

# Selecting an FHWA Categorical Exclusion

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In NEPA, Categorical Exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4 and based on past experience do not involve significant environmental impacts as described in [23 CFR 771.117\(a\)](#).

These projects should be addressed in the ERS/ECS database in the following manner:

1. If the project qualifies under [23 CFR 771.117\(c\)](#) or [23 CFR 771.117\(d\)](#) and does not have unusual circumstances as described in [23 CFR 771.117\(b\)](#), then WSDOT **can sign** the ECS form per the 2020 WSDOT-FHWA Categorical Exclusion Programmatic Agreement.
  - a) In ERS/ECS, select the CE subsection that best describes the action being undertaken.
  - b) If the project does not fit into (c)(1) through (c)(25) consider using
    - (c)(22) The project occurs within the operational ROW.
    - (c)(23) The project has limited Federal assistance.
  - c) If the project fits under any of the following (c)(26): Modernization of a Highway, (c)(27): Highway Safety Projects, or (c)(28): Bridge rehabilitation, relocation, or replacement
    - Check to make sure the project meets the constraints in 23 CFR 771.117(e).
    - Consider completing the optional CE Verification Checklist to document compliance with the constraints and attaching it to the ECS form.
    - If the project does not meet the constraints, then process it as a (d)(13).
  - d) If the project may have unusual circumstances (23 CFR 771.117(b)), discuss the project with your FHWA Area Engineer and verify that conditions warrant FHWA review and approval.
2. If the project is not covered by any of the categories of exclusion but does not have any unusual circumstances or significant environmental impacts, discuss the project with your FHWA Area Engineer. If they agree that the project does not require an Environmental Assessment, submit it to FHWA for review and approval. The environmental document CANNOT be signed by WSDOT. In ERS/ECS select the FHWA CE subsection called "Not specifically listed".

## ***23 CFR 771.117(e) Constraint Definitions***

Actions described in (c)(26)<sup>i</sup>, (c)(27)<sup>1</sup> and (c)(28)<sup>2</sup> may not be processed as a c-list CE if they fail to meet any of the constraints listed in [23 CFR 771.117\(e\)](#).

**23 CFR 771.117(e)(1): Acquisition and minor amount of right of way**

- Acquisition includes options to purchase, rights of first refusal, fee title, permanent easements, temporary easements, and/or access rights, including advance/early and post-NEPA acquisitions.
- Acquisition is considered more than minor if it will:
  - Require displacement of owners and/or tenants and personal property from residences, commercial or non-profit establishments, or farms.
  - Involve more than a quarter of the parcel or substantially affect the functionality of the primary structure on the property.

**23 CFR 771.117(e)(4): Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions.**

The project will NOT result in major traffic disruptions if the following are TRUE for the project.

- Provisions are made for access by local traffic and are so posted.
- Through-traffic-dependent businesses will not be adversely affected.
- The detour or ramp closures, to the extent possible, will not interfere with any local special event or festival.
- The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.
- There is no substantial controversy associated with the use of the temporary road, detour, or ramp closure.

**23 CFR 771.117(e)(5): Changes in access control.**

The constraint applies only when changes in access control affect traffic patterns.

- Changes that *would* affect traffic patterns include actions such as the installation of medians or C-curb.
- Changes that *would not* affect traffic patterns include actions such as breaks in access control for maintenance or emergency access, or minimal alternations or adjustments to driveways.

**23 CFR 771.117(e)(6): 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): or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.**

A floodplain encroachment is defined as:

- An action that may result in an increase in the designated regulatory floodway.
- An action that may result in an increase of more than 1 foot of surface water elevation in the base floodplain when no regulatory floodway is designated
- An action that may increase the risk of damage to property and loss of human life, or may result in modification of a watercourse.