Introduction

The Categorical Exclusion Guidance is intended to serve as ODOT’s process for completing Categorical Exclusions (CE) under the Surface Transportation Project Delivery Program. Under NEPA Assignment, ODOT assumed the Federal Highway Administration’s (FHWA) National Environmental Policy Act (NEPA) responsibilities. It is now ODOT’s responsibility to determine all classes of action and approve all environmental documents with the exception of projects that cross state lines. Since ODOT is serving as the federal agency for projects conducted under NEPA Assignment, this guidance is to be utilized rather than the Programmatic Categorical Exclusion Agreement (CE PA) executed in 2015 (Agreement No. 18769). For projects that do not fall under NEPA Assignment, the CE PA should still be followed.

Project documentation shall be developed by ODOT that demonstrates CE actions meet the criteria established in this guidance and that individual actions meet the definition of a CE defined in 23 CFR 771.117(a) (see Council on Environmental Quality [CEQ] definition below) and have no unusual circumstances defined in 23 CFR 771.117(b) that would require the preparation of either an Environmental Assessment (EA) or Environmental Impact Statement (EIS). ODOT shall complete the task of analyzing environmental impacts and preparing environmental documentation for NEPA compliance pursuant to 23 CFR 771.109, 771.113, and 771.117(b). CE determinations will be used as considerations of notices to proceed to final design, right-of-way purchases, or construction.

In accordance with FHWA regulations (23 CFR 771, “Environmental Impact and Related Procedures”), CEs are actions which meet the definition contained in the CEQ regulations at 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, either individually or cumulatively, have any significant environmental impacts, and are, therefore, categorically excluded from the requirement to prepare an EA or EIS.

The term “Significant” as used in NEPA is defined at 40 CFR 1508.27 and requires consideration of both context and intensity.
CE Actions

All CEs will be classified as “C” or “D” listed CEs in accordance with 23 CFR 771.117 and the CE Programmatic Agreement. The appropriate determination of a CE is based upon the type of action and project impacts. The documentation and approval process are discussed on the following pages and all actions will be processed and documented with ODOT’s Online CE System or its successor.

In accordance with this Agreement, “C1” projects do not require additional documentation beyond determination that they meet the criteria presented in Appendix A. Projects defined as “C2” require limited documentation as a result of changes implemented in Surface Transportation Project Delivery Program (MAP-21) (P.L. 112-141) and as presented in Appendix B. Both C1 and C2 project types are considered “undocumented” CEs. Projects identified as meeting the criteria of 23 CFR 771.117(d) are processed according to context and intensity of impacts to environmental resources, and as presented in Appendix C.

Pursuant to 23 CFR 771.117(d), projects may qualify as a CE if appropriately analyzed and are documented to meet CE criteria. These “documented” or “D” project actions can include projects with impacts or scopes other than listed as C1 or C2 actions. Projects in this category must meet the intent of 23 CFR 771.117(d) in that they must satisfy the criteria for CE classification, cannot involve significant environmental impacts, and require environmental analysis and documentation that serves as a basis for making a CE determination.

- The District Environmental Coordinator (DEC) shall make CE determinations of C1 or C2 actions.
- The DEC will make CE determinations of D1 actions.
- ODOT’s Office of Environmental Services (OES) will make CE determinations of D2 and D3 actions.

Environmental impact thresholds for each are defined in Appendices A through C. It is the responsibility of ODOT to ensure that each project processed under this Agreement will be documented in accordance with the thresholds specified in Appendices A through C.

Class of Action Higher than a Categorical Exclusion

When the significance of impacts of a transportation project proposal is uncertain or an action does not meet any of the classifications for a “C” or “D” classified CE, as outlined in this Agreement, ODOT-OES will determine a class of action per 23 CFR 771.

Re-Evaluations

It may become necessary for ODOT to re-evaluate the CE classification for projects having CE determinations. If there is a change in project scope or impacts, a re-evaluation may be required prior to further approvals being granted. The re-evaluation of a CE shall be conducted by ODOT for the following circumstances:

- If the project scope has changed since the last CE determination
- If the project impacts have changed since the last CE determination
If the project has not commenced within five years of the project’s CE determination and the environmental studies have not been re-examined during that time, those studies shall be evaluated and ODOT will determine if additional agency coordination is required. This may prompt re-evaluation of the CE determination to document any changes to the project as a result of agency coordination. In these cases, a re-evaluation will be completed by ODOT if there are substantial changes in the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed actions or its impacts.

The signature authority for re-evaluations will be the same as for the original CE document unless the re-evaluation indicates a change in the level of document is needed. Prior to filing the plan package with Central Office, District Environmental Staff will complete the Environmental Consultation Form (ECF) or its successor. It is the responsibility of ODOT to ensure that the conditions of the project have not changed and the NEPA determination remains valid for the action.
Appendix A: Categorical Exclusion C1

Due to the limited scope of work for certain projects and based on ODOT’s past experience with similar actions, these actions meet the intent of CEQ regulation (Section 1508.4) and 23 CFR 771.117(a) and 771.117(c): “…meet the criteria for CEs in the CEQ regulation and normally do not require any further NEPA approvals by the FHWA.”

These projects must have independent utility and logical termini and must not exceed any of the C1 project impact thresholds listed below. Based on past experience, projects listed below will not result in any significant impacts to the human and/or natural environment. If environmental resources will be impacted, the level of documentation will need to be elevated. A C1 project form will be completed and signed by the DEC, the ORDC EC, or their designee for projects where no additional environmental verification is required. The DEC shall be ultimately responsible for ensuring that projects meet the criteria of a C1 action and do not require any further NEPA approvals by OES. The following project actions have been determined to meet the criteria of a C1 action as defined by ODOT:

1. Activities which do not involve or lead directly to construction, such as planning and technical studies; 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. Examples include:
   - Study type projects (i.e. feasibility studies, etc.).
   - Land donations to ODOT associated with ROW permits (Environmental Site Assessment issues will require coordination with ODOT-OES)
   - Early right-of-way acquisition in accordance with 23 CFR 710.501(e)**

2. Approval of utility installations along or across a transportation facility. Examples include:
   - Utility tower lighting and street lighting projects.

3. Construction of bicycle and pedestrian lanes, paths, and facilities. Examples include:
   - Walkways, sidewalks, shared-use paths, and facilities, small passenger shelters, (i.e. construction of a bike path on an existing railroad bed, designations of certain highways as bike routes, painting of existing paved shoulders as bike lanes, ADA ramps, etc.) provided that no new disturbance will occur.


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. Examples include:
   - Maintenance and/or replacement of existing noise wall panels and/or posts

7. Landscaping. Examples include:
   - Herbicidal spraying,
Mowing or brush removal/trimming projects.
Beautification or facility improvement projects (i.e. landscaping, curb and gutter replacement, installation of park benches, decorative lighting, etc.).

(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. Examples include:
• The installation or maintenance of signs, pavement markings/raised pavement markers/sensors, traffic calming activities, and/or new or replacement fencing (right-of-way, vandal, etc.).
• General pavement marking or “line painting” projects.

(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. Examples include:
• Conservation/mitigation easements and fee simple.
• Land acquisition by a public agency/public park entity for passive recreational use.


(12) Improvements to existing rest areas and truck weigh stations. Examples include:
• Improvements to existing rest areas and weigh stations for minor maintenance (i.e. mill and resurfacing of existing parking areas). Projects involving major construction may require a higher level of documentation.
• Truck stop electrification and construction/installation of alternative energy facilities (CNG, solar, etc.) at existing facilities

(13) Ridesharing activities. Examples include:
• Transportation corridor fringe parking facilities, park-and-ride lots and 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. Examples include:
   • Purchase or conversion of vehicles to alternative fuel uses (CNG, E-85, etc.)

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way. Examples include:
   • Track and railbed acquisition.

(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) (Not applicable to ODOT)

(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. Examples include:
   • Replacement of existing or installation of new traffic signals, flashing beacons, railroad warning devices and the installation of ITS system components
   • Upgrade of existing tower lighting to new technologies that ensure a lesser impact than the current system.
   • Implementation of other new safety or operations technologies (must be approved by OES).

(22) Projects, as defined in 23 U.S.C. 101, which would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been
disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way. Examples include:

- Tower lighting within the existing operational right-of-way.
- Guardrail installation and replacement (including median cable barriers) where roadway ditches and backslopes will not be relocated
- Improvements to existing ODOT/County maintenance facilities.
- Construction of new ODOT/County maintenance facilities within existing operational right-of-way.
- Environmental mitigation activities within existing operational right-of-way.
- Work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals within existing operational right-of-way.
- Construction of alternative energy facilities (fuel tank farms, wind turbines, etc.)

(23) Projects that receive less than $5,267,324.01 of Federal funds or with a total estimated cost of not more than $31,603,944.06 and with Federal funds that comprise less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigations 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. (This only applies to stand alone projects, not for environmental surveys being conducted as part of a project with an environmental document)

(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. Examples include:
  - Related environmental mitigation activities (wetland, stream, upland, etc.).

(26) thru (28) Per 23 CFR 771(c)(26)-(28) and MAP-21, these items cannot be processed as a C1.
  - See C2 list in Appendix B.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility’s capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(31) Activities that do not utilize federal monies or require federal actions.
C1 Project Impacts Thresholds
Projects that involve any impacts to the following will not be considered eligible for processing as a C1:

- Any acquisition of permanent right-of-way for construction***
- Any National Scenic River corridor impacts
- The need for any Waterway Permits
- Any impacts to state or federally threatened or endangered species
- Any impacts to wetlands
- Any impacts to historic properties or historic districts
- Any Section 4(f)/6(f) impacts
- Substantial traffic disruption, including the use of a temporary road, detour or ramp closure unless the use of such facilities satisfy the following conditions:
  - Provisions are made for access by local traffic and so posted;
  - Through-traffic dependent businesses will not be adversely affected;
  - The detour or ramp closure, 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 temporary road, detour, or ramp closure
- Minor public or agency controversy on environmental grounds (no opposition from any organized groups or agencies and no unresolved environmental coordination).

***With the exception of early right-of-way acquisition conducted in accordance with 23 CFR 710.501(e) (see Item #1) and when an environmental document is being prepared for the project for which the early acquisition is being performed.
Appendix B: Categorical Exclusion C2

Due to the limited scope of work for certain projects and based on ODOT’s past experience with similar actions, these actions meet the intent of CEQ regulations (Section 1508.4), and 23 CFR 771.117(a), 771.117(c) and 771.117(d). Furthermore, these actions satisfy the criteria for CE Classification and do not involve significant environmental impacts. These projects must have independent utility and logical termini and must not exceed any of the C2 project impact thresholds listed below. They require a minimum level of documentation to ensure that no unusual circumstances are present (for example but not limited to: significant environmental impacts; substantial controversy on environmental grounds; significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action) that would warrant a higher level of NEPA documentation. Certain C1 actions that exceed C1 impact thresholds can be processed as a C2 only if they meet the criteria of a C2 action and if they do not exceed C2 impact thresholds. Those C1 actions that do not meet the criteria for C2 shall be processed at the next appropriate higher level (D listed projects). A C2 Environmental Form shall be completed by ODOT, with determination provided by the DEC or ORDC EC via signature.

The following project actions have been determined to meet the criteria of a C2 action as defined by ODOT:

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section. Examples include:
- Joint or limited use of right-of-way where the proposed use would have minimal or no adverse social (including highway safety), economic or environmental impacts.
- Installation of new noise walls and other new noise mitigation projects.
- Construction of highway safety and truck escape ramps.
- Construction of bicycle lanes and pedestrian walkways, sidewalks, shared-use paths, or facilities and trailhead parking that do not otherwise qualify for a C1 designation.
- Beautification or facility improvement projects (i.e. landscaping, curb and gutter installation and replacement, ADA ramps/curb ramps, installation of park benches, decorative lighting, etc.).
- Construction of alternative energy facilities (fuel tank farms, wind turbines, etc.)*

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section. Examples include:
- Lane reduction (“road diet”) changes provided traffic analysis is completed.
- Railroad projects that close at-grade crossings to improve safety or traffic operations.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in 23 CFR 771.117(e). Examples include:
- Railroad projects that close or relocate at-grade crossings
C2 Project Impacts Thresholds

The environmental resources listed below require documentation to illustrate that no significant impacts will occur. The C2 classification cannot be applied to projects when the threshold is exceeded for each resource:

- No acquisition of more than a minor amount of right-of-way such as strip take or an amount that would result in any residential or non-residential displacements.
- No need for a bridge permit from the U.S. Coast Guard, or an individual Section 404 permit under the Clean Water Act, or a Section 10 permit under the Rivers and Harbors Act of 1899.
- No finding of adverse effect to any historic property considered under Section 106 of the National Historic Preservation Act.
- No Section 4(f) use resulting in greater than de minimis impacts.
- No finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act.
- No construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions.
- No changes in access control.
- No 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.
- No minor public or agency controversy on environmental grounds (no opposition from any organized groups or agencies and no unresolved environmental coordination).
- If a full EJ Analysis Report is required, the project must be processed as a D-level CE or higher level document. If a memo-to-file/letter/IOC-format EJ Analysis report is determined to be the appropriate level of documentation, contact OES regarding NEPA document level.

ODOT will also consider the following areas for C2 projects. Documentation of these areas is only required if there is a potential for impacts.

- **Air Quality & Noise** - Studies not required or no impacts will occur based on studies (qualitative) and coordination conducted.
- **Hazardous Materials** - Limited to solid wastes as defined in Ohio Administrative Code 3745-27-01(R)(23) and petroleum related Underground Storage Tanks (USTs) and/or releases.
- **Farmland** - Not present or amount of ROW needed does not exceed criteria of the Farmland Memorandum of Understanding (MOU).
Appendix C: Categorical Exclusion – D listed Actions

ODOT agrees to process D-listed actions pursuant to 23 CFR 771.117(d). Projects in this category must meet the intent of 23 CFR 771.117 (d), satisfy the criteria for CE Classification and do not involve significant environmental impacts. ODOT shall confirm proposed projects as D1 with the concurrence of either the DEC or the ORDC EC. The confirmation of D2 actions will be made by ODOT-OES. OES is responsible for the review and approval of D3 actions. D listed projects must have independent utility and logical termini and must not exceed any of the D project impact thresholds listed below.

The following list of actions meet the criteria for a CE in the regulations (40 CFR 1508.4 and 23 CFR 771.117(a)). They require the submission of documentation demonstrating that the specific conditions or criteria are satisfied and that significant environmental effects will not result.

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

- Disposal of excess ROW form is the documentation for a D1 action.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation
of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner’s request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

Examples include:

- ROW acquisition only for bikeway/pedestrian facility (no construction)

(13) Actions described in 23 CFR 771.117 (c)(26), (c)(27), and (c)(28) that do not meet the constraints listed in 23 CFR 771.117(e).

- Project types that exceed thresholds in Appendix A
- Project types that exceed thresholds in Appendix B

**CE Action - D1 Thresholds**

The DEC shall confirm that the project meets the criteria of a D1 action by ensuring:

- Only Minor right-of-way (ROW) acquisition involving a maximum of two relocations. *(The context and intensity of the impact may require the CE to be elevated to the next higher level. Confirmation (by ODOT) shall be made that the acquisition will not result in significant impacts to the community or environment ).*
- Waterways - *Individual permit is acceptable but wetland impacts must be limited to less than 3 acres of Category 1 and 2 wetlands and/or up to 0.5 acres of Category 3 wetlands.*
- No Section 106 impacts that would warrant the preparation of Archaeological Data Recovery recommendations.
- Section 4(f) impacts are limited to Programmatic or *de minimis* Section 4(f) impacts.
- That there is no public or agency controversy on environmental grounds *(no opposition from organized groups or agencies and no unresolved environmental coordination).*
- No impacts to federally threatened or endangered species/critical habitat that results in a Biological Opinion; or
- No disproportionately high and adverse impacts relative to low-income and/or minority populations or disparate impacts to Title VI populations.
- No substantial floodplain impacts
- If a Coast Guard Permit is required contact ODOT-OES for additional guidance regarding applicability of the Memorandum of Agreement Between The United States Coast Guard and The Federal Highway Administration To Coordinate and Improve Bridge Planning and Permitting, executed January 14, 2014.
- The project does not propose the addition of a new interchange at an existing
CE Action - D2 Thresholds
It shall be confirmed by ODOT-OES that the project meets the criteria of a D2 action. The CE must include documentation demonstrating that the following concerns have been addressed.

- Right-of-way (ROW) acquisition involving a maximum of eight relocations. (The context and intensity of the impact may require the CE to be elevated to the next higher level. Confirmation shall be made to determine that the acquisition will not result in significant impacts to the community or environment.)
- Section 106 impacts, provided necessary documentation of consultation is included in the project files as required by 36 CFR Part 800.
- Wetland impacts of 5 acres or less. (Enough information to issue a wetland finding must be included in the CE documentation.)
- Substantial public or agency controversy on environmental grounds (strong opposition from organized groups or agencies). CE document must include documentation demonstrating that the public or agency concerns have been addressed.
- Programmatic or de minimis Section 4(f) impacts with documentation approved by OES.
- Individual Section 4(f) impacts/use as long as a draft of the D2 CE is provided to OES for review along with the Individual 4(f) packet.

D2 projects cannot involve the following:
- Any disproportionately high and adverse impacts on low-income and/or minority populations or disparate impacts to any Title VI populations.
- Quantitative PM 2.5 Hotspot Analysis.
- Quantitative MSAT Analysis.
- Unresolved substantial public or agency controversy on environmental grounds.
- Substantial/significant floodplain impact

CE Action - D3 Thresholds
If the project exceeds the thresholds listed for D2 actions but still meets the intent of 23 CFR 771.117(d), the CE will require the review and approval by OES.
General clarification for type of actions not specifically listed in Appendix A, B, and C:

Projects, such as construction of additional through lanes, minor new highway facility on new location, or construction of realignments on new location, can be processed as a C1 or C2 Categorical Exclusion. If the proposed project exceeds established thresholds for C1 or C2 or the type of project cannot be classified as a C1 or C2, it will be processed as a D1 Categorical Exclusion (Item #13). If established thresholds for D1 are exceeded, the proposed project will be elevated to the next appropriate higher level of CE.
CE Guidance Clarification: Approvals for changes in access control
4/12/16

FHWA listed “approvals for changes in access control” as a documented Categorical Exclusion (CE) in 23 CFR 771. FHWA defines changes in access control as Interstate System Access actions that add additional access to an interstate system, temporarily close an interstate highway, and/or construct locked gate access points on interstate highways. For ODOT, this means that interstate projects that involve an Interchange Modification Study (IMS) or Interchange Justification Study (IJS) requiring FHWA approval would be classified as a D1 or higher.

However, some ODOT actions that have been called changes in access control by ODOT do not meet the FHWA definition of an access control change and therefore would not require the preparation of a documented CE (D1 or higher). For example, actions requiring an Interchange Operations Study (IOS) for an interstate could be classified as a C1 or C2 as long as the environmental impacts do not exceed the C1 or C2 thresholds. Actions that involve changes in Limited Access control may be classified as a C1 or C2 as long as the environmental impacts do not exceed the C1 or C2 thresholds.

For all other changes in access control, no NEPA action is required.

Examples:

Hospital wants to remove section of the L/A fence, so that they can install a sign and landscaping partially within L/A and partially on their property. They will install some sort of fencing connecting to the L/A fence, but further back, on their property. No land transfer and no change in access. All work done by the local hospital’s contractor.

Not a NEPA action.

Honda wants to install a drop right turn from US 33 into their existing entrance. Partially within L/A. All work will occur within right-of-way. No land transfer and no change in access. All work done by Honda’s contractor.

Since turn lane is additional access/modification of limited access, it is a NEPA action. Process at appropriate CE level based on physical impacts. Not a mandatory D1, as it does not involve interstate.

School district wants to install a center left turn lane on SR 41. All work will occur within non-L/A right-of-way. No land transfer. All work done by the school district.

Not a NEPA action.

Township wants to pipe an existing stream within L/A, in order to install a sign. Linear feet of impacts could trigger individual waterway permit. No land transfer and no change in access. All work done by the Township.

Not a NEPA action. At District Real Estate Office’s discretion whether to require documentation of secured waterway permits or permitting in process prior to issuing joint use permit.