



Chapter 5: Categorical Exclusion (Class II)

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5. Categorical Exclusion (Class II)

Chapter 5 discusses the Colorado Department of Transportation (CDOT) process and procedures for the Categorical Exclusion (CatEx) class of action (Class II). **Chapters 4** and **6** of the NEPA Manual address the other classes of action: Class I - Environmental Impact Statement (EIS) and Class III - Environmental Assessment (EA), respectively. Most of this chapter refers to the Federal Highway Administration's (FHWA) process for CatExs. **Chapter 10** discusses the Federal Transit Administration's (FTA) process, which is somewhat different.

5.1 Introduction

CatExs, the most common National Environmental Policy Act (NEPA) class of action, are for actions that do not individually or cumulatively have a significant environmental impact and are excluded from the requirement to prepare an EA or an EIS. CatExs are activities that previous experience has shown do not involve significant environmental impacts. CatExs have several guiding regulations, including:

- ▶ Council on Environmental Quality (CEQ) through 40 Code of Federal Regulation (CFR) 1508.4
- ▶ 23 CFR 771.117 FHWA CatExs
- ▶ 23 CFR 771.117 FTA CatExs
- ▶ *Programmatic Agreement between the Federal Highway Administration, Colorado Division and the Colorado Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects*, CDOT CatEx Agreement, June 2022

The regulations describe activities that are CatExs (23 CFR § 771.117), as well as unusual circumstances that would preclude an action from being classified as a CatEx.

As identified in 23 CFR § 771.117(a), CatExs are actions that:

- ▶ Do not induce significant impacts to planned growth or land use for the area
- ▶ Do not require the relocation of significant numbers of people
- ▶ Do not have a significant impact on any natural, cultural, recreational, historic, or other resource
- ▶ Do not involve significant air, noise, or water quality impacts
- ▶ Do not have significant impacts on travel patterns
- ▶ Do not otherwise, either individually or cumulatively, have any significant environmental impacts



FHWA/FTA. 1987 as amended. Environmental Impact and Related Procedures. 23 CFR 771 § 771.101 - 771.139



According to CFR 23 § 771.117(b), any action that would normally be classified as a CatEx, but could involve unusual circumstances, will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CatEx classification is proper. Unusual circumstances include:

- ▶ Significant environmental impacts;
- ▶ Substantial controversy on environmental grounds;
- ▶ Significant impact on properties protected by Section 4(f) of the Department of Transportation (DOT) Act or Section 106 of the National Historic Preservation Act; or
- ▶ Inconsistencies with any Federal, state, or local law, requirements, or administrative determination relating to the environmental aspects of the action.

CatExs require no major Federal action and have impacts that are generally well-understood. Because CatEx projects have no significant impacts on the environment, NEPA requirements are significantly less stringent than those for an EA or an EIS. For example, public involvement and alternatives analysis are not explicitly required, and the level of documentation for FHWA approval is greatly reduced. Although public involvement is not explicitly required for a Programmatic or Non-Programmatic CatEx, it is recommended to have some sort of public involvement at least for those CatExs that include some right-of-way (ROW) acquisition, construction impacts, road closures or detours, etc. Although a project may not have significant impacts, a large amount of public controversy can require preparation of an EA or an EIS as appropriate.

Classifying a project as a CatEx does not exempt it from other Federal or state environmental requirements. All applicable environmental requirements including, but not limited to, consultation pursuant to Section 7 of the Endangered Species Act or Section 106 of the National Historic Preservation Act, must be completed before FHWA or CDOT make the CatEx determination. Documentation is required to record the rationale for decision-making on projects that are categorically excluded from further consideration under the NEPA process. **Section 2.2.3** of this Manual discusses when NEPA applies to a project.

FHWA regulations (FHWA 23 CFR § 771. 117) contain two lists of CatExs:

- ▶ **Programmatic CatExs** - These standard actions routinely occur in CDOT's operations and maintenance of facilities and have previously been programmatically approved by FHWA and can be processed internally by CDOT (for example, roadway paving). Programmatic categories include several lists of project types:
 - C list CatExs from 23 CFR 771.117(c)
 - D list CatExs from 23 CFR 771.117(d)
- ▶ **Non-Programmatic CatExs** - These actions are often non-routine, require additional evaluation of environmental effects, and require additional FHWA review. To expedite and streamline the environmental process and to reduce paperwork for programmatic CatExs, CDOT and FHWA developed a CDOT CatEx Agreement



Types of CatExs

- Programmatic CatEx
- Non-Programmatic CatEx



The CDOT and FHWA Programmatic Agreement regarding CDOT CatEx Projects can be accessed at:

https://www.codot.gov/programs/environmental/nepa-program/assets/categorical-exclusion-programmatic-agreement-2022-update_signed-jf-3.pdf



(June 2022). The CDOT CatEx Agreement provides expeditious processing of CatEx level actions by CDOT under the guidance and with the approval of FHWA. Evaluation criteria still must be met to proceed as a Programmatic CatEx, which is further discussed in **Section 5.3.1**.

5.2 CatExs and Recent Guidance

5.2.1 Moving Ahead for Progress in the 21st Century Act

In July 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law. MAP-21 authorized the funding of surface transportation programs for Federal fiscal years 2013, 2014, and 2015 extensions. MAP-21 was the first long-term highway authorization enacted since the 2005 Safe Accountable Flexible Transportation Equity Act - A Legacy for Users (SAFETEA-LU).

MAP-21 enacted several new CatEx categories, including:

- ▶ Application of CatExs for Multimodal Projects
- ▶ CatExs in Emergencies
- ▶ CatExs for Projects within the Right-of-Way
- ▶ Programmatic Agreements and Additional CatExs

Because guidance for CatExs periodically changes, check the most current guidance posted on CDOT’s website (as described in this Manual).

5.2.2 Fixing America’s Surface Transportation Act

In December 2015, the Fixing America’s Surface Transportation Act or “FAST Act” was signed into law. A major theme of the FAST Act is to accelerate overall project delivery. Two items may impact CatExs:

- ▶ **Railroad rights-of-way (Subtitle E: Section 11504)** - Requires USDOT to propose an exemption from the historic preservation requirement to assess and address potential impacts on most railroad ROW, like the CatEx exemption granted to interstate highways in 2005.
- ▶ The use of programmatic agreements to process CatExs as a group, rather than case by case or project by project. For example, there may be economies of scale to deliver multiple bridge replacements at one time.



If a project does not meet any of the criteria on the CatEx Criteria List, the project will require additional NEPA approval by FHWA.

5.2.3 Infrastructure Investment and Jobs Act

In November 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law. The IIJA expands the definition of infrastructure and gives local governments command and control of their infrastructure. The IIJA also significantly expands the types of infrastructure improvements eligible for funding through the IIJA, including multimodal, electric vehicle, and carbon emission reduction type projects. The act requires special attention to climate change and equity as they relate to infrastructure, housing, and transportation.

The IIJA contains a few provisions to expand the use of CatExs. It requires the USDOT to identify existing CatExs for FHWA, FTA, and Federal Railroad Administration that would accelerate project delivery if they were available to other Federal agencies. USDOT must provide other agencies with existing documentation and substantiating information about those CatExs.

Previous surface transportation bills required USDOT to adopt a CatEx for projects of limited Federal assistance, currently defined as (1) projects that receive less than \$5 million of Federal funds or (2) projects with a total estimated cost of not more than \$30 million and Federal funds representing less than 15 percent of the total estimated project cost. These dollar thresholds are adjusted annually to reflect inflation since 2012. The IIJA raises these thresholds to \$6 million and \$35 million, respectively, and continues to require annual inflation adjustments (continuing to use 2012 as the base year).

5.3 Programmatic CatEx Projects

The CDOT CatEx Agreement expedites the processing of programmatic CatEx level actions that meet specific criteria. These actions do not require FHWA review or signature.

As part of the CDOT CatEx Agreement, a CatEx Criteria List has been developed (**Table 5-1**). Should any of the questions be answered in the positive (yes), the project may not proceed as a Programmatic CatEx and should proceed as a Non-Programmatic CatEx (see **Section 5.3.5**).



Table 5-1 CatEx Criteria List

CatEx Criteria Checklist

*If the project is category C26, C27, or C28, exceeding any of the starred criteria would require that category D13 be used instead.

Project Name:		Project Number:	
Environmental Project Manager:		Date Checklist Completed:	
Potential Resource and Impact		Impacts from Project	
		Yes	No
1	Through Lanes: Results in capacity expansion of a roadway by addition of through lanes;	<input type="checkbox"/>	<input type="checkbox"/>
2*	Right of Way: Involves acquisitions (fee simple) of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as not more than 10% of any adjacent parcels for transportation related facilities (e.g. rest areas, intersections, maintenance yards) (note, this requirement does not apply to "perfection of title for ROW" projects under 23 CFR 771.117(c)(5));	<input type="checkbox"/>	<input type="checkbox"/>
3*	Displacements: Involves acquisitions that result in any residential or non-residential displacements;	<input type="checkbox"/>	<input type="checkbox"/>
4	Early Acquisition: Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(c));	<input type="checkbox"/>	<input type="checkbox"/>
5*	Section 404 Permit: Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit or a Regional General Permit;	<input type="checkbox"/>	<input type="checkbox"/>
6*	Bridge Permit: Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);	<input type="checkbox"/>	<input type="checkbox"/>
7*	Historic Properties: Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);	<input type="checkbox"/>	<input type="checkbox"/>
8*	Section 4(f): 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 <i>de minimis</i> or exception;	<input type="checkbox"/>	<input type="checkbox"/>
9*	Section 6(f): Converts lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669- 669i; 50 Stat. 917), 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;	<input type="checkbox"/>	<input type="checkbox"/>
10*	Endangered Species: Requires formal consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536);	<input type="checkbox"/>	<input type="checkbox"/>
11*	Temporary Access and Road Closures: Involves the construction of temporary access, or the temporary closure of existing road, bridge, or ramps, that would result in major traffic disruptions, unless the use of such facilities satisfy the following conditions: a. Provisions are made for access by local traffic and so posted; b. The temporary access or closure, to the extent possible, will not interfere with any local special event or festival; c. The closure does not substantially change the environmental consequences of the action; d. There is no substantial controversy associated with the closure;	<input type="checkbox"/>	<input type="checkbox"/>
12*	Permanent Road Closures: Involves the permanent closure of existing road, bridge, or ramps, unless the following conditions are met: a. No major traffic disruptions; b. No adverse effects to through-traffic dependent business; c. No closure that substantially changes the environmental consequences of the action; d. No substantial controversy associated with the closure;	<input type="checkbox"/>	<input type="checkbox"/>



CatEx Criteria Checklist

*If the project is category C26, C27, or C28, exceeding any of the starred criteria would require that category D13 be used instead.

Project Name:		Project Number:		
Environmental Project Manager:		Date Checklist Completed:		
Potential Resource and Impact			Impacts from Project	
			Yes	No
13	Involvement with Interstate: Any project that involves the use (under, over or through) the Interstate ROW, whether by CDOT or a third party. This also includes Interstate frontage roads which are within the Interstate ROW;	<input type="checkbox"/>	<input type="checkbox"/>	
14*	Access Control: Involves changes in access control of an Interstate highway; or disposal of Interstate right-of-way (note: for C26, C27, and C28, <i>any</i> change in access control of a highway, not just Interstates, will require the use of D13 instead);	<input type="checkbox"/>	<input type="checkbox"/>	
15*	Floodplains: 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;	<input type="checkbox"/>	<input type="checkbox"/>	
16*	Wild and Scenic Rivers: Requires a Wild and Scenic River Section 7 determination from the river-administering agency. Please note that there is only one WSR river in Colorado: Cache La Poudre River in Region 4 near Ft. Collins;	<input type="checkbox"/>	<input type="checkbox"/>	
17	Noise: Is defined as a "Type I project" per 23 CFR 772.5 and/or CDOT Noise Guidance and results in impacted receptors;	<input type="checkbox"/>	<input type="checkbox"/>	
18	Air Quality: Does the project require a project level air quality conformity analysis;	<input type="checkbox"/>	<input type="checkbox"/>	
19	Statewide Planning: Is not included in or is inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program;	<input type="checkbox"/>	<input type="checkbox"/>	
20	Emergency Relief: Involves emergency relief funding or approvals;	<input type="checkbox"/>	<input type="checkbox"/>	
21	Other Circumstances: For situations that are atypical, (i.e. Superfund site) or any other issue not covered above please explain.	<input type="checkbox"/>	<input type="checkbox"/>	
For resources checked yes, please add description of project and assumed impacts with impact number:				



5.3.1 Programmatic CatEx Actions

Programmatic CatExs normally do not require any further NEPA review or approvals by FHWA.

For these actions, a Form 128 must be prepared and the CFR numbering (C1, C2, D1, D2, etc.) should be used for project tracking. If more than one programmatic CatEx category applies, the main category will be listed in the CatEx number field on CDOT Form 128, and the remaining categories will be listed in the comment box on the back part of the form. If both non-programmatic and programmatic categories apply, the project will be processed as a non-programmatic CatEx.

The following actions from 23 CFR § 771.117(c) and 23 CFR § 771.117(d) meet the criteria for CatExs in the CEQ regulation (CEQ, 40 CFR § 1508.4). Actions under these categories normally do not require any further approvals. The following types of actions are considered programmatic CatEx actions.

- C1. 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.
- C2. Approval of utility installations along or across a transportation facility
- C3. Construction of bicycle and pedestrian lanes, paths, and facilities
- C4. Activities included in the State's highway safety plan under 23 USC 402
- C5. Transfer of Federal lands pursuant to 23 USC 317 107(d) and/or 23 USC 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA
- C6. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction
- C7. Landscaping
- C8. 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
- C9. 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 USC 5121):
 - i. Emergency repairs under 23 USC 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



Form 128 is currently completed in the CDOT SAP computer tracking system, accessible to only CDOT personnel.



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.

- C10. Acquisition of scenic easements
- C11. Determination of payback under 23 USC 156 for property previously acquired with Federal-aid participation
- C12. Improvements to existing rest areas and truck weigh stations
- C13. Ridesharing activities
- C14. Bus and rail car rehabilitation
- C15. Alterations to facilities or vehicles to make them accessible for elderly and handicapped persons
- C16. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand
- C17. 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 CatEx
- C18. Track and railbed maintenance and improvements when carried out within the existing right-of-way
- C19. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site
- C20. Promulgation of rules, regulations, and directives
- C21. 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, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
- C22. 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.

C23. 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/ or www.transit.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/ or www.transit.dot.gov/) and Federal funds comprising less than 15 percent of the total estimated project cost

C24. 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 samplings; archaeological investigations for archaeology resources assessment or similar survey; and wetland surveys. (note: Generally, these activities are done as part of project development and do not require a separate Form 128 or to be identified on the Form 128 for a project. A separate Form 128 will only be required when these activities are done as a stand-alone activity (e.g., geotechnical investigation for rockfall mitigation or archeological investigations done separately from construction projects)

C25. 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 USC 1341; 1342)) carried out to address water pollution or environmental degradation.

C26. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing) if the project meets the constraints in 23 CFR 771.117(e)



- C27. 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)
- C28. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings if the project meets the constraints in 23 CFR 771.117(e)

Additional actions which meet the criteria for a CatEx in the CatEx regulations (40 CFR 1508.4), (40 CFR 771.117), and paragraph (a) of this section may be designated as CatExs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CatExs are satisfied and that significant environmental effects will not result. Examples of such actions include:

- D1. [Reserved]
- D2. [Reserved]
- D3. [Reserved]
- D4. Transportation corridor fringe parking facilities.
- D5. Construction of new truck weigh stations or rest areas.
- D6. 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 (non-Interstate).
- D7. Approvals for changes in access control
- D8. 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.
- D9. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary buildings where only minor amounts of additional land are required and where there is not a substantial increase in the number of users.
- D10. 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.
- D11. 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.
- D12. 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 CatEx 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.

D13. Actions described in 23 CFR 771.117 paragraphs (c)(26), (c)(27), and (c)(28) that do not meet the constraints in 23 CFR 771.117(e).

As part of every CatEx, the CatEx Criteria List as shown in **Table 5-1**, should be completed. Should any of the answers to the questions be yes, then the project cannot proceed as a Programmatic CatEx. The CatEx Criteria List is a required piece of each project file for every CatEx.

5.3.2 Programmatic CatEx Process

The CDOT CatEx Agreement establishes that CDOT, under certain circumstances, can determine on behalf of FHWA whether a project qualifies for a CatEx action specifically listed in 23 CFR 771.117. CDOT is also authorized to certify, to FHWA, that an action qualifies for a CatEx in a specific and limited circumstance if the action cannot be approved according to the terms of the CDOT CatEx Agreement. If a project meets the CatEx criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), and there are no unusual circumstances that could require the preparation of an EA or an EIS, CDOT is authorized to certify an action qualifies for a CatEx. These projects originate either through the CDOT planning process, which is further discussed in **Chapter 3**, or as a local agency project with CDOT oversight. The following sections discuss the processes for a CDOT Project Programmatic CatEx and a Local Agency Project with CDOT Oversight Programmatic CatEx.

Conducting actions documented by Form 128 will require information input by CDOT into the CDOT SAP computer tracking system. The CDOT SAP computer tracking system is accessible to only CDOT personnel.



The term “Local Agency” refers to a public agency, local public agency, established publicly owned organization, or private interest that can legally enter into an agreement with CDOT for a transportation project (CDOT, 2006).



CDOT or Local Agency Project

The following is the step-by-step process for approval of a Programmatic CatEx project:

1. **Internal Scoping** - The CDOT project manager (typically an engineer) initiates the Form 463, referred to as Design Data, and coordinates with all design and specialty disciplines, including Environmental, Right-of-Way, Utilities, Hydraulics, Traffic, Bridge Materials and Maintenance, to reach consensus on the project scope and to identify the multidisciplinary project development team. The Form 463 establishes the project within the CDOT tracking system. For local agency projects, the local agency project manager (typically an engineer) coordinates with the CDOT Resident Engineer and Region Program Environmental Manager (RPEM) to prepare the scope of work. Environmental impact avoidance and minimization alternatives are discussed. The RPEM, or designee, makes preliminary determinations about the anticipated environmental clearances and permits, and the associated responsibilities for each. The RPEM, or designee, schedules and coordinates with the CDOT Environmental Programs Branch (EPB) as necessary to initiate environmental clearance processes required on Part B of Form 128.
2. **Project Schedule** - The CDOT project manager, or local agency project manager, drafts a preliminary detailed project schedule and circulates it to the multidisciplinary project development team for comments. With input from the team, the project schedule is adopted and shared with the multidisciplinary project development team.
3. **Environmental Clearances** - The RPEM, or designee, coordinates with the Region or EPB resource specialists for initiation of the anticipated environmental clearances required for Parts A and B of Form 128 (**Figure 5-1**). For a local agency project, the local agency project manager coordinates with the project team or consultant team. On a local agency project, the project team is typically an environmental consultant hired by the local agency. CDOT may help with certain resources as time allows. Environmental resources requiring environmental clearances could include:
 - a. Air Quality (hot spot analysis)
 - b. Noise
 - c. Hazardous Materials (Initial Site Assessment [ISA] Checklist or Modified Environmental Site Assessment [MESA] or Phase I Environmental Site Assessment)
 - d. Threatened or Endangered Species or State Listed Species
 - e. Wetland Delineation (Survey)
 - f. Paleontology
 - g. Archaeology
 - h. History
 - i. Section 4(f) - Historic



Example CDOT CatEx schedules are located in Section 3 of CDOT's Project Development Manual, which can be found here:

<https://www.codot.gov/business/designsupport/bulletins-manuals/2013-project-development-manual/revs-to-project-manual>



- j. Section 4(f) - Non-Historic
 - k. Section 6(f)
 - l. Other (May include Noxious Weeds, Migratory Birds, Visual/Aesthetics, Floodplains, Environmental Justice, etc.)
4. **Field Inspection Review (FIR)** - The engineering project team prepares and provides the FIR engineering design plan set, which is approximately 30 percent design, for review and comment. Based on environmental clearances documentation, the RPEM, or designee, or local agency project manager coordinates with the CDOT project manager and project team to further identify environmental impact avoidance and minimization opportunities. The RPEM, or designee, communicates information requirements and anticipated timelines for necessary clearances and permits to the CDOT project manager.
5. **Part A and B Approval** - The project team prepares the environmental documentation necessary for the environmental clearances required for the front part (Parts A and B) of Form 128. This documentation is provided to CDOT for their review and comment. A brief technical memorandum summarizing the environmental clearances completed is prepared and submitted to the RPEM.
6. **Form 128 (Parts A and B)** - Once all resources that could be impacted have been inspected and impacts assessed, the RPEM approves the front part of Form 128. Parts A and B must be completed for ROW authorization and obligation of Federal funds for ROW.
7. **Form 128 (Part C)** - The RPEM, or designee, or local agency project manager initiates coordination with the permitting agencies for Part C of Form 128. Permit requirements or other mitigation measures are communicated to the CDOT project manager for inclusion in the final plans and specifications.
8. **Final Forms** - The CDOT Resident Engineer (in some cases, the CDOT project manager) signs and submits the final Form 463 and, as applicable, submits the completed and signed Form 128 and the Form 1180 signed by the CDOT Business Manager - Plans, Specifications, and Estimates (PS&E), to FHWA and Office of Financial Management & Budget (OFMB). Form 1180 approves the project plans, specifications, and cost estimates and requests that funds be obligated for the project. If changes have been made to the project design data, submit a revised Form 463 with the coinciding Form 128.

Form 418 is initiated with FHWA whenever Federal-aid or oversight is involved for approval. FHWA receives copies of Forms 463, 128, 1180, and 418. Once FHWA approves Form 418, funds are obligated and authorized for the construction phase and the project is sent to advertisement.



CDOT's Mitigation Tracking Spreadsheet is not required for Programmatic CatExs but is a recommended tool to track mitigation and can be found at the link below:

https://www.codot.gov/programs/environmental/resources/forms/CDOT%20Mitigation%20Tracking%20Spreadsheet_June%202012.xlsx/view



Part B should be considered as "impacts" and Part C should be considered as "mitigation."



CDOT Forms are available at <https://www.codot.gov/library/forms>



9. **FOR** - Environmental impacts are definitively quantified for environmental permit applications and to ensure adequate representation in the project plans and specifications. Form 463 is completed.
10. **Summary of Mitigation** - Based on the environmental clearances documentation, the RPEM, or designee, or local agency project manager prepares a Summary of Mitigation Measures and provides this summary to the CDOT project manager for inclusion in the Final Office Review (FOR) plans and specifications, which is approximately 90 percent design. A copy of the Summary of Mitigation Measures is provided to the RPEM. **Chapter 9** includes additional information on mitigation and monitoring commitments.
11. **Final Check** - The final plans and specifications containing all mitigation measures are provided to the RPEM, or designee, ideally a minimum of three weeks before final clearance is required. The RPEM, or designee, verifies that the relevant information presented in the Summary of Mitigation Measures is included in the Final Check plan set. Environmental staff explain/summarize changes required to the Final Check plan set. The RPEM, or designee, reviews and compiles the clearances and permits.
12. **Environmental Project Certification** - The RPEM approves the Environmental Project Certification in Part E of Form 128 (**Figure 5-1**). This signature means that all environmental commitments identified during the environmental clearance efforts are included or otherwise handled. A copy of the version of the plan set that was approved must be kept in the file to document changes that may be made under advertisement of the project for construction that will need subsequent clearance tracking in the file.
13. **Construction** - A pre-construction meeting is held with all specialty disciplines to outline permit conditions and mitigation commitments, etc. The CDOT Construction Project Engineer, or the local agency team, begins mitigation monitoring during construction to ensure compliance with permit requirements and mitigation commitments. Note: Long-term monitoring of mitigation may be required to successfully complete mitigation obligations and permit requirements.
14. **Project Close-Out** - The project is closed once construction is final and accepted by CDOT and most of the conditions of environmental permits have been satisfied. CDOT will prepare a Form 950 for project closure once all environmental commitments have been completed for the whole project. Project documentation and records should be maintained in accordance with CDOT Procedural Directive 51.1.

5.3.3 Programmatic CatEx Documentation

Completion of CDOT Form 128 is required for all CDOT projects. **Figure 5-1** includes Form 128, along with detailed instructions for completing the form.



Figure 5-1 Form 128 and Instructions

Colorado Department of Transportation NEPA DETERMINATION / PROJECT CERTIFICATION			
A. PROJECT INFORMATION			Form: _____
Environmental Scoping Date:	Project #:	Subaccount #:	Related Subaccount #:
Project Name:			
Project Description (and Location):			
Region:	CDOT Program/Residency:	Environmental PM:	FHWA Area Engineer:
FHWA NEXUS <input type="checkbox"/> Yes <input type="checkbox"/> No		Other Federal NEXUS: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Project Lead: <input type="checkbox"/> CDOT <input type="checkbox"/> Local Agency <input type="checkbox"/> Other			
Class of Action: <input type="checkbox"/> EIS/ROD <input type="checkbox"/> EA/FONSI <input type="checkbox"/> CatEx		Construction/Contracting Method: <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Design Build	
If CatEx, the project fits the following CE number: <input type="checkbox"/> GM/GC <input type="checkbox"/> Other: _____			
B. THE NEPA PROCESS			
Resource Clearances		Revised Clearances	
<i>Check Box Only if Impacted</i>			
	Clearance Date	Revised Clearance date	Revised Clearance date
Air Quality (hot spot analysis)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Noise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hazmat - ISA/MESA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
T&E and State Listed Species	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetland Delineation (Survey)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paleontology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Archaeology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
History	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section4(f) - Historic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section4(f) - Non-Historic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Section6(f)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>All required clearance actions indicated have been completed for the design plans referenced below. If Project is a Categorical Exclusion, no significant environmental impacts will result from this project. Construction is not authorized until approved in Part E below. Implementation of project shall include required mitigation commitments.</p> <p><input type="checkbox"/> Action meets requirements to be a Programmatic CatEx per the FHWA/CDOT Programmatic Agreement for Categorical Exclusions (FHWA signature below not required).</p> <p><input type="checkbox"/> This is an EA/FONSI or EIS/ROD. The Decision Document has already been signed by FHWA (FHWA signature below is not required).</p>		<p>All required clearance actions indicated have been completed for the design plans referenced below. If Project is a Categorical Exclusion, no significant environmental impacts will result from this project. Construction is not authorized until approved in Part E below. Implementation of project shall include required mitigation commitments.</p> <p>FHWA signature is not required because:</p> <p><input type="checkbox"/> This is a Programmatic CatEx <input type="checkbox"/> This is a Programmatic CatEx</p> <p><input type="checkbox"/> This is a Reevaluation of an EA/FONSI or EIS/ROD (1399 form has already been signed.) <input type="checkbox"/> This is a Reevaluation of an EA/FONSI or EIS/ROD (1399 form has already been signed.)</p>	
Design Plan Set and Date: _____ / _____ / _____		_____ / _____ / _____	
RPEM Signature and Date: _____ / _____		_____ / _____	
<p>FHWA Division Administrator Signature (if required) I concur with the above category designation and the scope of environmental clearance/permits indicated above.</p>		<p>FHWA Division Administrator Signature (if required) I concur with the above category designation and the scope of environmental clearance/permits indicated above.</p>	
Signature and Date: _____ / _____		_____ / _____	
Comments:			



Colorado Department of Transportation
NEPA DETERMINATION / PROJECT CERTIFICATION

Resource Clearances		Revised Clearances	
<i>Check Box Only if Impacted</i>	Date Completed	Date Updated	Date updated
404 Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
401 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
402 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Const. Stormwater Permit (CDPS)	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Const. Dewatering Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Noxious Weed Management	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
SB40 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Wetland Finding	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Structure Demolition Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Hazardous Materials – Phase II	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Permanent WQ	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
SWMP	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Other:	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____

D. Comments

E. ENVIRONMENTAL PROJECT CERTIFICATION

All clearance and permit requirements for this project have been addressed and mitigation included. The appropriate documentation is on file in the Region office.

	Clearance	Revised Clearance	Revised Clearance
Design Plan Set and Date:	_____ / _____	_____ / _____	_____ / _____
Certification Type:	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____
RPEM Signature & Date:	_____ / _____	_____ / _____	_____ / _____

Note to Project Manager: Any changes to the plans and specifications after the date of the RPEM signature in Part B that affect environmental impacts or mitigation must be approved by the RPEM.

Distribution:
RPEM (original): copies to Project Manager, Right of way (if ROW required)

CDOT Form #128b (07/21/2016)



Instructions for Filling out CDOT Form 128

Updated 12/15/2022

Completion of CDOT Form 128 is required for all CDOT projects, even those that have been cleared as fully documented (template) CatEx's, EAs or EISs. Parts A and B must be completed for Right of Way (ROW) authorization and obligation of federal funds for ROW. Parts A, B, C, and E must be completed prior to project advertisement and/or construction.

FHWA signature is required for all federally funded CatExs unless CDOT has been allowed to make a CatEx certification or determination and approval on FHWA's behalf (Programmatic CatEx). Programmatic CatExs are those that can be approved by CDOT without FHWA's signature based upon the requirements of the FHWA/CDOT Programmatic Agreement for Categorical Exclusions.

When FHWA signature is required, the FHWA will retain a copy of the signed Form 128 and return the original to the RPEM. A scanned copy is acceptable. The RPEM will be responsible for distributing copies within CDOT and maintaining the original within the Region.

FHWA approval is required for projects that exceed certain evaluation criteria, even if they would normally be considered Programmatic CatExs. Examples of reasons why a project could require FHWA approval include residential displacements, Individual Section 404 permits, individual Section 4(f) evaluations, or changes to access to the Interstate. The reason why FHWA signature is required when the project would normally be a Programmatic CatEx shall be stated in the Part B comments section.

If it is necessary for the Environmental Programs Branch to prepare a Form 128 for a statewide project, the EPB manager will be responsible for clearances, certification, and appropriate distribution.

If project revisions result in changes to the clearance/permit requirements, a revised Form 463 (Design Data) are required in addition to an updated Form 128. A CDOT Form 1399, NEPA Reevaluation, may also be appropriate.

STEP BY STEP INSTRUCTIONS FOR FILLING OUT THE FORM

Section A. Project Information

1. **Scoping Date:** An initiation date is required for FHWA annual tracking purposes. If there is no scoping meeting, please use the date of the environmental kick-off meeting. The third preference for this cell would be the date of the EPB Environmental Clearance Request.
2. **Federal Project #:** This is the federal project number including its prefix.
3. **Subaccount #:** This is the CDOT 5-digit Project Control Number (PCN).
4. **Related Subaccount Numbers:** Some projects have different subaccount numbers for the NEPA phase and the construction phase(s), especially for EA and EIS projects. Also, for smaller Design Build projects it is common to combine multiple Catex projects into one project for construction. This is where you would enter all those numbers.
5. **Project Name:** Enter the full name of the project.
6. **Project Description (and location):** Succinctly explain the full scope of work including the name of the roadway, endpoints or mileposts, etc.
7. **Region:** Enter Region(s) number. For statewide projects enter HQ.
8. **CDOT Program/Residency:** Based on how your Region divides projects, enter either the Program or Residency.
9. **Environmental PM:** Provide the name of the person who has coordinated the environmental work for the project.
10. **FHWA Area Engineer:** Provide the name of the Area Engineer who is responsible for the project.



11. **FHWA Nexus:** This is for annual tracking purposes so please make sure to check the box if this is a project with FHWA oversight.
12. **Other Federal Nexus:** This is for projects that have a federal nexus from a different agency. An example is a project that needs a 404 permit from the USACE. This field should be filled out even if there is not a FHWA nexus.
13. **Form #:** It is a way to track clearances for projects that need to be updated more than twice and require multiple Form 128s. This is applicable for projects with multiple phases, including Design Build.
14. **Project Lead:** Provide the Agency proponent. This is required for annual tracking purposes. An example of when the “Other” box would be checked is if you were working on an FTA project.
15. **Class of Action:** This form should be filled out for every project, even EIS/ROD and EA/FONSI projects, in order to document back part clearance (Section E) and project certification. For Catex projects, the Catex designation must be entered in the second line of this section. The designation must be taken from 23 CFR 771.117(c)-(d) or from the current FHWA/CDOT Programmatic Agreement for Categorical Exclusions. Project types that are not listed in 23 CFR 771.117(c)(d) or the Programmatic Agreement may still be considered as non-Programmatic CatExs; these require a transmittal letter of explanation to FHWA and are coded as “DX” CatExs.
16. **Project Delivery Method:** This is for annual tracking purposes and will help explain how the form will be used (i.e., whether the revised clearances will be used only if there are changes to the project, or if they will have to be used as a regular part of the approval process [for design-builds]). In SAP, it is anticipated that this field will be “greyed out” and populated by the Project Engineer via another function prior to the obligation of funds.

Section B. The NEPA Process

1. **Clearance Date:** The original clearance date for a resource on most CatEx projects is noted here (in the left-hand column). Each dated resource area must have corresponding clearance documentation in the project file. Resources without dates indicate the resource did not require a clearance. A brief note/memo to the file should describe the conditions of non-cleared resources (i.e., project limits remain in ROW and no excavation will occur, therefore no 4(f), 6(f) or paleo clearances are requested).

For separately or fully documented CatEx (using a template), EA, and EIS projects, these dates are left blank.

For Design Build projects, this column indicates a clearance for preliminary design (traditionally no more 30% design), as well as for Advertised plans or Bid. After awarded, subsequent environmental clearances will be obtained based on final design. The project can then be certified for construction.
2. **Check box:** The check box to the right of a resource should be checked if there is an impact or anticipated impact to that resource, or if a minimization/avoidance measure needs to be included in the construction plans (see explanation for each resource below). A clearance date will always accompany a checked box. During the clearance process it was determined if: mitigation is required, further evaluation is required, or a permit is required. Minimization or avoidance measures should be noted on the plan sheets. Here is an explanation of when to check the box for each resource:
 - **Air Quality:** checked if there is an air quality impact within non-attainment or maintenance areas.
 - **Noise:** checked if the project is classified as Type I in CDOT’s Noise Guidance and there is a noise impact, even if noise mitigation is not recommended.
 - **Hazmat:** checked if there are special handling requirements of known or potential hazardous materials or if further hazmat investigation is required prior to construction.
 - **T &E/ State Listed Species:** checked if there is an impact to federal or state listed species and/or avoidance/minimization measures are needed during construction. Clearance will include Section 7 consultation and Concurrence (if required).
 - **Wetlands:** checked if there are impacts to wetland or Waters of the US, or a permit or mitigation is required to avoid impacts.



- Paleontology: checked if there is a paleontology impact or mitigation/monitoring is required.
- Archaeology: checked if there are direct impacts to any significant archaeological sites or features, or if mitigation/monitoring is required.
- History: checked if there are *Adverse Effects* or a *No Adverse Effects* with impacts to any eligible historic site, or if mitigation/monitoring is required.
- Section 4(f) - Historic: checked if a *de minimis*, programmatic, or individual 4(f) is required, or if an exception is required that includes mitigation (e.g., temporary occupancy).
- Section 4(f) - Non-Historic: checked if a *de minimis*, programmatic, or individual 4(f) is required or if an exception is required that includes mitigation (e.g., temporary occupancy).
- Section 6(f): checked if a Temporary Non-conforming Use or Conversion is required; or if avoidance measures are required.
- Other: this box can be used for any other resource that is not listed on the form. Common examples are Environmental Justice, Visual, Floodplains or Farmlands. If you have two or more resources that you need to add, please add them to the comment box at the bottom of the page.

Date Only - If there is no impact or minimization measure to a specific resource, the check box should not be checked. However, there should be a date on the line to document when the resource was evaluated, and clearance was provided.

- Air Quality: provide clearance date if a hotspot analysis is required.
- Noise: provide clearance date if a noise analysis or review by the noise specialist is required.
- Hazmat: provide clearance date if an ISA or MESA is required.
- T & E/ State Listed Species: provide date of no effect or no impact determination.
- Wetlands: provide clearance date if a wetland delineation was conducted.
- Paleontology: provide clearance date if paleontology specialist reviewed the project.
- Archaeology: provide clearance date if an archaeological survey was done.
- History: provide clearance date for history review of the project.
- Section 4(f) - Historic: provide clearance date if the History or Archaeology reviews show that Section 4(f) is not applicable.
- Section 4(f) - Non-Historic: provide clearance date from Section 4(f) subject matter expert when there are non-historic Section 4(f) resources in the area (e.g., parks, trails, wildlife refuges).
- Section 6(f): provide clearance date if there are parks or trails in the area.
- Other: this box can be used for any other resource that is not listed on the form. Common examples are Environmental Justice, Visual, Floodplains or Farmlands. If you have two or more resources that you need to add, please add them to the comment box at the bottom of the page.

Neither Checkbox nor Date - If a resource is clearly not present in the project area or if the project scope would clearly not impact a certain resource and therefore no verification would be necessary, the check box and date line can be left blank. They can also be blank for projects that have an EIS/ROD, EA/FONSI, or separately/fully documented (e.g., template) CatEx.

3. **Revised Clearances:** (the middle and right-hand columns) should be filled out for NEPA reevaluations, including the following:

- If the Form 1399 is used, the resource portion does not need to be filled out, just check the box indicating that a Form 1399 was completed and provide the reevaluation date, design plan set date, and signatures are required.



- For CatExs, these columns can be used to reevaluate the project, including documenting the updated resource clearances and/or impacts. Checkboxes and dates are used in the same way as for the first column. However, only resources with new impacts should have checked boxes.
- For EAs or EISs where there are NO changes to the project or impacts, this column can be used in place of the Form 1399, and dates can be entered to show that the resources were reviewed.

These columns are applicable for Design Build projects. As mentioned above, when a Design Build project goes out for bid it is generally at 30% design. Once awarded, the contractor will be responsible for finalizing the design, so this design set needs an environmental clearance before it is released for construction. This could happen once or several times depending on how the contractor is advancing the project. Any of the above reevaluation methods could be appropriate depending on the circumstances. It also needs to be used for back part clearance (project certification) in Section E. A second form should be used if additional reevaluations are required.

4. **Design Plan Set and Date:** This section should always be filled out so that it is clear what level of design (scoping, FIR, or FOR) was used for the front part clearance in Section B. This is the plan set provided to specialist for resource clearances.
5. **RPEM Signature and Date:** Coordinate with your RPEM to determine who has authorization to sign within your region.
6. **FHWA Signature:** The checkboxes at the bottom of Section B (above the signature lines) should be checked if an FHWA signature at the bottom is not required.
7. **(In SAP) Revision Signature Section:** Check the box to open a new signature box for revisions.

Section C. Permits and additional requirements

1. **404 Permit:** This permit is needed if there will be any discharge of fill into a water of the U.S. Check the box if any 404 permit (individual, nationwide or non-notifying) is needed from the USACE. Add the date when that permit is authorized. For a NWP with no Preconstruction Notification, use the date the clearance is received from the resource specialist. If there is consultation with the USACE, but no permit is needed, do not check the box or add a date.
2. **401 Certification:** This water quality certification from the CDPHE or Tribal Authority/EPA is needed when a 404 permit is needed. If the 404 permit is a nationwide, the 401 certification is automatic - except where CDPHE is not the lead for 401 (e.g., Indian reservation, military base, etc.). If the certification is automatic, do not check the box or add a date. Check the box if 401 certification is not automatic and is needed, including if an individual 404 permit is needed. Add a date to the line when the nationwide permit/401 certification is received, or the individual permit/401 certification is received.
3. **402 Certification (Federal permit):** This is a National Pollutant Discharge Elimination System (NPDES) permit certification issued by EPA and is needed when there will be a discharge of pollutants to waters of the U.S. and when working on military bases, Indian lands, or some other federal lands. Check the box if any 402 NPDES Certification (includes all federal permits) is required. Add a date when that certification is received from the EPA or when the water quality sign-off is received from the regional water quality specialist. If there is consultation with the EPA, but no certification is needed, just add the date of that consultation.
4. **Const. Stormwater Permit (State permit):** This is a stormwater construction permit (SCP) issued by CDPHE. Projects with any construction activity that disturbs one or more acres, or is part of a larger common plan of development or sale require this permit (unless on federal lands). Check the box when the permit is required. Add a date when the water quality sign-off is received from the regional water quality specialist. Projects with no SCP will not have a checked box. If the permit is the responsibility of the contractor, note that in Section D of the 128 form and leave the date blank.
5. **Const. Dewatering Permit:** This is a Colorado Discharge Permit System (CDPS) permit issued by CDPHE for groundwater. If known during design, check the box for a project with any construction activity that requires dewatering (clean water) or remediation (contaminated water). Add a date when the water quality sign-off is received from the regional water quality specialist. If the permit is the responsibility of the contractor, note that in Section D of the 128 form and leave the date blank.
6. **Noxious Weed Management:** Check the box when a noxious weed management plan is needed for the project. Add a date when the plan document is final and complete. If the process varies, add a note in Section D of the 128 form explaining.



7. **SB40 Certification:** This certification is required from CPW when there are plans for construction in any SB40 jurisdictional stream or its bank or tributaries. Check the box if SB40 certification is required. Add a date when the certification process is complete, or clearance is received from the resource specialist. For a Programmatic SB40, use the date 15 days after the letter was sent to CPW unless CPW has requested more time or provides written concurrence during the 15-day review period. In these instances, use the date of CPW concurrence as the clearance date.
8. **Wetland Finding:** This is needed when permanent wetland impacts are greater than 500 sq. ft., or temporary + permanent wetland impacts are greater than 1000 sq. ft. Check the box if a wetland finding is required. Add a date when the finding is final and/or approved by the resource specialist.
9. **Structure Demolition Permit:** Check the box when the project will involve demolishing any structures (defined by CDPHE). However, prior to applying for and obtaining this permit, the structure must be inspected, and if necessary, abated for asbestos and lead based paint. Add a date when the permit is obtained from CDPHE, or when the resource specialist gives final clearance.
10. **Hazardous Materials - Phase II:** This is needed to obtain sound, scientifically valid data concerning actual property conditions to confirm findings from a Phase I or MESA, or to seek such data to inform evaluations, conclusions, and choices of action. Check the box if a Phase II is required. Add a date when the Phase II is complete and final.
11. **Permanent WQ:** Check the box when a project will install PWQ. Projects with no PWQ Control Measures (CMs) will not check the box; however, all projects require a PWQ clearance date. Add the date when the water quality sign-off is received from the regional water quality specialist. If the project is in an MS4 area, or if an EIS requires it, add a note stating that in Section D of the 128 form.
12. **SWMP:** Stormwater Management Plans (SWMPs) must be prepared for every construction project, regardless of the size of the disturbance area. Check the box for every construction project. Add a date when a project SWMP has been reviewed and cleared by an approved CDOT SWMP Reviewer.
13. **Other:** Use this box and date line for any other back-part permit or certification needed. Be sure to add details about this in Section D of the 128 form. (e.g., floodplain approvals, or a Section 408 permit.)

For Design Build projects, the left-hand column displays the permits that the contractor will be required to obtain, and which will be obtained by CDOT. When plans are sent to the CDOT Environmental Manager for review, a copy of the contractor-obtained permits should also be included. The Environmental PM should enter the date the permit was obtained on the appropriate line in the middle and right-hand columns.

Section D. Comments

Describe any permits obtained by the contractor after advertisement or other special conditions.

Section E. Environmental Project Certification

1. **Design Plan Set and Date:** The RPEM, or designee, must indicate the set of plans and specification (FIR, FOR, advertisement, award, etc.) that were reviewed prior to certification. The date of these plans must be provided. If the project is being certified for construction, then the plans being reviewed need to be marked as FINAL, AD or AWARD.
2. **Certification Type:**
 - a) **Advertisement** – Applicable for Design Build. By checking this box, you are releasing the project for advertisement, but not for construction. For Design Build, the project is certified for construction when the final plans are verified. This subsequent sign off will be documented in the middle column of this section.
 - b) **Advertisement & Construction** – Checked for a traditional design-bid-build project that is being released for advertisement and construction at the same time.
 - c) **Other** – An example of when this box gets checked is a CM/GC project.
3. **RPEM Signature & Date:** This is required for all projects being released for advertisement and/or construction. This signature is a certification that 1) all required clearance and permits have been obtained, 2) environmental mitigation is included in the referenced plans and specifications, and 3) the appropriate NEPA documentation is on file.



Parts A and B of Form 128 list environmental clearances to be completed as part of the Programmatic CatEx process. These environmental clearances include:

- ▶ **Air Quality** - Air quality is most relevant to projects within nonattainment or maintenance areas. See **Chapter 9, Section 9.2**, for additional information on conducting an air quality hot spot analysis.
- ▶ **Noise** -Type 1 projects require an examination of traffic noise. A Type 1 project generally involves construction of a roadway in a new location, physically alters the vertical or horizontal alignment of an existing roadway, or increases the number of through traffic lanes. Refer to **Chapter 9, Section 9.22**, for additional information on conducting a noise analysis.
- ▶ **Hazardous Materials** - Every project requires an ISA Checklist (Form 881), a MESA, or a Phase I Environmental Site Assessment. See **Section 9.25 of Chapter 9** for additional information on when an ISA, a MESA, or a Phase I is applicable depending on the size and type of project.
- ▶ **Threatened and Endangered Species and State Listed Species** - Follow the process outlined in **Section 9.9 of Chapter 9**. Otherwise, the Biological Resources Report serves as documentation for the presence or absence of threatened and endangered species in the project area.
- ▶ **Wetland Delineation (Survey)** - If wetlands are identified that would be impacted, a Wetland Delineation should be conducted for submittal to the USACE for a jurisdictional determination as outlined in **Section 9.6 of Chapter 9**.
- ▶ **Paleontology** - **Section 9.11 of Chapter 9** provides additional information on the process for the survey and documentation of the presence/absence of paleontological resources.
- ▶ **Archaeology** - **Section 9.10 of Chapter 9** provides additional information on the process for the survey and documentation of the presence/absence of archaeological resources.
- ▶ **History** - **Section 9.10 of Chapter 9** provides additional information on the process for the Section 106 review and survey of historic resources. CDOT's June 2014 Section 106 Programmatic Agreement includes a section about Section 106 consultation requirements for non-eligible, eligible, and listed bridges identified in previous statewide historic bridge inventories or newly documented as part of individual projects. Coordination with a CDOT Historian is required.
- ▶ **Section 4(f) Historic** - **Section 9.10 of Chapter 9** provides additional information on the process for the Section 106 review and survey of historic resources.
- ▶ **Section 4(f) Non-Historic** - Commonly affected Section 4(f) impacts include parks, trails, or historic properties. **Section 9.19 of Chapter 9** discusses the Section 4(f) process.



CDOT's June 2014 Section 106 Programmatic Agreement is found here:

<https://www.codot.gov/programs/environmental/archaeology-and-history/106-programmatic-agreement-1/view>



- ▶ **Section 6(f)** - **Section 9.20 of Chapter 9** provides additional guidance on Section 6(f), which relates to property purchased using Land and Water Conservation Funds.
- ▶ **Other** - Based on the preliminary determinations made by the RPEM, or designee, regarding the anticipated environmental clearances for a project, additional environmental clearances may be required. Additional environmental clearances could include Environmental Justice, Visual/Aesthetics, Socioeconomic regarding business access changes, etc. **Chapter 9** further discusses the methodologies and processes for these resources.

Part C of Form 128 identifies permits and additional requirements to be completed as part of the environmental project certification for the CatEx. The final plans and specifications identify and include permit mitigation measures. These permits and additional requirements include:

- ▶ **404 Permit (Clean Water Act)** - Impacts to streams and related jurisdictional wetlands or stream diversions of waters of the US could require a USACE Section 404 Nationwide Permit. An Individual Permit is required for projects with larger impacts to wetlands (typically greater than 0.5 acre in size). **Section 9.4 of Chapter 9** includes additional information on the permitting process. It should be noted that a Section 404 permit cannot be obtained until the USACE receives clearance on Section 106 from the SHPO (historic) AND Threatened and Endangered species consultation from the USFWS.
- ▶ **401 Certification (Clean Water Act)** - A Colorado Department of Public Health and Environment (CDPHE) Section 401 water quality certification is required if a Section 404 Individual Permit is required. This is generally the contractor's responsibility. **Section 9.5 of Chapter 9** includes additional information on the permitting process.
- ▶ **402 Certification Permits** - This permit is from the US Environmental Protection Agency if the project is located on Federal land; CDPHE if located on non-Federal land:
 - **Construction Stormwater Certification (Colorado Discharge Permit System)** - Projects that disturb one acre or greater require this construction stormwater permit from the CDPHE Water Quality Control Division. Additionally, a Stormwater Management Plan in CDOT's approved format must be prepared. **Section 9.4 of Chapter 9** includes additional information on the permitting process.
 - **Construction Dewatering or Remediation Certification** - If groundwater is encountered, a CDPHE Dewatering or Remediation permit may be required. **Section 9.4 of Chapter 9** includes additional information on the permitting process.
- ▶ **Noxious Weed Management** - Project-specific plans are developed prior to advertisement when noxious weeds and their management cannot be adequately identified, handled, or proscribed in the plans and specifications.



- ▶ **SB 40 Certification** - This Colorado Parks and Wildlife permit for impacts to stream banks, stream channels, and riparian areas is required. **Section 9.8 of Chapter 9** includes additional information on the certification process.
- ▶ **Wetland Finding** - For impacts to jurisdictional and non-jurisdictional wetlands and waters of the US, a Wetland Finding of No Practicable Alternative is required for approval by CDOT and FHWA if a certain threshold is reached. **Section 9.6 of Chapter 9** includes additional information on preparing a Wetland Finding.
- ▶ **Structure Demolition Permit** - Prior to demolition of bridges or other structures, a permit must be obtained from the Air Pollution Control Division for possible air quality impacts. The Notification of Demolition Form should be submitted to CDPHE at least 10 days before the demolition. This is the contractor's responsibility.
- ▶ **Hazardous Materials (Phase II)** - If recommended by the ISA, MESA, or Phase I Environmental Site Assessment, a Phase II subsurface soil and groundwater investigation is required for potential hazardous materials that present a liability issue during ROW acquisition, require management during construction to protect worker health and safety and the environment, or to properly dispose of the hazardous material. A Phase II may also occur on bridge structures or buildings to be demolished for things such as asbestos. **Section 9.25 of Chapter 9** provides additional information on when a Phase II is applicable depending on project size and type.
- ▶ **Permanent Water Quality (PWQ)** - According to CDOT's MS4 Permit, every project requires a PWQ clearance.
- ▶ **Stormwater Management Plan (SWMP)** - It must be documented that the SWMP has been approved and accepted by CDOT or the local agency Water Pollution Control Manager. SWMPs must be prepared for every CatEx regardless of the size of the disturbance area. Early acquisition projects, parcel disposals, and/or projects in which there is a change in ownership (e.g., Devolutions or Relinquishments) will not require a SWMP review.
- ▶ **Other** - Any other permits specific to the project may be required and documented in this location.

5.3.4 Programmatic CatEx Approval

CDOT may approve, on behalf of FHWA, those CatExs specifically listed in 23 CFR 771.117(c) and (d) that do not exceed the thresholds identified previously or in the CatEx Criteria List. CDOT will identify the applicable CatEx category from 23 CFR 771.117(c) or (d), ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No project-specific review or approval of the CatEx by FHWA is required. All programmatic CatExs require the review and approval of a CDOT RPEM or designee. CDOT may coordinate with FHWA depending on the project and type of action. The RPEM, or designee, may request or invite the FHWA Area Engineer to review a Programmatic CatEx,



CDOT Form 128 requires two signatures: one for the front part and one for the back part:

- Front part (Parts A and B) involves investigating if there are environmental areas of concern in regard to the project
- Front part (Parts A and B) is usually needed for ROW plan authorization and obligation of funds for ROW acquisition unless these areas do not have important environmental impacts and the ROW is being purchased with non-Federal funds
- Back part (Parts C and D) is needed for environmental permits and to ensure environmental commitments are in the final plans and specifications
- Back part (Parts C and D) is needed for project advertisement and obligation of funds for construction.



If the project is category C26, C27, or C28, exceeding any of the starred criteria would require that category D13 be used instead.



especially if unique circumstances surround the project. CDOT may not approve actions listed in 23 CFR 771.117 (c) or (d) that exceed any of the following listed thresholds in (Table 5-1).

5.3.5 Non-Programmatic CatEx Projects

Non-programmatic CatExs are actions that meet the criteria for a CatEx in the CEQ regulations (CEQ, 40 CFR § 1508.4) if they are appropriately analyzed, documented, and approved by FHWA and their regulations (FHWA, 23 CFR § 771.117). The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CatExs are satisfied and that significant environmental effects will not result from the action.

5.3.6 Non-Programmatic CatEx Criteria

To facilitate determining if a project action can proceed as a Programmatic or Non-Programmatic CatEx, CDOT has developed a list of questions on the CatEx Criteria List. If any of the questions on the CatEx Criteria List (Table 5-1) can be answered in the positive and cannot be resolved by amending the planned action, the project might not be approved as a CatEx and requires closer review by FHWA before determining the NEPA class of action.

5.3.7 Non-Programmatic CatEx Actions

Non-programmatic CatExs are actions that meet the definition of a CatEx in 23 CFR § 771.117 (a) and (b) but are not covered by a category in 23 CFR 771.117 (c) and (d). It is an action that does not individually or cumulatively have significant environmental impacts or have any yes answers in the CatEx Criteria List, but requires additional review by FHWA. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CatExs are satisfied and that significant environmental effects will not result from the action.

5.3.8 Non-Programmatic CatEx Process

As discussed in Section 2.4, CDOT staff, typically the CDOT RPEM, decide the appropriate class of NEPA documentation needed for a project in consultation with FHWA, although FHWA makes the final determination on class of action. These projects originate either through the CDOT planning process, which is further discussed in Chapter 3, or as a local agency project with CDOT oversight. The following sections discuss the processes for a CDOT Project Non-Programmatic CatEx and a Local Agency Project with CDOT Oversight Non-Programmatic CatEx. Conducting actions documented by Form 128 will require information input by CDOT into the CDOT SAP computer tracking system.



[CDOT's Mitigation Tracking Spreadsheet](#) is required to be completed for Non-Programmatic CatExs.



CDOT or Local Agency Project

The following is the step-by-step process for approval of a Non-Programmatic CatEx project:

1. **Internal Scoping** - The CDOT project manager or the local agency project manager (typically an engineer) coordinates with the CDOT Resident Engineer and the RPEM to prepare the scope of work. The CDOT project manager or local agency manager coordinates with all design and specialty disciplines, including Environmental, Right-of-Way, Utilities, Hydraulics, Traffic, Bridge Materials and Maintenance, to reach consensus on the project scope and to identify the multidisciplinary project development team. FHWA should be invited but can be briefed afterward if they are unable to attend. Environmental impact avoidance and minimization alternatives are discussed. The RPEM, or designee, makes preliminary determinations regarding the anticipated environmental clearances and permits, and associated responsibilities for each. The RPEM, or designee, schedules and coordinates with the CDOT EPB as necessary to initiate environmental clearance processes required on Part B of Form 128.
2. **Project Schedule** - The CDOT project manager or local agency representative drafts a preliminary detailed project schedule that is circulated to the multidisciplinary project development team for comments. The project schedule is adopted and shared with the multidisciplinary project development team. Examples of CDOT CatEx schedules can be found in the Environmental Section (Section 2) of CDOT's Project Development Manual (2013).
3. **Project Planning and Programming** - The CDOT project manager should verify that the project is included in the Statewide Transportation Plan (STP): Statewide Transportation Improvement Program (STIP). If the project is in an urban area, the CDOT project manager should verify that the project is included in the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP). If a project is not included in the Statewide Transportation Plan, STIP, RTP, and TIP, FHWA cannot approve the project. Note: Projects that do not meet the metropolitan planning organization regionally significant project criteria are not required to be in the STIP, RTP, or TIP.
4. **Environmental Clearances** - The RPEM, or designee, or local agency representative coordinates with the Region or EPB resource specialists for initiation of the anticipated environmental clearances required for the front part (Parts A and B) of Form 128. For local agency projects, this could be an environmental consulting team.
5. **FIR** - The project team prepares and provides the FIR engineering design plan set, which is approximately 30 percent design, for review and comment. Based on environmental clearances documentation, the RPEM, or designee, coordinates with the CDOT project manager and project team to further identify environmental impact avoidance and minimization opportunities. For local agency projects, coordination with the RPEM and CDOT project manager



occurs. The RPEM, or designee, communicates information requirements and anticipated timelines for necessary clearances and permits to the CDOT project manager.

6. **Form 128 (Parts A and B)** - The RPEM, or designee, approves Parts A and B of Form 128. Usually funds for ROW acquisition can be obligated and negotiations for ROW acquisition can proceed.
7. The RPEM, or designee, or local agency team prepares the Non Programmatic CatEx documentation (see **Section 5.3.2**) and submits it to FHWA, along with Form 128 and backup clearance documentation for approval.
8. **Front Part Approval** - The FHWA project representative approves the front part of Form 128 and the associated documentation and returns the originals to the RPEM for the project file. Upon completion of Parts A and B of Form 128, funds for final design and ROW acquisition can be obligated and negotiations for ROW acquisition can proceed.
9. **FOR** - Environmental impacts are definitively quantified for environmental permit applications and to ensure adequate representation in the project plans and specifications. Form 463 is completed.
10. **Form 128 (Part C)** - The RPEM, or designee, initiates coordination with the permitting agencies for Part C of Form 128. The RPEM, or designee, satisfies the requirements identified in Part C of Form 128. The local agency project manager coordinates with the RPEM, or designee, to verify that the requirements identified in Part C of Form 128 have been completed. Permit mitigation measures are added to the mitigation and monitoring commitments and are communicated to the CDOT project manager for inclusion in the final plans and specifications.
11. **Summary of Mitigation** - Based on environmental clearances documentation, the RPEM, or designee, updates the mitigation and monitoring commitments as necessary and provides this information to the CDOT project manager for inclusion in the FOR plans and specifications, which is approximately 90 percent design. CDOT's Mitigation Tracking Spreadsheet is recommended to provide a summary to the project team for inclusion in the CatEx, FOR plans, and specifications. **Chapter 9** includes additional information on mitigation and monitoring commitments.
12. **Final Check** - The final plans and specifications containing all mitigation measures are provided to the RPEM, or designee, ideally a minimum of three weeks before final clearance is required. The RPEM, or designee, verifies that the relevant information presented in the mitigation and monitoring commitments is included in the Final Check plan set. Changes made to the plans subsequent to the Final Check plan set are explained/summarized. The RPEM, or designee, reviews and compiles the clearances and permits.
13. **Environmental Project Certification** - The RPEM, or designee, approves the Environmental Project Certification in Part E of



Form 128. This signature means that all environmental commitments are included or being otherwise handled that were identified during the environmental clearance efforts.

14. **Final Forms** - The CDOT Resident Engineer (in some cases the CDOT project manager) signs and submits the final Form 463, and as applicable, the completed and signed Form 128, and the signed Form 1180 - PS&E by the CDOT Region Business Manager, to FHWA and OFMB. If changes have been made to the project design data, submit a revised Form 463 instead, along with the coinciding Form 128. OFMB then initiates the Form 418. Form 418 is initiated with FHWA whenever Federal-aid or oversight is involved for approval. Once FHWA approves Form 418, funds are obligated and authorized for the construction phase. The project is sent to advertisement.
15. **Pre-Construction** - A pre-construction meeting is held with all specialty disciplines to outline permit conditions and mitigation commitments, etc.
16. **Construction** - The Construction Project Engineer and the RPEM, or designee, begin mitigation monitoring during construction to ensure compliance with permit requirements and mitigation commitments. Note: Long-term monitoring of mitigation may be required to successfully complete mitigation obligations and permit requirements.
17. **Project Closeout** - The project is closed once construction is final and accepted by CDOT. CDOT will prepare a Form 950 for project closure. Project documentation and records should be maintained in accordance with CDOT Procedural Directive 51.1.

5.3.9 Non-Programmatic CatEx Documentation

Parts A and B of Form 128 document the necessary environmental clearances. These environmental clearances for Form 128 were previously discussed in **Section 5.3.3**.

There are several documentation options for a Non-Programmatic CatEx. The RPEM, or designee, and the FHWA Area Engineer should agree on and decide which option to use. Options include:

- ▶ CDOT's NEPA Template
- ▶ Technical reports
- ▶ Combination of Documented NEPA Template and EA style
- ▶ Other

Documentation that supports the CatEx determination becomes part of the administrative record and provides evidence that CDOT's decision was based on factual information and sound judgment. The level of documentation should be commensurate with the action's potential for adverse impacts and should support anticipated impacts and mitigation.



5.3.10 Non-Programmatic CatEx Approval

All Non-Programmatic CatExs require the review and approval of FHWA. The CDOT RPEM, or designee, will sign Part B of Form 128 after environmental clearances have been obtained. FHWA is sent Form 128 and the agreed-upon documentation for review and signature if the project is a Federal project. Once FHWA signs Part B of Form 128 and returns it to the CDOT RPEM for the project file, ROW negotiations can typically proceed. The RPEM will not sign Part E of Form 128 until all clearances and permits or their requirements for the project have been obtained or identified in the project plans and specifications to be handled by the contractor, FHWA has signed Part B, and mitigation or subsequent permit requirements are included in the plans and specifications.

5.4 Moving a Project Out of a CatEx Class of Action

As a project is progressing through the design stages, there may be situations where the potential impacts to environmental resources have greater severity than initially anticipated; in which case, approving the project as a CatEx may no longer be appropriate. The following items indicate when a project should move out of a CatEx class of action:

- ▶ Induces significant impacts to planned growth or land use for the area
- ▶ Requires relocation of significant numbers of people or businesses
- ▶ Has significant impacts on any natural, cultural, recreational, historic, or other resource
- ▶ Has significant air, noise, or water quality impacts
- ▶ Has significant impacts on travel patterns
- ▶ Has individual or cumulative significant environmental impacts
- ▶ Has a large amount of public controversy surrounding the project
- ▶ Has substantial controversy on environmental grounds
- ▶ Has significant impact on properties protected by Section 4(f)
- ▶ Shows inconsistencies with any Federal, state, or local law

It should be noted that there are no set thresholds for significant determinations because it takes both the context and intensity of the impact to decide significance of an impact. It is often the call of resource experts, regulatory agencies, or FHWA. It should also be noted that public involvement outreach, although not specifically required for a CatEx, can assist in keeping a project as a CatEx to avoid or minimize public controversy. If it appears adding a public involvement outreach component to a project would minimize or diminish public controversy, this might be a viable option for keeping the project as a CatEx instead of moving it to the next class.



5.5 References

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