

# Kentucky Transportation Cabinet

Department of Highways

Division of Environmental Analysis



## **CATEGORICAL EXCLUSION Guidance Manual**

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# I. Introduction

This guidance manual, and procedures recommended herein, have been developed to help ensure compliance with, and thorough documentation of, the processing requirements stipulated in the **2018 Categorical Exclusion Programmatic Agreement** between the Federal Highway Administration, Kentucky Division (FHWA) and The Kentucky Transportation Cabinet (KYTC). This programmatic agreement is further referred to as the “**Agreement**” throughout this manual. See Appendix A for the complete document. The **Agreement** was entered into pursuant to the following authorities:

- National Environmental Policy Act, 42 USC §4321 *et seq.*
- Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405, Sec. 1318(d) (July 6, 2012)
- Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (December 4, 2015)
- 40 CFR parts 1500-1508
- DOT Order 5610.1C
- 23 CFR 771.117

The development of the **Agreement** has created a streamlined procedure that will reduce paperwork and processing time for KYTC projects. This **Agreement** outlines the processing of actions classified as Categorical Exclusions for federal-aid highway projects. This **Agreement** allows KYTC to determine where a project qualifies for a Categorical Exclusion on behalf of FHWA.

Categorical Exclusions (CEs) are identified actions that FHWA has determined to not individually or cumulatively have a significant effect on the natural and human environment and, therefore, do not require the preparation of an EA or EIS (23 CFR 771.117(c)-(d)).

## A. Purpose of the Guidance Manual

This guidance manual is not intended to be all-inclusive; instead, **it is a valuable tool that includes recommended guidance and resources**. This manual further defines the document levels types and discusses the various subject areas covered under the National Environmental Policy Act. The purpose of this manual is to provide information and guidance for the preparation of Categorical Exclusion determinations for KYTC projects which are Federal actions and which meet the terms of the **Agreement**. Federal actions include, but are not limited to projects, which may use federal-aid funding and/or require FHWA approval or authorization.

**This manual is not regulatory**; however, it has been prepared to document standard methods and means by which the KYTC and the FHWA will ensure compliance with environmental laws, regulations and guidance, including, but not limited to the following:

- The National Environmental Policy Act (NEPA) of 1969, as amended
- Moving Ahead for Progress in the 21<sup>st</sup> Century Act, as amended
- Fixing America’s Surface Transportation (FAST) Act, as amended
- The Council on Environmental Quality (CEQ) *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (40 CFR 1500.1 *et seq.*), as amended
- U.S. Department of Transportation, *Environmental Impact and Related Procedures* (23 CFR 771.101 *et seq.*), as amended

- U.S. Department of Transportation Order 5610.1C, *Procedures for Considering Environmental Impacts*
- Federal Highway Administration, Technical Advisory 6640.8A, *Guidance Material for the Preparation of Environmental and Section 4(f) Documents*
- Federal Highway Administration, *Federal Aid Policy Guide*
- Federal Highway Administration, *Environmental Policy Statement*
- Title VI of the Civil Rights Act of 1964
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Section 4(f)
- Clean Air Act
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Wetlands 23 CFR 777
- Endangered Species Act
- Executive Order 13112, Invasive Species
- Farmland Protection Policy Act
- Noise 23 CFR 772
- The National Historic Preservation Act (NHPA) of 1966, as amended
- The Kentucky Antiquities Act (KRS 164.720 et seq)
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act

This manual is a dynamic tool that will be revised as necessary. The Kentucky Transportation Cabinet, Division of Environmental Analysis (DEA), in consultation with the Federal Highway Administration, will issue updates as appropriate.

## B. Categorical Exclusion Agreement between KYTC and FHWA

The **Agreement** between the FHWA and the KYTC establishes the basis for procedures which will reduce processing time and reduce unnecessary project delays, for projects meeting the criteria defined in 23 CFR 771.117, without compromising environmental quality. Through the execution of the **Agreement**, the FHWA and the KYTC have agreed to a streamlined review and approval process for CE projects.

The **Agreement** authorizes KYTC to determine on behalf of FHWA whether a project qualifies for a CE action specifically listed in 23 CFR 771.117.

The **Agreement** established a class of minor projects (CEMP) and three levels of CE project categories (CE I, CE II, and CE III). These various classifications are based on specific project type and circumstances, which dictate the degree of review, documentation required, and identification of the appropriate CE approval authority. The level of analysis required for each document level is included in Section III of this Manual. Approval authority for **CEMP's** and for **CE I's** resides with the **District Offices**. Approval authority for **CE II's** resides with the Division of Environmental Analysis (**DEA**). Approval authority for

**CE III's** resides with the **FHWA**. The KYTC may **not** delegate its responsibility for CE approvals to third parties (i.e., consultants, local government staff, or other State agency staff).

It also states that consultation with FHWA shall occur for actions that involve unusual circumstances (23 CFR 771.117(b)) to determine the appropriate class of action for environmental analysis and documentation. The KYTC may decide to conduct, or FHWA may require, additional studies be complete prior to a CE approval, or the preparation of an EA or EIS. FHWA shall be notified of public controversy, unresolved resource agency concerns or other unusual circumstances that may arise during the project development process.

In accordance with the **Agreement** and 23 CFR 771.129, the KYTC is responsible for re-evaluating CE determinations, as appropriate. Further guidance on the re-evaluation process is provided in Section IV of this manual.

The **Agreement** also identifies FHWA responsibilities:

- Provide timely advice and technical assistance on CEs to the KYTC, as requested.
- Provide timely input and review of CE actions.
- Oversee and implement the **Agreement**, including the applicable monitoring and performance provisions.
- Determine if NEPA documentation should be elevated based on environmental impacts, public or resource agency controversy, or other unusual circumstances.

It is imperative to remember that these documents are the FHWAs. The KYTC is completing them on their behalf. Early and continued communication with the FHWA is encouraged throughout the project development process.

## II. Categorical Exclusion Determination

### A. Categorical Exclusion Regulations

The established criteria for determining whether or not the appropriate NEPA clearance documentation is a CE, is based on regulatory direction promulgated under CEQ regulations and codified in 40 CFR 1508.4, wherein it is stated:

*“Categorical Exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in the implementation of these regulations (Section 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.*

The procedures adopted by the FHWA for implementation of the CEQ regulations, are codified in 23 CFR 771.117, wherein it is stated:

*Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, individually or cumulatively, have any significant environmental impacts.*

### B. Context and Intensity Consideration for Categorical Exclusions

Under the terms of the **Agreement**, and consistent with 23 CFR 771.117(c)-(d), when appropriately documented as having no significant impacts to the human and natural environment, the types of actions listed in the **Agreement** may be processed as a CEMP, CE I, CE II, or CE III document, as appropriate. Additional project types, not explicitly identified in the **Agreement**, may also qualify as CEs after appropriate consultation with the FHWA.

Such determination of the appropriate CE level will be made on a case-by-case basis through the application of context and intensity factors appropriate for the action proposed. The District Environmental Coordinator (**DEC**) or Environmental Project Manager (**EPM**) shall confirm that the proposed action(s) meet the criteria as identified in the **Agreement**, Sections II.C-D, and the CE Matrix in Appendix A. Key elements in determining both the applicability of the CE process and the appropriate CE level, are **context and intensity** (40 CFR 1508.27).

**1. Context** is based on its unique set of circumstances related to locale, setting and sensitivity. The range of possible effects of an action must normally be addressed in terms of several contexts such as society as a whole, the affected region, the affected community, the affected interests or individuals, and the affected resources.

The significance of potential impacts will vary depending on the sensitivity of each of the context components that make up the project setting. For example, a project to add right turn storage lanes would not be expected, based on previous experiences, to affect society as a whole or a geographic region, but those same experiences remind us that such a minor project could affect special interests and resources such as cohesive neighborhoods, or historic sites. Due to the realm of possibilities that exist from project to project, it is important to establish the context of the project as early as possible and to identify potential effects in both the short and long terms.

2. **Intensity** refers to the severity or degree of impact anticipated from project implementation upon specific constituents that define the project's context.

In determining the intensity of impacts, it may be necessary to enlist the assistance of a particular Subject Matter Expert (**SME**) and/or make inquiries with jurisdictional authorities. It is the perceived intensity of a site-specific action that will most often determine the applicability of the CE process and the level of CE classification. Reviewers must bear in mind that if the implementation of a project will, in the short or long term, have a significant impact on the human environment, then it **cannot** be processed as a CE.

### C. Categorical Exclusions for Minor Projects (CEMP)

Based on experience, with similar environmentally insignificant actions, the FHWA and the KYTC have concluded under the **Agreement** that the project actions listed in Appendix A: CE's listed in 23 CFR 771.117(c) of the **Agreement** are considered "Minor Projects", also referred to as CEMP's. CEMP projects are KYTC actions, which generally involve little or no physical construction activities. These project types are typically appropriately assessed as CE actions and will not directly, indirectly, or cumulatively cause significant impacts to the human and natural environment. These actions meet the criteria of 23 CFR 771.117(a) and (c), and 40 CFR 1508.4, "and **normally** do not require any further NEPA reviews by the Administration."

To qualify for a CEMP, the project must be one of the project types listed in Appendix A: CE's listed in 23 CFR 771.117(c) of the **Agreement** as well as satisfy the following criteria:

- An acquisition of no more than a minor amount of right-of-way;
- No residential or non-residential displacements;
- No bridge permit required from the U.S. Coast Guard, under section 9 of the Rivers and Harbors Act of 1899;
- Wetland and stream impacts that meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act;
- A finding of either "no historic properties affected" or "no adverse effect" to historic properties under the National Historic Preservation Act;
- An impact no greater than a *de minimis* use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f));
- No impacts to federally-listed threatened or endangered species determined May Affect, Likely to Adversely Affect unless addressed through the Kentucky Programmatic Conservation Memorandum of Agreement for Forest Dwelling Bats (CMOA).
- Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
- No change in access control;
- A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths);
- No construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers; and,
- No conversions of Section 6(f) properties.

#### D. CE Level I

CE I projects are KYTC actions, which are included in Appendix A and B of the **Agreement**, and do not satisfy the criteria be processed as a CEMP.

For a project to be processed as a CE I, it may not have any of the following characteristics:

- A finding of “Adverse Effect” to historic properties under the National Historic Preservation Act;
- Bridge replacement of rehabilitation project that requires an Individual Section 4(f) analysis;
- The use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f)) that requires an individual review;
- Impact to Section 6(f) properties that require a conversion;
- An acquisition or more than 5 relocations;
- An acquisition of more than 10 acres of fee simple right-of-way;
- Disproportionately high and adverse impacts to an environmental justice community;
- More than 0.5 acre of wetland impacts;
- A finding of “May Affect, Likely to Adversely Affect” threatened or endangered species or critical habitat under the Endangered Species Act, unless addressed through the Kentucky Programmatic Conservation Memorandum of Agreement for Forest Dwelling Bats (CMOA).

#### E. CE Level II

CE II projects are KYTC actions, which are included in Appendix A and B of the **Agreement** and do not satisfy the criteria be processed as a CEMP or CE I.

For a project to be processed as a CE II, it may not have any of the following characteristics:

- A finding of “Adverse Effect” to historic properties under the National Historic Preservation Act;
- Bridge replacement of rehabilitation project that requires an Individual Section 4(f) analysis;
- The use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f)) that requires an individual review;
- Impact to Section 6(f) properties that require a conversion;
- An acquisition or more than 10 relocations;
- An acquisition of more than 25 acres of fee simple right-of-way;
- Disproportionately high and adverse impacts to an environmental justice community;
- More than 5 acres of wetland impacts;
- A finding of “May Affect, Likely to Adversely Affect” threatened or endangered species or critical habitat under the Endangered Species Act, unless addressed through the Kentucky Programmatic Conservation Memorandum of Agreement for Forest Dwelling Bats (CMOA).

#### F. CE Level III

CE III projects are KYTC actions, which are included in Appendix A and B of the **Agreement** and do not satisfy the criteria be processed as a CEMP, CE I or CE II.

For a project to be processed as a CE III, it may not be processed with any of the following characteristics **WITHOUT WRITTEN APPROVAL FROM THE FHWA**:

- Disproportionately high and adverse impacts to an environmental justice community;
- Unresolved or substantial public and/or resource agency opposition (FHWA consideration for approval will require the CE documentation to demonstrate that the public or agency concerns have been addressed);
- Impacts to areas of cultural or religious significance to Native American Tribes;
- Project resulting in nonconformity with air quality standards;
- Impacts to federal or proposed federal wild and scenic river corridor(s) that results in an Individual Section 4(f) use/review;
- A finding of “May Affect, Likely to Adversely Affect” threatened or endangered species or critical habitat under the Endangered Species Act unless addressed through the Kentucky Programmatic Conservation Memorandum of Agreement for Forest Dwelling Bats (CMOA)
- The use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f)) that requires an individual review;
- Impact to Section 6(f) properties that require a conversion.

If the FHWA determines that the project action is not considered to be categorically excluded, then an environmental assessment (EA) or environmental impact statement (EIS) shall be prepared, as appropriate. In accordance with Highway Design Memorandum 01-13, a Scope Verification Meeting must be held for environmental documents that are anticipated to be processed as a CE III or higher.

- Highway Design Memo 01-13: <https://transportation.ky.gov/Highway-Design/Memos/01-13PD.pdf>



### III. Completing the Categorical Exclusion Document

#### A. Review Required for all CE Levels (CEMP, I, II, and III)

The **DEC** or **EPM** should conduct an on-site and/or online examination of the project location, as appropriate, and document the surrounding land uses. Using this information and available project information, the **DEC** and/or **EPM** will determine that the project is consistent with the project types specified in the **Agreement**, **and** satisfy criteria listed for the appropriate document level in Section II above. Any unusual circumstances will be discussed with the FHWA, and their recommendation of completing a CE shall be obtained in writing.

The **DEC** or **EPM** may request assistance from the DEA **SME**'s, if necessary, to complete the CE. Such request will be made utilizing the **Assistance Request Form** (see Appendix D), to the DEA **SME** and cc'ing the appropriate **DEC** or **EPM**. The request for assistance **must include**: (a) a brief project description and purpose and need statement, (b) a map, exhibit, or plans identifying and defining the project location, (c) the type of assistance needed, (d) the reason(s) for making the assistance request, and (e) a date by which the assistance is needed. Within five (5) working days of receipt of the request, the **EPM** or responsible **SME** will determine the appropriate action and provide, in writing, a response to the **DEC** and/or **EPM** outlining what action will be taken and an anticipated completion date will be provided.

Every federal action requires some level of public involvement (23 CFR 771.111(h)(2)(i) & (ii)). **The level of public involvement for CE projects should be commensurate with the nature and complexity of the proposed action.** The **DEC** or **EPM** will coordinate with the project team, and the FHWA, as appropriate, to ensure that the appropriate level of public involvement is completed for the proposed project action. The KYTC Highway Design Manual, <https://transportation.ky.gov/Organizational-Resources/Policy%20Manuals%20Library/Highway%20Design.pdf>, provides guidance and procedures on public involvement during the development of a highway project.

When making the determination of the appropriate type of public involvement, remember that stakeholder participation can be an essential element in garnering project support, identifying critical issues, and establishing and refining project purpose and need. Even at the CE project level, the KYTC and the FHWA promote openness and responsiveness to our customer's needs. By whatever means is deemed appropriate by the project team, it should be insured that affected property owners, local governments, permitting authorities, and those who have demonstrated an interest in the project are adequately informed and involved. The public outreach method(s) utilized shall be documented with the project record. **All coordination correspondence shall be attached as appendices to the appropriate CE.** Personal information of the public shall be protected, and identifying personal information should be redacted from the CE.

#### B. Documentation Required for all CE Levels (CEMP, I, II, and III)

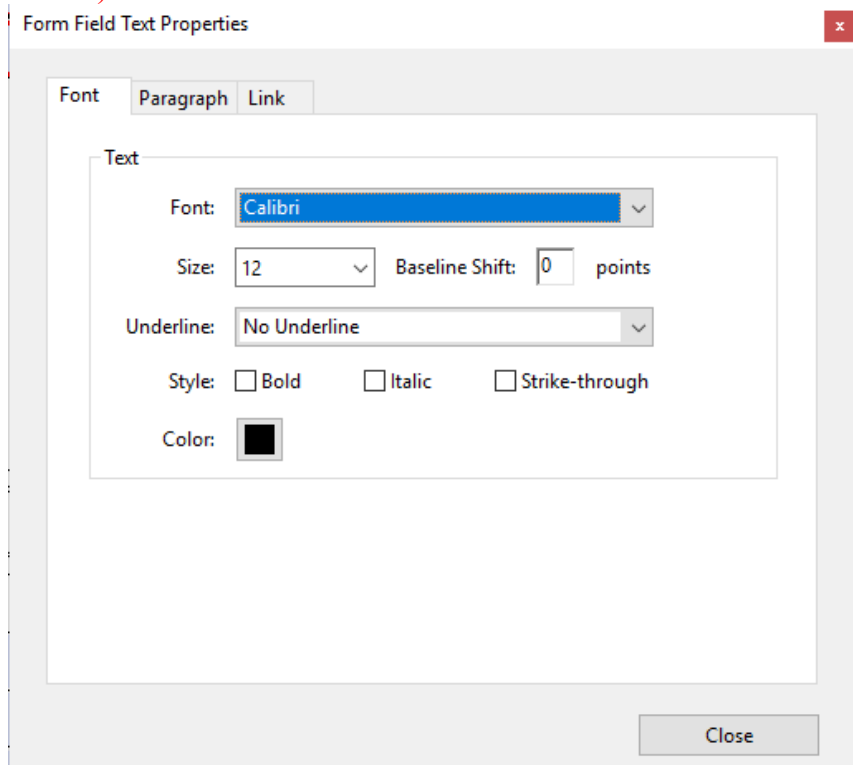
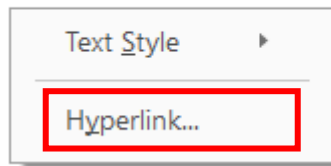
The use of the TC 58-48 Categorical Exclusion Determination (**CE Determination**) form enables compliance with paperwork reduction recommendations by the CEQ while allowing for thorough consideration of issues with minimal time and effort spent compiling data when minimal resources and few environmental issues are involved. This form shall be completed for all CE levels (CEMP, CE I, CE II, and CE III) and it is provided in Appendix B. This form briefly identifies the project, describes the environmental determination for each functional area, includes the appropriate commitments and/or mitigation, and includes the signature lines for approval of the appropriate document level. Any and all appropriate supporting documentation (CE Review, PA form, studies, plans, etc.) shall be appended to this form. Guidance on completing each section of the **CE Determination** is provided below.



**\*\*Please note that all new CE forms (TC 58-48 Categorical Exclusion Determination, TC 58-49 Environmental Project Impacts Reevaluation, and Categorical Exclusion Environmental Review are PDF forms and allow more user freedom. Abbreviated guidance is included in the form itself, as “tool-tips”. If unsure of what information is required in a text box, hover the mouse over the box to show the tool tip.**

Most text boxes that allow multi-line text, allow the user to edit the text font size and style (bold, underline, etc.). To access the text functionality while completing the form, right click in the text box. Click the Hyperlink... button (as shown in the image to the right), then the “Form Field Text Properties” tool box should pop-up (as shown below). The font and paragraph formatting can then be adjusted as needed. Please do not change the font type (leave it as Calibri).

## Project Description:



Text boxes that do not allow multi-line text (a single line of text) as shown below, auto adjust the text size to fit the box. Adobe does not have a restriction on the text size, please ensure all text is readable.

**Item #:**

### 1. Project Summary for CE

This section is to provide for identification of the project. This section should be consistent with all other project documentation. If not already provided by the project team, information for this section can be found in the current enacted six year highway plan on the KYTC Program Management webpage, and/or the District Status Report. Links to both are provided on the next page. The “tool-tips” in the PDF identify the specific information required in each text box. The project description should also include identification of the appropriate CE action as identified in the **Agreement**. For example, for a CEMP project that is simply installing signs, the project description box would include “project type is consistent with 23 CFR 771.117(c)-(8).”

- KYTC 2018 Highway Plan: <https://transportation.ky.gov/Program-Management/Pages/2018-Highway-Plan.aspx>
- District Status Reports: <https://intranet.kytc.ky.gov/org/DPM/Pages/Status-Reports.aspx>

## 2. Environmental Determination

This section of the **CE Determination** demonstrates how the project action meets the CE criteria and identifies the appropriate CE level. This section should be completed following the assessment of the project area and obtaining any supporting documentation needed to make the appropriate determinations. The **CE Determination** must have an answer for all rows. Record a summary of all commitments made, identify all issues that have been postponed or deferred, and specify all mitigation measures designed to address the anticipated environmental consequences of the proposed project.

The Project Manager (**PM**) will review and enter appropriate information identified in this section into the Communicating All Promises (**CAP**) document in the KYTC Six Year Plan database. The **DEC** or **EPM** should also ensure that the commitments are identified in EATS. It is extremely important that the **PM**, **DEC**, and **EPM** openly communicate the commitments and mitigation activities identified during the environmental review process to ensure their continuation throughout the project development process, construction, and maintenance, as appropriate. Remember these activities, are what allows the project to be categorically excluded.

## 3. Environmental Document Approval

The Project Manager (**PM**) shall review and sign all CE levels. It is imperative to pay special attention to the following sections:

1. Project Summary of CE
2. Environmental Determination
5. Environmental Mitigation/Commitments
6. Project Termini
7. Roadway Conditions and Setting
8. Purpose and Need
9. Alternative Description Analysis

This review is to ensure that the information contained within these sections appropriately reflects the project team decisions, is consistent with other project documents, and any identified commitments/mitigation efforts are carried on throughout the project development process.

Each CE level has different signature requirements for the environmental review staff. See Section V. Categorical Exclusion Approvals for the review and process requirements for each CE level.

## C. CEMP Documentation

As stated above, the TC 58-48 **CE Determination** form shall be completed for CEMP's. When necessary, additional documentation may need to be appended to this form. Depending on the project scope, additional documentation may include plans, programmatic agreement forms, coordination letters, additional pages documenting commitments, etc. Minimal documentation is typically necessary for these projects and approval authority for CEMP Project Determinations reside within the District Office or Central Office (**DEC** or **EPM**), typically wherever the project is managed.

It is the responsibility of the **DEC** or **EPM** completing/approving the **CE Determination** to ensure that the applicable CE type is identified from the **Agreement** (23 CFR 771.117) in the Project Description box. The project description should also be consistent with the description in the six-year plan, and accurately convey the project details. The responsible person should also ensure any conditions or constraints are met (as identified in the **Agreement** and Section II.C above), verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval.

#### D. CE Levels I, II, and III Documentation

As stated above, the TC 58-48 **CE Determination** form shall be completed for all CE levels. This document is the environmental document approval and summary page for CE I, II, and III's. A separate form, the Categorical Exclusion Environmental Review (**CE Review**) shall be completed and appended to the TC 58-48 **CE Determination** for CE I, II, and III's. These two documents are collectively referred to as the CE Document or CE. The **CE Review** form is a living document that should be regularly updated by the DEA to reflect changing environmental requirements and ensure continued compliance. This form provides for the identification of the range of issues of concern and the environmental resources affected by the proposed action. It supplies the means to document the presence or absence of particular resources (context) and provides the opportunity to describe the degree of impacts (intensity) anticipated from implementation of the proposed action.

The **CE Review** is included in Appendix B. General guidance for the completion of each section of the **CE Review** is provided below. All sections of the **CE Review** should be completed. Please note that the **CE Review** will always be appended to the CE Determination for CE I, II, and III's; that is why the section numbering for the CE Review form starts at Section 4. Sections 1. Project Summary of CE, 6. Project Termini, 7. Roadway Conditions and Setting, 8. Purpose and Need, and 9. Alternative Description Analysis must be completed by the DEC for all CE projects, including those recommended for elevation to higher CE levels. Questions about the completion of the **CE Determination** or **CE Review** shall be directed to the assigned **EPM** and applicable subject matter expert(s) (**SME**), as appropriate. Any comment or coordination letters pertaining to any section shall be attached to the environmental document.

#### 4. Attachments/Appendices

This section is to allow for the creation of a table of contents, or list of attachments/appendices, as appropriate. At a minimum, a project location map, current project plans, and alternatives analysis should be attached. Examples of types of attachments that may apply include public involvement documents, meeting minutes, design executive summary, agency coordination letter(s), etc. Documents can be attached to the PDF under the "Organize Pages" tab in Adobe Acrobat DC. Helpful tips to compile completed PDF's are provided below.

##### *a) Compile Documents in PDF*

All CE PDF files and associated attachments can be easily combined into a single PDF document in Adobe Acrobat DC Standard. Pages can then be rearranged, rotated, and deleted, as appropriate. This tool allows for a well-organized collection of project information that facilitates the electronic administrative record. An abbreviated how-to is provided below.

**Tools > Organize Pages** or choose **Organize Pages** (light green icon  ) from the right pane.

The Organize Pages toolset is displayed in the secondary toolbar near the top of the page. It is shown on the next page of this manual.



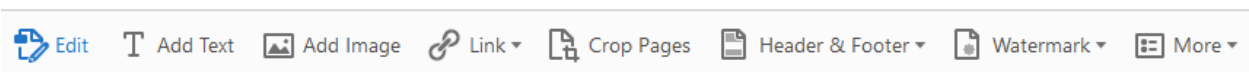
Other documents can be attached to the CE document by using the “insert” dropdown shown in the toolbar above. Pages can then be rearranged or deleted, as appropriate.

### *b) Bookmark Pages in PDF*

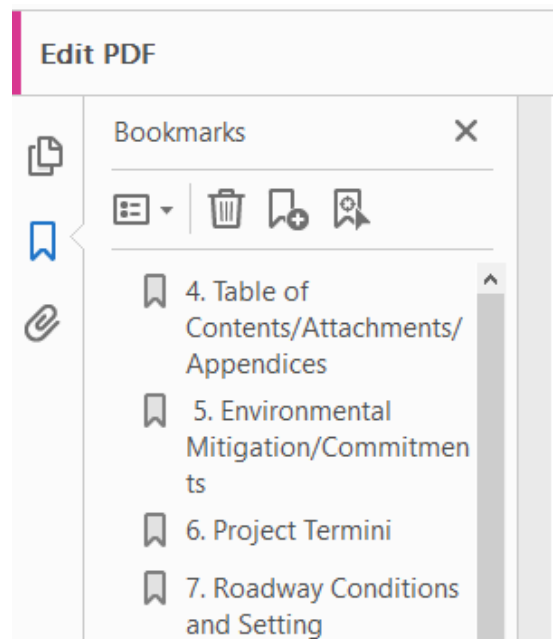
Attachments can also be bookmarked to allow for easy use of the PDF. When a page, image, or text is bookmarked it is linked with representative text in the bookmarks panel in the navigation pane. Each bookmark goes to a different view or page in the document. An abbreviated how-to is provided below. For more information on bookmarking, please visit Adobe’s website, <https://helpx.adobe.com/acrobat/using/page-thumbnails-bookmarks-pdfs.html>.

**Tools > Edit PDF** or choose **Edit PDF** (dark pink icon ) from the right pane.

The Edit PDF toolset is displayed in the secondary toolbar near the top of the page.



Click the “more” dropdown to add bookmark, or use keyboard shortcut Ctrl+B. Select the page of the document you would like to bookmark and give it a title in the PDF table of contents. The image to the right shows the bookmark panel that should appear on the left hand side of the Adobe screen. Clicking the title of a section allows you to jump to the first page of that section within the document. Bookmarks can be added and deleted from this panel. The page that a bookmark jumps to can be modified by right clicking a section title, and then selecting either “Set Destination” or “Use Current appearance as New Default.”

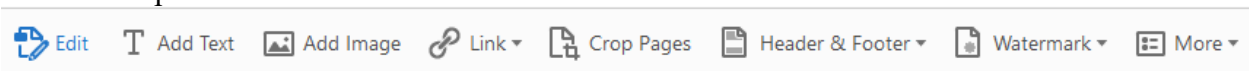


### *c) Adding Page Numbers to PDF*

Once the **CE Review** is attached to the **CE Determination**, page numbers should be added to the PDF document.

**Tools > Edit PDF** or choose **Edit PDF** (dark pink icon ) from the right pane.

The Edit PDF toolset is displayed in the secondary toolbar near the top of the page. An example of this toolbar is shown below.



Click the “header & footer” dropdown to select “add”. This will enable an Adobe pop-up window warning that the document already contains a header or footer. Click “add new”. In the pop-up window shown below, select “Insert page number”, move the <<1>> to the “right header text” box, and adjust the margins to the inches shown in the image below for the number to display correctly on the final document.

The screenshot shows the "Add Header and Footer" dialog box. At the top, it says "Saved Settings: [Custom-not saved]" with "Delete" and "Save Settings..." buttons. Below this is a "Font" section with "Name: Arial" and "Size: 8", along with "U" and "■" icons. To the right is a "Margin (Inches)" section with "Top: 1.11", "Bottom: 0.5", "Left: 0.6", and "Right: 0.5". There are six text input fields for "Left Header Text", "Center Header Text", "Right Header Text", "Left Footer Text", "Center Footer Text", and "Right Footer Text". The "Right Header Text" field contains "<<1>>". Below these fields are "Insert Page Number" and "Insert Date" buttons, and a "Page Number and Date Format..." link. A "Preview" section shows "Preview Page 1 of 14" and a "Page Range Options..." link. The preview area displays a page with a header containing the Kentucky Transportation Cabinet logo and text: "KENTUCKY TRANSPORTATION CABINET", "Department of Highways", "DIVISION OF ENVIRONMENTAL ANALYSIS", and "CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW". The page number "Page 1" is visible in the top right corner of the preview. At the bottom are "Help", "OK", "Apply to Multiple Files", and "Cancel" buttons.

## 5. Environmental Mitigation/Commitments

Record all commitments made, identify all issues that have been postponed or deferred, and specify all mitigation measures designed to address the anticipated environmental consequences of the proposed project. This should be in accordance with 23 CFR 771.105(d). Indicate a timeframe that any outstanding items should be completed by (i.e. prior to right-of-way acquisition, prior to tree cutting activities, prior to ground disturbing activities, etc.). An abbreviated version of the information included here should be identified in Section 2. of the **CE Determination**.

*a) Commitments* are promises made to an agency or the public in return for approval of, concurrence with, or acceptance of the project, including deferred items.

*b) Mitigation Measures* are actions to be implemented with the project, which serve to moderate, reduce, or eliminate impacts deriving from the proposed action, or to enhance project area conditions or characteristics in accordance with community or resource agency, and/or KYTC goals.

The Project Manager (**PM**) will review and enter appropriate information identified in the section into the Communicating All Promises (**CAP**) document in the KYTC Six Year Plan database. It is extremely important that the **PM**, **DEC**, and **EPM** openly communicate the commitments and mitigation identified during the environmental review process to ensure their continuation throughout the project development process, construction, and maintenance, as appropriate. Helpful information is provided below.

- 23 CFR 771.105(d): <https://www.fhwa.dot.gov/legisregs/directives/fapg/cfr0771.htm>.
- AASHTO's Practitioner's Handbook on Tracking Compliance with Environmental Commitments/Use of Environmental Monitors:  
<https://environment.transportation.org/pdf/programs/PG04.pdf>

## 6. Project Termini

The section should be utilized to describe the project termini and explain the logic behind their designation. This explanation should ensure that the perception of project segmentation does not occur. It should disclose the rationale for independent utility, i.e. how the project or project segment will be a usable and reasonable expenditure of funds even if no additional transportation improvements are made. It should clarify how this project will not restrict the consideration of other reasonably foreseeable improvements, and it must ensure that the project is of sufficient length to address environmental matters on a broad scope (i.e. the project termini are established to address the transportation need and not for the purpose of avoiding environmentally sensitive or controversial issues). Additional guidance is provided below.

- FHWA Guidance on the Development of Logical Project Termini:  
[https://www.environment.fhwa.dot.gov/legislation/nepa/guidance\\_project\\_termini.aspx](https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_project_termini.aspx).

## 7. Roadway Conditions and Setting

Most of the information required to complete this section can be obtained from the Design Executive Summary (DES). If not provided by the **PM**, another resource that can be used to locate this information is KYTC's Division of Planning website, <https://transportation.ky.gov/Planning/Pages/default.aspx>. The traffic counts tab can provide ADT, the maps tab provides the functional classification, applicable planning studies and reports may provide project or regional specific information.

## 8. Purpose and Need

It should be clearly explained in this section why the expenditure of public funds proposed is necessary and worthwhile. This statement should be developed with the project team and it should be data-driven. Although this explanation should be concise, it must also convey the project's importance so the merits of the proposed action can be weighed against the potential impacts in order to provide decision makers and the public with the information needed to reach a sound conclusion on what course of action to pursue.

Purpose and need (P&N) will vary with project scope and will drive the process for consideration and development of the range of alternatives and the depth of impact analysis. Purpose and need

statements developed from planning phase activities should be reviewed and adopted or modified, as appropriate. The statement should be consistent with the DES. The DRAFT P&N should be continuously evaluated as information is gained from data analyses and the public involvement process. It is a fluid, living narrative that should be evaluated by the project team until the final environmental document is approved.

Recommended information for supporting the need of the project includes past performance data and/or future performance projections. The most common elements used in P&N statements and examples of supporting information to include are outlined below.

*a) Transportation Demand*

Include any information that already identifies a need for the project. Sources to consult include the six year highway plan, long-range statewide transportation plan, KYTC corridor plan, and adopted urban or regional plans.

*b) Project Status*

Briefly include any pertinent information about the projects history, including planning studies or information identified during the initial scoping; strong support from other agencies and/or government units; and any action spending or schedules (a good example for this is for a BUILD grant project that has an anticipated schedule).

*c) Legislation*

Identify any federal, state, or local mandate for the action. The six-year highway plan and the State Transportation Improvement Program are legislative actions indicating project support.

*d) System Linkage*

Discuss any connections the project may provide (intermodal, communities, cities, neighborhoods, parks, etc.). Describe how the project will fit into the transportation network (functional classification, truck network, scenic byway, etc.).

*e) Capacity*

Explain the capacity capabilities of the present facility and compare it with its ability to meet current and projected traffic demands. Support this discussion with information such as levels of service (include the current and desired/recommended LOS), queue lengths, quantitative delay data, etc.

*f) Safety*

Identify any existing or potential safety hazards. Support this information with crash studies/rates, planning studies, strong public/agency concern, etc.

*g) Modal Interrelationships*

Explain how the project strives to complement/coordinate with airports, rail facilities, river port facilities, transit services, bikes and/or pedestrians, etc.

*h) Roadway Deficiencies*

Identify existing roadway deficiencies. Roadway deficiencies could include narrow lanes, inadequate cross-section for current or future traffic conditions, narrow or no shoulders (no



emergency recovery area), horizontal or vertical alignment issues, lack of passing opportunities or sight distance, load limits, high maintenance costs, etc.

#### *i) Social Demands or Economic Development*

Describe how the action will foster opportunities for new development, benefit schools, recreational facilities, etc., support proposed land use plans or community development plans. Identify the project economic development/land use changes that indicate the need to improve the facility or improve highway capacity.

Purpose and need statements should be developed in accordance with 23 USC 139, 23 USC 168, and 23 CFR Part 450. Additional references to consult for developing purpose and need statements include:

- AASHTO’s Practitioner’s Handbook-Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects:  
<http://environment.transportation.org/pdf/programs/PG07.pdf>
- KYTC DEA’s Project Management website:  
<https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Project-Management.aspx>
- KYTC Highway Design Policy Guide, Chapter 202.61:  
<https://transportation.ky.gov/Organizational-Resources/Policy%20Manuals%20Library/Highway%20Design.pdf>
- FHWA Environmental Review Toolkit, The Importance of Purpose and Need in Environmental Documents:  
[https://www.environment.fhwa.dot.gov/legislation/nepa/guidance\\_purpose\\_need.aspx](https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_purpose_need.aspx)
- FHWA Environmental Review Toolkit, NEPA Transportation Decisionmaking:  
[https://www.environment.fhwa.dot.gov/nepa/trans\\_decisionmaking.aspx](https://www.environment.fhwa.dot.gov/nepa/trans_decisionmaking.aspx)

Additional guidance on Purpose and Need is also provided in Appendix C.

### **9. Alternative Description and Analysis**

The development, evaluation, and comparison of alternatives are key to the environmental documentation process. The alternative of “no-build” should be addressed in all cases. In this section of the **CE Review**; however, only the **preferred alternative** should be described. Include a summary of impacts, detail the reasons for recommendation, and compare it to the no-build alternative. A summary of all alternatives considered, the associated impacts identified, and reasons for elimination shall be appended to the CE.

The number of alternatives considered should be commensurate with the project type and complexity. The nature of the project’s context and the intensity of its potential impacts should be considered when developing alternatives. A more detailed alternatives evaluation that concisely explains the rationale for the preferred course of action may be needed, depending on these circumstances. Some CE project circumstances may identify a single course of action.

The CEQ considers the alternatives evaluation to be the “heart” of the environmental process. CEQ guidelines require that agencies, “Rigorously explore and objectively evaluate all reasonable alternatives, and **briefly** discuss the reasons for eliminating alternatives from *detailed* study.” This encourages the consideration of a range of alternatives at a birds-eye or high-level to identify the potential impacts, and eliminate alternatives early based on these findings. Alternatives are often screened in the planning phase or early scoping/design, and should be documented in the appendix. It should be evident why the particular range of alternatives were developed. It is important to



include the rationale for generating, evaluating, and eliminating alternatives (do they meet the purpose and need?). Reasonable project alternatives not within the jurisdiction of the FHWA or KYTC should also be addressed when appropriate.

- AASHTO's Practitioner's Handbook on Using the Transportation Planning Process to Support the NEPA Process:  
[https://environment.transportation.org/pdf/programs/practitioners\\_handbook10.pdf](https://environment.transportation.org/pdf/programs/practitioners_handbook10.pdf)

## 10. Comments and Coordination

As noted earlier, every federal action requires some level of public involvement (23 CFR 771.111(h)(2)(i) & (ii)). The level of public involvement should be commensurate with the complexity of the project, project context, and the intensity of project impacts. This section should identify what types of public involvement and outreach were employed for the proposed project, and summarize the overall comments received. Copies of all correspondence, public meeting and project meeting minutes, notes, and legal publications must be attached to the CE. If a public meeting/hearing was held and a formal transcript prepared, a transcript summary must be attached to the CE.

Evidence of resolution of any controversy and/or concerns about the project as expressed by the public, property owners, government officials, resource agencies, and special interest groups, must be provided in this section. Examples of resolution may include KYTC response to comments, Preliminary Line & Grade meeting minutes, Design Executive Summary, or other documentation. If no such controversy or concerns have been expressed, this should also be noted. Any issues expressed about the project, which remain unresolved at the time of CE approval, or which have been deferred to later project phases for resolution, must be disclosed in Section 2. Environmental Determination and Section 5. Environmental Mitigation/Commitments. Additional guidance is listed below.

- FHWA's Public Involvement Techniques for Transportation Decisionmaking:  
[https://www.fhwa.dot.gov/planning/public\\_involvement/publications/pi\\_techniques/fhwah\\_ep15044.pdf](https://www.fhwa.dot.gov/planning/public_involvement/publications/pi_techniques/fhwah_ep15044.pdf)
- 40 CFR 1506.6 Public Involvement: [https://www.ecfr.gov/cgi-bin/text-idx?SID=a01cb32aa3da07acb3aa3502683df892&mc=true&node=se40.33.1506\\_16&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=a01cb32aa3da07acb3aa3502683df892&mc=true&node=se40.33.1506_16&rgn=div8)
- AASHTO's Practitioner's Handbook on Utilizing Community Advisory Committees for NEPA Studies: <https://environment.transportation.org/pdf/programs/PG05.pdf>

## 11. Right-of-Way

All boxes in this section should be completed. This section is to ensure compliance with the thresholds identified in the **Agreement** and compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. If there is no right-of-way required or no relocations, then a 0 should be placed in the acreages boxes.

If right-of-way and/or relocations are required for the project, the quantities should be checked with the thresholds identified in Section II. Categorical Exclusion Determination and the most recent version of the **Agreement** to ensure that the project is processed at the appropriate CE Level. If the fee simple acquisition acreage thresholds or relocation thresholds are exceeded, **DEA** consultation will be required.

The business and residential relocation thresholds can be by individual category or in combination, but the applicable number is the total relocations. If relocations include other categories (e.g. institutional, non-profit, industrial, etc.), they must still be counted as relocations. The acreage to be acquired is to include only that area to be converted to permanent KYTC ownership. Temporary, and/or construction, easements should not be included in the estimated acreage figure.

Box 11.E should be used to identify any unique or sensitive issues associated with any of the affected properties or businesses. This should include a discussion of available relocation areas for both residents and businesses affected by the project. This section should ensure that the project team provides uniform and equitable treatment of persons displaced from their homes, businesses or farms and are aware of any sensitive issues that may arise during the right-of-way phase. If any regulated or protected land use types (e.g. federal lands, Section 4(f), Section 6(f), Section 106, Agricultural District, etc.) would be affected, this must be noted. If any coordination letters or comment letters relating to right-of-way issues have been received, they must be summarized in box 11.E., and appended to the CE.

- A resource to help locate protected lands: <http://www.protectedlands.net/map/>
- National Conservation Easement Database: <https://www.conservationeasement.us/>

## 12. Economic Impacts

Briefly discuss any beneficial and or negative economic impacts anticipated as a result of the proposed project. Examples of impact include effects on the regional and/or local economy, including development, tax revenues, public expenditures, employment opportunities, accessibility, retail sales, etc.

## 13. Business Impacts

If commercial, industrial, business, and/or non-profit establishments will be displaced, estimates of the number of job losses must be obtained, the effects on employment opportunities must be estimated, the probability of the establishment relocating in the same general area should be determined, and the overall impacts of the loss of the establishment to the locale must be assessed. Positive and negative anticipated impacts should be discussed in this section.

## 14. Farmland Impacts

This section is to ensure compliance with the USDA's Natural Resources Conservation Service, Farmland Protection Policy Act (FPPA). To learn more about this, please visit, <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>. Several activities are exempt from FPPA, they include:

- Federal permitting and licensing
- Projects planned and completed without the assistance of a Federal agency
- Projects on land already in urban development or used for water storage
- Construction within an existing right-of-way purchased on or before August 4, 1984
- Construction for national defense purposes
- Construction of on-farm structures needed for farm operations
- Surface mining, where restoration to agricultural use is planned
- Construction of new minor secondary structures such as a garage or storage shed.

If there is potential to convert farmland, coordination with your local office of the Natural Resources Conservation Service (NRCS) or USDA Service Center is required, and the AD 1006 (LESA) form, which can be found online here, [https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045394.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf), should be completed and attached to the CE. For corridor type projects, the NRCS-CPA-106 form should be used instead, [https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045395.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf). A brief discussion on the positive and negative anticipated impacts on farmlands should be included.

The FPPA Policy Manual can be found here, [https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1049240.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1049240.pdf). It identifies other exemptions:

- Small acreages (i.e., 10 acres or less per linear mile or 3 acres where there is a project for an existing bridge or interchange) where a statewide, local, or tribal LESA system has been approved by the state conservationist. Acreage includes both direct and indirect conversions. These exemptions are to avoid new construction and encourage improvements to existing linear projects, such as highways.
- Corridor subsurface projects (such as buried water, sewage, and/or electrical lines) which will develop a soil disturbance/removal and reconstruction plan (as defined in 30 CFR 823.12 and 30 CFR 823.14) for all agricultural land uses. If a project is in cropland, as defined by USDA-NRCS, 30 CFR 823.15 applies and a soil disturbance/removal and reconstruction plan will be developed.

## 15. Social Impacts

This section addresses the effects of the proposed action on community values and quality of life factors. When assessing potential social impacts, community cohesion, family clusters, and neighborhood continuity should be considered in conjunction with the characteristics, which may make these phenomena important in project decision making. Such characteristics can include ethnicity and race, age, gender, income levels, educational attainment, employment status, disability, or special dependencies on community facilities and services. When analyzing the project relative to the intensity of potential impacts on any identified socially important values, factors such as safety, mobility, employment, relocations, isolation, mode choices, institutions, services, environmental justice factors, and land use changes should be considered as they may apply to any special sociological contexts defined. The development and use of good public involvement and outreach can be an invaluable tool for this process.

If appropriate, based on social context, the social history of the project area should be reviewed and estimates of how the project may affect on-going development trends and quality of life issues should be made.

It is also critical to identify any protected resources and uses in the project area and determine whether or not they will be affected. Such protected community assets include publicly owned parks, recreation areas, and wildlife and waterfowl refuges. They extend to wetlands, agricultural Districts, and historic properties (e.g. Section 4(f)/Section 6(f), and Section 106 land uses). If it is determined that any of these resources are present and may be affected by the proposed action, the **DEA** should be consulted as early as possible.

## 16. Environmental Justice

This section of the **CE Review** is to ensure compliance with Executive Order 12898, DOT Order 5610.2(a), and FHWA Order 6640.23A. A full analysis should be completed for projects that require more than one relocation or unusual circumstances. Guidance for completing the review required for this section can be found in the KYTC guidance memo provided below. If the project required an EJ summary, the survey results **should not** be appended to the CE. Instead a summary should be included in this section. The section should include a statement of anticipated impact; no impact to EJ populations anticipated, no disproportionately high and adverse impact to EJ populations with no mitigation measures required, no disproportionately high and adverse impact to EJ populations with mitigation measures required, or disproportionately high and adverse impacts to EJ populations anticipated (only allowed in CE's with FHWA approval). Include any steps taken to avoid, minimize, or mitigate anticipated impacts on minority or low-income populations. An example of this would be, if your project is not requiring any relocations, but traffic might be diverted through a minority or low-income residential neighborhood. A discussion of how this was considered throughout the project development process should be included here.

Additional guidance is provided below.

- KYTC EJ Guidance Memo:  
<https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/Approved%20EJ%20Guidance%209-2-2014.pdf>
- Executive Order 12898- Federal Actions to Address Environmental Justice in Minority and Low-Income Populations: <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>
- Department of Transportation Environmental Justice Order 5610.2(a)  
[https://www.fhwa.dot.gov/environment/environmental\\_justice/ej\\_at\\_dot/orders/order\\_56102a/](https://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/orders/order_56102a/)
- FHWA Actions to Address Environmental Justice Order 6640.23A  
<https://www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm>
- FHWA Community Impact Assessment:  
<https://www.fhwa.dot.gov/livability/cia/index.cfm>

## 17. Local Land Use and Transportation Plan

It must be determined if any locally approved land use plans, comprehensive plans, and/or transportation plans have been adopted for the project area. Contact with local Planning and Zoning authorities may be necessary. If an approved plan exists, indicate whether or not the proposed project or improvement type is included. If there are no adopted plans, or if the project is not included in approved plan, estimate the project's impacts on expected land use changes, growth, and development trends of the area's residential and commercial base. Consider development patterns and time frames and indicate what project impacts might occur, positive or negative. Coordination with local development agencies may be required to complete this section. Below are links to the listing of ADD's and MPO's. Coordination with the local government may also be required to determine if a plan exists.

- KY ADD's: <https://kaedonline.org/kentucky-area-development-districts/>
- Kentucky MPO's: <https://transportation.ky.gov/Planning/Pages/Metropolitan-Planning.aspx>

## 18. Section 106: Architectural Historic Resources

If there are no structures within the project view shed, 18.A should be checked no, and this should be described in Section 18.C.

If the project type is included in the Programmatic Agreement with the SHPO, <https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/Section%20106%20Programmatic%20Agreement%206-2-11.pdf>, the **DEC** must complete the Historic Architectural Investigation Form.

If there are any standing structures (including bridges) in the project area, determinations of historic significance or potential historic significance must be made. Structures less than fifty years of age are not eligible for the National Register of Historic Places. The **DEC** should make every effort to determine whether any structures that are more than 50 years old are located within the project view shed. If it can be documented that all of the standing structures on parcels affected by the project or within the project view shed are less than 50 years of age, the **DEC** must record this information in box 18.C., including the source of the determination of structure age. Confirmation that no standing structures 50 years old or older are present in the project area will permit checking the “No Effect” in box 18.B and including brief discussion on how that conclusion was derived in 18.C.

If a structure has been determined to be at least 50 years of age, the Architectural Historian **SME** must be contacted. The basis for the determination of age and the results of any further research conducted should be provided, including color photographs of each structure of concern and copies of all data gathered relative to historic structures shall also be submitted to the **SME** for further evaluation. The **SME** will be responsible for any further activities/documentation necessary for any structure.

There are several means of determining structure age. Before going to the field, the **DEC** should review topographic maps, preferably maps more than fifty years old, to locate structures of potential historic interest. After field visitation to take pictures of each side of any structure that even remotely appears to be at least fifty years old, records from the tax assessor’s office can be reviewed. In addition, to past property ownership, the tax roll may also provide clues regarding periods of new construction. Deed and title searches can also be a valuable courthouse resource; however, the **DEC** will need to consider the time required to conduct these searches and may choose to exhaust other methods before conducting such research. It should be recognized, that deed and title information are considered some of the most accurate means available for establishing a thorough history of property ownership.

Other local resources that can be utilized are the periodicals, census records, city directories, telephone books, etc., at the local library. Another potential resource is a local historian or the property owner. Care should be used in relying too heavily on this verbal record as it may inherently contain inaccuracies.

Finally, where more recent “kit-type” structures may be involved, the internet can be used as a resource for locating copies of old catalogues (Sears, Aladdin, etc.). These are useful for reviewing the catalogue homes that were at one time available, including plan and exterior views. These can be compared with the appearance of structures that have been seen in the project area.

Further information can be found below.

- Kentucky Transportation Cabinet Cultural Historic Webpage:  
<https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Cultural-Historic.aspx>

- AASHTO's Practitioner's Handbook on Consulting Under Section 106 of the National Historic Preservation Act: <https://environment.transportation.org/pdf/programs/ph06-2.pdf>
- Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System: <https://www.federalregister.gov/documents/2006/12/19/E6-21581/final-list-of-nationally-and-exceptionally-significant-features-of-the-federal-interstate-highway>

### 19. Section 106: Archaeological Resources

If the proposed project does not require any new right-of-way acquisition (temporary or permanent), and all planned construction will be within areas previously disturbed by construction, 19.A should be checked no, and this should be described in Section 19.C.

If acquisition of minor amounts of new right-of-way (temporary or permanent) is required for the proposed project, the necessity of an archaeological investigation can depend on the extent and type of disturbance that may have occurred in an area. Examples of disturbance that could impact archaeological sites or deposits include ditches, culverts, retention basins, parking lots, roads, underground utilities, and cut and fill for road construction. Buildings may also impact archaeological deposits, but in many cases, houses or businesses may be built over the remains of older buildings and archaeological deposits associated with the earlier structures may still be intact.

When considering the necessity of archaeological investigations, the extent of the disturbance (both vertically and horizontally) across the project area must be determined. Disturbance of soil to bedrock across the project area would automatically eliminate the need for an archaeological investigation. Other more limited surface disturbance must be assessed to determine whether archaeological deposits might remain intact beneath the disturbance.

An archaeological site investigation will not be required when the depth of the previous disturbance exceeds the depth at which archaeological deposits are expected to occur. This depth can vary depending upon geographic location, site conditions, etc. In some rare instances, such as in floodplains or thick colluvial soils, archaeological deposits may occur at depths of greater than 40 feet. Even in dense urban areas, archaeological sites may have been buried by previous fill and construction episodes to depths of 20 feet or more.

When making an assessment of any previous disturbance the **DEC** must consider whether the disturbance extends throughout the project area, how deep the disturbance extends into the soils, and what type of archaeological resources could be expected to occur in the project area. In many cases, the answers to these considerations may not be readily apparent, especially with regards to depth of the disturbance. Resources that may aid in determining if the archaeological potential of a project area has been eliminated through disturbance include old road construction plans, county soil surveys, historic maps and atlases for the area, and geological quadrangles. From the geological quadrangles and the county soil surveys, the **DEC** can estimate the depth of soils in the project area, and possibly whether buried soils occur in the project. Historic maps and atlases can provide information on what type of historic resources may occur in the project area, and if the project area has the potential to contain intact resources not readily identified by surface inspection (e.g., cemeteries). The Office of State Archaeology GIS database may help determine if sites have been recorded in deep floodplain or colluvial soils in the area (but not the depth at which those sites may have been identified).

If, after reviewing the available resources and assessing the type, depth and extent of any disturbances, the **DEC** has questions, they should contact the archaeological **SME**. Unless it can be determined that the project area has been disturbed throughout and to a depth that exceeds that at



which archaeological deposits or sites may be expected to occur, an archaeological investigation shall be required.

If it can be verified that all of the area to be acquired has been previously disturbed, then 19.B can be checked “no effect”, and a thorough description of the basis for the determination of prior disturbance of all project areas must also be given in section 19.C.

If the project type is included in the Programmatic Agreement with the SHPO, <https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/Section%20106%20Programmatic%20Agreement%206-2-11.pdf>, the **DEC** must complete the Archaeological Investigation Form.

If the proposed project will require the acquisition of new right-of-way, which has not been previously disturbed by human activities, or if prior disturbance cannot be clearly determined, then consultation of official archaeological resource databases and archaeological **SME** must be completed.

If the **SME** determines that an on-site field review is needed, the **SME** and **DEC** will schedule this review to be conducted as soon as possible. If the **SME** subsequently determines that archaeological resources are or may be present, all required procedures and documentation from this point forward, must be initiated and completed by the **DEA** or their designee. The **DEC** and the project team will be kept informed by the **SME** through the **EPM** of activities and schedules required to address archaeological resource issues. As soon as possible, the **DEC** will be provided with all correspondence necessary to complete Section 19 of the **CE Review**.

Whenever archaeological investigations have been conducted for projects involving federal aid, excluding only those specifically conducted to assess historic archaeological sites, Native American Consultation (NAC) is required. Consultation must be conducted using nation-to-nation protocols. Preparation of all NAC shall be the responsibility of the NAC **SME**. If NAC is not required, this should be explained in Section 19.F.

DEA Archaeological **SMEs** will coordinate these activities with the appropriate NAC **SME**. Consultation shall typically occur as soon as possible following report concurrence by the SHPO. Only after consultation with and approval of FHWA, shall NAC be conducted, prior to SHPO concurrence.

All NAC correspondence shall be prepared by the NAC **SME** for the signature of the FHWA and shall be copied to appropriate District and Central Office staff. NAC shall conclude 45 days following FHWA signing and distribution of the documents. Dates of NAC letters shall be documented in 19.F of the **CE Review**. FHWA shall provide DEA with copies of all related correspondence received from the tribes during the comment period along with their notification that the comment period has ended. In the rare instance that a tribe expresses an objection to a project, FHWA shall provide DEA with a copy of the letter upon its receipt. FHWA, DEA, and the DEC shall consult, as necessary, to resolve any tribal objections. If a tribe requests to further consult as additional data is developed this shall be indicated in Section 19.F and Section 5. The Archaeological SME shall notify the EPM and DEC of the outcome of the consultation, any project implications, and will provide copies of all correspondence received. Copies shall be attached to the CE. Additional information can be found at the sources listed below.

- Kentucky Transportation Cabinet Archaeology Webpage:  
<https://transportation.ky.gov/Archaeology/Pages/default.aspx>

- National Historic Preservation Act of 1966: <https://ncshpo.org/resources/national-historic-preservation-act-of-1966/>
- 36 CFR 800-Protection of Historic Properties: <https://www.achp.gov/sites/default/files/regulations/2017-02/regs-rev04.pdf>
- Advisory Council on Historic Preservation: <https://www.achp.gov/>
- KY Heritage Council: <https://heritage.ky.gov/Pages/index.aspx>

## 20. Section 4(f)

Properties subject to Section 4(f) of the U.S. Department of Transportation Act (49 USC 303) are publicly owned parks, recreation areas, and/or wildlife and waterfowl refuges. Significant historic sites (i.e. NRHP listed or NRHP eligible) are subject to Section 4(f) regardless of ownership (public or private). Section 4(f) only permits the use of any of these protected lands for a transportation project when:

- there is no “feasible and prudent” alternative to the use of the Section 4(f) property; and*
- the project includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.*

If the project is adjacent to a Section 4(f) resource, the TC 58-58 form, <https://transportation.ky.gov/Organizational-Resources/Forms/TC%2058-58.pdf>, shall be completed to ensure that the project team is aware of this resource and design decisions are made in accordance with this substantive law. Additional guidance can be found in this Highway Design Memo, <https://transportation.ky.gov/Highway-Design/Memos/01-18.pdf>. If it is determined that any Section 4(f) property is present in the project area, then the **EPM**, Historic, and/or Archaeological **SME** must be consulted and further consultation with FHWA will be required.

Section 4(f) is triggered when a project will “use” land from a protected resource. “Use” has been defined to include any permanent fee simple acquisition as well as “constructive use.”

If impacts to significant historic resources include the use of land from within the historic site boundaries, appropriate Section 4(f) compliance activities (*de minimis*, Programmatic or Individual), will also be required. These actions are the responsibility of the **EPM** and **SME** in consultation with the FHWA. The **DEC** will be provided with all correspondence necessary to complete Section 20 of the **CE Review** as soon practicable (*de minimis*, Programmatic 4(f)), or the **DEC** will be advised by the **EPM** that due to Section 4(f) issues and impacts (Individual 4(f)), environmental compliance responsibilities are being transferred to the DEA.

Section 4(f) resource impacts can be addressed utilizing a *de minimis* finding, Programmatic Section 4(f) Evaluations, Net Benefit Programmatic 4(f) or Individual Section 4(f) Statements. With the passage of SAFETEA-LU came greater flexibility for addressing 4(f) protected resources. If it can be determined, in consultation with the official having jurisdiction over the resource, that the project is having only *de minimis* impacts, then Section 4(f) requirements are considered satisfied. The official with jurisdiction over the resource must be notified of the FHWA finding that the project will not adversely affect the resource and of the Agency’s intent to make a *de minimis* determination. The official with jurisdiction must concur, in writing, with the determination. The public must also have been afforded an opportunity to comment on the project’s potential impacts on the resource. With the *de minimis* finding, no analysis of prudent and feasible alternatives is required. Measures to minimize harm must still be considered and implemented.



The FHWA has established Nationwide Programmatic 4(f) Evaluations for:

- 1) Federally-Aided Highway Projects with Minor Involvement with Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges
- 2) Federally-Aided Highway Projects with Minor Involvement with Historic Sites;
- 3) Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges
- 4) Programmatic Section 4(f) evaluation prepared for certain federally assisted transportation improvement projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the FHWA and official(s) with jurisdiction over the Section 4(f) property, the use of the Section 4(f) property will result in a net benefit to the Section 4(f) property
- 5) Programmatic Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects.

Copies of these documents are included in the web links below. For projects meeting the programmatic 4(f) evaluation criteria, the processing of qualifying projects can be streamlined by eliminating a certain amount of internal review and interagency coordination. The specific thresholds enabling the use of programmatic 4(f) evaluations are contained in the Nationwide Section 4(f) Evaluations published by the FHWA. Projects requiring Individual Section 4(f) Statements are more complex and exceed the strict criteria of the programmatic evaluations. The processing of Individual Section 4(f) Statements is time consuming and restrictive and should be avoided, if at all possible. In both cases, programmatic or individual, the use of Section 4(f) protected lands can only be used when there is no feasible and prudent alternative. Therefore, regardless of the type of Section 4(f) compliance documentation that may be applicable, the DEA must be notified of any potential Section 4(f) involvement as early as possible.

The resources listed below for additional Section 4(f) information:

- FHWA Section 4(f) Tutorial:  
[https://www.environment.fhwa.dot.gov/env\\_topics/4f\\_tutorial/default.aspx](https://www.environment.fhwa.dot.gov/env_topics/4f_tutorial/default.aspx)
- KYTC Section 4(f) Webpages:  
[https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Section-4\(f\).aspx](https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Section-4(f).aspx)
- FHWA Guidance for Preparing and Processing Environmental and Section 4(f) Documents:  
[https://www.environment.fhwa.dot.gov/legislation/nepa/guidance\\_preparing\\_env\\_documents.aspx](https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx)
- Section 4(f) Guidance and Legislation Documents:  
<https://www.environment.fhwa.dot.gov/legislation/section4f.aspx>
- 49 USC 303 – Policy on lands, wildlife, and waterfowl refuges, and historic sites:  
<https://www.govinfo.gov/app/details/USCODE-2009-title49/USCODE-2009-title49-subtitleI-chap3-subchapI-sec303/summary>
- 23 USC 138 – Preservation of Parklands: <https://www.govinfo.gov/app/details/USCODE-2011-title23/USCODE-2011-title23-chap1-sec138>
- 23 CFR 774 – Parks, recreation areas, wildlife and waterfowl refuges, and historic sites:  
<https://www.govinfo.gov/app/details/CFR-2016-title23-vol1/CFR-2016-title23-vol1-part774>

- Section 4(f) Policy Paper: <https://www.federalregister.gov/documents/2012/01/04/2011-33732/section-4f-policy-paper>
- AASHTO's Practitioner's Handbook on Complying with Section 4(f) of the U.S. DOT Act: <https://environment.transportation.org/pdf/programs/pg11-1%20lowres.pdf>
- FHWA Programmatic 4(f) on Independent Walkway and Bikeways: <https://www.environment.fhwa.dot.gov/legislation/section4f/4fbikeways.aspx>
- FHWA Programmatic 4(f) of Historic Bridges: [https://www.environment.fhwa.dot.gov/legislation/section4f/4f\\_bridges.aspx](https://www.environment.fhwa.dot.gov/legislation/section4f/4f_bridges.aspx)
- FHWA Programmatic 4(f) on Minor Involvements with Historic Sites: [https://www.environment.fhwa.dot.gov/legislation/section4f/4f\\_minor\\_hist.aspx](https://www.environment.fhwa.dot.gov/legislation/section4f/4f_minor_hist.aspx)
- FHWA Programmatic 4(f) on Minor Involvements with Parks, Recreation Areas and Waterfowl and Wildlife Refuges: [https://www.environment.fhwa.dot.gov/legislation/section4f/4f\\_minor\\_parks.aspx](https://www.environment.fhwa.dot.gov/legislation/section4f/4f_minor_parks.aspx)
- FHWA Programmatic 4(f) on Net Benefits: [https://www.environment.fhwa.dot.gov/legislation/section4f/4f\\_netbenefits.aspx](https://www.environment.fhwa.dot.gov/legislation/section4f/4f_netbenefits.aspx)
- Temporary No Use Exception Letter Template Example to OWJ: [http://www.dot.state.oh.us/Divisions/Planning/Environment/NEPA\\_policy\\_issues/4F\\_6F/Documents/Section%204\(f\)%20Temporary%20No%20Use.pdf](http://www.dot.state.oh.us/Divisions/Planning/Environment/NEPA_policy_issues/4F_6F/Documents/Section%204(f)%20Temporary%20No%20Use.pdf)

## 21. Section 6(f)

Properties subject to Section 6(f) of the Land and Water Conservation Fund (LWCF) Act of 1965 have been purchased or improved with LWCF grants from the U.S. Department of the Interior, National Park Service (NPS). Section 6(f) of the LWCF Act states:

*“No property acquired or developed with assistance under this section, shall, without the approval of the Secretary of the Interior, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location.”*

Therefore, when a project proposes to acquire any land (temporary or permanent) from any publicly owned outdoor recreation resource, it must be determined if a Section 6(f) property would be involved. This can be achieved by referencing the U.S. Department of the Interior Land and Water Conservation (LWC) website to determine if the affected resource is listed. If listed, maps or exhibits of the proposed project area must be submitted to the Governor's Office for Local Development (GOLD), along with a request for determination regarding what portion of the resource have had LWC funding applied. If the GOLD provides written confirmation that Section 6(f) property(s) is NOT affected, this will enable completion of Section 21 of the **CE Review**. If the GOLD provides confirmation that Section 6(f) property(s) IS affected, the DEA **EPM** must be notified, and the results of the coordination with the GOLD should be discussed in this section. Below are some helpful tools.

- Land and Water Conservation Fund Grants in Kentucky: <http://projects.invw.org/data/lwcf/grants-ky.html>

- A Quick History of the Land and Water Conservation Fund Program  
<https://www.nps.gov/nrcr/programs/lwcf/history.html>
- Kentucky Department for Local Government: <http://kydlgweb.ky.gov/>

If the project is adjacent to a Section 6(f) resource, the TC 58-58 form, <https://transportation.ky.gov/Organizational-Resources/Forms/TC%2058-58.pdf>, shall be completed to ensure that the project team is aware of this resource and design decisions are made in accordance with this law. Additional guidance can be found in this Highway Design Memo, <https://transportation.ky.gov/Highway-Design/Memos/01-18.pdf>.

## 22. Noise

The project area should be examined to determine if any noise sensitive sites or land uses are present, as early as possible in the project development phase. Noise sensitive sites and uses include any occupied property where frequent exterior human use occurs (e.g. residences, parks, schools, hospitals, etc.) and a lowered noise level would be of benefit, or any occupied structures where normal interior human uses could be hindered or negatively affected by discernable increases in noise levels (e.g. libraries, schools, hospitals, churches, nursing homes, theaters, etc.). For a full list of what types of land uses are considered noise sensitive for indoor and outdoor uses, consult Table 1 of the Kentucky Transportation Cabinet Noise Analysis and Abatement Policy. If the project is not considered a Type I project and noise sensitive receptors are NOT present, then Section 22 can be completed and no further noise considerations are required. If noise sensitive receptors ARE present, additional noise considerations must be made for Type I projects. Type I projects include:

- 1) A new roadway on new alignment;
- 2) Substantial Horizontal Alteration: A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition;
- 3) Substantial Vertical Alteration. A project that removes shielding, therefore, exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor;
- 4) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane;
- 5) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane;
- 6) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange;
- 7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza;
- 8) Re-striping of existing pavement to create a through or auxiliary lane.

If the proposed project DOES involve one or more of the above listed conditions, a project specific Traffic Noise Impact Analysis must be performed in accordance with the KYTC Noise Policy. A summary of the results/recommendations should be included in this section. Additional noise guidance is provided below.

- KYTC Noise Webpage:  
<https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Noise.aspx>
- FHWA Highway Traffic Noise: <https://www.fhwa.dot.gov/environment/noise/>

- 23 CFR 772 – Procedures for Abatement of Highway Traffic Noise and Construction Noise: <https://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0772.htm>
- FHWA Noise Policy FAQ's: [https://www.fhwa.dot.gov/Environment/noise/regulations\\_and\\_guidance/faq\\_nois.cfm](https://www.fhwa.dot.gov/Environment/noise/regulations_and_guidance/faq_nois.cfm)
- FHWA Noise Measurement Handbook: <https://www.fhwa.dot.gov/environment/noise/measurement/handbook.cfm>
- FHWA Techniques for Reviewing Noise Analyses and Associated Noise Reports: [https://www.fhwa.dot.gov/environment/noise/resources/reviewing\\_noise\\_analysis/fhwahep18067.pdf](https://www.fhwa.dot.gov/environment/noise/resources/reviewing_noise_analysis/fhwahep18067.pdf)

### 23. Air Quality

The potential air quality impacts of transportation projects are analyzed and updated as a whole at least once every two years through the development of the Statewide Transportation Improvement Program (STIP). It is developed by the Kentucky Transportation Cabinet (KYTC) Division of Program Management in consultation with the Federal Highway Administration (FHWA), Federal Transit Authority (FTA), Environmental Protection Agency (EPA), Metropolitan Planning Organizations (MPOs), and governing air quality agencies (Kentucky Division for Air Quality or Metropolitan Louisville Air Pollution Control District). All federal aid projects must be in the STIP, and TIP (if applicable), prior to signing the NEPA document. The STIP/TIP information should be included in the NEPA document (the most recent approved version, including the fiscal years, and page number(s)). The most recent STIP is included on KYTC's Program Management website. Modifications are included in the excel documents under the heading, **Amendments and Modifications by Project**. The most recent STIP information should be included in the NEPA document. TIP's are maintained by the local MPO, and their documents should be checked for each project. Links to both are provided in the list below.

At the present time (June 2018), there are nonattainment areas in Kentucky for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) and the 1997 ozone NAAQS. Due to an ongoing court case, conformity is once again required for the 1997 Ozone NAAQS for the nonattainment and maintenance areas for that standard. Any changes in the designations of counties or areas in Kentucky shall be updated on the EPA website, link provided below.

For all federal-aid projects, a statement regarding the project's potential to contribute Mobile Source Air Toxics (MSAT's) to the surroundings is required. FHWA has developed a list of project types that would not be reasonably expected to contribute to an increase in MSAT concentrations. A list of these project types can be found in 40 CFR 93.126. If a project is in the exempt list and meets the criteria specified then this section can be completed by indicating that the project will have "No Potential For Meaningful MSAT Effects". If a project is not on the exempt list, but will have no impacts on traffic (build and no build traffic does not differ) then the "No Potential for Meaningful MSAT Effects" box may be checked and no contact with DEA is required, but this should be discussed in 23.F. Low potential for MSAT effects requires a qualitative analysis, whereas a high potential for MSAT effects requires a quantitative analysis. Additional information can be found at the following links.

- KYTC Air Quality Webpage: <https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Air-Quality.aspx>
- KYTC STIP: <https://transportation.ky.gov/Program-Management/Pages/2019-STIP-Book.aspx>

- MPO Webpages: <https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/MPO%20address%20and%20contact%20for%20web%209%202007.pdf>
- FHWA Interim Guidance on MSATS in NEPA Documents: [https://www.fhwa.dot.gov/environment/air\\_quality/air\\_toxics/policy\\_and\\_guidance/msat/](https://www.fhwa.dot.gov/environment/air_quality/air_toxics/policy_and_guidance/msat/)
- FHWA 2016 Memo on MSATS: [https://www.fhwa.dot.gov/Environment/air\\_quality/air\\_toxics/policy\\_and\\_guidance/msat/2016msat.pdf](https://www.fhwa.dot.gov/Environment/air_quality/air_toxics/policy_and_guidance/msat/2016msat.pdf)
- EPA Summary of the Clean Air Act: <https://www.epa.gov/laws-regulations/summary-clean-air-act>
- 42 USC 85 – Air Pollution Prevention and Control: <https://www.govinfo.gov/app/details/USCODE-2010-title42/USCODE-2010-title42-chap85>
- 40 CFR 93 – Determining Conformity of Federal Actions to State or Federal Implementation Plans: <https://www.govinfo.gov/app/details/CFR-2010-title40-vol20/CFR-2010-title40-vol20-part93>
- Kentucky Nonattainment Status for all Criteria Pollutants: [https://www3.epa.gov/airquality/greenbook/phistory\\_ky.html](https://www3.epa.gov/airquality/greenbook/phistory_ky.html)
- AASHTO’s Practitioner’s Handbook on Addressing Air Quality Issues in the NEPA Process for Highway Projects: <https://environment.transportation.org/pdf/programs/ph18-1-ol.pdf>

#### 24. Hazardous Materials: Sites

As early as possible in project development, an inspection of the project area will be completed to determine if any of the structure types, sites, or land uses listed in Appendix E are present in the project area. If no such structures, sites or land uses are present, or if the project would have no effect upon any such structures, sites or land uses, then this section can be completed. In 24.C, provide a statement briefly explaining the basis of the no sites/land uses present or no sites/land uses affected determination.

If any potential hazardous materials sites are present in the project area and would be affected by the proposed project, then the DEA Hazardous Materials **SME** must be consulted.

If the **SME** advises that no hazardous materials permits, authorizations, or site specific Environmental Site Assessments (ESA) are required, this will permit the completion of all boxes in this section. If the **SME** subsequently determines that any hazardous materials permits, authorizations, or special mitigation plans, are required, and/or an ESA must be performed, the **SME** will so advise, in writing.

Though every effort should be made to complete Phase II investigations prior to requesting FHWA authorization of ROW funds, circumstances may dictate that Phase II or Phase III work be deferred. Consultation between the **DEC**, **EPM**, and **FHWA** must precede any decision to defer Phase II investigations. Documentation of the consultation must be attached to the CE and the issue of deferral discussed in Sections 24.C and 5 of the CE. The CE may be processed for the purpose of completing design and initiating the right-of-way phase; however, hazardous materials compliance activities must be fully addressed prior to any request for construction authorization. Additional information can be found at the following.

- KYTC UST & HAZMAT Webpage:  
<https://transportation.ky.gov/EnvironmentalAnalysis/Pages/USTs-and-Hazardous-Materials.aspx>

## 25. Hazardous Materials: Bridges

Demolition and/or renovations of a structure fall under the National Emissions Standard and Hazardous Air Pollutants (NESHAP) rules. Notifications are required 10 days prior to any removals, demolition or renovations **OR** when asbestos amounts larger than 160 square feet or 260 linear feet or 35 cubic feet are to be removed. These notifications are submitted to the Regional Division for Air Quality (RDAQ) or to the applicable local agency; Louisville-Jefferson County Metro Government Air Pollution Control District (LAPCD) when working in Jefferson County. The RDAQ office boundaries are broken out into seven offices and are grouped by counties surrounding the RDAQ office. A map outlining RDAQ boundaries with inspector names and phone numbers is available on KY Division for Air Quality (DAQ) website, <https://eec.ky.gov/Pages/index.aspx> The notification forms are also available on KY DAQ and LAPCD website. These 10 day notifications are required prior to doing the asbestos removal/abatement and again 10 days prior to beginning of demolition/renovation of the structure. Please see KYTC Division of Construction Memo, <https://transportation.ky.gov/Construction/Construction%20Memos/CM%2013-03.pdf> for process on contractor completion of this form.

The discussion of demolition/renovation of a structure has been broken out into two different types of structures:

### *a) Bridge Demolitions/Renovations:*

- A written/email request for an asbestos inspection is submitted by the **DEC**, **EPM**, and/or District/Central Maintenance to the Bridge Facilities **SME**. The written request should include the location of the bridge and the bridge number for that bridge, photograph, and proposed demolition/renovation plan sheets of activities for the bridge.
- KY Licensed DEA or statewide consultant Asbestos Inspector performs the asbestos inspection.
- DEA or consultant review asbestos inspection laboratory results.
- If the asbestos inspection does not identify any asbestos bridge materials requiring removal/abatement prior to demolition/renovation then the **DEC** and **EPM** are notified and the asbestos inspection report is placed in ProjectWise database, for others to use in the demolition/renovation process.
- If asbestos is identified on the bridge structure, asbestos removal/abatement activities are scheduled and completed by DEA and its statewide consultants or specifications for contractor removal are required for inclusion in the contract documents. Once asbestos removals/abatement is completed by DEA the **DEC** and **EPM** are notified by the **SME** and the asbestos inspection and abatement reports are placed in the ProjectWise database for access and use by others who are responsible for demolition/renovation activities of the bridge.
- Notifications must be submitted to RDAQ or LAPCD if working in Jefferson County for all bridge demolitions.



### *b) Structures Acquired through Acquisitions of ROW:*

- A written/-email request for an asbestos inspection is submitted by the District ROW to DEA SME. The written request includes the address of each property, a list of the structures with square footage on each property, photograph of structures and proposed construction project plan sheets of the structures.
- KY Licensed DEA and statewide consultant Asbestos Inspectors perform the inspections.
- If the asbestos inspection does not identify any asbestos materials requiring removal/abatement prior to demolition/renovation, the District ROW is informed by the SME and the asbestos inspection report is placed in the ProjectWise database for others to use in the demolition/renovation process.
- If asbestos is identified removal/abatement activities are scheduled and completed by DEA and its statewide consultants or specifications for contractor removal are required for inclusion in the contract documents. Once asbestos removals/abatement is completed by DEA and the District ROW is informed, the asbestos inspection and abatement reports are placed in the ProjectWise database for access and use by others who are responsible for demolition/renovation activities.
- Notifications must be submitted to RDAQ or LAPCD if working in Jefferson County for all structure demolitions.

### 26. Threatened and Endangered Species

Following identification of all species that may potentially occur in the project vicinity, it will be determined if habitat for the identified species is present following procedures established for use of the Habitat Assessment Manual (HAM). A CE may not be approved without the completion of a habitat assessment. All Section 7 clearances shall be obtained to the maximum extent practicable prior to the approval of the CE. Should activities need to be deferred, the process outlined in the HAM should be followed, and the outstanding activities should be identified in sections 26.B, 26.D, and 5 of the **CE Review**.

The project action should be checked with the No Effect by Definition Checklist identified in the most recent version of the HAM. If the project is considered No Effect by Definition, 26.A should be checked yes and a brief explanation of this should be included in 26.B. Determination of Effect and additional analysis required should state no.

For species where there is no habitat present or no impacts to the identified habitat, the appropriate “No Effect” finding shall be completed and attached to the CE. Species for which a No Effect finding has been made shall be documented in Section 26.B.

If habitat exists for either the Indiana or northern long-eared bat, the conditions and methods that have been agreed upon to address minimizing project impacts to the species, such as acceptance of tree cutting restrictions/use of the Imperiled Bat Conservation Fund, and/or the decision to proceed with a Biological Assessment (BA) should be documented in this section.

If T&E compliance activities require preparation of a BA, this should be completed prior to requesting right-of-way authorization, but must be completed prior to requesting construction authorization. Due to seasonal restrictions or other circumstantial issues, it may be necessary to defer the required BA activities to a future point in time to allow for the advancement of the project. The process as outlined in the Habitat Assessment Manual should be followed. At a minimum, the justification for deferral should be included in 26.D, including reasonable assurance that the project

will not result in an adverse effect or jeopardy opinion. Reasons for deferral could be one or more of the following; waiting for more complete plans to be developed so that a proper biological assessment can be completed, need to acquire right-of-way in order to access survey area, seasonal survey requirement for subject species, etc. Other information to include in this section would be any commitments that have already been made with USFWS (include any relevant meetings/notes), and an estimated timeline to complete the additional activities. Ensure that any outstanding activities are documented in both Sections 26.D and 5. of the **CE Review**. Additional guidance can be found at the following:

- KYTC Permitting and Ecology Webpage: <https://transportation.ky.gov/EnvironmentalAnalysis/Pages/Ecology-and-Permitting.aspx>
- KYTC DEA HAM: <https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/2017%20HAM%20Final%2004-02-2018.pdf>
- USFWS IPAC: <https://ecos.fws.gov/ipac/>
- USFWS Endangered Species Act Document Library: <https://www.fws.gov/endangered/esa-library/index.html>
- EPA Summary of the Endangered Species Act: <https://www.epa.gov/laws-regulations/summary-endangered-species-act>
- 50 CFR 402 – Interagency Cooperation-Endangered Species Act of 1973, as amended: <https://www.govinfo.gov/content/pkg/CFR-2018-title50-vol11/xml/CFR-2018-title50-vol11-part402.xml>
- AASHTO’s Practitioner’s Handbook on Implementing Eco-Logical: Integrating Transportation Planning and Ecological Decision Making: <https://environment.transportation.org/pdf/programs/ph16-1%20v7%20press.pdf>
- AASHTO’s Practitioner’s Handbook on Complying with Section 7 of the Endangered Species Act for Transportation Projects: <https://environment.transportation.org/pdf/programs/ph17%20esa%20final.pdf>

## 27. Water Resources

As soon as possible in the project development phase, any water resources that may be impacted should be identified. The water resources impact determination will be used to ascertain permitting or other actions that may need to be taken to comply with state and/or federal regulations or requirements. Special consideration will be given to those projects located within close proximity to Special Use Waters. Project development and permitting activities will both reflect appropriate consideration of these resources and may also include protective measures to prevent or minimize harm. Consideration of impacts to Waters of the United States (U.S.) (defined as Federally regulated perennial, intermittent, and ephemeral streams, lakes/ponds, or wetlands), Drinking Water Resources (public or private, surface, or groundwater), Wellhead Protection Areas, MS4 regulated areas, and karst areas will also be given. Impacts below the Ordinary High Water Mark (OHWM) of Waters of the U.S. will be of particular interest in assessing permitting requirements. The need for a U.S. Coast Guard (USCG) Section 9 permit or US Army Corps of Engineers (USACE) Section 10 permit for crossing of a Navigable Water must also be determined. In addition, the need for a KPDES permit for discharge of storm water during project construction and any influence that resources in the area, such as Special Use Waters, may have on project requirements should be identified.



### *a) Special Use Waters*

Special Use Waters are rivers, streams and lakes listed in Kentucky Administrative Regulations or the Federal Register as Cold Water Aquatic Habitat, Exceptional Waters, Reference Reach Waters, Outstanding State Resource Waters, Outstanding National Resource Waters, State Wild Rivers and Federal Wild and Scenic Rivers. Not included as Special Use Waters are water bodies designated by default as Warm Water Aquatic Habitat, Primary Contact Recreation and Secondary Contact Recreation. The Kentucky Division of Water web site for Special Use Waters (<https://eec.ky.gov/Environmental-Protection/Water/Regs/Pages/SpecialH2O.aspx>) and the Kentucky Administrative Regulations (<http://www.lrc.ky.gov/kar/401/010/026.htm>) provides a means for identifying and locating these resources.

Highway project development within the watersheds of Special Use Waters may require additional coordination or permitting activities with resource agencies responsible for administration and protection of these designated waters.

If Special Use Waters are present within the project area, the DEA Permitting **SME** should be contacted for additional guidance with regard to the KPDES permitting requirements. The presence of Special Use Waters may require additional coordination with the Division of Water, an Individual KPDES permit (requiring a public notice), or other requirements.

### *b) Floodplains*

Floodplain encroachments have the potential to increase flood elevations or decrease storage capacity. The KYTC Division of Highway Design, Drainage Branch assesses the impact of floodplain encroachments during final design. Coordination with FEMA and the Division of Water, if necessary, is conducted as part of that design and review. Indication of floodplain impacts in Section 27.F will serve as notice to the Drainage Branch that this issue will require consideration as design proceeds. No further coordination or consultation is required for completion and approval of the CE.

### *c) Drinking Water Supplies*

Prior to completion of the **CE Review**, it must be determined if public or private drinking water sources (including groundwater sources and/or wellhead protection areas) are present in the project area and if the potential exists for those drinking water sources to be affected (directly or indirectly) by the project during or after construction. This may require interviewing affected landowners and consulting with local water utilities to determine their water sources. If area residents are found to be using groundwater or surface water as a drinking water supply, coordination with the Permitting SME should be initiated. This is of the utmost importance if the project lies within a wellhead protection area or the watershed of a municipal drinking water supply. Plans for avoiding or minimizing harm to these resources will be coordinated with the project team.

After coordination with the landowners, local officials or other affected parties, and consideration of appropriate measures, any commitments, special provisions or protective measures to be employed, especially those that will require specific consideration during detailed design will also be reported in Section 27.F and Section 5.

#### *d) OHWM Impacts*

If Waters of the U.S ARE present in the project area and it is determined that stream impacts will occur below the Ordinary High Water Mark, then coordination with the DEA Permitting SME should occur.

#### *e) Special Aquatic Sites*

In the instance that a Water of the U.S. has been identified as being impacted by the project then as early as possible in project development, it should be determined if the project will result in the loss of a Special Aquatic Site (SAS). In Kentucky, a SAS may be defined as wetlands or Riffle-Pool Complexes.

To address wetland concerns, the National Wetland Inventory (NWI) mapping of the project area should be reviewed. NWI coverage can be obtained using the in-house KYTC ArcView layers or from various internet sources. Since NWI maps are often incomplete or inaccurate, this information must also be supplemented by a review of soils maps, which may identify hydric soils in the project area. The appropriate NRCS resources will be reviewed to identify the presence of hydric soils in the project area. Soils identified as hydric or as map units that contain hydric inclusions, reveal a strong possibility for the presence of wetlands even if the area(s) is not identified as wetland on the NWI map.

Utilizing both the NWI map and the hydric soils information, the reviewer must field assess the project area and determine if any wetlands or potential wetlands may be present. Riffle-Pool Complexes may also exist within stream reaches to be impacted. Field review must also investigate for these features.

If no SAS or potential SAS is present, or if the project would have no effect upon any SAS present, then a statement, briefly explaining the basis of the no SAS present or no SAS affected determination should be provided in 27.F and a copy of the NWI map and soils map should be attached to the CE.

## 28. Permits

#### *a) Small Municipal Separate Storm Sewer Systems (MS4)*

If the project is located wholly or partially within a designated MS4 community, then coordination with the DEA MS4 SME should occur to determine if the project is in compliance with the overall KYTC MS4 program. Additional coordination with the local MS4 community may be required. This coordination must be completed prior to completion of the CE. Any specific requests of the local MS4 that will affect design or that will need to be reflected in final plans should be noted in both Sections 28.A and 5.

- MS4: [https://eec.ky.gov/Environmental-Protection/Water/Comp\\_Insp/Pages/MS4.aspx](https://eec.ky.gov/Environmental-Protection/Water/Comp_Insp/Pages/MS4.aspx)

#### *b) KPDES KYR10 Storm Water Permit*

If the project will result in a surface disturbance greater than one (1) acre, then a KPDES KYR10 storm water permit will be required. Surface disturbance includes all disturbance related to the highway construction including staging areas, excess material disposal sites, utility relocation, or other disturbances. If “Yes” is checked, then the project manager and the District Construction Branch Manager should be informed of the need for a KPDES KYR10 permit. This notification should result in the development and submittal of the

KYR10 notification to the Division of Water prior to construction. Once KPDES permitting needs have been identified the District Construction Branch or Central Office Construction will be responsible for completing the appropriate KPDES permit application and submitting the application to the Division of Water. Additional guidance can be found below.

- Highway Design Memo: <https://transportation.ky.gov/Highway-Design/Memos/05-17%20-02-17.pdf>
- KPDES KYR10: <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/KYR10PermitPage.pdf>

#### *c) Section 9 of the Rivers and Harbors Act United States Coast Guard Permits*

Section 9 Waters are a subsection of Section 10 Waters and are defined as navigable waters currently used as a means of transporting interstate or foreign commerce. If you are unsure whether a project occurs in a navigable waterway, then the DEA Permitting **SME** must be consulted.

By Memorandum of Agreement to Coordinate and Improve Bridge Planning and Permitting dated January 14, 2014, the FHWA and U.S. Coast Guard (USCG) agreed to streamlining measures, including the development of NEPA documents that would satisfy the requirements of both agencies. This requires early coordination and consultation with USCG for any projects that may require a USCG permit. When such permit is required, FHWA shall be notified so that they can request the USCG to become a cooperating or participating agency. USCG involvement and development of a navigational impact report are to occur concurrently with the NEPA scoping process. Though it is not anticipated that bridge replacement over navigable waterways, will routinely be documented with a CE, the **DEC** and **EPM** should be aware of these requirements, if applicable, and coordinate with FHWA prior to scoping the project. Additional guidance is provided below.

- Section 9 of the Rivers and Harbors Appropriation Act of 1899: <https://www.fws.gov/laws/lawsdigest/riv1899.html>
- MOA to Coordinate and Improve Bridge Planning and Permitting: [https://www.environment.fhwa.dot.gov/env\\_initiatives/edc/MOA\\_USCG\\_bridge\\_permits.aspx](https://www.environment.fhwa.dot.gov/env_initiatives/edc/MOA_USCG_bridge_permits.aspx)

#### *d) Section 10 of the Rivers and Harbors Act*

It should be determined if impacts to Waters of the U.S. will be regulated by USACE under Section 10 of the Rivers and Harbors Act of 1899 by the USACE. The USACE Public Notice No. 83-LD-016 shall be used to determine whether a Section 10 Water will be impacted. Additional information can be found at the following.

- EPA Section 10 of the Rivers and Harbors Appropriation Act of 1899: <https://www.epa.gov/cwa-404/section-10-rivers-and-harbors-appropriation-act-1899>
- USACE Public Notice No. 83-LD-016: [https://www.lrl.usace.army.mil/portals/64/docs/regulatory/permitting/sec10\\_lrl.pdf](https://www.lrl.usace.army.mil/portals/64/docs/regulatory/permitting/sec10_lrl.pdf)

#### *e) Permitting Requirements*

Once 404/401 permitting is determined to be necessary, the DEA **SME** shall be responsible for preparation of the 404/401 permit application packages. Completion of permitting

activities is not required for issuance of the CE; however, project permitting needs must be identified in the appropriate locations of Section 28.H and Section 5. The discussion in this section should identify that there is no practicable alternative that is less damaging to the aquatic environment, and that the proposed impacts are not anticipated to significantly degrade the nation's waters. Include the steps taken to avoid and minimize impacts to wetlands, where practicable. Indicate any remaining, unavoidable impacts.

- AASHTO's Practitioner's Handbook on Applying the Section 404(b)(1) Guidelines in Transportation Project Decision-Making: <https://environment.transportation.org/pdf/programs/ph14-2.pdf>
- Nationwide Permits: <https://www.lrl.usace.army.mil/Missions/Regulatory/Obtain-a-Permit/Nationwide/>
- 40 CFR 230 – Section 404(b)(1) Guidelines: [https://www.epa.gov/sites/production/files/2015-03/documents/cwa\\_section404b1\\_guidelines\\_40cfr230\\_july2010.pdf](https://www.epa.gov/sites/production/files/2015-03/documents/cwa_section404b1_guidelines_40cfr230_july2010.pdf)

#### *f) Significant Water Resources/Karst Policy*

Prior to completion of the **CE Review**, it must be determined if ANY significant water resources are present that may be affected by the project. These may include but are not limited to Special Use Waters, Drinking Water Supplies, Wellhead Protection areas, karst areas, etc. If any of these features or characteristics are present in the project area, the project may be a candidate for use of the Department's Policy on Best Management Practice (BMP) to be Used for Karst and Significant Resource Areas (Design Memorandum 12-05). If so, "Yes" should be checked and a request for assistance sent to the appropriate DEA SMEs as application of the "Karst Policy" may serve to comply with several programs as well as minimize impacts to various resources. Additional information can be found at the following.

- 33 USC 1344 – Permits for dredged or fill material: <https://www.govinfo.gov/app/details/USCODE-2011-title33/USCODE-2011-title33-chap26-subchapIV-sec1344>
- 33 CFR 323 – Permits for discharges of dredged or fill material into waters of the US: <https://www.govinfo.gov/app/details/CFR-2012-title33-vol3/CFR-2012-title33-vol3-part323>
- KY BMP's: <https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/KY%20BMP%20Manual%20Section%201.pdf>
- Highway Design Memo 12-05: <https://transportation.ky.gov/Highway-Design/Memos/Design%2012-05.pdf>

## 29. Secondary and Cumulative Impacts

Discuss any anticipated secondary/indirect, and cumulative impacts. The analysis requirements for this section should be commensurate with the potential for adverse and significant impacts, and should be discussed in early project scoping with FHWA. CE's do not have significant environmental effects; therefore, this section should include consideration and discussion to support that or discuss potential minimization and/or mitigation techniques to apply to avoid significant impacts.

*a) Secondary/indirect Impacts* occur later in time than the proposed action. However, they are still reasonably foreseeable. They can be thought of as cause and effect. Some examples of indirect effects include growth, changes in the land use patterns, population density or growth rate, and related effects on the natural environment.

*b) Cumulative Impacts* result from incremental impacts from the proposed project, added to other past, present, and reasonably foreseeable future actions. These are the total effects on the natural and human environment. There may be different cumulative impacts on different environmental resources.

Additional guidance can be found below.

- FHWA Q&A regarding consideration of indirect and cumulative impacts in the NEPA process: <https://www.environment.fhwa.dot.gov/nepa/QAimpact.aspx>
- Center for Environmental Excellence by AASHTO Indirect Effects/Cumulative Impacts: [https://environment.transportation.org/environmental\\_topics/indirect\\_effects/overview.aspx](https://environment.transportation.org/environmental_topics/indirect_effects/overview.aspx)
- AASHTO's Practitioner's Handbook on Assessing Indirect Effect and Cumulative Impacts under NEPA: <https://environment.transportation.org/pdf/programs/ph12-2.pdf>

### 30. Construction

Potential project effects and impacts unique to construction phase activities should not be overlooked. As early as possible in project development, the project area should be evaluated for conditions and circumstances that may be sensitive to construction processes. It should be determined if highly erodible soils are present and if special measures to control silt and sediment from entering surface streams or groundwater conduits during construction are necessary. It should be determined if special consideration must be given to any state or local ordinances or laws relative to dust control, open burning, or other air quality issues. It should be determined if any noise sensitive land uses are present which could affect time and duration of construction operations. It should be determined if construction period detours will be required and if such detours would adversely affect neighborhoods or businesses. It should be determined if any specific areas (e.g. wetlands, archaeological sites, wildlife habitat, sensitive vegetation, etc.) should be restricted from equipment or materials storage or staging. These factors and any other anticipated project consequences from construction which could adversely affect the environment, should be discussed in this section.

General language that can *typically* be included in this section: Highway construction activities are designed to have minimal and temporary impacts to traffic patterns and access, air quality, water quality, noise, and landscape. KYTC will implement erosion and sediment control measures as specified in the Kentucky Department of Highways Standard Specification (KHDSS) Section 212 and 213. KYTC or its contractors will control fugitive dust generation in accordance with KHDSS Section 107.01.04. Excess construction material will be managed in accordance with KHDSS Section 204. KYTC and their contractors will follow the Best Management Practices plan and groundwater protection plan provided with the project documents. In order to maintain traffic during widening and reconstruction, temporary pavement widening may be required. Maintenance of Traffic and Construction Phasing plans will provide a minimum of two-lanes of traffic during non-working hours and access to properties will be provided, as necessary, at all times by using temporary entrances, entrance pipes, flag persons, temporary striping, channelization devices, etc., as necessary. Negative impacts on traffic will be temporary, only lasting as long as construction.

## E. Surplus Properties

The action of selling an excess ROW parcel is identified as qualifying for approval as a Categorical Exclusion in agreement with FHWA. These requests to dispose of surplus property can be processed as CE I's.

The action of approving the surplus property will not typically result in direct impacts to sensitive environmental resources, including historic resources, wetlands, streams, and threatened or endangered species or their habitat; however, the future use of the parcel may change as a result of property owner actions. This change in use is considered an indirect impact, which could cumulatively result in an impact upon sensitive resources. Due to the unique circumstances surrounding disposal of excess property and the minimal potential for impacts, these actions, though considered a CE I, are documented in a different manner.

In approving the applications for surplus property, KYTC will disclose any sensitive resources, which may occur on the parcel or in its immediate vicinity. Any mitigation, coordination, consultation and compliance with applicable federal and state rules and regulations will be the responsibility of the property owner. In instances where a known National Register eligible archaeological site exists on the parcel, it shall not be surplused without a deed restriction or preservation easement that will protect the site from future disturbance.

When processing the CE I for a surplus property, the **DEC** or **EPM** will utilize the *Surplus Property Categorical Exclusion Impact Summary Sheet* and the *Surplus Property Notification of Environmental Conditions Form*. Completion of the form shall be in accordance with guidance issued by the DEA on the matter dated December 3, 2004 or as superseded (See Appendix D). In the unlikely event that a Section 4(f) resource exists on the property, **DEA and FHWA must be consulted**. ROW taking from these resources should have been minimized during project development. In most cases, if there is surplus property available, it would likely revert back to the park, refuge or historic property rather than be sold to a third party.

If an archaeological site is known to exist on the parcel, but its eligibility for the National Register has not been determined, the Applicant/Purchaser shall be notified that they may need to coordinate with the SHPO prior to conducting earth moving activities. If it is unknown whether a site may exist, the archaeology **SME** should be consulted and requested to review available GIS data. The areas on the property where any restrictive provisions may apply, should be described to the extent necessary for the Applicant/Purchaser to fully recognize the area of concern. If an archaeological site eligible for the National Register is known to exist on the parcel, the property shall not be surplused without a deed restriction or preservation easement that will protect the site from future disturbance. If this is in conflict with Applicant/Purchaser's proposed use of the property, then they will need to conduct sufficient investigations to satisfy the SHPO for release of the easement.

If there are any environmental conditions of the property that might require an action on the part of or recognition of a restricted use by the Applicant/Purchaser, the *Surplus Property Notification of Environmental Conditions* form is to be completed. The Applicant/Purchaser is required to sign the form in the space provided, acknowledging their understanding of the applicable conditions.



## IV. CE Re-evaluations

CE determinations must be periodically reevaluated to assure that the decision reflects the current project and that effects and impacts previously identified have not significantly changed. Reevaluation of a project decision is appropriate if:

1. **The scope of the project has changed.** This may mean that terminus, alignments or other significant aspects of the previous analysis and approval are substantively different. Though not necessarily considered a change of scope, a reevaluation must also consider the minor changes that occur between preliminary and final design. These refinements may incorporate additional right of way, affect additional residences, or create impacts not addressed by the original determination.
2. **Regulations have changed.** Passage of new regulations or changes that may occur within existing regulations may render a previous determination invalid. When reevaluated, projects must be assessed in accordance with regulations that exist at the time of reevaluation, not those that were in effect at the time of the original decision.
3. **Conditions have changed.** After approval of a document, conditions in the area of the project may be altered. This would most typically occur as a result of the introduction of man-made features or influences on the landscape but may also include significant catastrophic events such as fires, floods, etc. Any significant changes that have occurred within the landscape where the project will be located that alter previous determinations of impact or effect must be considered.
4. **Funding phase request from FHWA.** Prior to requesting each subsequent major project approval from the FHWA (Final Design, Right-of-Way, Utilities, and Construction), all CE projects must be reevaluated to establish whether or not conditions have changed, rendering the CE classification invalid, unless there have been no changes and the CE has been approved within the last 90 days. Projects which are within 90 days of the CE approval may proceed with major project approvals without a reevaluation specifically for that phase. For example, if a project approved its CE I less than 90 days ago, and no changes had occurred, the project could also have Right-of-Way and/or Utilities authorized without reevaluation. If a project is re-evaluated for a specific phase or phases, and the phase(s) that it has been re-evaluated for are indicated on the TC 58-49 **Environmental Project Impacts Re-evaluation** form, and no project changes have occurred, then the re-evaluation is valid for two years.

A CE approval is considered to have expired if it is more than two (2) years old. Projects which were processed as CEMP Projects and CE I's will be reevaluated by the **DEC**. Projects which were approved as CE II's or III's, or approved through the EA/FONSI process, will be reevaluated by the **EPM**. The **DEC** should coordinate with the **EPM** in advance of planned major project actions to assure re-evaluation of CE II and III documents, as needed, to maintain project schedules.

For each re-evaluation, all of the documentation developed for the CE or FONSI approval will be reviewed and compared with the current circumstances surrounding the proposed project. As with the initial evaluation/approval, project context and intensity factors will be key to the re-evaluation. If the re-evaluation finds that there have been no significant changes in the project or in the range of factors that led to the initial **CE Determination**, then no further NEPA coordination for the project is required. This finding must be documented in the project file with the completion of the TC 58-49 **Environmental Project Impacts Re-evaluation (Re-evaluation)** form (see Appendix B). If project conditions and circumstances are found to have changed to such a degree that the CE classification should be reexamined or elevated, a new CE evaluation process must be initiated regardless of whether two years have passed since the approval.

If it is determined that a CEMP Project should be elevated to CE I, the required documentation will be developed by the **DEC**. If it is determined that a CEMP or CE I should be elevated to CE II or higher, the **DEC** will provide all available project and environmental information to the **EPM**, along with a recommendation for project elevation.

If a CE II or III project is deemed, through the reevaluation process, to require elevation, the execution of the appropriate NEPA requirements will be the responsibility of the **EPM**. The **DEC** and the project team will be notified by the **EPM** of the decision, apprised of the actions, activities, and schedule to complete the reevaluation process.

### A. Review Required for all CE Re-evaluations

Re-evaluations for all project levels should involve coordination with the project team to identify any plan changes, and review of the previously approved environmental document and environmental reviews. Coordination with the appropriate **SME**'s may be required to ensure continued compliance with the original clearance or to provide a new review for the re-evaluation. The surrounding land uses should be reviewed to ensure the area previously cleared is consistent with existing conditions. Any new laws or regulations developed since the original clearance should be followed, as applicable.

### B. CE Re-evaluation Documentation

The TC 58-49 Environmental Project Impacts Re-evaluation (**Re-evaluation**) should be completed for all NEPA RE's. The information should be consistent with the original environmental determination.

#### 1. Project Summary

The information should be identical to the **CE Determination** (or other NEPA document type) unless information has changed. For example, there could be new breakout project numbers, the project description could have slightly changed in the most recent version of the highway plan, the project could have previously been an LPA project that is now district administered, etc. In the title block, 1. Project Summary for \_\_\_\_\_, the document level of the original environmental document should be selected.

#### 2. Environmental Determination

This section of the **Re-evaluation** demonstrates how the project action continues to meet the criteria and identifies the appropriate document level. This section should be completed following the re-assessment of the project area and obtaining any supporting documentation needed to make the appropriate determinations. The Environmental Determination must have an answer for all rows. The Original Determination column should be identical to the original environmental determination. The Re-evaluation for \_\_\_\_\_ should indicate the appropriate phase(s) that the document is currently being re-evaluated for. This column should indicate the current determination for each functional area. This is to indicate if the determination is consistent with the original environmental determination or if information has changed. The Comment/Commitments/Mitigation column should indicate any and all information that should be conveyed to the project team. Record a summary of all commitments made, identify all issues that have been postponed or deferred, and specify all mitigation measures designed to address the anticipated environmental consequences of the proposed project. This should include original commitments and new commitments to ensure that all commitments are carried through the project development process.

The Project Manager (**PM**) will review and enter appropriate information identified in this section into the Communicating All Promises (**CAP**) document in the KYTC Six Year Plan database. It is

extremely important that the **PM**, **DEC**, and **EPM** openly communicate the commitments and mitigation activities identified during the environmental review process to ensure their continuation throughout the project development process, construction, and maintenance, as appropriate. Remember these activities, are what allows the project to be categorically excluded.

The statement, “Based on the criteria listed above.....the subject project is determined to be considered a \_\_\_” should be completed for all NEPA reevaluations. This is to indicate if the project is still considered the original document level, or indicate if the project determination has changed.

### 3. Environmental Document Approval

The **DEC** and Project Manager (**PM**) shall review and sign all CE levels. This review is to ensure that the information contained within these sections appropriately reflects the project team decisions, is consistent with other project documents, and any identified commitments/mitigation efforts are carried on throughout the project development process. See Section V. Categorical Exclusion Approvals for the review and process requirements for each CE level. The approval signatures required for the **Re-evaluation** should be consistent with the original document level approval if the document level remains the same. However, if the document level is elevated, the document approval signatures required for the **Re-evaluation** should be the consistent with the new document level.

**Should project plans change, new laws be released, or surrounding land-use change** since the approval of the **Re-evaluation**, then a new **Re-evaluation** should be completed.

# V. Categorical Exclusion Review, Approval, and Documentation Procedures

## A. Review Recommendations for all CE Levels (CEMP, CE I, CE II, and CE III)


It is recommended that the CE document be reviewed and revised before circulated for approval. The reviewers should be consistent with the approval requirements for the appropriate CE level. For example, a CE I should be reviewed by the DEC or EPM, as appropriate, whereas a CE III, would require FHWA review and comment. See Sections V.B. for the appropriate reviewers based on document level.

### 1. Adobe PDF Review/Comment

This review can be electronic to expedite the review; however, for the administrative record, the drafts and comments should be saved in ProjectWise under the Working Folders>Environmental Working Folder>NEPA-Environmental Document.


#### a) Sending PDF for Review/Comment

Adobe PDF allows for sharing and comments within the application. In the upper right corner, click blue **Share** button. The information shown in the to the right should appear. Click **Review File** you can either enter the email of the recipient, link to share via email, or send as attachment. If recipient is invited by email, then you are able track when they add comments, mention others, finish reviewing.

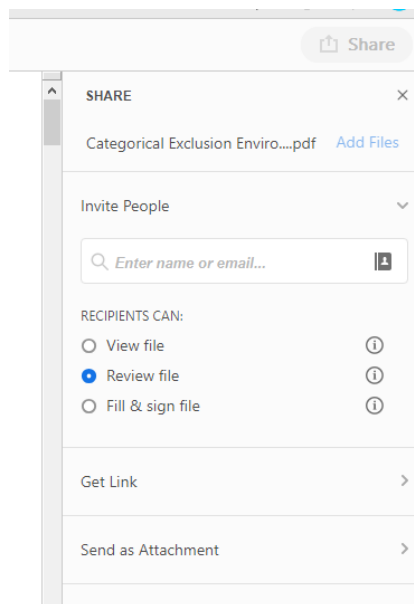
Another way to access this screen is **Tools > Send for Review** or choose **Send for Review** (yellow icon ) on the right pane.

#### b) Comments in PDF

Comments can be added by the reviewer throughout the document. The document preparer can also respond to comments for easy tracking. See below for an easy how-to.

**Tools > Comment** or choose **Comments** (dark yellow icon ) from the right pane.

The secondary toolbar as shown below should appear to allow for various tools to use for adding comments to the PDF.

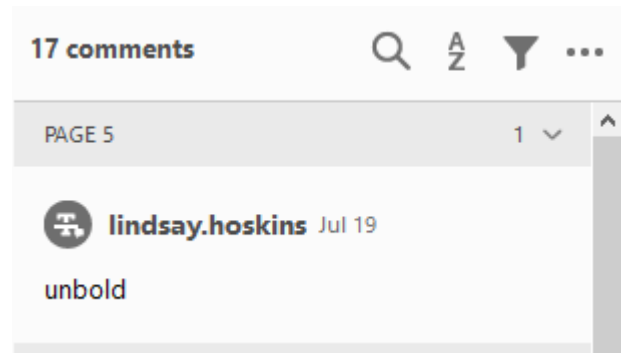


within the image and get a the to or



Comments will then pop-up in a reading pane to the right side of the Adobe screen. An example of the comment pane is shown to the right.

Comments can be searched, sorted, filtered, and edited from this pane. Simply clicking on a comment will jump the part of the document that it applies to.





A response to comments can be provided in the PDF also. This allows for easy tracking to ensure all concerns have been addressed. To reply to a comment, click on a comment within the PDF. The following box should appear below for direct response.

As a reminder, no consultant logos should be within the CE language or maps. These are federal documents. No consultant references should be included (ex. Consultant X sent out survey forms). Documents should not be written in first person. CE documents should be easily readable and understandable by the general public. General guidance for writing documents is provided below.

- AASHTO’s Practitioner’s Handbook for Preparing High-Quality NEPA Documents for Transportation Projects: <https://environment.transportation.org/pdf/programs/pg15-1.pdf>
- FHWA Memo of Implementing Quality Environmental Documentation: [https://www.environment.fhwa.dot.gov/env\\_initiatives/edc/iged\\_memo.aspx](https://www.environment.fhwa.dot.gov/env_initiatives/edc/iged_memo.aspx)
- Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act: <https://www.federalregister.gov/documents/2012/03/12/2012-5812/final-guidance-on-improving-the-process-for-preparing-efficient-and-timely-environmental-reviews>
- Plain Language Writing Act of 2010: <https://plainlanguage.gov/law/>

## B. Approval Procedure for all CE Levels (CEMP, CE I, CE II, and CE III)

The document can be approved electronically. **Tools > Fill & Sign** or choose **Send for Review** (purple icon ) on the right pane. Then click if you or others need to sign first. If it’s you, click the ink pen icon () to insert your electronic signature. If the document requires further signatures, specify where to sign within the document by clicking the appropriate signature box, and then send for their signature. If sent through Adobe, the progress can be tracked.

### 1. CEMP Approval Signatures

After completion of the CEMP criteria, the **DEC** or **EPM** or **Director of DEA** and the Project Manager (**PM**) shall review the documentation in support of the CEMP and sign the **CE Determination** form.

### 2. CE Level I Approval Signatures

After completion of the CE I criteria, the **DEC** or **EPM** or **Director of DEA** and the Project Manager (**PM**) shall review the documentation in support of the CE I and sign the **CE Determination** form.

### 3. CE Level II Approval Signatures

After completion of the CE II criteria, the **DEC**, the **EPM**, the Project Manager (**PM**), and the **Director of the DEA** shall review the documentation in support of the CE II and sign the **CE Determination** form.

### 4. CE Level III Approval Signatures

After completion of the CE III criteria, the **DEC**, the **EPM**, the Project Manager (**PM**), the **Director of the DEA**, and the **FHWA** shall review the documentation in support of the CE III and sign the **CE Determination** form.

### 5. CE Reevaluations

After completion of the **CE Re-evaluation**, the document will be reviewed and approved with the procedure for the appropriate document level.

### 6. Surplus Properties Documentation and Processing Procedure

After completion of the TC 58-46 Surplus Property Categorical Exclusion Impact Summary Sheet and TC 58-47 Surplus Property-Notification of Environmental Conditions, the **DEC** shall review the documentation in support of the request and sign the forms. The **District Right of Way Agent** should also review and sign the TC 58-46 Surplus Property Categorical Exclusion Impact Summary Sheet and continue the surplus property request as appropriate.

## C. Documentation Procedure for all CE Levels (CEMP, CE I, CE II, and CE III)

The **DEC** or **EPM** will determine that the project is consistent with the project types specified in the **Agreement**, **and** satisfy criteria listed in Section II and the CE Matrix. The project must meet transportation planning requirements in 23 CFR 771.113(a)(3). Before NEPA approval, at least one post-NEPA phase must be in the current, fiscally constrained Transportation Improvement Program (TIP) (if applicable) and the Statewide Transportation Improvement Program (STIP). The long-range transportation plan must show funding sources for the entire project.

The **DEC** or **EPM** shall prepare an email distribution to the appropriate project team members, Division of Program Management, FHWA, and DEC or EPM, as appropriate. The email should state the appropriate CE level, the project has been environmentally cleared, the appropriate tracking systems have been updated, and indicate any additional work that is required or mitigation commitments, as necessary. Copies of the approved CE and supporting documentation (exhibits, maps, photos, coordination letters, etc.) shall be provided to both the DEA and the FHWA, and the project should continue to be advanced.

The original materials will be kept on file by the District and DEA, as appropriate. The document naming should follow the memo released in 2010 (see Appendix B). The documents shall be attached or linked to distribution email to ensure that all appropriate project team members have access to it. Most SYP projects have ProjectWise folders and the completed CE should be placed in the Milestones & Submittals>NEPA-Environmental Document folder and then linked to the Activity in EATS. The document should also be placed on the Sharepoint website for FHWA (KYTC intranet>DEA FHWA Documents>Completed CEs). The document should also be placed on the N: drive by the **EPM** (N:DEA>CEs folder>Current Year).

If the DEA or FHWA have any objections or reservations about the CE designation or the content of the CE, the DEC will be notified within thirty (30) days of receipt by DEA and FHWA. The Division of Program Management shall note on the FHWA Programming Document (Form PR-1), the appropriate CE level.



## VI. CE Administrative Record

The administrative record is the entire body of the written record for a project, which provides the support for the agency's decisions. It will be vitally important for the project administrative record for CE projects to support the determination that the proposed action does not individually or cumulatively result in a significant impact on the human environment.

Information developed for the administrative record in support of this conclusion should include, as appropriate, professional staff and expert opinions, research study results, past NEPA action records, and examples of similar previously approved CE actions. The administrative record must show that agency decision makers understood the legal standard applying to the decision, that they applied it properly evaluating all relevant factors and terms, and that the action taken was reasonable in light of these factors and terms. It should be expected, that in the case of a legal proceeding challenging a CE project designation, the entire project file will be subject to review.

With this level of inquiry in mind, it is often useful to include in the administrative record, internal memoranda, notes, and other information showing the deliberative process at work. Documents disagreeing with actions taken should not be intentionally excluded, as they tend to demonstrate openness and fairness in the decision making process. The record must reflect how the information developed and received was handled in the decision making process. It must also show how negative information or information which tended against the project was considered. Since the CE evaluation process is an environmental process requiring the consideration of all environmental impacts, then the record must reflect that all environmental impacts were considered. Failure to consider even a single significant impact can be critical. The administrative record must reflect a sincere desire to comply with all applicable legal requirements.

Remember, the administrative record is the primary way in which the agency can present its factual case to a court. Therefore, a concise and sequential, easy to follow and easy to understand administrative record should be maintained throughout the life of the project. It should be organized in an acceptable fashion that is properly indexed, with decision documents clearly marked and accessible. All members of the project team and key decision makers should know what the administrative record says.

Failure to have an adequate administrative record is almost always fatal to a major court proceeding. Time spent in preparation of a good administrative record is always time wisely spent.

All environmental data management for CEs will be accomplished within the Environmental Analysis Tracking System (EATS) and be entered in accordance with training provided by Central Office on the subject. EATS includes activities for each CE level in the Project Management Section. The responsible **EPM** or **DEC**, depending on CE level, will initiate the activity in EATS and populate the Requested Date (initiation date) and other appropriate attributes. For CEMP and CE I projects, the **DEC** shall be responsible for maintaining sufficient information in the tracking system such that others in the Department reviewing the data will be able to recognize the current status of the project. This will be the responsibility of the **EPM** for CE II's and III's. Maintaining current status and populating attributes of the activity are key to the usefulness of the tracking system.

EATS also includes a "CE Evaluation/Checklist" activity within each subject matter area (Air Quality, Noise, Biology, etc.) for tracking of reviews and clearances. If **SMEs** are requested to assist during the review of a project, a CE Evaluation/Checklist activity is to be initiated. This is to be done by the responsible **DEC/EPM** at the time that the DEA Request for Assistance is sent, to reflect the initiation of the SME activity and document the submittal of the request in the tracking system.

In addition to many general statuses, there are several statuses that are unique and specific to the CE Evaluation Checklist activity such as:

- CE Request for Assistance Sent by EPM
- CE Request for Assistance Sent by DEC
- CE Request for Assistance Received
- CE Request for Assistance Response
- Field Survey Required
- Field Survey Complete; KYTC to Finish
- Field Survey; Consultant Needed
- Checklist Complete; To EPM/DEC

These statuses are sufficient for tracking the request for assistance, response to schedule the assistance requested, subsequent actions to address the needs of the project and delivery of response to the DEC or EPM who initiated the activity. If additional studies are required in order to fully address the Request for Assistance, these may require the initiation of additional activities (phase 1 Survey, Habitat Assessment, etc.). Until the needs identified in the Request for Assistance have been fully addressed, the CE Evaluation/Checklist activity should remain open (Further Work Required (Activity): Yes).

Once the CE has been completed, the Actual Completion Date and Expiration Date are to be populated. Remembering to populate the Expiration Date is significant to the rest of the Department as this field is reported in numerous Oracle Six Year Plan reports and used by Department personnel as an indicator of environmental status. Most SYP projects have ProjectWise folders and the completed CE should be placed in the NEPA document folder and linked to the Activity in EATS.

EATS is also equipped to track re-evaluations of CE projects. In the Project Management section, reevaluation activities are available for each level of CE. When a reevaluation is determined to be necessary, the responsible environmental manager (EPM or DEC) shall initiate the reevaluation activity in EATS. If plan changes have occurred that warrant the involvement of SMEs in the review of the project, CE Evaluation/Checklist activities will be initiated within the subject matter areas as earlier described. The phase(s) that the re-evaluation is being completed for should be indicated in EATS.

- AASHTO's Practitioner's Handbook on Maintaining a Project File:  
<https://environment.transportation.org/pdf/programs/ph01-2.pdf>

## VII. Glossary

**ACE** - Army Corps of Engineers (see also USACE). They provide public engineering services in peace and war to strengthen national security, energize the economy, and reduce risks from disasters. They are responsible for administering the CWA.

**ACHP** - Advisory Council on Historic Preservation. The ACHP is an independent federal agency responsible for the federal review process to ensure that cultural resources are considered during federal project planning and implementation.

**ACM** - Asbestos-containing material. Any material or product that contains more than 1% asbestos.

**ADD** - Area Development District. The Kentucky ADD's can be found online here: <https://kaedonline.org/kentucky-area-development-districts/>

**AST** - Above ground storage tank.

**BA** - Biological Assessment. A formal study and written document which specifically addresses the potential impact of a project on federally listed threatened and/or endangered species in compliance with Section 7 of the Endangered Species Act. A BA must be approved by the U.S. Fish and Wildlife Service.

**BO** – Biological Opinion. Formal consultation where the USFWS prepares a statement on whether the proposed activity will jeopardize the continued existence of a listed species. These are prepared when a BA determines that an action is “likely to adversely affect” a listed species.

**CAA & CAAA** - Clean Air Act and Clean Air Act Amendments. The federal law, which sets air quality requirements and milestones, mandates integration of transportation and air quality planning procedures, and establishes penalties for failure to meet requirements. <https://www.epa.gov/clean-air-act-overview>

**CAP** - Communicating All Promises. The “CAP” is the umbrella under which all commitments and promises are tracked and communicated through the life of a project. Commitments and promises are to be accumulated in the PRECON system (see Project Development Memorandum No. 1-2003).

**CE** - Categorical Exclusion. CE refers to a classification of federally aided or permitted projects or actions that do not have a significant impact on the environment, either individually or cumulatively.

**CEQ** - Council on Environmental Quality. The CEQ developed regulations for the implementation of NEPA. These are codified in 40 CFR 1500-1508: [https://www.energy.gov/sites/prod/files/NEPA-40CFR1500\\_1508.pdf](https://www.energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf)

**CFR** – Code of Federal Regulations. <https://www.govinfo.gov/app/collection/cfr/>

**CIA** - Community Impact Assessment. It is an iterative process to evaluate the effects of a transportation action on a community and its quality of life. <https://www.fhwa.dot.gov/livability/cia/index.cfm>

**Constructive Use (23 CFR 771.135(p))** - Applying to Section 4(f) resources, a constructive use of a 4(f) property can occur without an actual physical “taking” and may occur if the action results in sufficiently serious impacts that would substantially impair the value of the resource in terms of its significance and enjoyment. According to FHWA regulations, substantial impairment may be construed only when the protected activities, features, or attributes of the resource are substantially diminished. The degree of impairment should be determined in consultation with the jurisdictional officials; however, FHWA is the final decision-maker on constructive use applicability.

**Cultural Historic Resource Assessment** - A formal technical study and written document which presents a professional evaluation of all structures, sites, properties and Districts which are 50 years old or older, as to their National Register eligibility, their historic site boundaries, and the effects of a project upon all such sites listed on or determined eligible for the National Register of Historic Places.

**Cumulative Impact** - The sum of all direct, indirect and secondary impacts resulting from construction and operation of a transportation improvement project.

**CWA** - Clean Water Act. It established the basic structure for regulating discharges of pollutants into the waters of the U.S. and regulating quality standards for surface waters. <https://www.epa.gov/laws-regulations/summary-clean-water-act>

**DEA** - Division of Environmental Analysis. They are responsible for providing environmental guidance to Transportation Cabinet employees, to contractors, and to the general public concerning Cabinet projects and activities. <https://transportation.ky.gov/EnvironmentalAnalysis/Pages/default.aspx>

**DEC** - District Environmental Coordinator. Environmental representative in each District responsible for providing environmental guidance to District personnel, contractors, and the public concerning the KYTC projects and activities. This includes the preparation and review of environmental documents required by state and federal environmental laws. The DES works closely with planning, design, construction, and maintenance to ensure potential impacts to the social, economic, or physical environment are identified, evaluated, and minimized based on environmental policies.

**DEIS** - Draft Environmental Impact Statement.

**Determination of Effect** - A finding made by the FHWA, in consultation with the State Historic Preservation Officer (SHPO) and the ACHP, which determines whether or not a proposed project affects a property included on or determined eligible for the National Register of Historic Places (NRHP).

**Determination of Eligibility** - The process of researching, assembling, and presenting documentation to render a professional evaluation of the historic significance of a property, site, structure, or District. This process involves the application of the National Register criteria, in consultation with the KYTC, the FHWA, and the SHPO.

**Direct Effects** - Influences or occurrences anticipated to be caused by an action(s) associated with a project and occurring at the same time as the action(s).

**EA** - Environmental Assessment. It is a concise public document that serves to determine whether or not a federal action has the potential to cause significant environmental effects. Generally, the EA includes a brief discussion of the need for the project, alternatives considered, the environmental impact of the proposed alternatives, and a listing of the agencies and persons consulted. If the agency determines that the action will not have significant environmental impacts, then the agency will issue a Finding of No Significant Impact. If the EA determines that the environmental impacts of a proposed federal action will be significant, an Environmental Impact Statement is prepared.

**EIS** - Environmental Impact Statement. If a proposed federal action is determined to significantly affect the quality of the human environment, then an EIS is prepared. The EIS process consists of three documentation phases, the DEIS (Draft Environmental Impact Statement), the FEIS (Final Environmental Impact Statement), and the ROD (Record of Decision). The regulatory requirements for an EIS are more detailed and rigorous than the requirements for an EA.

**EJ** - Environmental Justice (Executive Order 12898) - Refers to the specific consideration of and efforts undertaken to avoid disproportionately high and adverse effects upon minority and low income populations with respect to human health and the environment.

**EO** – Executive Order. <https://www.federalregister.gov/presidential-documents/executive-orders>

**EPA** – Environmental Protection Agency. An agency of the U.S. federal government whose mission is to protect human and environmental health. <https://www.epa.gov/>

**Ephemeral Stream** - A stream with flowing water only during, and for a short duration after, precipitation events in a typical year. Streambeds are located above the water table year-round. Precipitation is the primary source of water for stream flow. (Fed. Reg./Vol. 65, No. 47, 3/9/00).

**EPM** - Environmental Project Manager in the Division of Environmental Analysis. Responsible for the overall management of the environmental process in the development of highway projects. They oversee the coordination of information and needs from the District(s) with the various in-house SME's and consultants. Overall are responsible for assuring KYTC compliance with the NEPA, and all other regulatory requirements necessary for the development and operation of KY roadway network.

**ESA** - Environmental Site Assessment. ESA is also known as a Phase I Site Assessment and is associated with environmental studies conducted to assess the potential for hazardous and toxic materials contamination of a property.

**FEIS** - Final Environmental Impact Statement.

**FHWA** - Federal Highway Administration. They provide stewardship over the construction, maintenance, and preservation of the Nation's highways, bridges and tunnels. They also conduct research and provide technical assistance to state and local agencies in an effort to improve safety, mobility, and livability, and to encourage innovation. The FHWA environmental toolkit can be accessed here: <https://www.environment.fhwa.dot.gov/default.aspx>.

**FPPA**- Farmland Protection Policy Act. Refers to the process required to assess the impacts of a project on prime or unique farmland or farmland of statewide or local importance. FPPA requirements are accomplished in consultation with the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>

**FONSI** - Finding of No Significant Impact. Documentation of the findings and reasons why a project is not anticipated to have any significant effect on the human environment and for which an EIS will not be prepared. The FONSI shall include the EA or a summary of the EA and shall reference any other environmental documents related to it.

**HA** – Habitat Assessment. The process of collecting, analyzing, and reporting the best available information on the habitat characteristics as they relate to the population dynamic of living species. The KYTC develops a manual to aid in completing a habitat assessment. <https://transportation.ky.gov/EnvironmentalAnalysis/Environmental%20Resources/2017%20HAM%20Final%2004-02-2018.pdf>

**Headwaters** - Refers to rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are part of a surface tributary system to an interstate or navigable water of the U.S., upstream of the point on the river or stream at which the average annual flow is less than five cubic feet per second (5 cfs). For streams that are dry for long periods of the year, the Corps of Engineers may establish the headwaters as that point where a flow of 5 cfs is equaled or exceeded 50% of the time.

**Human Environment** - The human environment is interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.

**Independent Utility** - A project is considered to have independent utility when it can be demonstrated that it provides a usable section which meets project purpose and need objectives and would constitute a reasonable expenditure of highway funds even if no other adjacent highway improvements were ever made.

**Indirect Effects** - Project effects or impacts that can be expected to result from a given project and occur later in time and/or farther removed in distance from the area of direct effects.

**Intermittent Stream** - A stream that has flowing water during certain times of the year, when groundwater provides for stream flow. During dry periods, intermittent streams may not have flowing water. Precipitation is a supplemental source of water for stream flow. (Fed. Reg./Vol. 65, No. 47, 3/9/00).

**Jurisdictional Determination** - Refers to a field survey and/or document review performed by the Corps of Engineers to officially determine whether or not a specific land area is subject to regulation (Section 404 of the Clean Water Act) as “waters of the United States”, and, if so, the extent of the area to which the regulations apply. This is generally applied to wetlands but may also be used to determine jurisdictional issues associated with headwaters, ephemeral streams, ditches, and similar surface drainage.

**KPDES** - Kentucky Pollution Discharge Elimination System. <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx>

**Logical Termini** - Logical termini for a project represent connecting points with known features (intersecting roads, land uses, economic areas, population concentrations, etc.) at either end, which serve to create a useable route and enhance good transportation planning.

**MOA** – Memorandum of Agreement. A written document describing a cooperative relationship between two parties wishing to work together on a project or to meet an agreed upon objective. It serves as a legal document and describes the terms and details of the partnership agreement.

**MOU** – Memorandum of Understanding. Is a formal document describing the broad outlines of an agreement that two or more parties have reached through negotiations. It is not a legally binding document, but signals the intention of all parties to move forward with a contract.

**MPO** - Metropolitan Planning Organization (23 USC 134). Section 8 of the Federal Transit Act, as amended, requires that a MPO be designated for each urbanized area and that the metropolitan area has a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. The MPO must work cooperatively with the State and transit operators to determine their mutual responsibilities in the conduct of the planning process and in the development of the unified planning work program, transportation plan, and transportation improvement program. In air quality nonattainment or maintenance areas, the MPO shall coordinate the development of the transportation plan with the SIP development process including the development of transportation control measures, and the MPO shall not approve any transportation plan or program which does not conform with the SIP (40 CFR 51). For additional information on Kentucky’s nine MPOs, see the Division of Multimodal Programs page on the KYTC Internet Web Site: <https://transportation.ky.gov/Planning/Pages/Metropolitan-Planning.aspx>.

**NEPA** - National Environmental Policy Act. Passed in 1969, this is the federal legislation, which requires federal agencies to document the environmental impacts of transportation projects. It establishes the mandate for the EIS, to be prepared for all major federal actions, which are anticipated to have significant impacts on the human environment. NEPA also created the framework for other types of environmental



documentation (EA, FONSI, CE, etc.). NEPA required each federal agency to develop their own regulations for implementing NEPA, and KYTC is most often subject to the NEPA regulations of the FHWA. NEPA also established the Council on Environmental Quality, which developed the core regulations and whose responsibility it is to oversee the NEPA process on behalf of the President. CEQ also arbitrates NEPA disputes. <https://www.epa.gov/nepa>

**NRCS** - Natural Resources Conservation Service of the U.S. Department of Agriculture. <https://www.nrcs.usda.gov/wps/portal/nrcs/site/national/home/>

**NRHP** - National Register of Historic Places. The official federal listing of buildings, structures, sites, Districts, and objects which have been determined to possess national, state, or local significance in American history, architecture, engineering, archaeology, or culture. It is maintained by the Keeper of the National Register in the National Park Service of the Department of the Interior. <https://heritage.ky.gov/historic-places/national-register/Pages/overview.aspx>

**NRHP Criteria for Evaluation** - The criteria used to determine whether or not a property is eligible for listing have been codified at 36 CFR 800. The criteria are set out as follows:

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in Districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

- A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. that are associated with the lives of persons significant in our past; or
- C. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or may be likely to yield, information important in prehistory or history.

**Non-Attainment Areas** - Counties that do not meet national ambient air quality standards (NAAQS). They are ranked by the severity of their problem as marginal, moderate, serious, severe, or extreme. Under the requirements of the CAAA, these areas must take specific measures to reduce emissions to meet NAAQS by a specified time. <https://www.epa.gov/green-book>

**NOI** - Notice of Intent. The official announcement published in the Federal Register advising interested parties that an EIS will be prepared for a specific project and soliciting information and comments on that project.

**Ordinary High Water (OHW)** - OHW is defined as “that line on the shore established by the fluctuations of water indicated by physical characteristics such as clear, natural line impressed on the bank, shelving changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas” (33 CFR 328.3(e)). The OHW mark is the elevation at and below which USACE jurisdiction begins.

**PM** – Project Manager. The District or Central Office individual who has been assigned the overall responsibility for management and oversight of a KYTC project.

**Project Area** - All of the area between logical project termini wherein direct and indirect project effects can reasonably be determined as likely to occur.

**Relocations** - The number of residential dwellings, individual businesses, and other parcels which are displaced by a proposed highway project.

**ROD** - Record Of Decision. A document approved by the Division Office of the FHWA that officially presents the basis for selecting and adopting a specific transportation project alternative that has been evaluated through the various environmental and engineering studies required by NEPA and for which an FEIS has been approved and circulated for comment.

**Secondary Impacts or Effects** - A general term used to define probable project impacts which can be attributed to the project's implementation and which take place later in time or farther removed in distance but are still reasonably foreseeable.

**Section 106 Procedures (36 CFR 800)** - Defines the broad range of required procedures based on Section 106 of the National Historic Preservation Act of 1966, which governs the identification, evaluation, and protection of significant historical and archaeological resources that may be affected by a federally-aided transportation project. Principal elements include: establishment of the Area of Potential Effect (APE), designation of Consulting Parties, identification of significant resources, establishment of boundaries for those resources, and determinations of effect upon those resources.

**Section 4(f) (49 USC 303)** - The broad range of procedures required under the U.S. Department of Transportation Act on federally-aided transportation projects, by which the FHWA determines whether or not a proposed project will use land from a publically owned park, recreation area, wildlife or waterfowl refuge, or any significant Section 106 resource, and confirms that there are no "prudent and feasible" alternatives to the use of land from the protected resource (23 CFR 771.135). [https://www.environment.fhwa.dot.gov/legislation/nepa/guidance\\_preparing\\_env\\_documents.aspx](https://www.environment.fhwa.dot.gov/legislation/nepa/guidance_preparing_env_documents.aspx)

**Section 6(f) (16 USC 460)** - A provision in the Federal Land and Water Conservation Fund Act that protects public recreation properties which have been developed or enhanced using funds provided to states or municipalities under the Act. Section 6(f) compliance procedures require a study and analysis of alternatives to demonstrate that there are no practical alternatives to the conversion of the land to non-recreational uses and they require the replacement of land taken with lands of reasonably equivalent usefulness and location (16 USC 460). [https://www.environment.fhwa.dot.gov/env\\_topics/other.aspx#6f](https://www.environment.fhwa.dot.gov/env_topics/other.aspx#6f)

**Section 7 Consultation** - Formal consultation conducted between the KYTC, the FHWA, and the USFWS for threatened and endangered species when it is determined that a project may adversely affect a federally listed species (16 USC 1531-1543). <https://www.fws.gov/midwest/endangered/section7/index.html>

**Section 401 Water Quality Certification** - The broad range of procedures required by Section 401 of the Federal Clean Water Act (CWA) for projects involving the discharge of materials into surface waters, including wetlands. Project applicants must demonstrate that activities will comply with water quality standards and other provisions of federal and state law and regulations regarding conventional and nonconventional pollutants, new source performance standards, and toxic pollutants. <https://www.epa.gov/cwa-401/clean-water-act-section-401-state-certification-water-quality>

**Section 404 Permits** - Permits issued by the U.S. Army Corps of Engineers (USACE) to authorize the discharge of dredged or fill material into the waters of the United States pursuant to Section 404 of the Clean Water Act (CWA). The Environmental Protection Agency has veto authority over individual permits. No discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's water would be significantly degraded. The 404 permit application must show that you have taken steps to avoid wetland impacts where practicable,

minimized potential impacts to wetlands, and provided compensation for any remaining, unavoidable impacts. <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>

**SHPO** – State Historic Preservation Officer. An agency of the Kentucky Tourism, Arts and Heritage Cabinet, the Kentucky Heritage Council is the State Historic Preservation Office, responsible for the identification, protection and preservation of prehistoric resources and historic buildings, sites, and cultural resources throughout the Commonwealth. <https://heritage.ky.gov/Pages/index.aspx>

**Significance, Significantly, and Significant Impacts (40 CFR 1508.27) - Great care should be exercised when using this terminology and these terms should be avoided in CE documentation and discussions.**

As used in NEPA parlance, significance, and its variants, requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed project and both short-and long-term effects are relevant. Intensity refers to the severity of impact. Responsible officials and stakeholders should be consulted on decisions about the intensity of impacts. The following should be considered in evaluating intensity: (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial; (2) The degree to which the proposed action affects public health or safety; (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas; (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial; (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks; (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration; (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terminating an action temporary or by breaking it down into small component parts; (8) The degree to which the action may adversely affect Districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources; (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973; and (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

**SIP** – State Implementation Plan. <https://www.epa.gov/sips-ky>

**SME** - Subject Matter Expert in the Division of Environmental Analysis (DEA).

**STIP** - Statewide Transportation Improvement Program (see MPO definition above and Air Quality Impacts for additional information). <https://transportation.ky.gov/Program-Management/Pages/default.aspx>

**SYP** - Six Year Plan. The KYTC official identification document for projects funded, and approved by the State Legislature, for implementation of various project phases for the six-year period beginning with the current fiscal year. <https://transportation.ky.gov/Program-Management/Pages/default.aspx>

**THPO** – Tribal Historic Preservation Officer. They are officially designated by a federally-recognized Indian tribe to direct a program approved by the National Park Service and THPO must have assumed some or all of the function of SHPO's on Tribal lands. <https://www.nathpo.org/thpos/what-are-thpos/>

**TIP** - Transportation Improvement Program (see MPO definition above and Air Quality Impacts, pg. 31 for additional information).

**USACE** – United States Army Corps of Engineers (see also ACE). They provide public engineering services in peace and war to strengthen national security, energize the economy, and reduce risks from disasters. They are responsible for administering the CWA.

**USC** – United States Code. It is the codification by subject matter of the general and permanent laws of the U.S. <http://uscode.house.gov/>

**USDOT** – United States Department of Transportation. Their mission is to ensure our nation has the safest, most efficient and modern transportation system in the world; that improves the quality of life for all American people and communities, from rural to urban, and increases the productivity and competitiveness of American workers and businesses. <https://www.transportation.gov/>

**USFWS** – United States Fish and Wildlife Service. An agency of the U.S. federal government within the U.S. Department of the Interior dedicated to the management of fish, wildlife, and natural habitats. <https://www.fws.gov/frankfort/>

**UST** - Underground Storage Tanks. <https://www.epa.gov/ust>

**Waters of the United States** - Refers to all interstate and intrastate waters such as streams (including intermittent and ephemeral streams), lakes, and wetlands which are subject to USACE jurisdiction under Section 404 of the CWA.

**Wetlands** - Includes all areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and, under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands must demonstrate the presence of three criteria including wetland vegetation, wetland soils, and wetland hydrology



# Appendix A

- 1) 2018 Categorical Exclusion Programmatic Agreement between FHWA and KYTC
- 2) Categorical Exclusion Matrix



## PROGRAMMATIC AGREEMENT

### BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, KENTUCKY DIVISION AND THE KENTUCKY TRANSPORTATION CABINET REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

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THIS PROGRAMMATIC AGREEMENT ("Agreement"), made and entered into this 5<sup>th</sup> day of March 2018, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE of Kentucky, acting by and through its Kentucky Transportation Cabinet ("KYTC") 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 natural and human environment and, therefore, do not require the preparation of an EA or EIS (23 CFR 771.117(c)-(d));

**Whereas**, the KYTC 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 KYTC 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));

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

## I. PURPOSE

The purpose of this Agreement is to authorize KYTC to determine on behalf of FHWA whether a project qualifies for a CE action specifically listed in 23 CFR 771.117 (listed in Appendix A and B of this Agreement). This Agreement also authorizes KYTC to provide documentation to FHWA that an action that it cannot approve on behalf of FHWA according to the terms of this Agreement, but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS).

## II. 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 (FAST) 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

## III. RESPONSIBILITIES

A. The KYTC is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:
  - a. For actions qualifying for a CEMP, CE Level 1 or CE Level 2 listed in Appendix A (CEs established in 23 CFR 771.117(c)) or Appendix B (CEs established in 23 CFR 771.117(d)), that do not exceed the thresholds outlined below, the KYTC may make a CE approval on behalf of FHWA. The KYTC will identify the applicable CE from Appendix A or B, 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. The KYTC may not approve CE Level 3 actions listed in Appendices A or B, that exceed the thresholds for the CEMP, CE Levels 1 or 2. The KYTC shall provide documentation to FHWA that the action qualifies for a CE.
  - c. KYTC may process projects that meet the definition of a CE in one of three (3) ways:
    - i. CE for Minor Projects (CEMP)
      - A. Actions defined in Appendix A and satisfying the following criteria may be documented with a CEMP:
        - 1) An acquisition of no more than a minor amount of right-of-way;
        - 2) No residential or non-residential displacements;
        - 3) No bridge permit required from the U.S. Coast Guard, under section 9 of the Rivers and Harbors Act of 1899;
        - 4) Wetland and stream impacts that meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act;
        - 5) A finding of either "no historic properties affected" or "no adverse effect" to historic properties under the National Historic Preservation Act;
        - 6) An impact no greater than a de minimis use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (Section 4(f));
        - 7) No impacts to federally-listed threatened or endangered species determined May Affect, Likely to Adversely Affect unless addressed through the Kentucky Programmatic Conservation Memorandum of Agreement for Forest Dwelling Bats (CMOA).
        - 8) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
        - 9) No change in access control;



- 10) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths);
  - 11) No construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers; and,
  - 12) No impacts to Section 6(f) properties.
- B. If any of the criteria above cannot be met, the action will be processed as a CE Level 1, 2, or 3.

ii. CE Level 1

- A. Actions listed in Appendix B, and actions listed in Appendix A that do not satisfy criteria identified in III.A(1)(c)(i), may be documented with a CE Level 1, provided that they satisfy the following criteria:
- 1) A finding under "Section 106" of the National Historic Preservation Act of either:
    - a) "No historic properties affected" or "no adverse effect" to historic properties; or,
    - b) For bridge replacement or rehabilitation projects meeting criterion 2 of this section, a finding of adverse effect to historic properties;
  - 2) No Section 4(f) use, unless such use can be addressed with a de minimis determination or, with FHWA approval, through a programmatic evaluation;
  - 3) No impacts to Section 6(f) properties that require a conversion;
  - 4) No more than 5 relocations;
  - 5) No more than 10 acres of fee simple ROW;
  - 6) No disproportionate and highly adverse impacts to an environmental justice community;
  - 7) No more than 0.5 acre of wetland impacts; and,
  - 8) No impacts to federally-listed threatened or endangered species determined May Affect, Likely to Adversely Affect unless addressed through the CMOA.
- B. If any of these criteria cannot be met, the action will be processed as a CE Level 2 or 3.

iii. CE Level 2

- A. Actions listed in Appendix A or B that do not satisfy criteria identified in III.A(1)(c)(i) or III.A(1)(c)(ii) may be documented with a CE Level 2, provided that they satisfy the following criteria:
- 1) A finding under "Section 106" of the National Historic Preservation Act of either:
    - a) "No historic properties affected" or "no adverse effect" to historic properties; or,
    - b) For bridge replacement or rehabilitation projects meeting criterion 2 of this section, a finding of adverse effect to historic properties;
  - 2) No Section 4(f) use, unless such use can be addressed with a de minimis determination or, with FHWA approval, through a programmatic evaluation;
  - 3) No impacts to Section 6(f) properties that require a conversion;
  - 4) No more than 10 relocations;
  - 5) No more than 25 acres fee simple ROW;
  - 6) No disproportionate or highly adverse impacts to an environmental justice community;

- 7) No more than 5 acres of wetland impacts; and,
  - 8) No impacts to federally-listed threatened or endangered species determined May Affect, Likely to Adversely Affect unless addressed through the CMOA.
- B. If any of these criteria cannot be met, the action will be processed as a CE Level 3.

iv. CE Level 3

- A. Actions meeting the definition of a CE in 23 CFR 771.117(a) but not satisfying the criteria for CEMP, CE Level 1 or CE Level 2 may be documented with a CE Level 3.
  - B. Projects that involve any of the following may only be considered eligible for processing as a CE Level 3 with the written approval of FHWA.
    - 1) Any disproportionately high and adverse impacts relative to environmental justice.
    - 2) Unresolved or substantial public and/or resource agency opposition. CE documentation must demonstrate that the public or agency concerns have been addressed and is attached.
    - 3) Impacts to areas of cultural or religious significance to Native American tribes.
    - 4) Project resulting in nonconformity with air quality standards.
    - 5) Federal or proposed federal wild and scenic river corridor impacts that result in an Individual 4(f) Impact/Use.
    - 6) With the exception of species addressed under the CMOA, impacts that result in a "May Affect, Likely to Adversely Affect" federally listed threatened or endangered species.
    - 7) Individual Section 4(f) Impacts/Use.
    - 8) Section 6(f) Impacts that require a conversion.
  - C. Should the Division Office object to a KYTC CE Level 3, this may not constitute a disapproval of the action, but may signify that FHWA will need to engage in project-specific review to verify that the documentation is adequate, which may include consultation with other agencies.
- d. Actions not specifically listed in Appendices A and B may not be documented with a CE without approval of FHWA. If the KYTC believes that an unlisted action meets the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a), it may prepare a request for consideration by FHWA and determination of the appropriate level of environmental documentation. The environmental document shall be submitted to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project.
- e. KYTC shall provide a copy of the CE documentation prepared for the action(s) in accordance with Section IV of this Agreement.
- f. The Division of Program Management shall note on the FHWA Programming Document (Form PR-1), that the activity has been documented with a CE.
- 2. 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. The KYTC may decide to conduct, or FHWA may require, additional studies be completed prior to a CE approval, or the preparation of an EA or EIS.
  - 3. Meeting applicable documentation requirements in Section IV for State CE approvals on FHWA's behalf and CE Level 3 documentation prepared for FHWA, applicable approval and re-evaluation requirements in Section V, and applicable quality control/quality, monitoring, and performance requirements in Section VI.



4. The KYTC may not delegate its responsibility for CE approvals to third parties (i.e., consultants, local government staff or other State agency staff).
  5. Notifying the FHWA of public controversy, unresolved resource agency concerns or other unusual circumstances that may arise during project development.
- B. The FHWA is responsible for:
1. Providing timely advice and technical assistance on CEs to the KYTC, as requested.
  2. Providing timely input on and review of CE actions. FHWA will base its approval of CE actions on the project documentation prepared by KYTC under this Agreement.
  3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.
  4. Determining if NEPA documentation should be elevated based on environmental impacts, public or resource agency controversy, or other unusual circumstances. Decisions to elevate NEPA documentation may include change in NEPA class of action or level of CE.

#### IV. CE DOCUMENTATION APPROVALS

KYTC shall prepare the documentation for projects processed as a CE in one of three ways:

- A. For CEs meeting the CEMP criteria:
1. The District Environmental Coordinator (DEC) or Environmental Project Manager (EPM) and the Project Manager (PM) shall confirm that CEMP actions meet the criteria specified in subpart III(A)(1)(c).
  2. The DEC or EPM shall prepare a Categorical Exclusion for Minor Projects form documenting that the activity is a CEMP Project Action:
    - a. The documentation will include the photographic record and any supporting data, documenting the findings that the project meets the CEMP project criteria.
    - b. The CEMP determination will be prepared for the signature of both the DEC or EPM and the PM.
- B. For CEs meeting the CE Levels 1 and 2 criteria:
1. The DEC or EPM and the PM shall confirm that the CE Level 1 actions meet the criteria specified in subpart III.(A)(1)(c) and document this finding with their signatures.
  2. The DEC or EPM, with assistance of subject matter experts (SME), and/or the Project Team (as necessary), shall prepare supporting documentation (exhibits, maps, photos, coordination letters, etc.), including the execution by the DEC or EPM and PM of a Categorical Exclusion Environmental Determination Checklist.
  3. CE Level 1 actions are considered to be approved once the CE checklist and supporting documentation has been signed and provided to both the Division of Environmental Analysis (DEA) and the FHWA.
  4. The DEA or FHWA shall have thirty days to voice any objections or reservations about the CE Level 1 and 2 designations or the content of the CE Checklist.
  5. CE Level 2 actions require the additional signature and approval of the DEA.
- C. For CEs meeting the CE Level 3 criteria:
1. The EPM, with SME, DEC, and Project Team assistance as necessary, is responsible for execution of the CE Checklist for CE Level 3 projects.
  2. Documentation for a CE Level 3 includes a CE Checklist and any documentation required to support the CE Level 3 designation.
  3. With recommendation of the DEC or EPM, and the PM, DEA will sign and forward the CE Checklist and supporting materials to the FHWA for approval.

- D. The KYTC should provide any electronic or paper project records maintained by the KYTC to FHWA at its request. The KYTC 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 KYTC of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.
- E. Variations from Standard Practice
  - 1. KYTC may request individual CE review and approval from FHWA even though an action or project falls within the bounds of CE Level 1 or 2, or the list of CEMP projects. The determination for the need for this exception to the standard procedures will be made by the DEA.
  - 2. Projects may be evaluated against the various CE Level criteria on a case-by case basis and, if found to be consistent with the criteria and intent of 23 CFR 771.117, may be recommended by KYTC for CE designation. The determination for the applicability of CE status for these types of actions or projects will be made with the participation and approval of the FHWA.

## **V. RE-EVALUATIONS**

- A. In accordance with 23 CFR 771.129, the KYTC shall re-evaluate CE determinations and FHWA's approvals for projects, consult with FHWA and, as necessary, prepare additional documentation to ensure that determinations are still valid.
- B. Prior to requesting subsequent major project approvals from the FHWA, all CE projects shall be re-evaluated by KYTC to establish and document whether conditions have changed, rendering the CE classification invalid.
- C. A CE approval is considered to have expired if it is more than two (2) years old. If the CE approval has expired a re-evaluation is required.

## **VI. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE**

- A. KYTC Quality Control & Quality Assurance

The KYTC shall carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement. The FHWA and KYTC agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
- B. FHWA Oversight and Monitoring
  - 1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of KYTC, as well as KYTC's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of KYTC's CE approvals, CE submissions to FHWA for approval, adequacy and capability of KYTC staff and consultants, and the effectiveness of KYTC's administration of its internal CE approvals.
  - 2. FHWA shall conduct a program audit at least once every three years, to review CE determinations made by KYTC and evaluate adherence to this agreement in its processing of CE documents. FHWA shall notify KYTC, in writing, of any deficiencies identified. KYTC shall provide, in writing, a plan for implementing corrective measures to assure that any deficiencies are corrected and the root cause addressed.
  - 3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to KYTC's performance under this Agreement. The FHWA may require KYTC 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. The KYTC agrees to cooperate with FHWA in all oversight and quality assurance activities.



## VII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and KYTC 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. Changes to Appendices A and B, agreed upon by both parties, shall not require amendment of the Agreement or effect any of its terms.

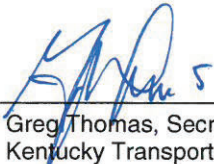
## VIII. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. The KYTC 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 KYTC requests renewal, and FHWA determines that KYTC 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 by giving at least 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that the KYTC is not able to make CE approvals on FHWA's behalf.

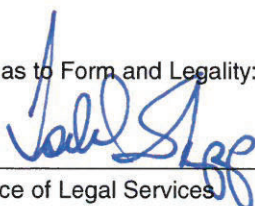
Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

  
\_\_\_\_\_  
Thomas L. Nelson, Jr., P.E.,  
Division Administrator  
Kentucky Division, Federal Highway Administration

3/6/18  
Date

  
\_\_\_\_\_  
Greg Thomas, Secretary  
Kentucky Transportation Cabinet

2/13/19  
Date

Approved as to Form and Legality:  
  
\_\_\_\_\_  
KYTC Office of Legal Services

1/30/18  
Date

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

## Appendix A

- (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), 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.

These projects may also include those defined as follows, provided that all work is conducted within existing right of way:

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

(23) Federally-funded projects:

- A. That receive less than \$5,000,000 of Federal funds; or
- B. With a total estimated cost of not more than \$30,000,000 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) 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.

(27) 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

(1)-(3) [Reserved numbering in federal regulation]

(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) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes) with impacts beyond the existing operational right of way.

(14) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting with impacts beyond the existing operational right of way.

(15) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings with impacts beyond the existing operational right of way.

(16) Modification of an existing interchange or the construction of an interchange or a grade separation to replace an existing at grade intersection (FHWA consultation required when the interstate system is involved).

(17) Construction of realignments on new location, not to exceed two miles in realignment length.

(18) Construction of a minor new highway facility, on new location and less than one mile in length. FHWA consultation required when the interstate system or interstate-like freeways are involved.



# CATEGORICAL EXCLUSION MATRIX

	<b>Types of Categorical Exclusions</b>			
<b>Functional Areas**</b>	<b>CEMP</b>	<b>CE I</b>	<b>CE II</b>	<b>CE III*****</b>
<b>Right of Way Acquisition</b>	Minor amounts**	No more than 10 acres fee simple ROW	No more than 25 acres fee simple ROW	More than 25 acres fee simple ROW
<b>Relocations</b>	None	No more than 5 relocations	No more than 10 relocations	More than 10 relocations
<b>U.S. Coast Guard Section 9 Permit</b>	No	Yes	Yes	Yes
<b>404 Permits: Nationwide (NW) Individual (IP)</b>	Nationwide-Yes Individual-No	Nationwide-Yes Individual-Yes*****	Nationwide-Yes Individual-Yes	Nationwide-Yes Individual-Yes
<b>Wetland Impacts****</b>	Less than 0.5 acres	Less than 0.5 acres	0.5 acre and above; if more than 5 acres consult with FHWA	Case-by-case determination by FHWA if impact is greater than 5 acres
<b>Section 106 Coordination</b>	No historic resource, other than bridges*, adversely affected	No historic resource, other than bridges*, adversely affected	No historic resource, other than bridges* adversely affected	Historic resource adversely affected but mitigated
<b>Programmatic 4(f)</b>	No; <i>de minimis</i> only	Yes, with DEA and FHWA approval*****	Yes, with FHWA approval	Yes
<b>Individual 4(f)</b>	No	No	No	Yes
<b>Threatened and Endangered Species</b>	No effect or not likely to adversely affect, CMOA	No effect or not likely to adversely affect, CMOA	No effect or not likely to adversely affect, CMOA	Likely to adversely affect
<b>Federally Listed Wild and Scenic Rivers</b>	No	Yes, with DEA and FHWA approval	Yes, with FHWA approval	Yes
<b>Conversion of 6(f) Land and Water Conservation Funds</b>	No	No	No	Yes
<b>Environmental Justice</b>	No significant impacts	No significant impacts	No significant impacts	Disproportionately high and adverse
<b>Public and Resource Agency Controversy***</b>	No unresolved issues	No unresolved issues	No unresolved issues	No unresolved issues
<b>Hazardous Materials</b>	Minor amounts	Minor amounts	Minor amounts	Minor amounts
<b>Air Quality Impacts</b>	Meets NAAQ standards	Meets NAAQ standards	Meets NAAQ standards	Does Not Meet NAAQ standards

\*For bridge replacement or rehabilitation projects, with no Section 4(f) uses, unless such use can be addressed with a *de minimis* determination or, with FHWA approval, through a programmatic evaluation.

\*\*The significance of the impacts will be assessed on a project by project basis utilizing the context and intensity factors listed in the agreement. Also, certain circumstances within a functional area may require the approval of the Director of the Division of Environmental Analysis and consultation/approval with/by FHWA

\*\*\*Document any agency or public controversy on environmental grounds. Document who is involved and, what the controversy was, how it was received and how it has been resolved or addressed. The project can proceed when all public controversy has been addressed and disclosed for review.

\*\*\*\*Permit types dictated by acres of wetlands impacted: NWP: 01-0.5 acre and IP: 0.5 acre and above.

\*\*\*\*\*Must be approved by the Director of DEA to remain at CE I if more than one of the following apply: P4(f). Individual 404 permit, reconstruction or addition of through travel lanes > 1 mile or interchange to replace at grade intersection

\*\*\*\*\*CE III's require scope verification meetings with design, environmental, and FHWA to determine appropriate document level based on anticipated environmental impacts prior to the start of design. Most items in the CE III column can only be processed at that document level with written approval from FHWA.

# Appendix B

- 1) TC 58-50 Assistance Request Form
- 2) TC 58-48 Categorical Exclusion Environmental Determination
- 3) Categorical Exclusion Environmental Review
- 4) TC 58-49 Environmental Project Impact Re-evaluation
- 5) Memo on Environmental Document Naming



KENTUCKY TRANSPORTATION CABINET  
Department of Highways  
DIVISION OF ENVIRONMENTAL ANALYSIS

TC 58-50  
Rev. 01/2014  
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**ASSISTANCE REQUEST FORM**

To:	From:		
Project #:	Route:	County:	
Env. Subject Matter:	<input type="checkbox"/> CE Level: <input type="checkbox"/> EIS	<input type="checkbox"/> EA/FONSI <input type="checkbox"/> State Funded	
Project Description (P/N):			
Type of Assistance Needed/Reason for Request:			
Date by which Assistance Needed:			
<input type="checkbox"/> Map or Exhibit Attached			
Pc: EPM: SME:	Requestor		Date

Submit request through email to KYTC DEA Request for Assistance.

**\*\* FOR DEA USE ONLY \*\***

**RESPONSE**

**Response due (rec'd date + 5 workdays):**

\_\_\_\_\_  
Responder

\_\_\_\_\_  
Date



KENTUCKY TRANSPORTATION CABINET  
 Department of Highways  
**DIVISION OF ENVIRONMENTAL ANALYSIS**  
**CATEGORICAL EXCLUSION DETERMINATION**

TC 58-48  
 Rev. 09/2019  
 Page 1 of 1

**1. PROJECT SUMMARY**

<b>Item #:</b>	<b>Project Sponsor:</b>
<b>Route(s):</b>	<b>County:</b>
<b>Project Description:</b>	

**2. ENVIRONMENTAL DETERMINATION**

Functional Area	Determination	Comments/Commitments/Mitigation
Public and Resource Agency Controversy		
Total acreage of fee simple ROW		
Number of Total Relocations		
Environmental Justice Impacts		
Section 106: Architectural Historic		
Section 106: Archaeological Resources		
Section 4(f)		
Section 6(f)		
Noise		
Air Quality Impacts		
Hazardous Materials Impacts		
Section 7: T&E Species		
Anticipated Feet of Stream Impacts		
Anticipated Acreage of Wetland Impacts		
Anticipated Permits		
Other:		
Other:		
Other:		

Based on the criteria listed above, in review of the most recent Categorical Exclusion Agreement between KYTC and FHWA, the subject project is determined to be considered a Categorical Exclusion, Level

**3. ENVIRONMENTAL DOCUMENT APPROVAL**

Based on the information obtained during the environmental review process and included as attachments to this form, the project is determined to be a Categorical Exclusion under 23 CFR part 771 pursuant to the National Environmental Policy Act and complies with all other applicable environmental laws, regulations, and Executive Orders. The project action does not individually or cumulatively have a significant effect on the natural and human environment.

_____ District Environmental Coordinator	_____ Date	_____ Project Manager	_____ Date
_____ Environmental Project Manager	_____ Date	_____ Director of Environmental Analysis	_____ Date
_____ Recommended by FHWA	_____ Date	_____ Federal Highway Administration	_____ Date





**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

**5. ENVIRONMENTAL MITIGATION/COMMITMENTS/COMMENTS**

**6. Project Termini**

**Project Length:**            mile(s)    **Project Termini:** MP            to

**Termini Description:**

**7. Roadway Conditions and Setting**

**Existing Functional Classification:**

**Terrain:**

**Current Year ADT:**

**Design Year ADT:**

**Existing Number of Lanes:**

**Existing Bike Accommodations:**

**Existing Sidewalks:**

**Proposed Number of Lanes:**

**Include any additional information to describe the roadway condition and setting:**





**8. Purpose and Need**



**9. Preferred Alternative Description and Analysis**



**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

**10. Comments and Coordination**

A) Include the type of public, local government, and/or property owner outreach and summarize the type of comments received:

B) Was there controversy on the project?	Yes	No
--	-----	----

C) If yes, describe the controversy and indicate if there is additional work needed to resolve all public, local government, and/or property owners' concerns.

**11. Right-of-Way**

A) Does the project require the acquisition of right-of-way?	Yes	No
--	-----	----

B) Indicate right-of-way impacts in acreages for each type below.

Fee Simple:	Temporary Easement:	Permanent Easement:
-------------	---------------------	---------------------

C) Have any conservation easements been identified?	Yes	No
---	-----	----

D) Are relocations required?	Yes	No
------------------------------	-----	----

Number of Residential Relocations:	Number of Business Relocations:
------------------------------------	---------------------------------

Are suitable properties available for relocation?	Yes	No
---	-----	----

E) Describe the right-of-way impacts.



**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

**12. Economic Impacts**

<b>A) Will the project have beneficial and/or negative economic impacts on the regional and/or local economy, such as effects on development, tax revenues and public expenditures, employment opportunities, accessibility, and retail sales?</b>	<b>Yes</b>	<b>No</b>
--	------------	-----------

**B) Describe both positive and negative impacts anticipated as a result of the proposed project.**

**13. Business Impacts**

<b>A) Will the project affect established businesses or business districts?</b>	<b>Yes</b>	<b>No</b>
---	------------	-----------

**B) Describe both positive and negative impacts anticipated as a result of the proposed project.**

**14. Farmland Impacts**

<b>A) Will the project affect prime farmlands?</b>	<b>Yes</b>	<b>No</b>
--	------------	-----------

**B) Describe both positive and negative impacts anticipated as a result of the proposed project. If applicable, include a brief description of the FPPA ratings and information.**



**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

**15. Social Impacts**

A) Will the project affect neighborhoods or community cohesion for various social groups?	Yes	No
B) Will the project affect travel patterns and accessibility (e.g. vehicular, commuter, bicycle, or pedestrian)?	Yes	No
C) Will the project affect school districts, churches, businesses, police or fire departments, etc.?	Yes	No
D) Will the project affect elderly, handicapped, non-drivers, or transit-dependent?	Yes	No

E) Describe both positive and negative impacts anticipated as a result of the proposed project.

**16. Environmental Justice**

A) Will the project have disproportionately high and adverse human health or environmental effects on minorities or low-income populations?	Yes	No
---	-----	----

B) Describe both positive and negative impacts anticipated as a result of the proposed project.

**17. Local Land Use and Transportation Plan**

A) Is there a local land use and/or local transportation plan?		Yes	No
B) Is the project consistent with the local land use plan?	NA	Yes	No
C) Is the project consistent with the local transportation plan?	NA	Yes	No

D) Describe the consistencies and inconsistencies with the local land use and transportation plans.



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**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

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**18. Section 106: Architectural Historic Resources**

<b>A) Were any sites identified as eligible or potentially eligible for the National Register of Historic Places identified in the view shed of the project?</b>	<b>Yes</b>	<b>No</b>
--	------------	-----------

<b>B) What was the determination of effect from the proposed project?</b>		
<b>No Effect</b>	<b>No Adverse Effect</b>	<b>Adverse Effect</b>

**C) Discuss the analysis completed and any additional efforts required.**

**19. Section 106: Archaeological Resources**

<b>A) Were any sites identified as eligible or potentially eligible for the National Register of Historic Places identified within the project area?</b>	<b>Yes</b>	<b>No</b>
--	------------	-----------

<b>B) What was the determination of effect from the proposed project?</b>			
<b>No Effect</b>	<b>No Adverse Effect</b>	<b>Adverse Effect</b>	<b>Undetermined/Deferred</b>

**C) Discuss the analysis completed and any additional efforts required.**

<b>E) Is Native American Consultation required?</b>	<b>Yes</b>	<b>No</b>
---	------------	-----------

**F) Summarize any comments received during NAC, and if there was a tribal request for additional consultation.**





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**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

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**20. Section 4(f)**

A) Are Section 4(f) properties on/or adjacent to the project?		Yes	No
B) Is there a use of a Section 4(f) property?	NA	Yes	No
C) Please indicate the type of 4(f) analysis required, if any.			
De Minimis	Programmatic	Individual	

D) Discuss the analysis completed and any additional efforts required.

**21. Section 6(f)**

A) Are Section 6(f) properties on/or adjacent to the project?		Yes	No
B) Is there a conversion of a Section 6(f) property?	NA	Yes	No

C) Discuss the analysis completed and any additional efforts required.

**22. Noise**

A) Is this project considered a Type I project?		Yes	No
---	--	-----	----

B) Discuss the analysis completed and any additional efforts required.



**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

**23. Air Quality**

<b>A) Is the project located in an air quality non-attainment or maintenance area for ozone?</b>	<b>Yes</b>	<b>No</b>
<b>B) Is the project listed in an approved STIP and/or TIP?</b>	<b>Yes</b>	<b>No</b>
<b>STIP:</b>	<b>TIP:</b>	
<b>C) Is the project controversial or does the project HAVE or ADD a signalized intersection with a projected "open to traffic" year with an ADT&gt;80,000 vehicles per day?</b>	<b>Yes</b>	<b>No</b>
<b>D) Indicate the level of potential for Mobile Source Air Toxin Effects.</b>		
<b>No Potential (no analysis)</b>	<b>Low Potential (qualitative analysis)</b>	<b>Higher Potential (quantitative analysis)</b>
<b>E) Is the project in an area requiring PM 2.5 consideration?</b>	<b>Yes</b>	<b>No</b>
<b>F) Discuss the analysis completed and any additional efforts required.</b>		

**24. Hazardous Materials: Sites**

<b>A) Are known or potentially contaminated sites (service stations, landfills, automotive repair, junkyard, buildings with asbestos, etc.) located along the project corridor?</b>	<b>Yes</b>	<b>No</b>	
<b>B) Is ROW required from, or extensive excavation required adjacent to, a potentially contaminated site?</b>	<b>NA</b>	<b>Yes</b>	<b>No</b>
<b>C) Discuss the analysis completed and any additional efforts required.</b>			

**25. Hazardous Materials: Bridges**

<b>A) Are there any bridges to be removed, refurbished, or repainted?</b>	<b>Yes</b>	<b>No</b>	
<b>B) Will there be lead-based paint wastes?</b>	<b>NA</b>	<b>Yes</b>	<b>No</b>
<b>C) Discuss the analysis completed and any additional efforts required.</b>			



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**26. Section 7: Threatened and Endangered Species**

**A) Is the project considered a No Effect by Definition?** Yes  No

**B) List IPAC Species identified in project area, determination of effect, and additional analysis required.**

Species	Determination of Effect	Additional Analysis Required

**C) Is the project located upstream of or within designated critical habitat?** Yes  No

**D) Discuss the analysis completed and any additional efforts required.**

**27. Water Resources**

**A) Does the project impact Waters of the U.S.?** Yes  No

**B) Will the waters impacted include State Listed Special Use Waters or tributaries to Special Use Waters?** NA  Yes  No

**Indicate all types of Special Use Waters and/or tributaries impacted below.**

<input type="checkbox"/> Cold Water Aquatic Habitat	<input type="checkbox"/>	Federally Designated Scenic River
<input type="checkbox"/> Reference Reach Stream	<input type="checkbox"/>	Exceptional Waters
<input type="checkbox"/> Federally Designated Wild River	<input type="checkbox"/>	State Wild River
<input type="checkbox"/> Outstanding National Resource Water	<input type="checkbox"/>	
<input type="checkbox"/> Outstanding State Resource Water	<input type="checkbox"/>	

**C) Is the project within the watershed of a significant water resource (private or public drinking water supply wellhead protection area, Special Use Water, etc.)?** Yes  No

**D) Does the project involve impacts to a stream below the Ordinary High Water Mark or to a wetland?** NA  Yes  No

**Indicate all impacts below the OHWM.**

<input type="checkbox"/> Bridge/Pier/Abutment	<input type="checkbox"/>	Temporary Diversion
<input type="checkbox"/> Culvert	<input type="checkbox"/>	Bank Stabilization
<input type="checkbox"/> Low Water Crossing	<input type="checkbox"/>	Wetland Fill
<input type="checkbox"/> Relocation/Channelization	<input type="checkbox"/>	Other:
<input type="checkbox"/> Excess Excavation Site	<input type="checkbox"/>	



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E) Will the project impact a lake or pond requiring its draining or filling?	NA	Yes	No
Does a stream enter the lake or pond?	NA	Yes	No
Does a stream exit the lake or pond?	NA	Yes	No

F) Discuss the analysis completed and any additional efforts required.

**28. Permits**

A) Is the project located partially or wholly within a designated MS4 community other than KYTC?	Yes	No
--	-----	----

Indicate any local ordinances, restriction, local permits, or other requirements that require consideration before, during, and after construction.

B) Will the project involve surface disturbance greater than one acre?	Yes	No
C) Are Section 401/404 permits likely to be required for this project?	Yes	No

Indicate permits expected to be required.

	USACE NW: BNR	USACE NW	USACE Letter of Permission	USACE Individual	KDOW General WQC	KDOW Individual WQC
Stream/Lake/Pond						
Wetland						

D) Will this project affect navigable waters of the US as defined by the USACE and require a Section 10 permit?	Yes	No
---	-----	----

E) Will this project affect a navigable body requiring a Coast Guard, Section 9 permit?	Yes	No
---	-----	----

F) Does this project encroach upon the 100 year floodplain?	Yes	No
---	-----	----

G) Is the project a candidate for application of the KYTC Karst policy?	Yes	No
---	-----	----

H) Discuss the analysis completed and any additional efforts required.



**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

**29. Secondary and Cumulative Impacts**

<b>A) Will the project induce adverse or beneficial secondary and/or cumulative impacts?</b>	<b>Yes</b>	<b>No</b>
--	------------	-----------

**B) Describe any secondary and/or cumulative impacts anticipated as a result of the proposed project.**

**30. Construction**

<b>A) Will excess excavation sites be required?</b>	<b>Unknown</b>	<b>Yes</b>	<b>No</b>
---	----------------	------------	-----------

**B) Discuss potential impacts of construction activities pertaining to water quality, stream diversion, air quality, detours and delays of traffic, businesses, noise, etc.**



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Department of Highways  
DIVISION OF ENVIRONMENTAL ANALYSIS

**CATEGORICAL EXCLUSION ENVIRONMENTAL REVIEW**

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**ENVIRONMENTAL PROJECT IMPACTS REEVALUATION**

**1. PROJECT SUMMARY FOR**

<b>Item #:</b>	<b>Project Sponsor:</b>
<b>Route(s):</b>	<b>County:</b>
<b>Project Description:</b>	

**2. ENVIRONMENTAL DETERMINATION**

Functional Area	Original Determination	Reevaluation for	Comments/Commitments/ Mitigation
Public and Resource Agency Controversy			
Total acreage of fee simple ROW			
Number of Total Relocations			
Environmental Justice Impacts			
Section 106: Architectural Historic			
Section 106: Archaeological Resources			
Section 4(f)			
Section 6(f)			
Noise			
Air Quality Impacts			
Hazardous Materials Impacts			
Section 7: T&E Species			
Anticipated Feet of Stream Impacts			
Anticipated Acreage of Wetland Impacts			
Anticipated Permits			
Other:			
Other:			
Other:			

Based on the criteria listed above, in review of the most recent set of project plans, the subject project is determined to be considered a .

**3. ENVIRONMENTAL DOCUMENT APPROVAL**

Based on the information obtained during the environmental review process and included as attachments to this form, the project is determined to be pursuant to the National Environmental Policy Act and complies with all other applicable environmental laws, regulations, and Executive Orders. The project action does not individually or cumulatively have a significant effect on the natural and human environment.

_____	_____	_____	_____
District Environmental Coordinator	Date	Project Manager	Date
_____	_____	_____	_____
Environmental Project Manager	Date	Director of Environmental Analysis	Date
_____	_____	_____	_____
Recommended by FHWA	Date	Federal Highway Administration	Date




**TRANSPORTATION CABINET**  
Frankfort, Kentucky 40622  
www.transportation.ky.gov/

**Steven L. Beshear**  
Governor

**Michael W. Hancock, P.E.**  
Acting Secretary

**MEMORANDUM**

**TO:** DEA Staff; Environmental Coordinators

**FROM:** David M. Waldner, P.E., Director  
Division of Environmental Analysis 

**DATE:** February 10, 2010

**SUBJECT:** Electronic Filing of Environmental Documents

Due to some recent inquiries from FHWA Headquarters, we have been requested to examine a better approach to transmittal and filing of environmental documents with FHWA. To facilitate an improved archival storage and recovery system, effective immediately, we are to provide FHWA with an electronic copy of all environmental documents that do not require FHWA signature for approval (CEMP, CE 1 and CE 2 documents). FHWA has established a FTP site for submittal of the documents, which can be found at <ftp://fhwaftp.fhwa.dot.gov/KY/TQ>. Login and password information will be provided by email to all who may need access, preliminarily thought to be the EPMs and DEC. CEMPs and CE1s completed in the district should be scanned by the DEC and placed on the ftp site upon their approval. It is the responsibility of DEA staff, specifically the EPMs, to provide copies of those documents developed in Central Office.

Documents submitted to the site should be placed within the appropriate District folder. Files should be named to include the primary project number (01-0123) in a 'two digit'-'four digit' format. If a location description is also thought to be helpful in the name, it should follow the Item Number (ex. 07-0128 Duncannon Road). For other project types that do not have SYP item numbers, these should identify the project type (Transportation Enhancement (TE), Congestion Mitigation Air Quality (CMAQ), Recreational Trails (RT), Rails to Trails (RTT), National Scenic Byway (NSB), Safe Routes to Schools (SRTS), Federal Earmark (FE), Surplus Property (SP), Transportation, Community and System Preservation (TCSP)), the county and an additional identifier related to the project (ex. TE Hardin Traveler's Rest). The FTP site is a temporary holding area for documents and will periodically be swept into a more permanent archive on an FHWA server. In other words, these will not remain there for our future reference so it would also be advisable to push a copy into the Project Wise folder while addressing the FHWA needs. When a document is placed in the site, please send an email to Anthony Goodman and the EPM advising that it has been placed there.

As for larger projects (CE3, EA/FONSI, EIS) that require FHWA approval, we will continue to send hard copies to them for their signature and records. Given that consultants fairly routinely provide electronic copies of the documents, please make a habit of placing a copy into the appropriate Project Wise folder for future reference. This will typically be the responsibility of the EPM since coordination of these documents occurs under their management.

Attachment 1 includes a couple of screen shots to explain how documents can be placed into the site. If you need any assistance with this, please feel free to contact an EPM or me.

pc: Anthony Goodman, FHWA



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# Appendix C

1) KYTC MEMO on Purpose and Need Statement Guidance and Instructions

2) KYTC MEMO on Purpose and Need Guidance for Maintenance and Operations

David Waldner




KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
WWW.KENTUCKY.GOV

ERNIE FLETCHER  
GOVERNOR

MAXWELL C. BAILEY  
SECRETARY

MEMORANDUM

**TO:** State Highway Engineer, Deputy State Highway Engineers, Assistant State Highway Engineers, Chief District Engineers, and Division Directors

**FROM:** Marc D. Williams, P.E.  
Commissioner of Highways 

**DATE:** January 24, 2005

**SUBJECT:** Purpose and Need Statement Guidance and Instructions

Attached please find the Kentucky Transportation Cabinet-Department of Highways guidance on the development and role of purpose and need statements for Kentucky Transportation Cabinet projects. This guidance was developed to improve the quality of our decision making in the development of transportation solutions for the citizens of the Commonwealth. Decisions that align themselves with the Cabinet's strategic goals and vision, specifically: improving safety, providing opportunities for future economic growth, improving our national competitiveness, and improving the overall quality of life of our public and within our communities. It was also developed to strengthen the linkage between planning and project development so that we are delivering projects that provide the value, need, and service demanded by our transportation system and those served by it.

The guidance is to be distributed to all appropriate staff and consultants. To assist in the distribution, an electronic version of the guidance will be provided to those offices listed at the top of this memorandum. In addition, a link to the guidance will be placed on the Department of Highway's web page within the Cabinet's web site. The primary user Divisions of the guidance are encouraged to place an electronic version on their web pages as well.

MDW:JM:JP

C: John Mettille, CEPA

## **Purpose and Need Statement Instructions for KYTC Projects**

**Background:** Purpose & Need of a project is the first decision point of the shared decision making process. The Purpose and Need provides the foundation for successful decision-making and the basis for the evaluation and comparison of reasonable alternatives. Each project will have a purpose and need agreed to by the project team that will be utilized to establish the scope of the required work. The scope describes the physical boundaries of the project and defines what the project will deliver and what it will not. The project team will also use this purpose and need to develop alternatives and to guide their decisions. Historically, the predesign meeting was held to establish scope of the engineering work for a project. The project team must understand the importance of establishing the purpose and need in determining scope of the engineering and environmental work to deliver a project.

For projects where the Division of Planning has completed a planning study, the project team should review, revise and adopt the Purpose and Need presented in the study with consensus reached on all necessary modifications. In addition to these studies, the Division of Planning has completed or is completing "Project Identification Forms" which include project problem statements for most of our projects. These forms provide the first description of a proposed project including the history, background, and why we are proposing a project. The forms also provide information and factual data on the project location, project and community issues, cost estimates, and the problem that will be addressed. The resulting problem statement sets the foundation and framework for future decisions on the solutions for the problem identified.

A sound transportation planning process is the primary source of a project's purpose and need. The transportation planning process sets the tone for KYTC to define an area's transportation needs, decide which needs to address, and determine the timeframe for addressing the needs.

Decisions that result from the transportation planning process can be used in project development and NEPA if the planning process is consistent with the "3-C" principles (comprehensive, cooperative, and continuous) **and** when the planning study process, alternatives considered, and resulting decisions are thoroughly documented (including the necessary and appropriate examination through the applicable public involvement processes).

The transportation planning process can be utilized to develop a project's purpose and need in the following ways: (a) goals and objectives from the transportation planning process can be a part of the project's purpose and need

statement; (b) mode choice or choice of corridors based on an analysis conducted during the transportation planning process may be included as part of the project-level purpose and need statement; or (c) if the financial plan supporting a MPO's long-range transportation plan indicates that the reasonably available funding for a specific project likely will involve funding sources beyond traditional federal and state transportation funds, such information may be included in the purpose and need statement.

If the purpose and need identifies a corridor or mode based on some aspect of the transportation planning process, the environmental document should: (a) identify and summarize the study or analysis upon which the selection of the corridor or mode was based, and incorporate the analysis by reference or append it to the project environmental document; (b) make any such study or analysis available during the NEPA scoping process; and (c) summarize the reasons for selecting the corridor or mode in the discussion of the purpose and need statement for the EA or EIS, with an explanation of the planning factors that were used as the basis for selecting the corridor or mode.

A Purpose and Need Statement is necessary for developing all projects. It is a requirement on projects that include future NEPA documentation, an Environmental Impact Statement or Environmental Assessment. A well-justified purpose and need is also vital to meeting the requirements of Section 4(f) (49 U.S.C. 303) and the Executive Orders on Wetlands (E.O. 11990) and Floodplains (E.O. 11988) and the Section 404(b)(1) Guidelines. A clear, well-justified and defined purpose and need discussion explains to the public and decision-makers that expenditure of funds is necessary and worthwhile and that the priority of the project is warranted when compared to other needed highway projects. The intention of this guidance is to create a uniform approach within KYTC and with KYTC partners in developing Purpose and Need Statements for all projects.

**Legal Guidance:** The legal guidance for Purpose and Need Statements comes from the NEPA CEQ regulation, Section 1502.13—the Purpose and Need Statement “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” Each federal agency has its own guidance on NEPA documentation.

It is important to note that the lead agency for an action (project) has the authority for and responsibility to define the purpose and need, specifically for the purposes of NEPA. FHWA Technical Advisory T 6640.8A and 40 CFR 1502.13 directs state DOT's to “identify and describe the proposed action and the transportation problem(s) or other needs which it is intended to address.” FHWA in July 2003 prepared and distributed additional guidance from CEQ on purpose and need that states:



**"In cases of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to the Department of Transportation for transportation projects because our primary substantive expertise and program responsibility, and this is the same deference that would be owed to other Federal agencies in their areas of expertise and program responsibility".**

According to the FHWA memo, the statement above suggests that another Federal agency should only raise questions regarding Department of Transportation purpose and need statements when those questions relate to substantive or procedural problems (including omission of factors) important to that agency's independent legal responsibilities.

FHWA's technical advisories list 9 factors that may be helpful in establishing the need for a proposed action. Eight of those are relevant to this discussion and include: system linkage, capacity, transportation demand, legislation, social demands or economic development, modal interrelationships, safety, and roadway deficiencies. The ninth addresses project status, and is not relevant to this discussion.

All of the factors which are relevant in explaining a project's purpose and need should be as fully developed as possible and utilize as specific data as possible to compare the present, future no-build, and future build conditions. The data could include such factors as reduction in vehicle hours travel, improvements in travel speeds, reduction in traffic accidents, injuries and fatalities, savings in cost to the traveling public, enhanced economic development potential, increased tax base, improved access to public facilities and resources, etc. One should note that it is not sufficient to simply state that a project is needed to provide increased capacity and improve safety. You must prove that a need exists through supporting data.

This point is further emphasized when you use development, growth, and economic development in your purpose and need. Using these as a "selling point" for the project will require the identification of the associated positive and negative impacts. This includes a "hard look" at the identification of the indirect effects of a project's "selling points".

**Preparing the Purpose and Need Statement:** The Purpose and Need Statement sets the stage for consideration of the alternatives. It has three parts: The Purpose, the Need, and Goals and Objectives. The Purpose defines the transportation problem to be solved. The Need provides data to support the problem statement (Purpose). The Goals and Objectives describe other issues that need to be resolved as part of a successful solution to the problem.

The Purpose and Need Statement is intended to clarify the expected outcome of public expenditure and to justify that expenditure - What you are trying to accomplish and why you think it is necessary. As such, it should be the first step in the project development process. It will be used to guide the development of alternatives, and it will be a fundamental element when developing criteria for selection between alternatives.

It is important to understand FHWA terminology when preparing Purpose and Need Statements. The terms "Proposed Action", "Preferred Alternative", "Purpose", and "Need", are used frequently in FHWA guidance and NEPA regulations. These terms can lead to confusion if not understood. Definitions and descriptions of these terms are provided below:

**Proposed Action:**

A general proposal in its initial form that is intended to satisfy current or expected transportation needs.

**Preferred Alternative:**

The specific alternative, which the lead agency believes, would best fulfill its mission and responsibilities giving consideration to economic, environmental, technical and other factors.

**Purpose:**

- The Purpose is analogous to the problem. It is the "what" of the proposal.
- The Purpose is the problem statement.
- The Purpose should focus on the state transportation system. Other important issues to be addressed by the project such as local transportation systems, livability, and the environment should be identified as Goals and Objectives. As such, it may reflect other priorities and limitations in the area, such as environmental resources, growth management, land use planning, and economic development.
- The Purpose should be stated concisely in a single sentence.
- The Purpose should be stated as the positive outcome that is expected. For example, the purpose is to reduce congestion in the interstate corridor.
- It should avoid stating a solution as a purpose—as in—the purpose of the project is to build a bypass. Therefore, it should not be so specific as to "reverse engineer" a solution.
- Where appropriate, it should be stated broadly enough so that more than one mode can be considered and multi-modal solutions are not dismissed prematurely.

- Similarly, it should be stated broadly enough so that more than one alternative can be considered and alternatives are not dismissed prematurely.
- The Purpose should be stated in a manner so that a suite of intermediate steps could be posed as the solution, scaled to the needs of the community, if appropriate.
- The project Purpose should also include how the project addresses the Cabinet's strategic goals and vision:
  - Taking care of what we have
  - Making the system work better
  - Increasing capacity
  - Improving safety
  - Creating opportunities for future economic growth
  - National competitiveness
  - Supporting overall quality of life of our public

**Need:**

- Should establish the justification and/or evidence that the problem exists, or will exist if under a set of assumptions and expectations (such as population projections or planned land use growth) are realized.
- Should be factually and numerically based.
- Should support the assertion made in the purpose statement. For example, if the purpose statement is based on safety improvements, the need statement should support the assertion that there is or will be a safety problem to be corrected.

**Goals and Objectives:**

Project elements beyond the state transportation issues identified should be included in the Purpose and Need Statement as Goals and Objectives. The Goals and Objectives should balance environmental and transportation values. They should support early and effective interagency involvement in environmental issues to improve the outcome of each natural and cultural resource agency's mission while minimizing costs and delays. In addition, the Goals and Objectives could consider equally the project's schedule, cost, quality, quality of life, cultural resources, fish and wildlife habitat, public input, and regulatory input.

The Goals and Objectives will be different for each project and may include the following:

- Broad community or quality of life goals, for example - improving air quality, economic development, or creating an uncongested, pedestrian friendly downtown business district.
- Environmental goals such as avoidance and minimization of impacts and enhancement opportunities, for example – avoiding impacts to nesting

migratory birds or improving riparian habitat beyond what is required for mitigation.

- Regulatory compliance, for example - protecting wetlands or complying with the Kentucky Six-Year Highway Plan.

**Applicability:** A Purpose and Need Statement should be developed for all projects, regardless of funding source.

**Timing and Process:** The Purpose and Need Statement should be developed when the project concept is first identified, whether that is during the development of the Statewide Transportation Plan (STP), or other manner of initiation. However, it should be noted that a sound planning process is the primary source of a project's purpose and need. It is through the planning process that state and local government determine what the transportation needs of an area are, which of the transportation needs they wish to address, and in what time frame they wish to address them. That is what federal law requires from the planning process and what actually prevents projects that do not come from the planning process from going forward. In any event, a Project Team engaged to develop a project for construction must confirm the Purpose and Need information and data documented in the planning process as the first step in the shared decision-making process.

How/When/What can prompt that Purpose and Need to be altered or changed throughout the project development process:

- 1.) Change in conditions in the area – change in traffic, change in crashes, land use changes, deteriorating conditions of the infrastructure
- 2.) Change in community values
- 3.) Implementation or planned implementation of other transportation improvements that impact the items mentioned above

Regardless, these need to be discussed, documented, and consensus achieved before altering.

**Documentation:** The Purpose and Need Statement must be included in the permanent record for any proposal that is intended to result in the construction of a transportation facility. The documentation may be used in later environmental documentation and may be required for the project to enter onto the STIP for development and construction.

**Role of Purpose and Need:** Why do you need a purpose and need statement for a project? Consider the following to answer that question:

- It sets the foundation and framework for future decisions.
- It is the yardstick that we measure decisions against, particularly alternative solutions and decisions.
- Remember that it is more than an environmental issue or requirement.
- It serves as a logic check.
- It explains to the public and decision-makers why we are proposing a project.
- It will help determine whether a project is a want or a need.
- It justifies the expenditure of funds and why the level of environmental impacts are acceptable.
- It defines what can be considered reasonable, prudent, and practical alternatives.
- It is reexamined and refined as appropriate throughout the project development process.
- It is defined and refined by the project team, with input from the public and resource agencies.

In other words, the purpose and need is:

- The problem statement and justification for a project.
- The basis for project decisions.
- The basis for alternative development.
- The basis for the range of alternatives developed.
- The basis for screening criteria.
- The basis for alternative comparison and evaluation.
- Basis for the No-build discussion.
- Provides the reasons for moving forward.

**And that: The project description listed in the Cabinet's Six-Year Plan is not the purpose and need for the project. The project description serves as a placeholder for programming and budgetary planning purposes but should be revised (as needed) once the purpose and need is better defined.**



David Waldner



TRANSPORTATION CABINET

Frankfort, Kentucky 40622

www.kentucky.gov

Ernie Fletcher  
Governor

Bill Nighbert  
Acting Secretary

MEMORANDUM

Jim Adams  
Deputy Secretary

TO: State Highway Engineer, Deputy State Highway Engineers,  
Assistant State Highway Engineers, Chief District Engineers,  
and Division Directors

Marc Williams  
Commissioner of Highways

FROM: Marc D. Williams, P.E.  
Commissioner of Highways

Dan Druen  
Commissioner of  
Administrative Services

DATE: April 29, 2005

Paul Steely  
Commissioner of Aviation

SUBJECT: Purpose and Need Guidance for Maintenance and Operations

Roy Mundy  
Commissioner of  
Vehicle Regulation

The vision of the Kentucky Transportation Cabinet is to provide a safe, secure, and reliable transportation system that supports existing and future economic development, national competitiveness, and overall quality of life. We must achieve this vision in a manner that insures that we are providing the value, need, and service demanded by our system and those served by it.

The purpose of Department of Highway projects, programs, and activities is to address the problems that affect the overall operation and preservation of the transportation system and its infrastructure. In other words, our goal is to optimize the performance of the transportation system in alignment with the Cabinet's vision, mission, and goals. The problems are identified as we plan, operate, and maintain the transportation system. These same activities provide the factual data that help justify the scope of the effort and the expenditure of public funds to address the problems.

Recent guidance on purpose and need statements issued by the Commissioner of Highways raised some questions as to whether all projects, programs, and activities require individual purpose and need statements. These questions were specifically raised pertaining to maintenance and operational activities and projects. Almost all operational and maintenance activities and projects will not require individual purpose and need statements if they are identified through a program that evaluates the system infrastructure, quantifies the problem, and prioritizes the needs. Individual purpose and need statements may be needed for projects that involve U.S. Army Corps of Engineers permit applications, historic bridge rehabilitation, and Interstate rehab and resurfacing.



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The Office of System Preservation and Operations, which includes the Divisions of Maintenance, Traffic Operations, and Equipment, includes many programs whose objectives are to optimize the preservation, safety, quality and operation of transportation system and its infrastructure. These programs include:

- The FEO1 Routine Maintenance Program, which includes daily routine maintenance activities such as litter removal, mowing, pothole repairs, guardrail repair/replacement, and snow/ice removal, does not require individual purpose and need statements. These activities are done in order to maintain and preserve a safe and reliable transportation system and infrastructure. This program uses the Maintenance Rating Program to grade how well the system is being maintained. It is also used to identify deficiencies and guide where maintenance efforts need to be focused.
- The FDO5 State Resurfacing Program focuses on the preservation of the pavement infrastructure of the state-maintained highway system. The resurfacing projects are done in order to provide a quality, safe and reliable transportation system and infrastructure. The Pavement Management process collects data on pavement conditions. This data is used to prioritize resurfacing projects based upon the condition of the pavement and type of treatment required to address the condition.
- The purpose of the FEO2 Bridge Maintenance Program is to preserve and maintain the bridge infrastructure of the state-maintained highway system. Bridge maintenance projects are conducted in order to provide a quality, safe and reliable transportation system and to preserve the existing infrastructure. The Cabinet's bridge inspection program collects data on the condition of bridges on the state-maintained highway system. This data is used to define the needs and priorities of the bridge maintenance program.
- The FEO6 New Guardrail Program addresses the safety of the state-maintained highway system. This program evaluates and prioritizes requests for new guardrail locations throughout the state-maintained highway system.
- The purpose of the FEO7 Welcome Center/Rest Area Maintenance and Operation Program is to operate, preserve and maintain the welcome centers and rest areas located along the state transportation system. In doing so we contribute to the overall safety of the transportation system,

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- local and regional tourism, and the quality of the driving experience on our highway system.
- The purpose of the FEO4 Traffic Operations Program is to preserve and improve the safety, reliability, and operational efficiency of the state-maintained transportation system. Activities in this program include, but are not limited to, the installation of traffic control devices, the highway safety program, traveler information including the 511 telephone system, and Intelligent Transportation System projects and activities.

While the Purpose and Need Statement Guidance applies to all Department of Highway projects, programs, and activities, individual purpose and need statements are not required for projects and activities that come out of the programs listed above. The statements presented above for each program serve as programmatic purpose and need statements for those projects and activities.

MDW:JM:JP

C: John Mettill, CEPA

# Appendix D

- 1) KYTC MEMO on Surplus Property Guidance
- 2) TC 58-46 Surplus Property Categorical Exclusion Impact Summary Sheet
- 3) TC 58-47 Surplus Property – Notification of Environmental Conditions



KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
WWW.KENTUCKY.GOV

ERNIE FLETCHER  
GOVERNOR

MAXWELL C. BAILEY  
SECRETARY

## MEMORANDUM

To: Environmental Coordinators, District Surplus Property Coordinators and DEA Staff

From: David M. Waldner, Director  
Division of Environmental Analysis

Handwritten signature of David M. Waldner in blue ink.

Tom Kerns, Acting Director  
Division of Right of Way and Utilities

Handwritten signature of Tom Kerns in blue ink.

Date: December 3, 2004

Subj: Surplus Property Guidance

Since the implementation of the new CE agreement back in March, we have been looking for a more expeditious manner of processing surplus property requests. In the past, these actions have sometimes required time consuming and costly archaeological investigations, biological assessments or other field work felt necessary in order for the PCE or CE for the action to be approved.

A new strategy for processing of these actions has been jointly developed by KYTC and FHWA staff. As discussions were held with FHWA, it became clear that they felt that we were doing "too much". There have always been questions regarding the possible future use of the land being surplus and its effect on resources on or proximate to the parcel. Is it the responsibility of the Cabinet to clear a parcel environmentally at taxpayers expense so that a buyer may purchase the land for their own benefit? FHWA's response was a resounding "NO". As a result, the following guidance has been prepared for use in clearing future surplus property parcels. If you have any questions, please contact me or, if I am unavailable, John Mettelle.

### *Surplus Property Guidance*

The action of selling an excess ROW parcel is identified as qualifying for approval as a categorical exclusion in our CE agreement with FHWA (see Table 4, Project Type 6.) Most of these requests to dispose of surplus property can be processed as Level 1 CEs.

The federal undertaking is the approval of KYTC's request to surplus or dispose excessive right of way that is no longer needed for the highway. As such, the action of approving the surplus of property will not typically result in direct impacts to

sensitive environmental resources, including historic resources, wetlands, streams, and threatened or endangered species or their habitat.

We acknowledge, however, that the future use of the parcel may change as a result of property owner actions. This change in use is considered an indirect impact of the surplus of the parcel which could cumulatively result in an impact upon the sensitive resources listed above. KYTC in approving the applications for surplus property will disclose any sensitive resources which may occur on the parcel or in its immediate vicinity. Any mitigation, coordination, consultation and compliance with applicable federal and state rules and regulations will be the responsibility of the property owner. In instances where a known National Register eligible archaeological site exists on the parcel, it shall not be surplus without a deed restriction or preservation easement that will protect the site from future disturbance.

### ***Surplus Property Categorical Exclusion Impact Summary Sheet***

When processing the CE for a surplus property, the EC or DEA staff will utilize the *Surplus Property Categorical Exclusion Impact Summary Sheet*. The information about the action and the parcel should be entered in Section I at the top of the form, including the date of the review, Applicant/Purchaser name, the route on which the parcel exists, the Item Number or Project Number for which the parcel was purchased, the parcel number and the county where it is located. The existing conditions should describe the approximate size of the parcel as well as the present land use. Any environmental features should be inventoried including historic sites, archaeological sites, streams, wetlands, etc. located on or proximate to the parcel. The anticipated or proposed future land use, should the parcel be sold to the Applicant/Purchaser, should be clearly identified in the Proposed Use section.

Section II of the form is designed to identify the type of impacts, the degree of effect and the type of effect, either direct or Indirect and Cumulative, that may result from the proposed action. Impact levels are categorized as "None", "Minimal", or "Significant". Each potential type (row) of impact should include a designation for both direct (D) and indirect (I) effects under one of the three impact levels. Where both effect types fall under the same designated level, D/I should be used to so indicate. The form has been developed with drop-down lists with selection choices of D, I and D/I.

Line A: There presumably will almost always be a change in the use of the land. The Comments should identify whether the proposed use is in keeping with local zoning laws (if any.) If it is not, this does not preclude the parcel being sold, but we should notify the prospective owner of the need to address this issue on the *Surplus Property Notification of Environmental Conditions* (Notification) form.

Line B: In the unlikely event that a Section 4(f) resource exists on the property, **DEA and FHWA must be consulted**. ROW taking from these resources should have been

minimized during project development. In most cases, if there is surplus property available, it would likely revert back to the park, refuge or historic property rather than be sold to a third party.

If an archaeological site is known to exist on the parcel, but its eligibility for the National Register has not been determined, the Applicant/Purchaser shall be notified that they may need to coordinate with the SHPO prior to conducting earth moving activities (see Notification form). If you do not know whether a site exists at the location, a DEA SME should be consulted and requested to review available GIS data. The areas on the property where any restrictive provisions may apply, should be described to the extent necessary for the Applicant/Purchaser to fully recognize the area of concern. If an archaeological site eligible for the National Register is known to exist on the parcel, the property shall not be surplusd without a deed restriction or preservation easement that will protect the site from future disturbance. If this is in conflict with Applicant/Purchaser's proposed use of the property, then they will need to conduct sufficient investigations to satisfy the SHPO for release of the easement.

If the parcel lies adjacent to a Section 4(f) resource or the proposed land use would not effect the area of concern on the parcel, the possible indirect effects of the proposed land use on the resource should be discussed. This might include any number of possible impacts such as a visual impact to an historic property or surface water runoff from a proposed development into a critical habitat or refuge.

Lines C and D: Impacts to wetlands and floodplains on the property or adjacent to it should be discussed. If wetlands exist on the parcel, the Applicant/Purchaser should be notified of the possible need to obtain permits from state and federal agencies before implementing their proposal (See Notification form.) The location of these areas should be sufficiently described or delineated so as to have clearly warned the Applicant/Purchaser of the resource and his responsibilities. Effects of the proposed land use change on the resources should be discussed in the comments box.

Line E: The potential for the presence of endangered species or their habitat must be considered. An endangered species list should be requested from the USFWS. If habitat or species presence can be easily dismissed, the Reviewer should prepare a memo to the file explaining why the species are not of concern on the particular parcel (no caves or trees for bats, no water course for mussels, etc.) If habitat or species presence can not be easily dismissed, the Applicant/Purchaser must be notified (see Notification form) that they may have some investigative responsibilities or restrictions that may apply to use of the property and that consultation with the USFWS prior to initiating any activities on the property should be undertaken. The comment for this line should identify any species of possible concern, should reference the USFWS letter and any memoranda that may have been prepared by staff to address ESA issues. If possible endangered species presence may lead to restrictions on parcel development, these should also be cited.



**Line F:** The potential for the proposed land use to create diminished water quality should be addressed. This might be of particular importance if the parcel or its adjacent properties are suitable habitat for endangered aquatic species. These potential impacts should be addressed in the Comment section. Such concerns may also contribute to a decision to check the Notification related to either permitting or endangered species, as appropriate.

**Line G:** If the parcel is characterized by ephemeral , intermittent streams, or perennial streams, the impact of the proposed land use on these streams must be considered. If the proposed use will encroach upon these water courses, the Applicant/Purchaser should be notified (see Notification form) of the possible need to secure permits from the appropriate agencies.

**Line H:** In the unlikely event that KYTC has purchased a parcel that includes a possible area of contamination that has not been remediated while in our ownership, it is incumbent upon us to notify (see Notification form) the Applicant/Purchaser. This would also apply if during our ownership of the property, it was used by KYTC or with KYTC permission, in a manner that might have lead to the contamination of the parcel. It might further apply if we are aware of the use of an adjacent parcel (leaking UST for example) that has contaminated our parcel. We should be careful not to speculate on such matters and should limit our notification to those instances where we have confirmed there to be a problem or should reasonably know that a problem is likely to exist.

**Line I:** If there are any other issues that might influence how a property can be utilized once sold, or might be considered a direct or indirect effect of the surplusung action, these should be discussed in this section.

**Signatures:** The action, assuming that no Section 4(f) resources were on the parcel, is to be signed by the DEC and the District Surplus Property Coordinator.

**Copies:** Copies of the form, attachments and the Notification form are to be sent to DEA and FHWA.

### ***Surplus Property Notification of Environmental Conditions***

If there are any environmental conditions of the property that might require an action on the part of or recognition of a restricted use by the Applicant/Purchaser, the *Surplus Property Notification of Environmental Conditions* form is to be completed. The Project Identification information from the *Impact Summary Sheet* will be automatically populated onto the top of the form. Any of the site conditions that might apply should be checked in the box located along the left margin. The second item regarding billboards should always be checked. The form is to be provided to the District Surplus Property Coordinator at the time of issuance of the environmental clearance and should be signed by both the DEC and the District Surplus Property Coordinator. It will be the

responsibility of the District Surplus Property Coordinator to assure that the Applicant/Purchaser is provided a copy of the completed form and advised of the implications of the notification. The Applicant/Purchaser is required to sign the form in the space provided, acknowledging their understanding of the applicable conditions. If desired by the District Surplus Property Coordinator, the DEC can assist in explaining the notification to the Applicant/Purchaser.

Any questions regarding the intent or implementation of the procedures described herein should be sent to the appropriate Division Director.

pc: Ken Sperry, John Mettillle, Jose Sepulveda



**SURPLUS PROPERTY CATEGORICAL EXCLUSION IMPACT SUMMARY SHEET**

**I. PROJECT IDENTIFICATION**

A. Route: \_\_\_\_\_ Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
 B. County: \_\_\_\_\_ C. Item No: \_\_\_\_\_  
 D. Description \_\_\_\_\_  
 1 Existing Conditions: \_\_\_\_\_  
 2 Proposed Use: \_\_\_\_\_

**II. IMPACT EVALUATION**

- A. Land Use Changes
- B. 4(f) Lands
  - 1 Historic Site/District effects
  - 2 Archaeological site effects
  - 3 Public recreation effects
  - 4 Wildlife/Waterfowl refuge effects
- C. Wetlands effects
- D. Floodplain effects
- E. Endangered Species/Habit effects
- F. Water Quality impacts
- G. 401/404 permits
- H. Hazmat/UST issues
- I. Other issues (discuss):

	Direct			Indirect/Cumul			COMMENTS
	SIG	MIN	NONE	SIG	MIN	NONE	
A. Land Use Changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B. 4(f) Lands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
1 Historic Site/District effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2 Archaeological site effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3 Public recreation effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4 Wildlife/Waterfowl refuge effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C. Wetlands effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D. Floodplain effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E. Endangered Species/Habit effects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F. Water Quality impacts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G. 401/404 permits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H. Hazmat/UST issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I. Other issues (discuss):							

**III. RECOMMENDATIONS/CONDITIONS/COMMENTS:**

APPROVED:

\_\_\_\_\_  
 District Environmental Coordinator

\_\_\_\_\_  
 Date

APPROVED:

\_\_\_\_\_  
 District Right of Way Agent

\_\_\_\_\_  
 Date

cc: Division of Environmental Analysis  
 FHWA



## SURPLUS PROPERTY – NOTIFICATION OF ENVIRONMENTAL CONDITIONS

<b>COUNTY</b>		<b>PARCEL</b>
<b>LOCATION</b>		
<input type="checkbox"/>	The proposed land use may not be compatible with local zoning ordinances.	
<input type="checkbox"/>	The parcel to be sold includes, or may include, an archaeological site eligible for the National Register of Historic Places. The applicant/proposed owner should contact the Kentucky Heritage Council before conducting any earthmoving activities on this parcel.	
<input type="checkbox"/>	The parcel includes streams, tributaries or wetland areas that may require permitting from the U.S. Army Corps of Engineers and/or the Kentucky Division of Water prior to disturbance. The applicant/proposed owner should contact these agencies prior to conducting any earthmoving activities on this parcel.	
<input type="checkbox"/>	The parcel to be sold includes habitat suitable for species on the Threatened or Endangered Species list maintained by the United States Fish and Wildlife Service. The applicant/proposed owner should contact the U.S. Fish and Wildlife Service before conducting any earthmoving, clearing or other activities on this parcel that might potentially cause the intentional or inadvertent "taking" of an endangered species. Such actions are contrary to law and subject to penalty including fines and/or imprisonment.	
<input type="checkbox"/>	The parcel to be sold includes locations where activities were or may have been conducted, that could have resulted in the contamination of the property. The applicant may need to consult with a professional, and appropriate state and federal agencies, regarding proper safety measures, clean-up standards, etc. if ground disturbing activities are planned.	
<b>COMMENTS</b>		
<b>SIGNATURE</b>		<b>DATE</b>

# Appendix E

- 1) Section 106 Programmatic Agreement Project Types
- 2) Noise Type I Projects
- 3) Air Quality Project Types for MSATS
- 4) UST/HAZMAT Land Use Types
- 5) Section 7 No Effect by Definition Project Types

Programmatic Agreement  
Among the Federal Highway Administration,  
Kentucky Transportation Cabinet,  
Kentucky State Historic Preservation Officer, and the  
Advisory Council on Historic Preservation  
Regarding  
Implementing Section 106 of  
the National Historic Preservation Act  
For Federally Funded Road Projects in the Commonwealth  
of Kentucky

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 USC 101, implements the Federal-aid Highway Program (Program) in the Commonwealth of Kentucky by funding and approving state and locally sponsored transportation projects that are administered by the Kentucky Transportation Cabinet (KYTC); and

WHEREAS, the Kentucky Division Administrator, FHWA, is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the Commonwealth of Kentucky complies with Section 106 of the National Historic Preservation Act, as amended (NHPA), and codified at its implementing regulations, 36 CFR Part 800, and effective January 11, 2001; and

WHEREAS, FHWA has determined that implementation of the Program in Kentucky may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Kentucky State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Kentucky and for affording ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA has notified the public, interested organizations, and federally recognized Indian tribes with ancestral lands in Kentucky (Cherokee Nation, Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee Indians, The Shawnee Tribe, Absentee Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Miami Tribe of Oklahoma, Peoria Indian Tribe of Oklahoma and Chickasaw Nation) about this Agreement, has requested their comments, and has taken any comments received into account; and

WHEREAS, KYTC has participated in the consultation and has been invited to be a signatory to this Agreement;

NOW, THEREFORE, FHWA, the SHPO, ACHP, and KYTC agree that the Program in Kentucky shall be carried out in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Kentucky and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.



## Stipulations

FHWA shall ensure that the following measures are carried out:

### I. Definitions

- A. Unless otherwise specified, “days” shall refer to calendar days throughout this document.
- B. “Small-Scale” Projects: KYTC’s “Small Scale” projects are typically processed as Categorical Exclusions (CEs) as defined in the National Environmental Policy Act (NEPA), as well as in regulations of the Council on Environmental Quality (CEQ) and FHWA. KYTC and FHWA further subdivide these actions into one of four levels depending upon the degree of impact to environmental resources. For purposes of this Agreement, “Small Scale” projects shall be considered as those satisfying the criteria for processing as CE for Minor Projects (CEMP), CE Level 1 and CE Level 2. Project types that are routinely processed as “Small Scale” projects are identified in Attachments 1 and 2 of the accompanying Handbook (see III. C).
- C. “Large-Scale” Projects: KYTC’s “Large Scale” projects are those that involve major reconstruction or new construction, are complex or are controversial and thus have higher potential for causing environmental impacts than “Small Scale” projects. “Large Scale” project impacts are typically evaluated under NEPA using a CE Level 3, Environmental Assessment (EA) or Environmental Impact Statement (EIS).

### II. Applicability

- A. This Agreement sets forth the process by which the Federal Highway Administration (FHWA), with the assistance of the KYTC, will meet its responsibilities pursuant to Section 106 and Section 110 of the NHPA (16 U.S.C. 470f) for Federal-aid Highway projects (undertakings) in the Commonwealth of Kentucky. The purpose of the Agreement is to improve the efficiency of Section 106 review for roadway and bridge construction projects funded by FHWA that have little to no potential to cause effects to historic properties, or that otherwise do not warrant case-by-case consultation with the SHPO.
- B. The agreement does not apply to projects developed through the KYTC Office of Local Programs.

### III. Delegation of Responsibilities to the KYTC

- A. Through the execution of this Agreement, FHWA delegates to KYTC, many aspects of the routine Section 106 coordination for roadway and bridge construction projects. Delegation of this responsibility may not be transferred to any other agency or party. Except as provided for in stipulation III.D, KYTC may independently perform the work and consultation described in the following sections of 36 CFR Part 800 on behalf of FHWA as follows:

#### 36 CFR 800.3

- (1) Establish Undertaking
- (2) Coordinate with other reviews
- (3) Identify the appropriate SHPO
- (4) Plan to involve the public
- (5) Identify other consulting parties
- (6) Expediting consultation

36 CFR 800.4

- (1) Determine scope of identification (including Area of Potential Effect - APE)
- (2) Identify historic properties
- (3) Evaluate historic significance
- (4) Results of identification and evaluation

36 CFR 800.5

- (1) Apply criteria of adverse effect
- (2) Finding of no adverse effect
- (3) Consulting party review
- (4) Results of Assessment

- B. KYTC will ensure that all cultural resources staff meet the qualifications set forth in the Secretary of Interior's Professional Qualification standards (48 FR 44716) for such work. These qualified KYTC cultural resources personnel shall have the primary responsibility for implementing this Agreement. Consultants working on projects on behalf of FHWA and KYTC must also meet these standards as well as the prequalification requirements of KYTC and SHPO.
- C. Upon the written agreement of SHPO and FHWA, KYTC shall finalize a *Handbook for Implementing Section 106 of the National Historic Preservation Act for Federal Aid Highway Projects in Kentucky* (Handbook). The Handbook will be consistent with the stipulations in this Agreement, and KYTC will provide a copy of the Handbook to the ACHP, and make it available to the public. All work carried out under this agreement will be conducted in accordance with the procedures, policies, and standards in the Handbook. KYTC may from time to time revise the Handbook in consultation with FHWA and SHPO. Revisions to the Handbook will be effective upon the written agreement of SHPO and FHWA. The revised Handbook will also be provided to the ACHP for its files and made available to the public.
- D. FHWA will be responsible for the following actions, which are not delegated to KYTC:
1. FHWA shall initiate consultation with federally recognized Indian tribes in accordance with federal requirements for government-to-government consultation.
  2. In the event of a dispute, regardless of the nature (designation of Area of Potential Effect, suitability of consulting parties, phased identification, eligibility, and effects determinations) FHWA shall be involved in the resolution in accordance with 36 CFR Part 800.
  3. Consultation for projects where adverse effects to historic properties are unavoidable.
  4. Consultation on a Memorandum of Agreement (MOA).
  5. Consultation on Section 4(f) *de minimis* findings.

IV. Consultation with federally recognized Indian tribes

In recognition of the unique government-to-government relationship between the Federal government and federally recognized Indian tribes, FHWA shall take the lead in identifying and establishing consultation with Indian tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c) – (f). FHWA shall ensure that consultation with Indian tribes is initiated early in project planning to identify



cultural, confidentiality, or other concerns and to allow adequate time for consideration of such concerns in the planning process.

#### V. Participation of other consulting parties and the public

- A. KYTC will seek and consider the views of the public, as appropriate, in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties. Public involvement in planning and implementation of undertakings covered by this Agreement shall be governed by FHWA's and KYTC's policies and procedures for compliance with the National Environmental Policy Act (NEPA).
- B. Certain small-scale projects covered by this Agreement may require that KYTC involve consulting parties. KYTC will identify consulting parties pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, the Handbook and the requirements of 36 CFR 800.2(c)(5) and 800.3(f).

#### VI. "Small Scale" Projects Exempted from Review

- A. Project types identified in Attachment 1 are those that would not typically result in any effect to historic properties regardless of the setting or surroundings where the work is undertaken.
- B. For any project of a type listed in Attachment 1, KYTC will document the project in accordance with the procedures in the Handbook and may proceed without further review by FHWA or SHPO.

#### VII. Review of "Small-Scale" Projects and "Large Scale" Projects

- A. For those projects not exempt from review under terms of Stipulation VI, KYTC shall review the undertakings in accordance with 36 CFR Part 800, following the procedures in the Handbook.
- B. KYTC shall complete the requirements of 36 CFR 800.3 and 800.4 to initiate consultation and complete the identification and evaluation of historic properties by carrying out the requirements of the Handbook.
- C. KYTC may apply streamlining procedures contained in the Handbook to "Small Scale" projects with no historic properties affected or a finding of no adverse effect.
- D. If KYTC determines, in consultation with the SHPO and consulting parties, that the undertaking will have an adverse effect on historic properties, it will notify FHWA and FHWA will ensure the Section 106 process is completed in accordance with 36 CFR 800.6. FHWA will be responsible for making a finding of adverse effect and the resolution of those effects.

#### VIII. Emergency Situations

As defined in 36 CFR 800.12, emergencies are separated into two categories:

- A. Disasters or emergencies declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. These occurrences can require emergency highway system/ facility repairs that are necessary to 1) protect the life, safety,

or health of the public; 2) minimize the extent of damage to the highway system/ facilities; 3) protect remaining highway facilities; and/or 4) restore essential traffic.

In situations where this definition applies:

1. Repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies. These emergency repairs, including temporary traffic operations, are typically undertaken during or immediately following the occurrence that necessitated the action.
2. For repairs initiated within the first 30 days of the declaration, the processing of environmental documentation will happen concurrently or after the fact. In these cases, KYTC shall comply to the extent possible with the stipulations of this Agreement, but reviews will likely be conducted after the emergency work is completed. For projects taking longer than 30 days to initiate the repair, Section VIII of this Agreement will not apply.
3. Notification in writing or electronic mail (when appropriate) of an emergency action shall be provided to SHPO within 48 hours of the initial report. The notification will be clearly identified as an emergency situation and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notification shall also include a brief description of the resource(s) involved, the anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.
4. Work required to restore the damaged resource or facility to its original condition that is beyond the scope of the emergency repair will comply with the procedures in Sections III-V of this Agreement. In these situations, KYTC may request an expedited review by SHPO and consulting parties.

- B. In accordance with 36 CFR 800.12(d), emergencies that are defined by immediate rescue and salvage operations conducted to preserve life or property such as necessitated by natural disaster or other catastrophic events, are exempt from the provisions of Section 106 and this Programmatic Agreement.

## IX. Administrative Provisions

### A. Dispute Resolution

If the SHPO, KYTC, or ACHP objects in writing to either KYTC or the FHWA regarding any action carried out or proposed with respect to the implementation of the Agreement, then FHWA shall consult with the objecting party to resolve the objection. If after such consultation, FHWA determines that the objection cannot be resolved through consultation, then FHWA shall forward all documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

1. Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
2. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection.



Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence with the proposed response to the objection.

If a consulting party or a member of the public object to actions proposed by KYTC for an undertaking carried out under this agreement, FHWA will consult with the objecting party to resolve the objection in accordance with the requirements of 36 CFR 800.4 – 800.6.

#### B. Amendments

Any party to this Agreement may request that it be amended, whereupon the parties shall consult to consider such amendment. The amendment will be effective on the date a copy is signed by all of the original signatories. KYTC may revise Attachment 1 of this Agreement (exempted projects) without formally amending the Agreement, provided it consults with the other signatories regarding the proposed revisions and obtains the written concurrence of the FHWA, SHPO, and ACHP.

#### C. Termination

Any party to this Agreement may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, FHWA shall conduct individual project reviews pursuant to 36 CFR 800.

#### D. Duration of Agreement

This agreement shall become effective upon its approval and execution by the FHWA Kentucky Division Administrator and the ACHP, and shall remain in effect until December 31, 2012. Thereafter, this agreement shall be automatically renewed for successive two year (biennial) terms unless any party gives written notice to the other parties that the agreement will not be renewed beyond the then current term of the agreement.

#### E. Evaluation of the Programmatic Agreement

Once this agreement is executed, KYTC, FHWA and SHPO shall meet by October 31, 2012 to evaluate its effectiveness and, if warranted, suggest revisions to its stipulations. KYTC, on behalf of FHWA, will notify the ACHP and it may participate at its discretion. This notification may be done informally (e.g. via email).

Execution and implementation of this Agreement evidences that the Federal Highway Administration has satisfied its Section 106 responsibilities for all individual undertakings of the Federal-Aid Highway Program in Kentucky.





**Attachment 1 – Small Projects Unlikely to Affect Historic Properties**  
(All work within existing ROW)

1. General highway maintenance, including filling potholes, crack sealing, mill and resurfacing, joint grinding/milling, etc.
2. Guardrail replacement where no new bank stabilization is required.
3. The installation or maintenance of highway signs, pavement markings and/or contemporary fencing within the existing ROW.
4. General pavement marking or “line painting” projects.
5. The installation of raised pavement markers.
6. Herbicidal spraying within existing ROW.
7. Mowing or brush removal/trimming projects within existing ROW
8. Improvements to existing KYTC/County maintenance facilities.
9. Study-type projects (i.e. feasibility studies, etc.).
10. Approval of utility installations along or across a transportation facility provided no drainage of wetlands will occur.
11. Acquisition of scenic easements.
12. Transfer of federal lands to another federal agency pursuant to USC 317 when the subsequent action is not an FHWA action.

## 23 CFR 772.5 Definition of a Type I Project for Noise

*Traffic noise impacts.* Design year build condition noise levels that approach or exceed the NAC listed in Table 1 for the future build condition; or design year build condition noise levels that create a substantial noise increase over existing noise levels.

*Type I project.* (1) The construction of a highway on new location; or,

(2) The physical alteration of an existing highway where there is either:

(i) Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,

(ii) Substantial Vertical Alteration. A project that removes shielding therefore exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,

(3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,

(4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,

(5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,

(6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,

(7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

(8) If a project is determined to be a Type I project under this definition then the entire project area as defined in the environmental document is a Type I project.

*Type II project.* A Federal or Federal-aid highway project for noise abatement on an existing highway. For a Type II project to be eligible for Federal-aid funding, the highway agency must develop and implement a Type II program in accordance with section 772.7(e).

*Type III project.* A Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis.

# Consideration of MSAT In NEPA Documents

The FHWA developed a tiered approach with three categories for analyzing MSAT in NEPA documents, depending on specific project circumstances:

1. (1) No analysis for projects with no potential for meaningful MSAT effects;
2. (2) Qualitative analysis for projects with low potential MSAT effects; or
3. (3) Quantitative analysis to differentiate alternatives for projects with higher potential MSAT effects.

For projects warranting MSAT analysis, all nine priority MSAT should be considered.

## 1. ***Projects with No Meaningful Potential MSAT Effects, or Exempt Projects.***

The types of projects included in this category are:

- Projects qualifying as a categorical exclusion under 23 CFR 771.117;
- Projects exempt under the Clean Air Act conformity rule under 40 CFR 93.126; and
- Other projects with no meaningful impacts on traffic volumes or vehicle mix.

For projects that are categorically excluded under 23 CFR 771.117, or are exempt from conformity requirements under the Clean Air Act pursuant to 40 CFR 93.126, no analysis or discussion of MSAT is necessary. Documentation sufficient to demonstrate that the project qualifies as a categorical exclusion and/or exempt project will suffice. For other projects with no or negligible traffic impacts, regardless of the class of NEPA environmental document, no MSAT analysis is recommended. However, the project record should document in the EA or EIS the basis for the determination of no meaningful potential impacts with a brief description of the factors considered. Example language, which must be modified to correspond with local and project-specific circumstances, is provided in [Appendix A](#).

## 2. ***Projects with Low Potential MSAT Effects***

The types of projects included in this category are those that serve to improve operations of highway, transit, or freight without adding substantial new capacity or without creating a facility that is likely to meaningfully increase MSAT emissions. This category covers a broad range of projects.

We anticipate that most highway projects that need an MSAT assessment will fall into this category. Examples of these types of projects are minor widening projects; new interchanges; replacing a signalized intersection on a surface street; and projects where design year traffic is projected to be less than 140,000 to 150,000 annual average daily traffic (AADT).

For these projects, a qualitative assessment of emissions projections should be conducted. This qualitative assessment should compare, in narrative form, the expected effect of the project on traffic volumes, vehicle mix, or routing of traffic and the associated changes in MSAT for the project alternatives, including no-build, based on VMT, vehicle mix, and speed. It should also discuss national trend data projecting substantial overall reductions in emissions due to stricter engine and fuel regulations issued by EPA. Because the emission effects of these projects typically are low, we expect there would be no appreciable difference in overall MSAT emissions among the various alternatives.

[Appendix B](#) includes example language for a qualitative assessment, with specific examples for four types of projects: (1) a minor widening project; (2) a new interchange connecting an existing roadway with a new roadway; (3) a new interchange connecting new roadways; and (4) minor improvements or expansions to intermodal centers or other projects that affect truck traffic. The information provided in [Appendix B](#) should be modified to reflect the local and project-specific situation.

In addition to the qualitative assessment, a NEPA document for this category of projects must include a discussion of information that is incomplete or unavailable for a project specific assessment of MSAT impacts, in compliance with the Council on Environmental Quality (CEQ) regulations (40 CFR 1502.22(b)). This discussion should explain how current scientific techniques, tools, and data are not sufficient to accurately estimate human health impacts that could result from a transportation project in a way that would be useful to decision-makers. Also in compliance with 40 CFR 150.22(b), this discussion should contain information regarding the health impacts of MSAT. See [Appendix C](#).

### **3. *Projects with Higher Potential MSAT Effects***

This category includes projects that have the potential for meaningful differences in MSAT emissions among project alternatives. We expect a limited number of projects to meet this two-pronged test. To fall into this category, a project should:

- Create or significantly alter a major intermodal freight facility that has the potential to concentrate high levels of diesel particulate matter in a single location, involving a significant number of diesel vehicles for new projects or accommodating with a significant increase in the number of diesel vehicles for expansion projects; or
- Create new capacity or add significant capacity to urban highways such as interstates, urban arterials, or urban collector-distributor routes with traffic volumes where the AADT is projected to be in the range of 140,000 to 150,000<sup>6</sup> or greater by the design year;

*And also*

- Be proposed to be located in proximity to populated areas.

Projects falling within this category should be more rigorously assessed for impacts. If a project falls within this category, you should contact the Office of Natural Environment (HEPN) and the Office of Project Development and Environmental Review (HEPE) in FHWA Headquarters for assistance in developing a specific approach for assessing impacts. This approach would include a quantitative analysis to forecast local-specific emission trends of the priority MSAT for each alternative, to use as a basis of comparison. This analysis also may address the potential for cumulative impacts, where appropriate, based on local conditions. How and when cumulative impacts should be considered would be addressed as part of the assistance outlined above. The NEPA document for this project should also include relevant language on unavailable information described in [Appendix C](#).

If the analysis for a project in this category indicates meaningful differences in levels of MSAT emissions among alternatives, mitigation options should be identified and considered. See [Appendix E](#) for information on mitigation strategies.

You should also consult with HEPN and HEPE if you have a project that does not fall within any of the types of projects listed in category 3 above, but you think has the potential to substantially increase future MSAT emissions.

## Land Uses Typically Associated With UST/HW

Land uses that involve any of the following operations, processes or activities are likely to generate hazardous wastes and to have chemical or fuel storage facilities on-site.

1. Sale, repair and maintenance of motor vehicles (automobiles, aircraft, trucks, construction equipment, RVs, farm equipment).
2. Electroplating and other metal manufacturing and fabricating operations.
3. Metal finishing, refinishing and etching (auto body, printed circuit board manufacturing, jewelry fabrication).
4. Operation or repair of printing and reproduction equipment.
5. Dry cleaning and laundry services.
6. Photographic processing and printing.
7. Analytical laboratory operations.
8. Provision of home, industrial or commercial pest control.
9. Chemical manufacture, formulation or processing.
10. Warehouse operations.
11. Manufacture, formulation or processing of pesticides or agricultural products or chemicals.
12. Home, garden, pool or agricultural supply manufacturing.
13. Textile manufacturing (including fabric dyeing and finishing).
14. Manufacture, refinishing or stripping of furniture or wood products.
15. Cosmetic manufacturing or processing.
16. Chemical treatment of lawns, gardens, yards or provision of other landscape and tree services.
17. Pressure treating or preserving wood products.
18. Building and repair of boats.
19. Production and repair of shoes.
20. Paint formulation and mixing.



21. Metal galvanizing.
22. Drum, barrel and tank reconditioning.
23. Battery manufacturing, rebuilding or recycling.
24. Solvent recycling.
25. Scrap metal and junk yard operations.
26. Chemical and petroleum product storage facilities (both above and underground tanks and flammable storage rooms).
27. Landfills.
28. Receive bulk deliveries of raw or processed materials.
29. Lessor or renter of vehicles, maintain fleet operations, rent equipment.
30. Product distribution, consolidation and shipping operations.
31. Waste or spend product incineration.
32. Nursery and greenhouse operations.
33. Schools, auditoriums and other facilities with large heating requirements.
34. Recycling facilities.
35. Gas stations/old garages/old country stores.

**If a project included in the list below involves removal or impact to suitable listed species habitat as defined in the HAM (e.g. tree removal) or if the project includes any additional activities that do not fully fit into any of the fifteen categories described below, then you must continue with a No Effect finding or consult your SME.**

No Effect Projects by Definition\*:

- 1) General highway maintenance, including filling potholes, crack sealing, mill and resurfacing, joint grinding/milling, etc.
- 2) Guardrail replacement where no new bank stabilization is required.
- 3) The replacement of traffic signals within existing ROW.
- 4) The installation or maintenance of signs or pavement markings within the existing ROW.
- 5) General pavement marking or “line painting” projects.
- 6) The installation of raised pavement markers.
- 7) Mowing or brush removal/trimming projects within existing ROW.
- 8) Improvements to existing KYTC/County maintenance facilities.
- 9) Study-type projects (e.g. feasibility studies, etc.).
- 10) Installation of new fencing, signs, small passenger shelters, traffic signals, or railroad warning devices where no habitat, as defined in the HAM, occurs.
- 11) Acquisition of scenic easements.
- 12) Transfer of federal lands pursuant to USC 317 when the subsequent action is not an FHWA action.
- 13) Track and rail-bed improvements, maintenance activities, or acquisition.
- 14) Bridge deck overlays, bridge deck replacements and other maintenance activities, including painting projects provided the project does not involve any work within or involve impacts to streams, rivers, scenic river corridors, or other habitat as defined in the HAM.
- 15) Disposal of excess ROW parcels wholly contained in recent Major Project Acquisitions.

\*List is derived from KYTC/FHWA Determinations of No Effect Memorandum of Understanding, 2005. Contact your SME Biologist if you would like a copy of the full MOU document.