

PROGRAMMATIC AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, SOUTH DAKOTA DIVISION AND THE SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT made and entered into this 5th day of February 2021, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION and the STATE of South Dakota, acting by and through its DEPARTMENT OF TRANSPORTATION hereby provides as follows:

Whereas, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321-4370h (2014), and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

Whereas, the Federal Highway Administration's (FHWA) distribution and spending of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

Whereas, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA's primary responsibilities (49 CFR 1.81(a)(5));

Whereas, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions for certain actions that FHWA has determined do not normally have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

Whereas, the South Dakota Department of Transportation (SDDOT) is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and must assist FHWA in fulfilling its obligations under NEPA for the SDDOT projects (23 CFR 771.109);

Whereas, Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a categorical exclusion (CE) on behalf of FHWA;

Whereas, the FHWA regulations implementing the authorities in section 1318(d), are codified in 23 CFR 771.117(g);

Whereas, this Agreement supersedes the previous programmatic agreement among FHWA and SDDOT regarding Processing of Certain Categorical Exclusions, dated February 5, 2016;

Whereas, based on monitoring and other oversight activities conducted by FHWA, SDDOT has adequately implemented the terms of the previous programmatic agreement;

Now, therefore, the FHWA and SDDOT enter into this Programmatic Agreement ('Agreement') for the processing of CEs.

I. PARTIES

Parties to this Agreement are the FHWA and the SDDOT.

II. PURPOSE

- A. This Agreement allows the SDDOT to determine on behalf of FHWA whether a project qualifies for a Categorical Exclusion (CE) specifically listed in 23 CFR 771.117.
- B. This Agreement authorizes the SDDOT to approve CEs on FHWA's behalf as long as the approval does not exceed the **CE approval threshold [VI.]**.
- C. This Agreement also authorizes SDDOT to certify to FHWA that an action processed as a CE3 [see Section V(C)] or an action not specifically listed in 23 CFR 771.117, but meeting the categorical exclusion criteria in 40 CFR 1501.4 and 23 CFR 771.117(a), qualifies for a categorical exclusion as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS). FHWA is responsible for approvals of CE3s certified by SDDOT.
- D. This Agreement applies to all SDDOT and Local Government Assistance projects using Federal-aid funds under the Federal-Aid Highway Program.
- E. This Agreement does not delegate any other FHWA responsibilities under environmental or other Federal laws.

III. AUTHORITIES

This Agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. Fixing America's Surface Transportation (FAST) Act, P.L. 114-94, 129 Stat. 1312, Sec. 1315
- D. 40 CFR parts 1500 - 1508
- E. DOT Order 5610.1C and 23 CFR 771.117 (and any successor Orders or Regulations)

IV. RESPONSIBILITIES

A. SDDOT responsibilities:

1. Identify actions that are specifically listed in 23 CFR 771.117(c) and 23 CFR 771.117(d) including (c) list activities constrained by 23 CFR 771.117(e). This includes activities added through FHWA rulemaking to those listed in 23 CFR 771.117(c) or example activities listed in 23 CFR 771.117(d) after the date of the execution of this Agreement. These actions are referred to as programmatic categorical exclusion (PCE) actions within this Agreement that SDDOT may make a CE approval on behalf of FHWA.
2. Review PCE actions for:
 - a. **NEPA compliance [V.]**.
 - b. **CE approval threshold [VI.]**; and
 - c. **Unusual circumstances [VII.]**.
3. Provide timely re-evaluations, quality control and quality assurance reviews, and monitoring activities for PCEs approved under this Agreement **[VIII.]**.
4. Ensure that SDDOT environmental employees who prepare and approve PCE documents will, at a minimum:
 - a. Be knowledgeable with and follow the appropriate subsections 23 CFR 771 through 774 and FHWA and SDDOT procedures for environmental analysis and NEPA compliance.
 - b. Have completed Introduction to NEPA and Transportation Decision-making web-based course FHWA-NHI-142052 or an equivalent course approved by FHWA.
 - c. Have adequate experience addressing NEPA compliance for transportation projects or until such time, have their work reviewed by staff having the necessary experience.
5. Rely only upon the SDDOT Environmental Manager or the qualified Environmental Specialists directly employed by the State to make CE approvals. SDDOT may not delegate its responsibility for CE approvals to third parties (e.g., consultants, local government staff, and other State agency staff).
6. Maintain adequate organizational and staff capability and expertise to effectively carry out the provisions of this Agreement. This includes, without limitation:
 - a. Using appropriate technical and managerial expertise to perform the functions set forth under this Agreement.
 - b. Devote adequate financial and staff resources for processing and approving projects under this Agreement.

B. FHWA responsibilities:

1. Provide timely response and technical assistance to PCE requests from the SDDOT.
2. Review and consider CE actions for approval that exceed the SDDOT'S **CE approval threshold [VI.]**.
3. Provide timely review and response to requests for coordination, consultation, or compliance with environmental requirement under law, regulation, or Executive Order related to the State's processing of CE actions under this agreement. This includes all Section 4(f) evaluations and *de minimis* and temporary occupancy determinations, all formal ESA consultations except those included in a programmatic ESA consultation, all responses to Essential Fish Habitat conservation recommendations, all Section 106 Memorandums of Agreement, and government-to-government consultation with Native American Tribes.
4. Oversee the implementation of this Agreement in accordance with 23 CFR 771.117(g) and the provisions in Section VIII.

V. NEPA COMPLIANCE

The SDDOT will conduct NEPA compliance reviews on all projects in order to determine whether an action will involve significant environmental effects that would require the preparation of an EA or EIS. For a CE class of action, three levels of PCE documentation will be used by the SDDOT depending on the type of action being proposed.

A. CE1 - SDDOT Batched PCE

1. PCE actions that may be reviewed and documented by the SDDOT as a CE1 are identified in Appendix A of this Agreement. In order for the SDDOT to approve an action as a CE1, the action must be reviewed to ensure they meet the administrative conditions also included in Appendix A.
2. Based on past experience, FHWA has determined these actions do not result in significant natural or human environmental impacts therefore, these actions may be reviewed by SDDOT for NEPA approval without the involvement of FHWA.
3. CE1 review and approval dates are to be documented in the SDDOT *Environmental Status Report* [V.E.].

B. CE2 - SDDOT Approved PCE

1. PCE actions that do not meet the requirements of a CE1 may be reviewed and documented as a CE2. In order for the SDDOT to approve an action as a CE2, the action may not exceed the **CE approval threshold [VI.]** or include any **unusual circumstances [VII.]** that would make the CE2 approval inappropriate.
2. In order for the SDDOT to approve an action as a CE2, the SDDOT will review all NEPA requirements and summarize the results using the *SDDOT Categorical Exclusion Checklist and Environmental Commitments Checklist*. CE2 actions do not require NEPA approval by the FHWA.
3. When approving a CE2, the SDDOT will certify the following: "This project meets the definition for a Categorical Exclusion under 23 CFR 771.117(a), does not involve unusual circumstances as defined under 23 CFR 771.117 (b), does not require preparation of an Environmental Impact Statement or Environmental Assessment, qualifies for a Categorical Exclusion under 23 CFR 771.117(c) or 23 CFR 771.117(d) and does not exceed the threshold criteria listed in the Programmatic Agreement between FHWA and SDDOT regarding Categorical Exclusions."

C. CE3 - FHWA Approved PCE Based on SDDOT Certification

1. PCE actions that do not meet the requirements of a CE1 or CE2 may be reviewed, documented, and recommended for approval to the FHWA as a CE3 by the SDDOT.
2. In order for the SDDOT to recommend an action for approval as a CE3, the SDDOT will review all NEPA requirements and summarize the results on the *SDDOT Categorical Exclusion Checklist and Environmental Commitments Checklist*.
3. FHWA's review and approval of CE3 documents will be based on the certified *SDDOT Categorical Exclusion Checklist and Environmental Commitments Checklist*, documentation supporting Checklist conclusions, and summaries of all public meetings, comments and responses. This information is to be provided by the SDDOT with each approval request.

D. Documentation

1. The SDDOT will maintain a project record for all CE approvals. This record will include at a minimum:
 - a. All checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 - b. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 - c. Any stakeholder communication, correspondence, consultation, and public meeting documentation;
 - d. The name and title of the document approver and the date of SDDOT's approval or FHWA's final approval; and
 - e. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).
2. SDDOT will maintain electronic or paper project records for approved CEs along with supporting documentation including all letters and comments received from governmental agencies, the public, and others for a period of no less than 3-years after completion of project construction. This 3-year retention provision does not relieve SDDOT of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies. These records will be made available to the FHWA at any time upon request.

3. SDDOT shall ensure that project records are available to the public consistent with requirements applicable to Federal agencies under 5 U.S.C. § 552 (the Freedom of Information Act [FOIA], as amended in 2002), NEPA, and consistent with applicable FHWA regulation, policy, and guidance.
- E. Reporting
- At the beginning of each quarter (January, April, July, and October), the SDDOT will publish the *SDDOT Environmental Status Report*. At a minimum this report will include approval dates for all CEs that have been completed for projects in the most current 4-year STIP. The report will also include contact information for agencies and the public to request additional information. The full contents of the report will be agreed to in advance by the SDDOT and FHWA. A current copy of this report will be made available to FHWA, resource agencies, and the general public through the SDDOT website.

VI. CE APPROVAL THRESHOLD

Individually, each of the following conditions defines the SDDOT CE approval threshold. The SDDOT may not approve a CE in which any of the following conditions apply.

- A. "May Affect, Is Likely to Adversely Affect" federally listed or candidate species or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act except those species included in a programmatic ESA consultation.
- B. Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303) approved by FHWA under individual, de minimis, or programmatic evaluations. This condition excludes exceptions identified under 23 CFR 774.13 when FHWA concurs with SDDOT's application of the exception.
- C. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property.
- D. Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act;
- E. Requires one or more acres of wetland impacts.
- F. Requires a U.S. Army Corps of Engineers Section 404 Individual Permit;
- G. Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR § 650 subpart A;
- H. Involves acquisitions of more than a minor amount of right-of-way.
 1. Acquisitions include:
 - a. Options to purchase, rights of first refusal, fee title, permanent easements and access rights.
 - b. Both advance and post-NEPA acquisitions.
 2. Acquisition is considered more than minor if:
 - a. It will require displacement of owners or tenants and personal property from residences, commercial or non-profit establishments, or farms; and
 - b. It will affect the functionality of the primary structure(s) on the property or use of the property.
 3. Typical examples of *minor* amounts of ROW acquisition include: low cost, strip acquisitions, and corner acquisitions that do not affect permanent structures.
- I. Requires Tribal consultation as requested by a Tribe.
- J. Is defined as a "Type I project" per 23 CFR 772.5 for purposes of a noise analysis.
- K. Action requires an air quality impact assessment under the Clean Air Act.
- L. Requires a U.S. Coast Guard bridge permit.
- M. Requires 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 published by the U.S. Department of the Interior/U.S. Department of Agriculture.
- N. Is not included in or is inconsistent with the statewide transportation improvement program, and transportation improvement program when in an urbanized area (as applicable).
- O. Requires **unusual circumstances [VII.]** determined by FHWA to exceed SDDOT's CE approval threshold.

VII. UNUSUAL CIRCUMSTANCES

The SDDOT will consult with FHWA on activities that are not clearly PCE actions or when unusual circumstances are identified in order to determine 1) the appropriate environmental class of action and 2) whether the action meets the SDDOT's **CE approval threshold [VI.]**. SDDOT may decide or FHWA may require additional studies be performed prior to making a CE approval, or the preparation of an EA or EIS. Unusual circumstances include but are not limited to the following:

- A. Access control changes that affect traffic patterns. For example:
 - 1. Changes that would affect traffic patterns include actions such as the installation of medians and providing new temporary and permanent access to the interstate.
 - 2. Changes that would not affect traffic patterns include actions such as breaks in access control for maintenance or emergency access or minimal alterations or adjustments to driveways.
- B. Use of a temporary roads, detours, or ramp closures. This condition will not apply when all of the following are true.
 - 1. Provisions have been made for access by local traffic and are so posted.
 - 2. Through-traffic dependent business will not be adversely affected.
 - 3. Use of detour(s) or ramp closure(s), to the extent possible, will not interfere with local special events or festivals.
 - 4. Use of temporary road detour(s) that will reroute traffic flow has been provided to the public and no substantial controversy has been identified.
- C. Capacity expansion of a roadway by the addition of through lanes.
- D. Closure of existing roads, bridges, or ramps.
- E. Acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(d)).
- F. Use or lease of real property owned by a Federal agency.
- G. Modification of a watercourse.
- H. Substantial public controversy.

VIII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING, AND RE-EVALUATIONS

- A. SDDOT Quality Control & Quality Assurance

The SDDOT agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.
- B. SDDOT Performance Monitoring and Reporting.
 - 1. The FHWA and SDDOT will cooperate in monitoring performance under this Agreement and work to assure quality performance.
 - 2. At a minimum, the SDDOT shall monitor its processes relating to project CE approvals and certifications, environmental analysis, and project file documentation, and check for errors and omissions. SDDOT shall take corrective actions as needed. The SDDOT shall document its quality control activities and any corrective actions taken.
- C. FHWA Oversight and Monitoring
 - 1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of SDDOT, as well as SDDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of SDDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of SDDOT staff and consultants, and the effectiveness of SDDOT's administration of its internal CE approvals.

2. FHWA in cooperation with the SDDOT will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. The SDDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. If necessary, the SDDOT will draft a corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by the SDDOT shall be considered at the time this Agreement is considered for renewal.
 3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to SDDOT's performance under this Agreement. The FHWA may require SDDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
 4. The SDDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.
- D. Re-evaluations
- In accordance with 23 CFR 771.129, the SDDOT shall re-evaluate its determinations, certifications, and approvals for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.
- E. Project Authorization Approvals
- If FHWA does not approve the project authorization for right-of-way or construction due to concerns with NEPA compliance, then FHWA will immediately inform SDDOT of the reasons for its decision not to approve these phases.

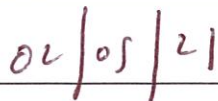
IX. AMENDMENTS AND ADMINISTRATIVE MODIFICATIONS

- A. If the parties agree to amend this Agreement, then FHWA and SDDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.
- B. Appendix A may be modified through verbal agreement by FHWA and SDDOT without new signatures to this agreement based on activities added through FHWA rulemaking to those listed in 23 CFR 771.117(c) and 23 CFR 771.117(d) after the date of the execution of this Agreement. A modification date shall be noted on the revised Appendix A.

X. TERM, RENEWAL, AND TERMINATION

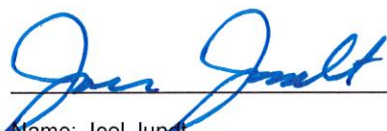
- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. The SDDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if SDDOT requests renewal and FHWA determines that SDDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.
- D. **Expiration or termination of this Agreement shall mean that the SDDOT is not able to make CE approvals on FHWA's behalf.**

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.



Name: Kirk Fredrichs
Title: Division Administrator
South Dakota Division
Federal Highway Administration

Date



Name: Joel Jundt
Title: Acting Secretary
South Dakota Department of Transportation

Date

APPENDIX A

BATCHED PROGRAMMATIC CATEGORICAL EXCLUSIONS

Based on past experience with similar actions, the FHWA and SDDOT have identified actions that do not individually or cumulatively, have significant environmental impacts. Furthermore, these actions do not have a potential to generate substantial controversy on environmental grounds, impact properties protected by Section 4(f) of the DOT Act, cause effects to historic properties whether or not such properties are present (36 CFR 800.3(a)(1)), or create inconsistencies with Federal, State, or local laws, requirements or administrative determinations relating to the environmental aspects of the action.

For actions listed on the Batched 23 CFR 771.117 'c' List, the SDDOT may batch the project as a CE1 without NEPA approval by the FHWA when all of the following Administrative Conditions apply.

Administrative Conditions

- undertaking is on an existing transportation facility
- undertaking is within existing operational right-of-way¹ and disturbance to previously placed fill material will not exceed the depth of the previously placed fill material
- undertaking may involve waters of the U.S. but is limited to those approved under a Nationwide Permit
- undertaking involving bridges or structures has been reviewed and found to have no signs of bats
- undertaking will not require tree clearing
- undertaking will not require percussive activities that increase noise above existing traffic/background levels, such as blasting and use of pile drivers, rock drills, hoe rams, or chainsaws
- undertaking has no known public controversy
- undertaking is limited to the activities listed below and is not part of a larger project

BATCHED 23 CFR 771.117 'c' LIST

Non-Ground Disturbing Activities

1. Planning and research activities
2. Grants for training
3. Engineering to define the elements of a proposed action or alternatives to assess environmental effects
4. Federal-aid system revisions which establish classes of highways on the Federal-aid highway system
5. Acquisition of scenic easements
6. Ridesharing activities
7. Funding for the development of Information Technology support materials [i.e., programs, guidelines, software]
8. Funding for SDDOT and Local Transportation Assistance Program training and equipment
9. Safe Routes to School education/outreach (non-infrastructure) projects
10. Visual Statewide Bridge Inspections

Ground Disturbing Activities within the existing operational ROW

1. Replacing/repairing existing underground utilities and replacement and relocation of existing utility poles between the sidewalk and roadway.
2. Construction, reconstruction, or restoration of bicycle and pedestrian lanes, paths, and facilities.
3. Installation of noise barriers.

¹ " Existing operational right-of-way" means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

4. In kind replacement or maintenance of landscaping.
5. Installation or replacement of fencing (like kind if historical type materials).
6. New or renewal of pavement markings, rumble strips and stripes, signs, impact attenuators, median glare screens, roadway delineators, breakaway devices, and reflective object markers.
7. Repair, replacement, or installation of lighting, traffic and pedestrian signals, in ground traffic sensors, or other similar devices.
8. Emergency Repairs declared by the State Governor or President of the United States (23 USC 125).
9. Improvements to existing rest areas and truck weigh stations unless included on the "Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System.
10. Replacement of sidewalks and curbs to satisfy the requirements of the Americans with Disabilities Act when there are no alternations to adjacent structures or facades.
11. Repair, replacement, or installation of railroad warning devices and track and rail bed maintenance when carried out within the existing railroad right-of-way.
12. Deployment of electronics, photonics, communications, or information processing equipment to improve safety or enhance security or passenger convenience.
13. Reconstruction, restoration, and resurfacing activities within the existing operational right-of-way.
14. Pothole filling, crack sealing, joint repair, pavement milling or grooving, and surface treatments.
15. Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and storm water treatment.
16. Minor highway safety or traffic operation improvement undertakings involving drainage system elements, including but not limited to converting existing drop inlets to traversable designs; installation, replacement, and extensions of pipes and pipe end sections as long as such work is not within a stream; installation, replacement, modification of safety barriers, and removal of fixed objects such as utility poles, non-breakaway signs, and modern pipe headwalls within the roadway ROW.
17. Repair, replacement or resetting of existing guardrail with replacement of existing wood or weathering steel guardrail being replaced consistent with the existing materials.
18. All work within interchanges or medians of divided highways unless the median has not been previously disturbed by construction.
19. All work between a highway and the adjacent frontage road, unless the area has not been previously disturbed by construction.
20. Replacement or repair of curb and gutter and sidewalks (exclusive of ADA projects) when there are no alterations to adjacent structures or facades.
21. Rehabilitation, reconstruction or refurbishing of existing at-grade railroad crossings.
22. Emergency structural repairs to maintain the structural integrity of bridges.
23. Routine maintenance of bridges and culverts including bridge repairs, deck replacement or repairs, overlays, railing repair, painting, and berm repairs.

BATCHED 23 CFR 771.117 'd' LIST

Non-Ground Disturbing Activities

1. 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.
2. Approvals for changes in access control.
3. Approvals for disposal of excess right-of-way as stated under 23 CFR 771.117(d)(6)
4. Acquisition of land for hardship or protective purposes as stated under 23 CFR 771.117(d)(12).