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)** – 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. For example, replacement lighting is limited to “in-kind” replacement.

- **Section 106** – 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 Species Act** – The project types eligible for this expedited CE process have no potential for effects on any listed plants or animals 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, Conditions on Use, would

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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.
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.

Some environmental impact-related issues are addressed on a programmatic basis. For example, 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. Also, 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.
## Appendix C: Revision History

The following table shows the revision history for this document.

<table>
<thead>
<tr>
<th>Effective Date Month, Year</th>
<th>Reason for and Description of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2018</td>
<td>Version 1 was released.</td>
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