



## PROTECT Discretionary Grant Program Notice Of Funding Opportunity Questions & Answers

The Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula and Discretionary Grant Programs were established under section 11123(b) of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58, November 15, 2021), also known as the “Bipartisan Infrastructure Law” (BIL), codified at 23 U.S.C. 171. The following Questions and Answers (Q&As) focus on the PROTECT Discretionary Grant Program and the Notice of Funding Opportunity (NOFO) posted on April 21, 2023. Unless otherwise noted, references to “PROTECT Program” or “PROTECT grants” refer to the PROTECT Discretionary Grant Program.

*Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.*

### **Eligible Applicants**

1. Does the list of eligible applicants include regional councils, water and sewer authorities that manage pump stations to remove water from roadways, or a public authority that installs and operates electric vehicle chargers?

**Answer:** Entities eligible to apply for a PROTECT discretionary grant are statutorily defined under 23 U.S.C. 176 and include a unit of local government or a special purpose district or public authority with a transportation function. If an application is submitted for a PROTECT discretionary grant from one of these entities, the entity would have to demonstrate that it meets the criteria for being a unit of local government or a special purpose district or public authority with a transportation function under 23 U.S.C. 176.

2. Are there conditions under which an eligible entity can apply to subaward the project and its management?

**Answer:** An eligible entity selected to receive a PROTECT grant will be the direct recipient of the grant funds. Whether the PROTECT grant funded project is carried out by the direct recipient, a subrecipient, or a contractor, the direct recipient remains responsible for ensuring all Federal requirements are satisfied. See 2 CFR 200.330 – 200.334 for information on subrecipient monitoring and management. Applicants should describe their proposed approach for implementing the project in their application.

3. Which Federal Land Management Agencies (FLMAs) can apply jointly with a State? And what State Agencies are acceptable lead applicants?



**Answer:** The Federal Land Management Agencies (FLMAs) include: the Bureau of Indian Affairs, U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and the Department of Defense, including the U.S. Army Corps of Engineers and Military Surface Deployment and Distribution Command (SDDC). For programs such as the PROTECT Discretionary Grant Program administered under title 23 of the United States Code, State means a State DOT. If an FLMA submits a joint application with an entity other than a State DOT then the application would be ineligible for consideration for a PROTECT discretionary grant. (23 U.S.C. 176(d)(2)(F)).

4. Are entities that are otherwise eligible under the PROTECT Discretionary Grant Program and located in a U.S. Territory eligible to apply for a grant?

**Answer:** Yes, otherwise eligible entities located in U.S. Territories are eligible to apply for Planning Grants, Resilience Improvement Grants, Community Resilience and Evacuation Routes Grants, and At-Risk Coastal Infrastructure Grants (23 U.S.C. 176(d)(2)). However, U.S. Territories are only eligible to apply for At-Risk Coastal Infrastructure Grants (23 U.S.C. 176(d)(4)(C)).

5. Are transit agencies eligible to apply directly for PROTECT Grant funding?

**Answer:** Yes, entities eligible to apply for a PROTECT grant include a public authority with a transportation function. A transit agency is an eligible entity if it is an operator of a public transportation facility or service eligible under chapter 53 of title 49, which means a facility or service that provides regular, continuing shared-ride surface transportation service that is open to the general public or open to a segment of the general public defined by age, disability, or low income. See 49 U.S.C. 5302(15).

6. Please explain the correct meaning of a special purpose district or public authority with a transportation function.

**Answer:** A “public authority” means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. (23 U.S.C. 101(a)(22)). If a special purpose district applies for a PROTECT grant it should include appropriate documentation that it was established in accordance with applicable State law.

### **Eligible Facility**

7. Are Federally owned and maintained roads, parking lots and lands eligible for funding under this NOFO?



**Answer:** Federally owned facilities may be eligible for funding under this NOFO if the application is submitted by an eligible applicant and the proposed project meets the eligibility requirements of one of the funding categories under Section C of the NOFO. FHWA will review project specific information provided in an application to make an eligibility determination.

8. Would mixed-use or recreational trails be eligible for a Resilience Grant?

**Answer:** A mixed-used (also referred to as a “shared-use path”) may be eligible if the proposed PROTECT discretionary grant project is a highway project eligible for assistance under title 23 of the United States Code and it must primarily serve a transportation (rather than a recreation) purpose. FHWA will review project specific information provided in an application to make an eligibility determination.

9. In identifying eligible highway projects, the law refers to “highway projects eligible for assistance under Title 23, U.S.C.” What type of highway projects does this include?

**Answer:** PROTECT funds can be used on public roads for eligible highway projects identified in 23 U.S.C. 176. An eligible highway facility can be determined by looking at the definition of “highway” in 23 U.S.C. 101(a)(11). Under this definition, a highway project is (A) located on a road, street, or parkway, (B) includes right-of-way, a bridge, a railroad-highway crossing, a tunnel, a drainage structure including public roads on dams, a sign, a guardrail, and a protective structure, in connection with a highway, or (C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel. Upon determining the facility is eligible for funding, then PROTECT-eligible activities may be identified for that facility. If title 23 funds could be spent (or have been spent) for an eligible project on the highway, then the highway is eligible for PROTECT funds for eligible activities under that program.

PROTECT grant funds may be used for an eligible purpose on a public road that is (1) a Federal-aid highway (as defined in 23 U.S.C. 101(a)(6)), or (2) other than a Federal-aid highway (including highways functionally classified as local roads or rural minor collectors). A “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel (23 U.S.C. 101(a)(23)).

10. Is a public road, that is not a public highway, located within a State-owned and managed forest an eligible facility?

**Answer:** Yes. PROTECT discretionary grant funds may be used for an eligible PROTECT project located on a public road that is (1) a Federal-aid highway (as defined in 23 U.S.C. 101(a)(6)), or (2) other than a Federal-aid highway (including highways



functionally classified as local roads or rural minor collectors). A “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel (23 U.S.C. 101(a)(23)).

11. Would an airport runway or an airport Automated People Mover electric train system be eligible for a PROTECT Grant?

**Answer:** Neither an airport runway nor an airport automated people mover electric train system would be an eligible project under the PROTECT Discretionary Grant Program. The purpose of this grant program is to plan for and strengthen surface transportation to be more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters. Generally, activities located within the boundary of an airport facility are not considered surface transportation. However, this does not preclude an eligible applicant from submitting an application for an eligible activity on an eligible facility located adjacent to an airport facility.

12. If the application includes a planning or resilience improvement project on a State-owned and maintained road, would we need a letter of support from them to submit with our grant application?

**Answer:** If an eligible applicant submits an application for an eligible activity on an eligible facility that it does not own or have jurisdiction over, documentation of consultation with the State DOT including the State DOT’s concurrence to carry out the proposed project on its facility must be submitted with the application. If the project is selected to receive a PROTECT grant is a construction project, the applicant must ensure that all Federal and State required approvals are met before FHWA will obligate funds to the project.

13. Do pedestrian walkways and bike lanes need to be connected to or adjoining a highway, or are pedestrian walkways, bike lines, and shared use paths along railway eligible on their own?

**Answer:** A shared use path may be eligible if the proposed project is a highway project eligible for assistance under title 23 of the United States Code and must primarily serve a transportation (rather than a recreation) purpose. FHWA will review project specific information provided in an application to make an eligibility determination.

### **Applications**

14. Can PROTECT grant funds be used to replace gas emission vehicles with electric bikes, scooters, and vehicles?



**Answer:** No. Replacing gas emission vehicles with electric bikes, scooters, and vehicles is not consistent with the purpose of the PROTECT Discretionary Grant Program which is to plan for and strengthen surface transportation to be more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters.

15. Can an eligible entity submit one application for a project that has more than one component with independent utility?

**Answer:** Yes. FHWA strongly encourages applicants to identify in their applications the project components that have independent utility and separately detail costs and requested PROTECT grant funding for those components. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses the selection criteria in Section E of the NOFO in addition to describing how the full proposal, of which the independent component is a part, addresses selection criteria. Each component must meet the National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of FHWA funds even if no other improvements are made in the area and will be ready for intended use upon completion of that component's construction. All project components that are presented together in a single application must demonstrate a relationship or connection between them.

16. Can project development planning be included with an application for a Resilience Improvements Grant? Or, would project planning have to be completed and submitted with the application for a Resilience Improvement Grant?

**Answer:** PROTECT Resilience Improvement grants may be used for pre-construction activities (i.e., planning, environmental review, final design) and construction of the same project. However, no more than 10% of a Resilience Improvement Grant may be used for project-specific planning activities. Applicants requesting a grant for pre-construction and construction activities for the same project should submit one application for the entire project.

### **Resilience Improvement Plans**

17. What does it mean for a project to be “included on an applicable Resilience Improvement Plan” in order to receive priority consideration and to be precluded from submitting a benefit cost analysis?

**Answer:** FHWA considers proposed grant projects to be "included on the applicable Resilience Improvement Plan" if the project is on a list within the Resilience



Improvement Plan or the project is identified in a vulnerable area on a map (and the project is clearly labeled/identified). The Resilience Improvement Plan should convey basic project details. Claiming that a project is part of a general strategy, initiative, or action in a Resilience Improvement Plan (such as raising subway station stairs or improving highway drainage) is not sufficient to be considered "included on the applicable Resilience Improvement Plan."

18. Does a Resilience Improvement Plan have to focus only on transportation or can it address other issues like housing, sheltering, the coastline, or conservation areas?

**Answer:** Housing, sheltering, or conservation areas may be addressed in PROTECT resilience planning as they relate to transportation resilience. The purpose of the PROTECT Discretionary Grant Program is to plan for and strengthen transportation to be more resilient to natural hazards. A systemic approach to resilience considers risks to the system across interdependent sectors.

Title 23 provides requirements for Resilience Improvement Plans. See 23 U.S.C. 176(e)(2); see also FHWA's July 29, 2022, PROTECT Formula Program Implementation Guidance at [https://www.fhwa.dot.gov/environment/sustainability/resilience/policy\\_and\\_guidance/protect\\_formula.pdf](https://www.fhwa.dot.gov/environment/sustainability/resilience/policy_and_guidance/protect_formula.pdf). Resilience Improvement Plans shall, as appropriate, "assess the resilience of other community assets, including buildings and housing, emergency management assets, and energy, water, and communication infrastructure" (23 U.S.C. 176(e)(2)(E)(iv)), and "include such other information as the State or metropolitan planning organization considers appropriate." (23 U.S.C. 176(e)(2)(E)(vi)). In addition, Resilience Improvement Plans may also describe "resilience improvement policies, including strategies, land-use and zoning changes, investments in natural infrastructure, or performance measures that will inform the transportation investment decisions of the State or [MPO] with the goal of increasing resilience." (23 U.S.C. 176(e)(2)(D)(iii)).

19. Can an existing plan or vulnerability assessment be considered a Resilience Improvement Plan?

**Answer:** Yes, an existing plan or a study, such as a vulnerability assessment, may be considered a Resilience Improvement Plan if it incorporates all the required elements of a Resilience Improvement Plan under 23 U.S.C. 176(e)(2).

20. Can Multi-Hazard Mitigation Plans serve as a Resilience Improvement Plan?

**Answer:** Yes, a Multi-Hazard Mitigation Plan could serve as a Resilience Improvement Plan if it meets all requirements of a Resilience Improvement Plan in 23 U.S.C. 176(e)(2). However, please note that most State Hazard Mitigation Plans will likely not cover a sufficient time period to inform long-range transportation planning and may not cover transportation planning activities or investments in specific detail such that it would meet all the required elements of a Resilience Improvement Plan.



21. Can a project receive the 3% reduction in non-Federal share without receiving the 7% reduction in non-Federal share?

**Answer:** Yes. A project may be eligible for a 7% reduction separately from, or in addition to, a 3% reduction in the non-Federal share. The non-Federal share of a PROTECT Discretionary Grant Program project may be reduced by 3% if an applicable Resilience Improvement Plan developed by a State or a Metropolitan Planning Organization (MPO) is incorporated into the State DOT's Long Range Transportation Plan (LRSTP) or an MPO's Transportation Plan. (23 U.S.C. 176(e)(1)(B)(ii)). In order to obtain a 7% reduction in non-Federal match, a Resilience Improvement Plan must be developed in accordance with the requirements under 23 U.S.C. 176 and the project for which PROTECT discretionary grant funds are requested is prioritized on that Plan. (23 U.S.C. 176(e)(1)(B)(i)). For example, a Resilience Improvement Plan without a prioritized project list would not be eligible for the 7% reduction but could still apply the smaller 3% reduction if that plan is incorporated into the LRSTP.

22. Is there a template for the contents of a Resilience Improvement Plan?

**Answer:** No. Currently there is no published template or table of contents for the contents of Resilience Improvement Plans. Requirements for Resilience Improvement Plans are found in 23 U.S.C. 176(e)(2) and discussed further on pages 24-26 of FHWA's PROTECT Formula Program Implementation Guidance available at [https://www.fhwa.dot.gov/environment/sustainability/resilience/policy\\_and\\_guidance/protect\\_formula.pdf](https://www.fhwa.dot.gov/environment/sustainability/resilience/policy_and_guidance/protect_formula.pdf).

23. What does it mean for a project to be "prioritized" on the Resilience Improvement Plan?

**Answer:** States and MPOs may prioritize projects based on factors of their choosing such as asset vulnerability, criticality, or other relevant factors. The plan should clearly identify the list of prioritized projects and include basic project details such as asset location, name, and project scope. States and MPOs should coordinate with the owners and operators of multiple modes as appropriate to identify priority projects.

24. What does it mean for the Resilience Improvement Plan to be incorporated in an MTP or LRSTP?

**Answer:** Incorporated means added to either a State DOT's or MPO's planning document. There are several options for incorporating a Resilience Improvement Plan into the metropolitan transportation plan (MTP) or long-range state transportation plan (LRSTP) to obtain the 3% reduction in non-Federal share. States and MPOs are encouraged to develop their Resilience Improvement Plans as an integral part of their transportation planning processes. See 23 U.S.C. 134 and 135; 23 CFR 450.206(a)(9) and



450.306(b)(9). Incorporating a Resilience Improvement Plan into an MTP or LRSTP could be accomplished by several methods, including:

- The Resilience Improvement Plan may be incorporated administratively into a LRSTP or MTP by reference; or
- The Resilience Improvement Plan may be incorporated directly into a LRSTP or MTP by inclusion in an existing chapter, a new chapter or in an appendix to the document.

25. Does a project need to be included in a Resilience Improvement Plan by the August 18, 2023, application deadline to qualify for the reduction in non-Federal share match?

**Answer:** Yes. For applicants requesting a reduction in Federal share under 23 U.S.C. 176(e)(1), the applicant will need to submit a Resilience Improvement Plan in order to demonstrate that the relevant Resilience Improvement Plan meets the applicable requirements of 23 U.S.C. 176(e) for the requested reduction in Federal share, or for an included project to receive priority for Resilience Improvement Grants without a separate demonstration that projected benefits of the project would exceed costs. Determination of whether the requirements have been met and whether the project is eligible for a reduction in Federal share will be made during the grant review process.

26. Is a County able to develop a Resilience Improvement Plan as part of a Planning Grant?

**Answer:** No, counties are not eligible to submit Planning Grant applications to develop Resilience Improvement Plans in accordance with 23 U.S.C. 176(e)(2). However, counties may submit applications for other resilience planning grant activities identified in Section C of the NOFO.

27. Do projects included in a State DOT or Metropolitan Planning Organization Resilience Improvement Plan receive preference during the awards process?

**Answer:** Yes, FHWA is required by the law that established the PROTECT Discretionary Grant Program to prioritize an application for a Resilience Improvement grant for selection consideration if one of two conditions are met. The first condition is if the eligible activity proposed to be carried out with grant funds is included in the applicable resilience improvement plan developed pursuant to the requirements under 23 U.S.C. 176(e)(2). The second condition is if a determination is made that the eligible activity exceeds the costs of the activity and there is a need to address the vulnerabilities of surface transportation assets of the eligible entity with a high risk of, and impacts associated with, failure due to the impacts of weather events, natural disasters, or changing conditions, such as sea level rise, wildfires, and increased flood risk.

## **Federal Share and Match Requirements**





28. In general, for Resilience Improvement Grants, there is an 80% Federal and 20% non-Federal match requirement. There is also a 10% limitation on the amount of PROTECT grant funds that may be used for eligible project development (pre-construction) activities associated with a resilience improvement project. Does the 20% match requirement apply to the overall total project (pre-construction plus construction) cost or is a 20% match required for pre-construction costs and then another 20% match for construction costs?

**Answer:** The 20% non-Federal match requirement applies to the total project cost. A grant recipient may use up to 10% of grant funds to fully fund eligible pre-construction activities as long as 20% of eligible construction costs are funded with non-Federal funds.

### **Tribal Set-Aside**

29. If an Indian Tribe is a joint applicant on an application where another entity is the lead, would the project qualify for 100% Federal share?

**Answer:** No. For consideration whether the Federal share of an eligible Resilience Improvement project, Community Resilience and Evacuation Route project, or At-Risk Coastal Infrastructure project may be up to 100%, an Indian Tribe (as defined under 23 U.S.C. 207(m)(1)) must be the lead applicant *and* must also be the recipient of the PROTECT grant funds.

### **Benefit Cost Analysis (BCA)**

30. When does a project need to be included in a Resilience Improvement Plan to receive priority consideration without submittal of a BCA?

**Answer:** The project should be on the applicable Resilience Improvement Plan prior to application submission in order to waive the need for a BCA to receive priority for Resilience Improvement Grants. FHWA considers proposed grant projects to be "on the applicable Resilience Improvement Plan" if the project is on a list within the Resilience Improvement Plan or the project is identified in a vulnerable area on a map (and the project is clearly labeled/identified). The Resilience Improvement Plan should convey basic project details.

31. What are appropriate support data sources for Indian Tribes in place of the BCA?

**Answer:** Information on the data necessary for a benefit cost analysis are available in the USDOT Benefit-Cost Analysis Guidance for Discretionary Grant Programs at <https://www.transportation.gov/mission/office-secretary/office-policy/transportation-policy/benefit-cost-analysis-guidance>. BCA support data sources could include data



sources on Average Annual Daily Traffic (available through the Highway Performance Monitoring System at <https://www.fhwa.dot.gov/policyinformation/hpms/shapefiles.cfm>), Crash Modification Factors (available through the Crash modification Factors Clearinghouse at <https://www.cmfclearinghouse.org/>), Fatal Crash Data by Roadway (available through the Fatality Analysis Reporting System at <https://cdan.dot.gov/query>), Bridge Condition (available through InfoBridge at <https://infobridge.fhwa.dot.gov/Data>), Population Changes (available through the Census at <https://www.census.gov/quickfacts/fact/table/US/PST045222>).

32. Are the additional co-benefits of nature-based components (e.g., habitat, recreational and educational opportunities) allowed to be included in the BCA?

**Answer:** The USDOT BCA guidance does not provide a general methodology for calculating non-transportation benefits of nature-based transportation solutions, but it does provide some information regarding wildlife impacts and stormwater runoff which some nature-based solutions may provide. In cases where a nature-based solutions may provide additional benefits for which there is not a standard methodology outlined in the USDOT BCA guidance, please provide a detailed qualitative description of the baseline conditions and the impacts due to the project. Nonmarket benefits will be considered, but it is important that the impacts be tied directly to the project itself. It is also important that the applicant provide a qualitative description of the baseline and the impact due to the project. A quantitative analysis may be considered but the methodology should be justified using a published methodology or approach.

### **Eligible Project Type**

33. Would a project to realign a road and add a few inches of height to bring it out of the floodplain be eligible for a PROTECT grant?

**Answer:** Yes. The relocation of a road in a base floodplain to higher ground above projected flood elevation levels is an eligible Resilience Improvement activity. The application should include the best available scientific understanding of climate change risks, impacts, and vulnerabilities pertaining to the location of the current road and the proposed area of realignment. Note that if any of part of the project is proposed to be carried out, in whole or in part, within a base floodplain, under 23 U.S.C. 176(d)(5)(B)(ii) the application must include the following:

1. Identification of the floodplain in which the project is to be located and disclosure of that information to the Secretary in the application; and
2. Indication, whether, if selected, the eligible entity will implement one or more components of the risk mitigation plan under section 322 of the Robert T. Stafford



Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5165) with respect to the area.

34. Is the expansion or construction of a roadway to improve traffic during an emergency evacuation an eligible activity?

**Answer:** Yes, if two conditions are met:

(1) The evacuation route must be designated by the eligible entity to apply for a PROTECT discretionary grant with jurisdiction over the area in which the route is located. Under the PROTECT Discretionary Grant Program, “evacuation route” means a transportation route or system that is owned, operated, or maintained by a Federal, State, Tribal, or local government used to transport the public away from emergency events or to transport emergency responders and recovery resources, and is designated by the eligible entity with jurisdiction over the area (23 U.S.C. 176(a)(2)); **and**

(2) In the application for a Community Resilience and Evacuation Route Grant, the eligible entity must notify the Secretary that the existing evacuation route is not sufficient to adequately facilitate evacuations including the transportation of emergency responders and recovery resources. The notification should be data driven and evidence based, supporting the need for additional evacuation facilities, and aligning with the purpose and definition of evacuation routes. (23 U.S.C. 176(d)(4)(B)(ii)(II)).

35. Would purchase of Intelligent Transportation Systems focused on freight mobility to reduce congestion be eligible for a PROTECT Grant?

**Answer:** No, if the sole purpose of a project is to reduce congestion and freight delays, it would not be an eligible activity under the PROTECT Discretionary Grant Program. The purpose of the PROTECT program is to plan for and strengthen surface transportation to be more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters. Each of the four PROTECT discretionary grant funding categories have specific project eligibilities to achieve this purpose. If an application is submitted for a PROTECT discretionary grant, the applicant would have to demonstrate how use of the PROTECT discretionary grant funds for an Intelligent Transportation System focused on freight mobility to reduce congestion is eligible under one of the funding categories and meets the purpose of the PROTECT Discretionary Grant Program.

36. Would a project to purchase and install a flood warning system with automated gates to close a roadway or underpass that is subject to flooding be eligible for PROTECT Grant funds?

**Answer:** It depends. Flood warning systems with automated gates may be eligible activities under the Community Resilience and Evacuation Route Grants. PROTECT discretionary grants support the incremental cost of making surface transportation assets



more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters. A flood warning system with automated gates could be eligible to the extent the system makes the asset more resilient. However, to the extent that the primary purpose of a project is to address resilience, it could be eligible to be fully funded (up to the applicable Federal share). Other project components that are not inherently resilience-focused should generally be funded from other sources, including other Title 23 programs. FHWA will review project specific information provided in an application to make an eligibility determination. Please see Community Resilience and Evacuation Route Grants Section C for eligible activities.

37. Is the construction of microgrids (small independent power systems that use sustainable energy to power electric transit vehicles and would also service as community back-up power and would improve resiliency by reducing reliance on the electric grid for power during extreme weather, power outages, etc.) eligible under the Resilience Improvement Grant or Community Resilience and Evacuation Route Grant categories?

**Answer:** It depends. The purpose of the PROTECT Discretionary Grant Program is to plan for and strengthen surface transportation to be more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters. Each of the four PROTECT discretionary grant funding categories have specific project eligibilities to achieve this purpose. If an application is submitted for a PROTECT discretionary grant, the applicant would have to demonstrate (1) the transit microgrids are eligible as a public transportation facility or service eligible for assistance under chapter 53 of title 49, U.S.C., and (2) the proposed project is eligible under one of the funding categories described in Section C of the NOFO.

38. Would PROTECT Grant funding only support 40% of a project's construction cost?

**Answer:** An eligible entity that receives a Resilience Grant may not use more than 40% of the amount of the grant for the construction of new capacity. (23 U.S.C. 176(d)(5)(G)(i)(I)). The balance of the grant funds could be used for other eligible activities under the applicable grant for a Resilience Improvement, Community Resilience and Evacuation Route, or At-Risk Coastal Infrastructure project.

39. What is considered an existing evacuation route under the Protect Discretionary Grant Program? Would a roadway have to be designated as an Evacuation Route to be eligible?

**Answer:** An existing evacuation route means a route that is in operation and open to public travel. To be eligible to receive a PROTECT Community Resilience and Evacuation Route Grant, the route must have been designated as an evacuation route by the eligible entity with jurisdiction over the area in which the route is located.

40. For At-Risk Coastal Infrastructure Grants, would projects along the Intracoastal Waterway be eligible?



**Answer:** Yes, the Intracoastal Waterway is a tidal area connected to the Atlantic Ocean and projects along the waterway may be eligible for At-Risk Coastal Infrastructure grants 176(d)(4)(C)(i)(I). FHWA would need to review project specific information provided in an application to make an eligibility determination.

41. Can you apply for design and engineering funding for a specific roadway project within the Planning Grant category?

**Answer:** Yes, project planning activities are eligible under the PROTECT Planning Grants. This may include the costs of eligible project development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, other preconstruction activities, and other activities consistent with the purpose of a planning grant under 23 U.S.C. 176(d)(3). (23 U.S.C. 176(d)(5)(F)(ii)).

42. Could a project be selected for an award if it is not within 10 months of construction or does not meet any of the priority selection considerations?

**Answer:** It depends. As described in Section E.2 of the NOFO, FHWA will apply the priority considerations to select among projects with similar merit. An application may be determined eligible to proceed to the technical review and may be rated highly recommended or recommended; however, if the proposed project does not meet one or more of the priority considerations it will not be as competitive as other applications that are more responsive to the priority selection considerations. Failing to meet the construction readiness priority consideration while meeting one or more of the other priority considerations would not make an application less competitive.

### **Rural Set-Aside**

43. PROTECT discretionary grants have a 25% rural set-aside, with rural being anything outside of an urban area with a population greater than 200,000. Does the PROTECT program use the Census urban and rural boundaries or does this program use the FHWA adjusted urban boundaries to make that determination?

**Answer:** FHWA is using the Census-defined urban areas. To determine whether a project is within a rural area, an eligible entity may use the U.S. Census Bureau population data or FHWA's urban boundaries maps MPO and 2020 Census Urban Areas - FHWA HEPGIS Maps (dot.gov) available at <https://hepgis.fhwa.dot.gov/fhwagis/ViewMap.aspx?map=MPO+Boundaries%7CMPO+and+2020+Census+Urban+Areas>, which were developed to correlate with the definition of urbanized area under title 23 of the United States Code.



### Incremental Cost

44. Is PROTECT Grant funding only available for those project elements that enhance resiliency?

**Answer:** Yes, PROTECT Program funds can only be used for activities that are primarily for the purpose of resilience or are inherently resilience-related. The Program focuses on making surface transportation more resilient through support of planning activities and transportation projects. The focus must be on supporting the incremental cost of making assets more resilient to natural hazards, including climate change, sea level rise, flooding, extreme weather events, and other natural disasters. Other project components that are not inherently resilience-focused should generally be funded from other sources, including other Title 23 programs; however, specific eligibility determinations will be made based on the application. Please see the NOFO at Section C for eligible activities and Section E for criteria.

45. Could you please explain the “incremental” nature of the funding? How could a project be fully funded with PROTECT grant funds rather than only incremental funding?

**Answer:** Under the PROTECT Discretionary Grant Program, “incremental” represents the cost of eligible resilience activities included in a project when the project is not exclusively focused on resilience. For example, State Y estimates that reconstruction of a highway would cost \$200 million before considering future climate change, and that elevating the reconstructed highway and associated bicycle and pedestrian facilities to withstand higher inland flooding resulting from expected changes in precipitation would add an additional \$75 million. PROTECT discretionary grant funds should only support the \$75 million roadway elevating portions (the incremental resilience activity) of the project. However, if the primary purpose of a project is to address resilience, it may be eligible to receive the full amount requested for a Resilience Grant, up to the applicable Federal share. FHWA will review project specific information provided in an application to make an eligibility determination.

46. If you are only replacing a structure (for example, a bridge) to mitigate repetitive flooding, can the entire cost of the project be considered for grant funds not just the incremental cost of raising the bridge higher versus replacing at the same elevation?

**Answer:** Yes, if the primary purpose of the project is to address resilience, the project could be fully funded with PROTECT funds (up to the applicable Federal share).

### Criteria

47. How should an applicant notify the USDOT Secretary of insufficient evacuation routes?



**Answer:** In an application for a Community Resilience and Evacuation Route Grant, the applicant should clearly state that, through the application, they are notifying the Secretary that the existing evacuation route is not sufficient to adequately facilitate evacuations including the transportation of emergency responders and recovery resources. Data-driven and scientifically based evidence should be included with the application to explain why the existing route is not sufficiently adequate and how capacity expansion of the evacuation route will swiftly and safely accommodate evacuations.

### **Funding**

48. Is there a projected timeline for award of funds or maximum allowable timeframe for spending down planning funds that could be shared?

**Answer:** The announcement of projects selected to receive an FY 2022-2023 PROTECT discretionary grant is anticipated to be made in early 2024. Selected projects will be funded with either FY 2022 or FY 2023 funds. Awards funded with FY 2022 funds must be obligated, via a signed grant agreement between FHWA and the recipient, by September 30, 2025. Awards funded with FY 2023 funds must be obligated via a signed grant agreement by September 30, 2026. Funding expenditure deadlines for FY 2022 and 2023 funds will be documented in the grant agreement depending on the fund source.

### **Other**

49. Are letters of support needed from entities or stakeholders that do not have a substantive role in the project?

**Answer:** No, letters of support for a project are not required from entities and stakeholders that do not have a substantive role in the delivery of the project. However, applicants should describe in detail all the other public and private parties who are involved in delivering the project, including a specific description of the role of each entity in delivering the project.

If an application has joint applicants, the application should identify the eligible lead applicant who will be the recipient of the grant funds if the project is selected for an award. The application by joint applicants should also include a description of the roles and responsibilities of each applicant and should be signed by, or include a letter of support from, each applicant.