

PART 1, CHAPTER 2

FEDERAL HIGHWAY ADMINISTRATION CLASS OF ACTION DETERMINATION

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PART 1, CHAPTER 2

FEDERAL HIGHWAY ADMINISTRATION CLASS OF ACTION DETERMINATION

2.1 OVERVIEW

The Council on Environmental Quality (CEQ) promulgated regulations in **40 Code of Federal Regulations (CFR) parts 1500-1508** to implement the **National Environmental Policy Act (NEPA)**. These regulations provide that the Environmental Document [Environmental Impact Statement (EIS)/Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE)] serves as the administrative record of compliance with the policies and procedures of **NEPA** and other environmental statutes and executive orders. The [Project Development and Environment \(PD&E\) Manual, Topic No. 650-000-001](#) is the standard used by the Florida Department of Transportation (FDOT) to develop or assist in the processing of an Environmental Document. Adherence to the [PD&E Manual, Topic No. 650-000-001](#) assures compliance with **NEPA**, its implementing regulations, and other related environmental laws. Throughout this manual the process for preparing the Environmental Document for Type 2 CEs, Environmental Assessments (EAs), and EISs is referred to as the PD&E Study.

The Class of Action (COA) determination identifies the level of documentation required for a federal project. The COA determination is made in consultation with the Lead Federal Agency for EAs, EISs, and CEs as appropriate. This chapter provides guidance on determining the COA for projects in which the Federal Highway Administration (FHWA) is the Lead Federal Agency. For determining the COA for Federal Transit Administration (FTA) projects, see [Project Delivery](#).

Other state and local agencies may also seek federal funds or seek to maintain federal funding eligibility for transportation projects. These projects are processed through either FDOT's Local Agency Program (LAP) or by FDOT agreement with state or local agencies. FHWA has delegated to FDOT the management and disbursement of federal aid funds for transportation projects; therefore, FDOT provides oversight and is the liaison with FHWA on all federally funded projects (including LAP projects). To be considered a LAP project, funding has to be already programmed in the State Transportation Improvement Plan (STIP)/Transportation Improvement Plan (TIP). LAP projects are developed by a local agency that has received federal funds and is certified by FDOT (per [FDOT LAP Manual, Topic No. 525-010-300](#)) to administer FHWA federal-aid projects. LAP projects and those maintaining federal funding eligibility must follow the same procedures for the preparation of environmental documentation as other FHWA projects detailed in this manual.

When one of the following conditions exists, a transportation project is considered a federal action, and therefore must comply with **NEPA**:

1. Federal funds or assistance is or is expected to be used during any phase of project development or implementation;
2. Federal funding or assistance eligibility is being maintained for subsequent phases;
3. Federal permit(s) is (are) required when based on consultation the federal permitting agency has determined that an FDOT **NEPA** document is required to support the permit [e.g., U.S. Coast Guard (USCG) bridge permit, U.S. Army Corps of Engineers (USACE) **Section 404** permit]; or
4. Federal approval of an action is required (e.g., change in Interstate access control, use of Interstate right-of-way).

There are three classes of actions defined in **23 CFR § 771.115** which establish the level of documentation required in the **NEPA** process.

1. Class I: Environmental Impact Statements (EISs). This COA applies to actions that significantly affect the environment as defined by CEQ regulations. The types of actions which normally require an EIS are:
 - a. A new controlled-access freeway;
 - b. A highway project of four or more lanes on new location;
 - c. New construction or extension of fixed rail transit facilities (e.g., high speed or heavy rail, light rail, commuter rail); or
 - d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within or separated from (e.g., elevated lanes for bus rapid transit or high occupancy vehicles) an existing highway facility.
2. Class II: Categorical Exclusions (CEs). This COA applies to actions that do not individually or cumulatively have a significant environmental effect. These actions **do not**:
 - a. Induce significant impacts to planned growth or land use for an area;
 - b. Require the relocation of significant numbers of people;

- c. Have a significant impact on any natural, cultural, recreational, historic, or other resources;
- d. Involve significant air, noise, or water quality impacts;
- e. Have significant impacts on travel patterns; or
- f. Either individually or cumulatively, have any significant environmental impacts

CEs are exempt from the requirements to prepare an EA or EIS. A CE determination can be elevated by the lead agency when extenuating circumstances and/or controversy exist or when such issues arise later in project development.

- 3. Class III: Environmental Assessments (EAs). This COA is assigned to actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or Class II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental documentation required.

The term significant as used in **NEPA** is described in **40 CFR § 1508.27**, and requires consideration of both context and intensity (see insert). In many cases, the determination of significance will be obvious because of the absence of resources or

because the proposed action does not impact resources. In other cases, the degree to which the project may affect a resource will need to be considered. Consideration of these types of effects should be done in consultation with District environmental staff, specific resource agencies as appropriate, and FHWA.

FHWA Florida Division recognizes two types of CEs: Type 1 and Type 2 CEs. Type 1 CEs are those listed in **23 CFR § 771.117(c) and identified in 23 CFR § 771.117(d)** that meet the criteria established in the [Programmatic Agreement for Categorical Exclusions under 23 CFR § 771.117](#) and listed in **Section 2.2.2.1**. For all projects not listed as a Type 1 CE, the District must consult with FHWA to determine the appropriate COA. If the project qualifies for screening then it should be screened through FDOT's Efficient Transportation Decision Making (ETDM) process according to the [ETDM Manual Topic No. 650-000-002](#).

The determination of significance per NEPA requires considerations of both context and intensity:

Context: Context refers to the geographic, physical, natural, economic, and social settings of the action. The context is both the broader arena (society as a whole or watershed, for example) and the narrower environment (such as a specific neighborhood or stream).

Intensity: This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make a decision about partial aspects of a major action. The severity of the impacts must be viewed in both the larger and smaller contexts applicable to the action.

ETDM is FDOT's process to engage other agencies and the public early in project development. The Environmental Screening Tool (EST) is an internet-accessible, interactive Geographic Information System (GIS) database application that is used to coordinate with agencies and the public as part of the ETDM process. This tool provides standardized geographic data of environmental resources and provides agencies and the public an opportunity to view information about the project and comment on the potential effects of a proposed project. The decision of whether a project is entered into the EST is based on a qualifying project type and the conditions illustrated in the ETDM Screening Matrix for Qualifying Projects in **Figure 2-1**.

Roadway Project types qualifying for EST screening include:

1. Additional through lanes which add capacity to an existing road;
2. A new roadway, freeway or expressway;
3. A highway which provides new access to an area;
4. A new or reconstructed arterial highway (e.g., realignment);
5. A new circumferential or belt highway that bypasses a community;
6. Addition of interchanges or major interchange modifications to a completed freeway or expressway (based on coordination with FHWA); or
7. A new bridge which provides new access to an area, bridge replacements (e.g., non-Type 1 CE).

FDOT must complete the Programming Screen in the EST for all transportation projects described above before making a COA determination. During the Programming Screen each qualifying project is reviewed by appropriate FDOT personnel (i.e., project manager, environmental specialist, design and drainage staff), Environmental Technical Advisory Team (ETAT) and the FHWA (see FDOT's [ETDM Manual, Topic No. 650-000-002](#)). The District should coordinate with FHWA prior to submitting a COA determination for approval. A District may choose to do additional studies or coordination prior to making the COA determination and submitting it for approval. The **Final Programming Screen Summary Report** documents the COA determination and type of environmental analyses needed.

2.2 PROCEDURE

The first step of the Class of Action Determination process is to determine whether a project should be processed as a federal action as described in **Section 2.2.1**. The next step is to determine if FHWA is the Lead Federal Agency (See [Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification](#)). Once this is

determined, the project should be screened through the EST or prepared as a Type 1 CE, as discussed in **Section 2.2.2.1**. For projects qualifying for EST screening, the COA is typically determined in the ETDM Programming Screen; however, in certain circumstances the District may decide to delay the COA determination until additional analysis is completed. The COA determination process for FHWA projects is summarized in **Figure 2-2**.

2.2.1 Determination of Federal Action

Prior to initiating PD&E, the District must determine whether a project is going to be processed as a federal or state project. Projects involving a federal action, federal funds, federal permits, or that are maintaining federal eligibility, must be processed in accordance with the procedures in the [PD&E Manual, Topic No. 650-000-001 \(Section 2.1\)](#). By definition, LAP projects are federal actions requiring FDOT oversight and FHWA approval.

Information related to funding type can be found in the Long Range Transportation Plan (LRTP), TIP and STIP depending on the project. If the project is not identified in those plans and it is proceeding as a FHWA project, then steps should be taken to fulfill FHWA's planning consistency requirements as it advances and must be included in the Environmental Document. This information is included in the planning consistency form located in [Part 1, Chapter 4, Project Development Process](#) and for Type 2 CEs, the [Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11](#) located in [Part 1, Chapter 5, Type 2 Categorical Exclusion](#). FHWA planning consistency requirements must be satisfied prior to requesting Location and Design Concept Acceptance (LDCA) from FHWA. More information on FHWA's planning consistency requirements can be found in [Part 1, Chapter 4, Project Development Process](#).

2.2.1.1 SWAT Planning Meeting

Each District has an established State-Wide Acceleration and Transformation (SWAT) team. The SWAT team is composed of a cross-functional multi-disciplinary team of FDOT staff with experience in project delivery. The SWAT team typically includes Work Program, Intermodal Systems Development (ISD)/Planning, Design, and Environmental Management Office (EMO) staff.

The SWAT team is responsible for assisting Project Managers and consultants in achieving time savings through the state pre-construction process by scoping and scheduling projects aggressively. A key goal of SWAT is identifying the level of overlap between project development and design which can accelerate the process.

Yearly, a District SWAT team planning meeting is held before the FDOT Work Program gaming cycle begins. The SWAT planning meeting may include participants from the State Environmental Management Office (SEMO) or other staff experts at the request of the District SWAT team. These participants are transportation practitioners with

experience in various disciplines who ensure that project decisions get broad input and early acceptance.

During the planning meeting, the SWAT team reviews District PD&E projects set to be gamed in the coming year and discuss the purpose and need for each project. The team evaluates these candidate projects and those already programmed in the 5-year Work Program. Additionally, the team may review the ETDM **Planning Screen Summary Report**, if available, and assign a preliminary COA to each project. The team also recommends funding of the projects as either state or federal funds.

When determining preliminary COAs for projects, the SWAT team must be familiar with projects that must be federalized as listed in the Work Program Instructions. Some projects that must always fall under FHWA's jurisdiction include those that are:

1. On an Interstate
2. Using or involving Interstate right-of-way (e.g., air rights, adjacent
3. Projects within and impacting federal lands such as National Parks or Forests
4. Transportation Alternatives (TA) program;
5. FHWA Safety Program projects; or
6. Off-System projects (projects not on the State Highway System).

Other considerations should be taken into account when determining whether to use FHWA funds:

1. Projects qualifying as Type I CEs, since FDOT has delegated authority from FHWA;
2. Consideration of impacts to work program flexibility based upon anticipated cost of construction; or
3. Projects where protected species or habitat may be impacted and consultation under the **Endangered Species Act (ESA)** is necessary (See [Part 2, Chapter 27, Protected Species and Habitat](#)). **Section 7** would apply for federal projects, or those with a federal nexus. **Section 10** would apply for projects where there is no federal funding or federal nexus.

Projects that must be or stay federalized through FHWA are listed in **Chapter 25, Work Program Instructions, Current Tentative Work Program**. If federal funds have been used on a prior phase of the current project, coordination with Central Office [Office of

General Counsel (OGC) and SEMO] is needed to determine whether the project falls under FHWA's jurisdiction.

The District SWAT team ranks projects, that are not required to be federalized, based on environmental and engineering complexity and expected number of PD&E days that would be saved using the state funded project delivery process. This is done to determine if the project should move forward as a federal or state project. **Figure 2-3** provides guidance for deciding which projects are to follow the federal or state process. Each project is recommended as either a federal or state project. The results of the SWAT planning meeting include a list of projects for gaming, sorted into state funded and federally funded, and an initial view on preliminary Class of Action assigned to each project.

2.2.2 Categorical Exclusions

A Categorical Exclusion (CE) is a project which, based upon past experience with similar actions, does not individually or cumulatively have a significant environmental effect, and is excluded from the requirement to prepare an EA or an EIS. The definition of CE in **40 CFR § 1508.4** and **23 CFR § 771.117** provides further guidance for FHWA projects. CE determinations only apply to projects with a federal action. Generally, CEs are flexible documents that can vary based on the level of coordination and documentation needed to support the determination that an EA or EIS is not needed.

In order for a FHWA project to be classified as a CE, it must meet the definition for CEs contained in **40 CFR § 1508.4** and meet certain criteria contained in **23 CFR § 771.117(a)**, listed below. The criteria must be met and documented as appropriate before a CE determination can be made. It must be sufficiently evident that projects:

1. Do not involve significant environmental impacts;
2. Do not induce significant impacts to planned growth or land use for the area;
3. Do not require the relocation of significant numbers of people;
4. Do not have a significant impact on any natural, cultural, recreational, historic, or other resource;
5. Do not involve significant air, noise, or water quality impacts;
6. Do not have significant impacts on travel patterns; or
7. Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

In unusual circumstances [provided in **23 CFR § 771.117(b)**] a project normally classified as a CE will require coordination with or a finding from FHWA to determine if the CE classification is appropriate. FDOT may decide or FHWA may require additional studies be performed prior to making a CE approval. These unusual circumstances may include:

1. Significant environmental impacts;
2. Substantial controversy on environmental grounds;
3. Significant impact on properties protected by **Section 4(f)** of the **U.S. Department of Transportation (USDOT) Act** or **Section 106** of the **National Historic Preservation Act**; or
4. Inconsistency with any federal, state, or local law, requirement, or administrative determination relating to environmental aspects of the action.

For CE projects, the level of detail required to support the determination depends upon the magnitude of environmental impacts and the particular circumstances. Since projects approved with CEs are generally minor in nature and have less than significant impacts, indirect and cumulative impacts assessments will generally not be warranted. There may be exceptions, which can be evaluated on a case-by-case basis.

FDOT recognizes two types of CEs as agreed upon with FHWA:

1. **Type 1 CE:** applies to projects or actions listed in **23 CFR § 771.117(c)** and identified in **23 CFR § 771.117(d)** that meet the criteria established in the [**Programmatic Agreement for Categorical Exclusions under 23 CFR § 771.117**](#) (see **Section 2.2.2.1**)
2. **Type 2 CE:** actions which require additional documentation to support the determination that an EA or EIS is not needed. The decision requires consultation with and approval from FHWA (see [**Part 1, Chapter 5, Type 2 Categorical Exclusion**](#))

Type 1 CEs are not typically screened in the EST; however the EST may be utilized to view GIS data layers applicable to the project without initiating ETAT review. On occasion an EST screened project may result in a COA determination of Type 1 CE based on consultation with FHWA.

This section outlines the process used to confirm the validity of the CE determination and the required documentation for those projects.

2.2.2.1 Type 1 Categorical Exclusions

FDOT is authorized to act on FHWA's behalf in determining whether a proposed action is a Type 1 CE if the action is listed in **23 CFR § 771.117(c)** or identified in **23 CFR § 771.117(d)** according to the [Programmatic Agreement for Categorical Exclusions under 23 CFR § 771.117](#), satisfies the criteria for CEs in the **Council on Environmental Quality (CEQ) regulations (40 CFR § 1508.4)**, and satisfies the criteria identified in the agreement as listed below. These actions normally do not require any further **NEPA** approvals by the FHWA.

To be considered as a Type 1 CE, the project must meet the following criteria established in the [Programmatic Agreement for Categorical Exclusions under 23 CFR § 771.117](#):

1. The action must be listed in **23 CFR § 771.117(c)** (listed in **Section 2.2.2.1.1**) or an identified example action in **23 CFR § 771.117(d)** (listed in **Section 2.2.2.1.2**).
2. The action must satisfy the conditions described under **23 CFR § 771.117(a)** which meet the definition contained in **40 CFR § 1508.4**. These criteria are listed in **Section 2.2.2**.
3. The action must not have the unusual circumstances listed in **23 CFR § 771.117(b)**. Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with FDOT, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances are also listed in **Section 2.2.2**.
4. When FDOT evaluates a proposed action under **23 CFR §§ 771.117(c) and (d)** to comply with the provisions in **23 CFR §§ 771.117(a), (b) and (e)** [Note: **Subsection 771.117(e)** (listed in **Section 2.2.2.1.3**) only applies to **Subsections 771.117(c)26, (c)27 and (c)28**], the following criteria must be satisfied in order for the proposed action to qualify as a Type 1 CE. For each proposed action, determine whether:
 - a. The action causes no major adverse impacts on travel patterns, planned growth or land use for the area or access control;
 - b. The action causes no adverse impacts to air, noise or water quality;
 - c. The action causes no wetland impacts that would require an individual **Section 404** permit from the USACE under the **Clean Water Act, Section 404, 33 USC 1344** and/or **Section 10** of the **Rivers and Harbors Act**;
 - d. The action causes no impacts to navigation that would require an individual USCG bridge permit;

- e. The action causes no impacts greater than minimal floodplain encroachments, which will not affect flood heights or base floodplain limits;
- f. The action does not require construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers; [for **23 CFR 771.117(c)(26), (27), and (28)**]
- g. The action results in a “no involvement,” “no effect,” or with concurrence from US Fish and Wildlife Service or National Marine Fisheries Service, as appropriate, a “may affect but not likely to adversely affect” determination concerning impacts to endangered and threatened species and/or their critical habitat in accordance with **Section 7** of the **Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)-(d)**;
- h. The action would only require minor amounts of right-of-way and would not result in any residential or non-residential displacements;
- i. The action does not impact any properties protected by **Section 4(f)** of the **U.S. Department of Transportation Act, 49 U.S.C. § 303**, or FHWA has made a determination that **Section 4(f)** is not applicable in accordance with **23 CFR § 774**;
- j. The action has no involvement, a “no effect,” or “no adverse effect” determination regarding properties protected under **Section 106** of the **National Historic Preservation Act**;
- k. The action has no known contamination sites which would have more than a minimal impact to design, and right-of-way or construction activities once assessed can be avoided or remediated; or
- l. The action has no substantial controversy on environmental grounds.

The satisfaction of the criteria described in this section is documented by completing a [**Type 1 Categorical Exclusion Checklist, Form No. 650-050-12**](#) (see **Figure 2-4** and **Section 2.2.2.1.4**).

Failure of a project to meet any of the conditions set out in this section will require coordination with the FHWA. This could include following the Minor Categorical Exclusion (MiCE) process (**Section 2.2.3**), screening the project in the EST, completing a technical study to assess the impact to particular resources, coordination with a resource agency, and/or the preparation of Type 2 CE documentation, an EA or an EIS.

2.2.2.1.1 Actions listed in 23 CFR 771.117(c)

The following actions are listed in **23 CFR 771.117(c)** and meet the criteria for CEs in the CEQ regulations and **23 CFR § 771.117(a)** and normally do not require any further **NEPA** approvals by FHWA:

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)**:
 - a. Emergency repairs under **23 U.S.C. § 125**; and
 - b. 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:

- i. 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
 - ii. 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. Ride-sharing 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.
23. Federally-funded projects:
 - a. That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor) of Federal funds; or
 - b. With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor) 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. 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 **23 CFR § 771.117(e)**.

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 **23 CFR § 771.117(e)**.
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)**.
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.

2.2.2.1.2 Actions listed in 23 CFR § 771.117(d)

The following actions or projects are included in **23 CFR § 771.117(d)** and meet the criteria for CEs in the CEQ regulations and **23 CFR § 771.117(a)** and may be designated as CEs consistent with the [**Programmatic Agreement for Categorical Exclusions under 23 CFR § 771.117**](#):

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

2.2.2.1.3 Actions listed in 23 CFR § 771.117(e)

According to **23 CFR § 771.117(e)**, actions described in **23 CFR § 771.117(c)(26), (c)(27), and (c)(28)** may not be processed as CEs under **23 CFR § 771.117(c)** if they involve:

1. An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;
2. An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not 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** and/or **Section 10 of the Rivers and Harbors Act of 1899**;
3. A finding of “adverse effect” to historic properties under the **National Historic Preservation Act**, the use of a resource protected under **23 U.S.C. § 138** or **49 U.S.C. § 303 (Section 4(f))** except for actions resulting in de minimis impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the **Endangered Species Act**;
4. Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
5. Changes in access control;
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.

2.2.2.1.4 Coordination and Documentation

For Type 1 CEs, coordination with appropriate resource agency personnel (this may be an ETAT representative) will need to take place in some instances (such as coordination on historic resources, wetlands, listed species in order to verify the finding that there is no potential to significantly impact certain environmental resources. Coordination and documentation is also important because it may affect environmental permitting [e.g., State Historic Preservation Officer (SHPO) coordination in a Water Management District permit]. Coordination with FHWA may also be required in order to make findings under concurrent laws [such as the **Endangered Species Act** and **Section 4(f)**] prior to finalizing the COA determination.

A public hearing is not required in accordance with [Part 1, Chapter 11, Public Involvement](#). However, if the District determines that a sensitive community issue exists on or near the proposed improvement, a **Community Awareness Memorandum** may be prepared recommending appropriate public involvement activities (see [Part 1, Chapter 11, Public Involvement](#)).

Documentation consists of an evaluation checklist prepared after environmental analysis has been completed (see **Figure 2-4, [Type 1 Categorical Exclusion Checklist, Form No. 650-050-12](#)**). This is typically completed at the end of the PS&E (Plans, Specifications, and Estimates) or 100% plans.

The CE number from either **23 CFR § 771.117(c)** or **23 CFR § 771.117(d)** is included at the beginning of the form. For projects that may fall under two or more actions, identify the CE that is most appropriate.

Documentation of the results of any analysis and coordination should be placed in the project file for the administrative record. This documentation should include the results of desktop and/or field review, agency consultation, and any supporting documents and/or technical reports required to substantiate the responses on the checklist. It is important to document that the project will not have significant impacts and that environmental issues have been addressed. Approval of the **[Type 1 Categorical Exclusion Checklist, Form No. 650-050-12](#)** will be granted by the District Environmental Administrator or FDOT delegate. A LAP agency cannot make the COA determination or sign the checklist.

For Type 1 CEs, whenever FHWA under the provisions of **23 CFR § 650, Subpart H** determines that a USCG bridge permit is not required, a copy of the FHWA determination and supporting documentation may need to be provided to USCG and the USACE (as appropriate).

Once the **[Type 1 Categorical Exclusion Checklist, Form No. 650-050-12](#)** is completed, the District Environmental Office [District Environmental Management Office (DEMO), Planning and Environmental Management Offices (PLEMO)] will complete and provide the date of the determination on the **[Status of Environmental Certification For Federal Project, Form No. 650-050-13](#)**, as shown in **Figure 2-5**. This form is required as part of the contract documents for federal-aid construction projects and should be used when submitting all projects, including LAP projects, for approval to the Federal Aid Office. As specified by the **[LAP Manual, Topic No. 525-010-300](#)**, LAP agencies cannot make COA determinations or certify projects for advancement. LAP agencies do not have signature authority for environmental certifications; therefore, the **[Status of Environmental Certification For Federal Project, Form No. 650-050-13](#)** should be signed by appropriate FDOT personnel as noted on the form.

The District Federal Aid coordinator or the Federal Aid Management Office utilizes information from the **[Status of Environmental Certification For Federal Project, Form No. 650-050-13](#)** to complete the **Federal-Aid Project Authorization/Agreement Form (PR-1240 Form)**. After documenting the project file and FHWA's acceptance of the federal-aid form, the Type 1 CE project advances to the next production phase.

Before advancing to the next phase, the project should be reevaluated to confirm the original determination remains valid. Reevaluations for Type 1 CEs consist of completing

the checklist and submitting it with the [**Status of Environmental Certification For Federal Project, Form No. 650-050-13 \(Part 1, Chapter 13, Reevaluations\)**](#).

2.2.2.2 Type 2 Categorical Exclusions

For all projects that are not in the Type 1 CE categories, the District must consult with the FHWA and together determine whether the project should be developed through the MiCE Process, classified as a Type 2 CE, or be screened through the EST to determine the COA. For all Type 2 CE projects, the level of detail required is dependent upon the type(s) and magnitude of environmental impacts.

Type 2 CE documentation includes the [**Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11**](#), a **Preliminary Engineering Report (PER)**, and if applicable, a public hearing transcript. Details on Type 2 CEs and guidance on completing a **PER** is provided in [**Part 1, Chapter 5, Type 2 Categorical Exclusion**](#) and [**Part 1, Chapter 4, Project Development Process**](#). Type 2 CE documentation is sent to USCG when a bridge permit is required or FHWA has made a bridge permit determination under **23 CFR § 650, Subpart H**. Type 2 CE documentation is also sent to USACE whenever there is a **Section 404** permit involvement. Type 2 CE documentation must be approved by FHWA who provides LDCA allowing the project to proceed to the Design phase.

2.2.3 Minor Categorical Exclusion Process

The purpose of the Minor Categorical Exclusion (MiCE) process is to assist Districts in making and validating CE determinations and providing specific findings and documentation to address potential impacts to relevant environmental issues/or resources without causing the COA of the project to be elevated [**23 CFR § 771 (a) and (b)**]. The MiCE is not a new COA, but rather a process which can be used to support the determination that a project can be classified as a Type 1 CE, and, in some cases, a Type 2 CE (see **Figure 2-2**). This process provides guidance on managing project issues, documenting findings, and developing appropriate and focused documentation to support the CE determination. A finding implies that a decision must be made or a signature is needed by FDOT, FHWA, and/or an appropriate resource agency. MiCE can apply to PD&E studies or projects in Design where the CE determination must be made.

The following items should be assessed and/or documented in the Environmental Document and project file for projects being developed using the MiCE process:

1. Existing conditions
2. Potential impacts [e.g., **Section 106** involvement, listed species, **Section 4(f)**]
3. Anticipated/required consultations, permitting need(s)

4. Conclusions- need for findings/agency consultation
5. Coordination with FHWA

This assessment defines the project context and provides the basis for the level of analysis. The results should identify issues requiring resolution in the Environmental Document. After coordinating the results of the assessment with FHWA, a decision is made on the level of documentation necessary to validate the CE determination. This results in analysis that is focused on the issues requiring resolution.

There are two scenarios in the MiCE process. The first scenario is for projects that would normally qualify as Type 1 CEs, but may involve potential environmental impacts requiring additional analysis and documentation to assure the COA is valid based on analysis or coordination with FHWA. This scenario is triggered when there is a “Yes” checked on the [**Type 1 Categorical Exclusion Checklist, Form No 650-050-12.**](#)

The second scenario is for projects that were screened in the EST or may qualify as a Type 2 CE. The MiCE process can be used to focus the environmental analysis on the issues which triggered the Type 2 CE COA.

A MiCE Determination Key is provided in **Figure 2-6** to help determine the appropriate level of documentation for the CE. It is important to note that the COA determination is based on the context and intensity of impacts, therefore, the ultimate determination of the COA is made by FHWA.

2.2.4 Efficient Transportation Decision Making Qualifying Projects

For ETDM qualifying projects, the COA can be determined during the Programming Screen (see FDOT’s [**ETDM Manual, Topic No.650-000-002**](#)). The District performs analysis to assist in determining the appropriate COA. The COA is proposed by FDOT and is approved by FHWA. This determination, in addition to the potential effects for various environmental issues and the potential scope of work to be performed during the PD&E phase, is included in the **Final Programming Screen Summary Report**.

The process for obtaining the environmental COA during the Programming Screen requires that the District ETDM Coordinator complete the on-line COA determination, through the EST, and submit it to FHWA for approval. After the FHWA and the District have agreed on the COA, FHWA accepts it in the EST. After the COA determination is complete, the determination becomes part of the **Final Programming Screen Summary Report**. The COA determination may be deferred to allow for technical studies and additional coordination, potentially leading to a reduced COA.

Once the COA determination is made, the level of documentation required for **NEPA** compliance is described in the respective chapters for a Type 2 CE, an EA, or an EIS in **Part 1** of the [PD&E Manual, Topic No. 650-000-001](#).

2.2.5 Environmental Assessments and Environmental Impact Statements

An EA is prepared when the significance of the environmental impact is unknown. Guidance on preparing EAs is provided in [Part 1, Chapter 6, Environmental Assessment](#). An EIS is prepared when a project significantly affects the environment. Examples of the types of actions which would normally require an EIS are listed in **Section 2.1**. Guidance on preparing an EIS is provided in [Part 1, Chapter 8, Draft Environmental Impact Statement](#), and [Part 1, Chapter 9, Final Environmental Impact Statement](#). An EA or EIS must have sufficient documentation to support the COA Determination. Supporting information may include technical reports (e.g., **PER, Noise Study Report, Natural Resources Evaluation**).

2.2.6 Change of Class of Action

Prior to the beginning of PD&E or even during PD&E, the District or FHWA may seek to revisit the COA determination. Changes in the COA could arise if there are changes in the project's scope or changes in impact status of issues. It should be noted if the project is an EIS (which is based on significant impacts) a change in COA may be difficult or not warranted since a complete determination of significance is made upon completion of the analysis and approval by the FHWA. In addition it would require the withdrawal of the **Notice of Intent (NOI)** with cause from the **Federal Register**. See [Part 1, Chapter 8, Draft Environmental Impact Statement](#) for information on the **NOI**. In all cases, FHWA must be consulted if FDOT seeks modifications to a project's approved COA to obtain approval for the proposed change.

2.3 REFERENCES

23 Code of Federal Regulation (CFR) § 650, Subpart H, Conditions for determining if an activity requires a USCG permit

23 CFR § 771, Environmental Impact and Related Procedures

Council on Environmental Quality, Executive Office of the President. 1978. Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. Reprint 43 FR 55978-56007, 40 CFR Parts 1500-1508

Endangered Species Act of 1973 (ESA), as amended (16 USC § 1531-1541); 50 CFR § 402

Federal Highway Administration. 2003. Questions and Answers Regarding the Consideration of Indirect and Cumulative Impacts in the NEPA Process.
<http://www.environment.fhwa.dot.gov/projdev/qaimpact.asp>

Federal Highway Administration. 2011. Supplement to January 28, 2008 “Transportation Planning Requirements and Their Relationship to NEPA Process Completion”, February 9, 2011

Florida Department of Transportation (FDOT). Local Agency Program Manual, Topic No. 525-010-300.
http://www.dot.state.fl.us/projectmanagementoffice/LAP/LAP_TOC.shtm

FDOT. Efficient Transportation Decision Making (ETDM) Manual, Topic No. 650-000-002.
<http://www.dot.state.fl.us/emo/pubs/etdm/etdmmanual.shtm>

National Historic Preservation Act of 1966 (16 U.S.C. § 470), Public Law 89-665, as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, and Public Law 96-515., Section 106

National Environmental Policy Act, Section 7

Robert Stafford Act, Title 42 U.S.C. Section 5121, Congressional findings and declarations

Title 23 U.S.C. Section 101, Definitions and declarations of policy

Title 23 U.S.C. Section 107, Acquisition of right-of-way- Interstate System

Title 23 U.S.C. Section 125, Emergency relief

Title 23 U.S.C. Section 156, Proceeds from the sale or lease of real property

Title 23 U.S.C. Section 317, Appropriation for highway purposes of lands or interests in lands owned by the United States

Title 23 U.S.C. Section 402, Highway Safety Programs

United States Department of Transportation Act of 1966, Section 4(f)

United States Department of Transportation, Federal Highway Administration, October 30, 1987. Guidance for Preparing and Processing Environmental and Section 4(f) Documents, FHWA Technical Advisory T6640.8A

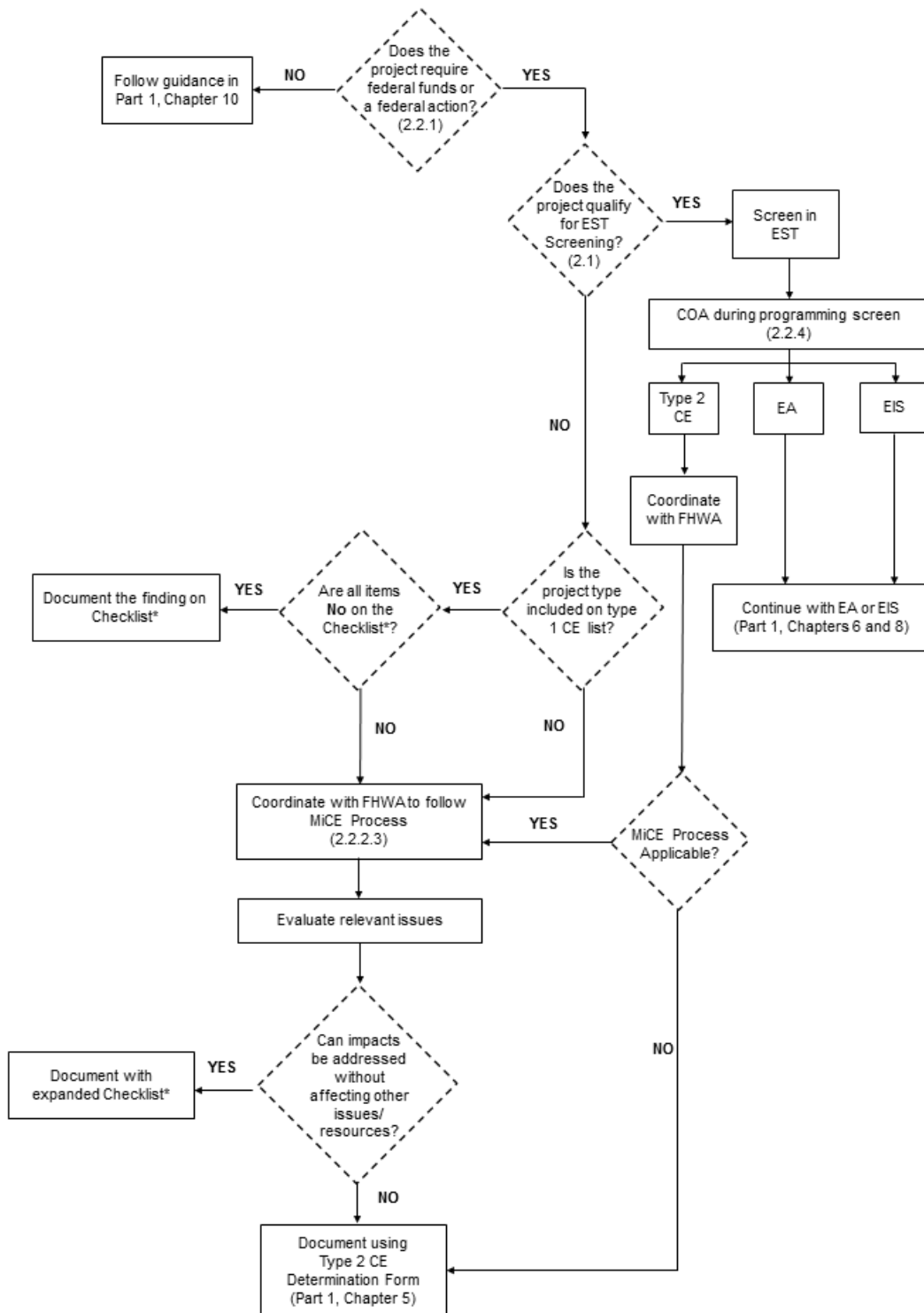
Urban Mass Transportation Act of 1964, as amended

2.4 HISTORY

1/12/2004, 1/31/2007, 3/06/2012, 2/03/2014

ETDM Screening Matrix for Qualifying Projects						
	Federal Dollars (any FHWA, FTA or FRA funds or federal authorization)		State Dollars (TRIP, Transit/ Intermodal System Grants, etc) No Federal Dollars Involved		Local Dollars Only	
	Responsible Agency	ETDM Screening	Responsible Agency	ETDM Screening	Responsible Agency	ETDM Screening
System						
Highways on the State Highway System (SHS) and on the Strategic Intermodal System (SIS)	FDOT	YES FDOT Lead	FDOT	YES	FDOT	YES
	Local		Local and FDOT	Local Option	Local and FDOT	Local Option
Highways on the SHS but not on the SIS	FDOT	YES FDOT Lead	FDOT	YES	FDOT	YES
	Local		Local and FDOT	Local Option	Local and FDOT	Local Option
Highways not on SHS but on the SIS	FDOT	YES FDOT Lead	FDOT	YES	FDOT	YES
	Local		Local and FDOT	Local Option	Local and FDOT	Local Option
Highways not on SHS nor on the SIS	FDOT	YES FDOT Lead	FDOT	YES	Local	N/A
	Local		Local	Local Option		
Major Transit Projects (new fixed guideway, New Starts) or Major Freight Projects	FDOT	YES	FDOT	YES	Local	N/A
	Local	Local Option	Local	Local Option		
NOTE: Local applies to any local government agency, other state agency, expressway authority, bridge authority or private entity						

Figure 2-1 ETDM Screening Matrix for Qualifying Projects



* Checklist = Type 1 Categorical Exclusion Checklist (Figure 2-4)

Figure 2-2 FHWA Class of Action Determination Process

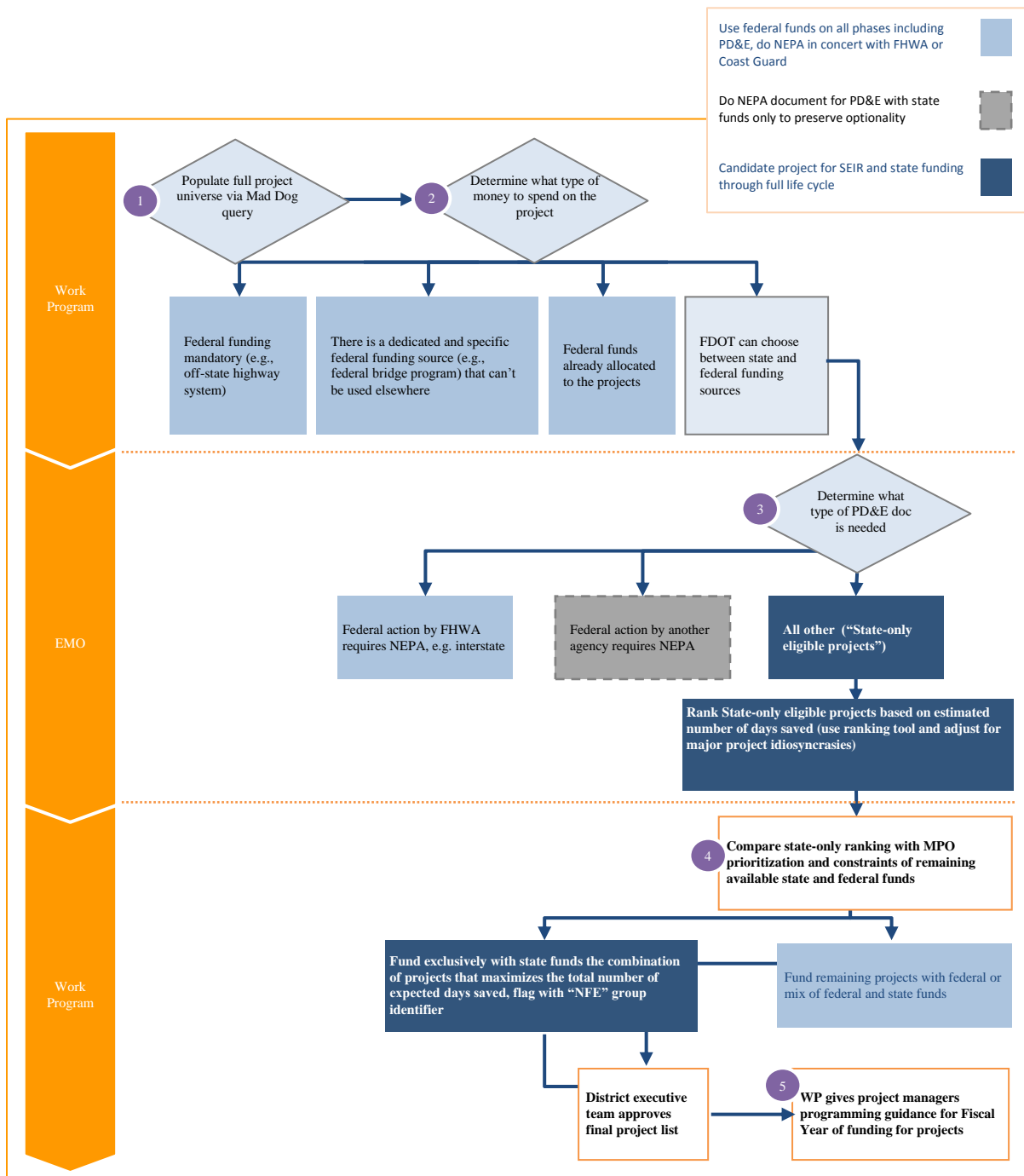


Figure 2-3 Funding Determination

TYPE 1 CATEGORICAL EXCLUSION CHECKLIST

Financial Management No. _____

FAP No. _____

CE Number: (c) _____ or (d) _____

Project Description (include project title, limits, and brief description of the proposed scope of work): _____

Note: The criteria below also consider the conditions listed in 23 CFR § 771.117(e) for the CEs described in 23 CFR § 771.117(c)(26), (27) and (28).

	YES	NO
1. Will the action cause major adverse impacts on travel patterns, planned growth or land use for the area or access control ?	___	___
2. Will the action cause adverse impacts to air, noise or water quality?	___	___
3. Will the action cause wetland impacts that would require an individual Section 404 Permit from the U.S. Army Corps of Engineers (USACE) under the Clean Water Act, Section 404, 33 U.S.C. § 1344 and/or section 10 of the Rivers and Harbors Act?	___	___
4. Will the action cause impacts to navigation that would require an individual United States Coast Guard Bridge Permit?	___	___
5. Will the action cause impacts greater than minimal floodplain encroachments, which will affect flood heights or base flood plain limits?	___	___
6. Will the action require construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers (for 23 CFR § 771.117 (c)(26), (27) and (28)?	___	___
7. Will the action result in a determination other than, (1) "no involvement," (2) "no effect", or (3) with concurrence from US Fish and Wildlife Service or National Marine Fisheries Service, as appropriate, a "may affect but not likely to adversely affect" determination concerning impacts to endangered and threatened species and/or their critical habitat in accordance with Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1536(a)-(d)?	___	___
8. Will the action require more than minor amounts of right-of-way, and result in any residential or non-residential displacements?	___	___

Figure 2-4 Type 1 Categorical Exclusion Checklist

- | | YES | NO |
|---|-----|-----|
| 9. Will the action impact any properties protected by Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c) [NOTE: If it has been determined that Section 4(f) is not applicable in accordance with 23 CFR § 774 and Part 2, Chapter 13 of the PD&E Manual then the answer to this question is no.] | ___ | ___ |
| 10. Will the action result in a determination other than, (1) no involvement, (2) “no effect,” or (3) “no adverse effect” regarding properties protected under Section 106 of the National Historic Preservation Act? | ___ | ___ |
| 11. Does the action have known contamination sites which would have more than a minimal impact to design, right-of-way, or construction activities once assessed as described in Part 2, Chapter 22, Contamination Impacts of the PD&E Manual, and can't be avoided or remediated? | ___ | ___ |
| 12. Will the action have substantial controversy on environmental grounds? | ___ | ___ |

IMPORTANT: If all answers are **No**, the project is a Type 1 CE and this checklist will be the NEPA document. If the answer to any of these questions is **Yes**, follow the Minor Categorical Exclusion Determination Key and coordinate with FHWA as appropriate.

This project has been evaluated and has been determined to meet the conditions as set forth in Florida's Programmatic Agreement for Categorical Exclusions effective October 2015, as a Type 1 Categorical Exclusion.

Signature: _____ Date: _____
District Environmental Administrator or designee

The following is a list of any supporting activities (e.g., field reviews, as appropriate, etc.), reports, or technical studies that were prepared and are included in the project file that were necessary to support the conclusions reached on the checklist.

- _____
- _____
- _____
- _____

Figure 2-4 Type 1 Categorical Exclusion Checklist (Page 2 of 2)

STATUS OF ENVIRONMENTAL CERTIFICATION FOR FEDERAL PROJECT

Financial Management No. _____

Federal Aid No. _____

Project Description (include project title, limits, and brief description of the proposed scope of work): _____

This project is a Categorical Exclusion under 23 CFR § 771.117 and per Florida's Programmatic Agreement for Categorical Exclusions effective October, 2015:

- A Type 1 Categorical Exclusion per (c) _____ or (d) _____ as determined on _____
- A Type 2 Categorical Exclusion approved on _____

The final environmental document for this project was a (check one):

- A Finding of No Significant Impact under 23 CFR § 771.121 approved on _____
- A Record of Decision under 23 CFR § 771.127 approved on _____

A reevaluation in accordance with 23 CFR § 771.129 was (check one):

- Approved on _____
- Not required

Signature: _____ Date: _____
Environmental Administrator or designee

Figure 2-5 Status of Environmental Certification for Federal Project

Minor Categorical Exclusion Determination Key

1. Was the project screened in the EST?

No, go to 2

Yes, go to 12

2. After analysis are findings needed to advance the project?

No, go to 3

Yes, go to 4

3. Districts may need to coordinate with agencies to meet regulatory and permit requirements (e.g., SHPO, FWS). Document with **Type 1 Categorical Exclusion Checklist**. Advance the project

4. After coordination with agencies do findings need to be made by FHWA?

No, go to 5

Yes, go to 6

5. Complete the **Type 1 Categorical Exclusion Checklist**. Attach summary of coordination and the findings to the checklist. Advance the project

6. Coordinate with FHWA on the issues/resources requiring findings. Is a FHWA signature required?

No, go to 5

Yes, go to 7

7. Do the impact(s) requiring findings affect other environmental issues/resources?

No, go to 8

Yes, go to 9

8. Document as a Type 2 CE focusing on resource/issue(s) that require resolution using the **Type 2 Categorical Exclusion Determination Form**. Summarize the coordination and attach the findings to the form. Submit for FHWA approval and advance appropriately.

Figure 2-6 Minor Categorical Exclusion Determination Key

9. Do these impacts require changes to the preliminary design (coordinate with engineer)?

No, go to 8

Yes, go to 10

10. Are other issues/resources impacted by project changes?

No, go to 8

Yes, go to 11

11. Document as a Type 2 CE focusing on relevant issues that require resolution using the ***Type 2 Categorical Exclusion Determination Form***. Provide supporting environmental and engineering documentation. Summarize the coordination and attach the findings for all affected issues to the form. Submit for FHWA approval and advance appropriately.

12. Do impacts require engineering modifications that affect other issues?

No, go to 11

Yes, go to 13

13. Do the impacts to the other issues/resources require consideration of additional alternative(s)?

No, go to 11

Yes, go to 14

14. Document as a Type 2 CE focusing on relevant issues that require resolution using the ***Type 2 Categorical Exclusion Determination Form***. Provide supporting environmental and engineering documentation. Requires alternatives analysis documented in a Preliminary Engineering Report. Summarize the coordination and attach the findings for all affected issues to the form. Submit for FHWA approval and advance appropriately.

Figure 2-6 Minor Categorical Exclusion Determination Key (Page 2 of 2)