 of the checklist.

Likewise, changes made during Final Design may also disqualify a project from Programmatic CE classification. Under such conditions, the next appropriate level of environmental documentation must be completed.