BASIS FOR EXPEDITED (c)(22) CATEGORICAL EXCLUSION (CE) PROCESS FOR CERTAIN LOW-IMPACT PROJECT TYPES

The project types eligible to use the expedited (c)(22) CE procedure were developed based, in part, on a previous FHWA-TxDOT programmatic agreement regarding the processing of certain types of projects, and an existing programmatic agreement with the State Historic Preservation Officer (i.e., the Texas Historical Commission), FHWA, and the Advisory Council on Historic Preservation.

The eligible project types were narrowed, and conditions of use were developed (in consultation with ENV subject matter experts), to account for other regulatory and environmental considerations. The subject matters considered included cultural resources, water quality, biology, hazardous materials, air quality, noise, and community impacts.

The project types eligible for this expedited process are covered by one or more specific CEs listed in FHWA’s CE rule, most notably the CE at 23 C.F.R. §771.117(c)(22) for projects that would take place entirely within the existing operational right-of-way. The eligible project types have also been determined to not trigger any additional reviews or coordination under any state or federal environmental law. For example:

- **Section 4(f)**\(^1\) – The covered activities have no potential to use land from a public park, recreation area, wildlife and waterfowl refuge, or historic site because the Conditions on Use in Section 3.0 prohibit the acquisition of any right-of-way or construction easements. Further, the covered activities do not involve any impacts that could rise to the level of a “constructive use” of such properties.

- **Section 106**\(^2\) – The covered activities have no potential to require individual review and consultation under Section 106 because they are identified in Appendix 3 of the Programmatic Agreement Among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings, and therefore by definition, have no potential to cause effects to historic properties.

- **Endangered and Threatened Species** – The project types eligible for this expedited CE process have no potential for effects on any plants or animals listed as threatened or endangered either under the Endangered Species Act or the Texas Parks and Wildlife Code, or their habitat. These project types occur within existing pavement or within the operational right-of-way and do not involve vegetation clearing or cutting, except cutting or blading of grass in areas that are already mowed as part of routine maintenance, when the mowing has previously been determined to have no effect on any listed species. In addition, Section 3.0,

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\(^1\) Section 4(f) of the Department of Transportation Act of 1966.

\(^2\) Section 106 of the National Historic Preservation Act.
Conditions on Use, would effect on any listed species. In addition, Section 3.0, Conditions on Use, would capture any unusual circumstances warranting consideration under the Endangered Species Act or the Texas Parks and Wildlife Code.

- **Clean Water Act/Rivers and Harbors Act** - The covered activities either have no impacts to jurisdictional waters or are covered by a nationwide permit under Section 404 and/or Section 10 of the Clean Water Act (Condition of Use D above). Additionally, the covered activities have no potential to require authorization under Sections 9 or 10 of the Rivers and Harbors Act because the covered activities generally do not trigger the permitting requirements of Sections 9 and 10, and the prohibition against “unusual circumstances” (Condition of Use A above) applies.

Some environmental impact-related issues are addressed on a programmatic basis. For examples:

- **Context** - specific best management practices (BMPs) to minimize construction emissions and other construction-related impacts such as noise and light pollution are used on all TxDOT projects as appropriate.

- **Stormwater discharges** are addressed through compliance with the TCEQ’s General Permit to Discharge under the Texas Pollutant Discharge Elimination System, also known as the Construction General Permit.

- **Lead-containing paint and asbestos** on bridges and other structures are addressed programmatically and are not identified or tracked as part of the NEPA review of a project.
Appendix C: Revision History

The following table shows the revision history for this interim guidance document.

<table>
<thead>
<tr>
<th>Effective Date Month, Year</th>
<th>Reason for and Description of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2019</td>
<td>Version 3 was released. Revised Condition of Use D to allow work in jurisdictional waters if it is covered by a non-reporting nationwide permit.</td>
</tr>
<tr>
<td>May 2019</td>
<td>Version 2 was released. Various revisions made, including explanation of the basis for this expedited process.</td>
</tr>
<tr>
<td>September 2018</td>
<td>Version 1 was released.</td>
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</tbody>
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