

## PROGRAMMATIC AGREEMENT

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

**This PROGRAMMATIC AGREEMENT (“Agreement”) made and entered as of the date of last execution below, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the VIRGINIA DEPARTMENT OF TRANSPORTATION (“VDOT”) hereby provides as follows:**

#### WITNESSETH:

**Whereas**, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §4321 et. seq., and the NEPA Implementing Regulations (40 CFR §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**, FHWA’s distribution and spending of Federal funds under the Federal-aid Highway Program and approval of projects 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**, FHWA’s NEPA implementing procedures (23 CFR Part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS (23 CFR §771.117(c)-(d));

**Whereas**, VDOT is a State agency that undertakes transportation projects using Federal funding received under the Federal-aid Highway Program and assists FHWA in fulfilling its obligations under NEPA for projects requiring an FHWA action (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 CE on behalf of FHWA;

**Whereas**, FHWA developed regulations implementing the authorities in Section 1318(d), effective November 6, 2014 (23 CFR §771.117(g));

**Whereas**, as defined in FHWA’s *A Practitioner’s Guide to FHWA Programmatic Agreements for Categorical Exclusions*, the CE decision is a determination that the proposed project would not individually or cumulatively have a significant environmental impact and the project fits in the category of projects not requiring the preparation of an EA or EIS;

**Whereas**, FHWA’s *A Practitioner’s Guide to FHWA Programmatic Agreements for Categorical Exclusions* allows for, and describes, a State DOT “determination” (i.e., a State DOT determines on behalf of FHWA that a project qualifies as a CE) and a State DOT “certification” (i.e., a State DOT certifies to FHWA that a project qualifies as a CE and FHWA makes the determination);

**Now, therefore**, FHWA and VDOT enter into this Agreement for the processing of categorical exclusions.

## **I. PARTIES**

The parties to this Agreement are FHWA and VDOT.

## **II. PURPOSE**

The purpose of this Agreement is to authorize VDOT to determine on behalf of FHWA whether a project qualifies for a CE, as specifically listed in 23 CFR §771.117(c) or (d) (current CE qualifying projects are listed in Appendix A and B of this Agreement). This Agreement also authorizes VDOT to certify to FHWA that a project, for which VDOT cannot make a CE determination according to the terms of the Agreement, meets the CE criteria in 40 CFR §1508.1(d) and 23 CFR §771.117(a) and qualifies for a CE 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).

## **III. AUTHORITIES**

This Agreement is entered into pursuant to the following authorities and other relevant 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) (July 6, 2012)
- C. Fixing America’s Surface Transportation Act, P.L. 114-94, Sec. 1315 (December 4, 2015)
- D. 40 CFR §1500-1508
- E. DOT Order 5610.1C
- F. 23 CFR §771.117

## **IV. RESPONSIBILITIES**

- A. VDOT is responsible for:
  1. Ensuring the following process is completed for each project that qualifies for a CE:
    - a. For projects established in 23 CFR §771.117(c) (current CE projects are listed in Appendix A) and established in 23 CFR §771.117(d) (current CE projects are listed in Appendix B) that do not exceed the thresholds in Appendix C (i.e., “Programmatic Categorical Exclusions”), VDOT may make a CE determination on behalf of FHWA. VDOT is responsible for defining the project that is the subject of its CE determination and VDOT has discretion on the level of analysis necessary to support its CE determination. VDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a signature evidencing the determination. No separate review or CE determination by FHWA is required.
    - b. VDOT may not make a CE determination for projects listed in 23 CFR §771.117(c) and 23 CFR §771.117(d) that exceed the thresholds in Appendix C. VDOT may certify to FHWA that these projects qualify for a CE. These actions require FHWA’s CE determination based on VDOT certification.
    - c. VDOT may not make a CE determination for projects not specifically listed as CEs in 23 CFR §771.117(c) and 23 CFR §771.117(d). Instead, if VDOT believes that a project

meets the requirements of a CE under 40 CFR §1508.1(d) and 23 CFR §771.117(a), VDOT may certify that a project will not result in significant environmental impacts, if VDOT concludes that the project qualifies for a CE and it does not involve unusual circumstances that warrant the preparation of an EA or EIS. VDOT shall submit this certification to FHWA for a CE determination.

2. Consulting with FHWA for projects that involve unusual circumstances (23 CFR §771.117(b)) to determine the appropriate class of action for environmental analysis and documentation. Additional studies may be required prior to making a CE determination.
  3. Conducting a quality assurance/control review prior to submitting a completed CE form to FHWA for a determination.
  4. Ensuring that a signed Documentation of FHWA Review form documenting an FHWA determination is included in the Comprehensive Environmental Data and Reporting System (CEDAR).
  5. Meeting applicable documentation requirements in Section V for VDOT CE determinations and VDOT certifications to FHWA, applicable requirements in Section VI, and applicable quality control/quality assurance, monitoring, and performance requirements in Section VII.
  6. Utilizing environmental staff directly employed by VDOT, specifically, District Environmental Managers (DEM) and the Central Office NEPA Program Manager (CO NEPA PM), to make CE determinations or certifications submitted to FHWA under this Agreement. VDOT may not delegate its responsibility for CE determinations or certifications to third parties (e.g., consultants, local government staff, and other State agency staff).
- B. FHWA is responsible for:
1. Providing timely advice and technical assistance on CEs to VDOT, as requested.
  2. Providing timely input and review of certified projects.
  3. Reviewing CE certifications and providing a CE determination or comments within seven business days from receipt of the CE certification. FHWA will base its CE determination on the project documentation and certifications prepared by VDOT. FHWA's CE determination will be represented by FHWA's signature on the Documentation of FHWA Review form or on the CE documentation that will be transmitted to VDOT.
  4. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

## **V. DOCUMENTATION OF VDOT CE DETERMINATIONS AND CERTIFICATIONS**

- A. For VDOT CE determinations and VDOT CE certifications, VDOT shall ensure that it fulfills the following responsibilities for documenting the project-specific determinations made:
1. For actions listed in 23 CFR §771.117(c) and 23 CFR §771.117(d), VDOT shall identify the applicable action; ensure any conditions are met; verify that unusual circumstances do not apply; address all other environmental requirements; and complete the review with a VDOT signature evidencing the determination or certification.
  2. For actions not listed in 23 CFR §771.117(c) and 23 CFR §771.117(d) that VDOT will be certifying, VDOT shall prepare documentation supporting the CE determination and demonstrating no unusual circumstances exist that would make the CE determination inappropriate.
  3. VDOT will utilize CEDAR to enhance quality control and review of supporting documentation. CEDAR will be the repository for documentation supporting VDOT determinations and certifications.
  4. VDOT will continue to provide FHWA access to CEDAR so that FHWA can review the project documentation as well as gather the information needed to respond to FHWA's Compliance Assessment Program (CAP).

5. When VDOT conducts periodic verification of project files supporting VDOT determinations, FHWA will be extended an invitation to participate in that verification. FHWA reserves the right to independently verify compliance.
  6. NEPA Documentation Concurrence Forms for VDOT's CE determinations are not necessary.
  7. The Programmatic Categorical Exclusion (PCE) form will be used for VDOT determinations.
  8. VDOT will obtain FHWA concurrence to conduct a CE certification using the NEPA Documentation Concurrence Form. The NEPA Documentation Concurrence Form can only be submitted to FHWA after quality control/quality assurance reviews by VDOT.
  9. The CE form will be used for all CE certifications.
- B. VDOT shall maintain a project record for its CE determinations and CE certifications submitted to FHWA. This record, maintained in CEDAR, should include at a minimum:
1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
  2. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
  3. The name and title of the person who makes the CE determination, which is limited to VDOT DEMs and CO NEPA PM, and the date of VDOT's determination, or the name and title of the person making the CE certification and the date of FHWA's determination; and
  4. For cases involving re-evaluations, any (required) documented re-evaluation.
- C. VDOT will provide any electronic project records maintained by VDOT to FHWA through FHWA's access to CEDAR. VDOT should retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve VDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

## **VI. CE DETERMINATIONS, CERTIFICATIONS, AND RE-EVALUATIONS**

- A. VDOT's CE determinations and CE certifications submitted to FHWA may only be made by VDOT's DEMs or CO NEPA PM. VDOT has discretion on the level of analysis necessary to support VDOT's CE determinations.
- B. Except as set forth in Section VI.C, in accordance with 23 CFR §771.129, VDOT shall re-evaluate CE determinations, consult with FHWA, and as necessary, prepare additional documentation to ensure that VDOT CE determinations and CE certifications are still valid. The Right of Way (ROW) Re-evaluation and Plans, Specifications, and Estimates (PS&E) Re-evaluation forms will be used for the re-evaluation of FHWA CE determinations.
- C. A ROW Re-evaluation form is not required for a VDOT CE determination, and evidence of adequate review will be documented in CEDAR. A PS&E Re-evaluation form is required for a VDOT CE determination.

## **VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE**

- A. VDOT Quality Control/Quality Assurance
  1. VDOT shall carry out regular quality control/quality assurance activities to ensure that its CE determinations and CE certifications are made in accordance with applicable Federal law and regulations and this Agreement.
- B. VDOT Performance Monitoring and Reporting
  1. FHWA and VDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.

2. VDOT agrees to summarize its performance under this Agreement to FHWA. VDOT will identify any areas where improvements are needed and the measures VDOT is taking to implement them. VDOT will identify any actions taken by VDOT as part of its quality control efforts under Section VII.A. This performance will be discussed with FHWA during an annual meeting. In the interim, a list of completed VDOT CE determinations will be provided to FHWA on a six-month reporting period basis.
- C. FHWA Oversight and Monitoring
1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of VDOT, as well as VDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of VDOT's CE determinations and CE certifications; adequacy and capability of VDOT staff and consultants; and the effectiveness of VDOT's administration of its internal CE processes.
  2. FHWA will conduct one or more program reviews as part of its oversight activities during the term of this Agreement. Should FHWA find a compliance issue(s) in the review(s), FHWA and VDOT will develop and implement a corrective action plan to address the compliance issue(s). The development of the action plan will be completed within 45 days of finalization of the review. FHWA will monitor the progress of the action plan to ensure it is implemented.
  3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to VDOT's performance. FHWA may require VDOT 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. VDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

## VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and VDOT shall 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.

## IX. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. VDOT shall post and maintain an executed copy of this Agreement on its external website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if VDOT requests renewal and FHWA determines that VDOT 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 by giving at least 30 days written notice to the other party.
- D. Expiration or termination of this Agreement shall mean that VDOT is not able to make CE determinations on FHWA's behalf.

*[SIGNATURES TO FOLLOW]*

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.

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Name: Thomas L. Nelson Jr., P.E.  
Division Administrator  
Federal Highway Administration, Virginia Division

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August 24, 2022  
Date



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Name: Chris Swanson  
Environmental Division Director  
Virginia Department of Transportation

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08/18/2022  
Date

## **APPENDICES**

**Appendix A: CEs listed in 23 CFR §771.117(c)**

**Appendix B: CEs listed in 23 CFR §771.117(d)**

**Appendix C: VDOT CE Determination Qualifying Thresholds**

## Appendix A: CEs listed in 23 CFR §771.117(c)

(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR §1508.4) and §771.117(a) and normally do not require any further NEPA approvals by FHWA:

(1) Activities that 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 that 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):

(i) Emergency repairs under 23 U.S.C. §125; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(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) Ridesharing activities.

(14) Bus and rail car rehabilitation.



- (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
- (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 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.
- (23) Federally-funded projects:
- (i) 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, see [www.fhwa.dot.gov](http://www.fhwa.dot.gov) or [www.fta.dot.gov](http://www.fta.dot.gov)) of Federal funds; or
  - (ii) 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, see [www.fhwa.dot.gov](http://www.fhwa.dot.gov) or [www.fta.dot.gov](http://www.fta.dot.gov)) 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 paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(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 paragraph (e) of this section.

(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 that 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.

## Appendix B: CEs listed in 23 CFR §771.117(d)

(d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR §1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(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.

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

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

(13) Actions described in paragraphs (c) (26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c) (26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (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.

## Appendix C: VDOT CE Determination Qualifying Thresholds

If any of the conditions listed below are true, the project *does not* qualify for a VDOT CE determination and would require a NEPA approval from FHWA.

1. Involves acquisition of more than minor amounts of temporary or permanent right of way acquisition. Considerations for whether the amount of acquisition qualifies as minor include, but are not limited to, the context and intensity of the impact, the size of the parcel, and the effect on the parcel's function;
2. Involves acquisitions that result in more than limited residential and non-residential displacements, considering the context and intensity of the impact;
3. Results in capacity expansion of a roadway by addition of through lanes;
4. Involves the construction of temporary access, or the closure of an existing road, bridge, or ramps, that would result in major traffic disruptions. Considerations for whether the traffic disruptions qualify as major include, but are not limited to, the context and intensity of the impact, the amount of travel delay, the time during which the facility is closed, the amount of traffic volume utilizing the facility, and the distance of the detour route;
5. Results in a determination of adverse effect on historic properties pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. §306108);
6. Requires the use of properties protected by Section 4(f) (49 U.S.C. § 303/23 U.S.C. §138) that cannot be documented with an FHWA *de minimis* determination or a programmatic Section 4(f) evaluation signed by FHWA;
7. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. §200305) or other unique areas or special lands that were acquired in fee or easement with federal public-use-money and have deed restrictions or covenants on the property;
8. Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. §1344) permit other than a Nationwide or a General Permit;
9. Requires a U.S. Coast Guard bridge permit (33 U.S.C. §401);
10. Requires work that will cause an increase of the flood level by more than one foot within a regulatory floodway of water courses or water bodies, or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to 23 CFR §650 subpart A;
11. Is defined as a "Type I Project" per 23 CFR §772.5 and the VDOT noise manual for purposes of a noise analysis;
12. Is likely to adversely affect federally listed species or designated critical habitat, with the exception of a "may affect, likely to adversely affect" (MALAA) determination for a species with a Section 7 programmatic biological opinion;
13. Involves any known or potential hazardous materials issues that represent a substantial liability or require substantial regulatory negotiation to resolve. Sites representing substantial liability would not include minor issues such as low-level petroleum impacts or minimal solid waste;
14. Does not meet the provisions of the FHWA Virginia Division's "Planning Documents and NEPA Approvals" document regarding fiscal constraint. In accordance with 23 CFR §450 and the agreement among FHWA, VDOT, the Federal Transit Administration, and the Virginia Department of Rail and Public Transportation, actions listed in 23 CFR §771.117(c) and 23 CFR §771.117(d) may be grouped;
15. Causes disproportionately high and adverse effects on any minority or low-income populations;
16. Involves multiple NEPA alternatives under consideration;
17. Is an action listed in 23 CFR §771.115(a); or
18. Involves unusual circumstances, pursuant to 23 CFR §771.117(b).