

**PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, NEVADA DIVISION
AND
THE NEVADA DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL
EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

This Programmatic Agreement (hereinafter “Agreement”), made and entered into this 15th day of February 2022, by and between the Federal Highway Administration, United States Department of Transportation (hereinafter “FHWA”) and the State of Nevada, acting by and through its Department of Transportation (hereinafter “NDOT”) hereby provides as follows:

WITNESSETH:

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

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

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

Whereas, FHWA’s NEPA implementing procedures (23 CFR part 771.117) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

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

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

Whereas, FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014;

Now, therefore, FHWA and NDOT enter into this Programmatic Agreement (“Agreement”) for the processing of categorical exclusions.

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration (FHWA) and the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION (NDOT).

II. PURPOSE

The purpose of this Agreement is to authorize NDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR 771.117 (current regulations at time of this Agreement in Appendix A). This Agreement also authorizes NDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117, but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an EA or an EIS.

III. AUTHORITIES

This Agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 - 4370
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. 40 CFR parts 1500 - 1508
- D. DOT Order 5610.1C
- E. 23 CFR 771.117
- F. Fixing America’s Surface Transportation (FAST) Act, Pub. L 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)

IV. RESPONSIBILITIES

A. NDOT is responsible for:

- 1. Ensuring the following process is completed for each project that qualifies for a CE:
 - a. For all current and future actions qualifying for a CE as established in 23 CFR 771.117(c) and (d) [Appendix A, current regulations at time of this Agreement], that do not exceed the thresholds in Section IV(A)(1)(b) below, NDOT may make a Programmatic CE (PCE) approval on behalf of FHWA. Prior to the PCE approval, NDOT will identify the applicable listed CE, 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 separate review or approval of the Programmatic CE (PCE) by FHWA is required.

For these actions NDOT shall record the following in the project file:

- (1) Project description;
- (2) identification of the specific example activity from the list in 23 CFR 771.117 (c) or (d);
- (3) consideration of the project setting and any project impacts as reflected in the CE checklist and a project map;
- (4) the outcome of any environmental studies conducted to consider unusual circumstances per 23 CFR 771 117 (b);
- (5) document that the CE classification is proper and that no unusual circumstances require the preparation of an EA or EIS; and,
- (6) any document prepared to assist in making this decision or any document prepared in order to be in compliance with any other environmental laws or regulations.

NDOT shall make all PCE project files, including all documentation described above, available to FHWA for inspection at any time. As requested, NDOT shall make available electronic copies to FHWA of all PCE projects issued.

- b. Actions currently listed in 23 CFR 771.117, or added to the regulations after the execution of this Agreement, that exceed the following thresholds may not be approved by NDOT. NDOT may certify to FHWA that the action qualifies for a FHWA approved CE (FACE). An action requires FHWA review and approval based on the NDOT certification, if the action:
 - i. Involves acquisitions of more than a minor amount of right-of-way. Acquisition of right-of-way shall be examined in the context and intensity of the project and setting. It may be that amount right-of-way that may produce an adverse effect or other non-desirable result in comparison to the project. When the potential circumstances may include this possibility, consultation with FHWA will be initiated;
 - ii. Involves acquisitions that result in any residential or non-residential displacements;
 - iii. Results in capacity expansion of a roadway by the addition of through lanes of more than 0.5 mile in one direction;
 - iv. Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions. Major traffic disruption is defined as:

- a) a lack to provide access, if necessary;
 - b) adversely affecting through-traffic dependent businesses;
 - c) interfering with local special events;
 - d) substantially changing the environmental consequences of the action;
 - or,
 - e) creates a substantial controversy.
- v. Involve changes in access control that adversely affect traffic patterns. Changes that could adversely affect traffic patterns may include installing medians or C-curb. Changes that would not affect traffic patterns include actions such as breaks in access control for maintenance or emergency access or minimal alterations or adjustments to driveways;
- vi. Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act;
- vii. Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with an FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges;
- viii. Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;
- ix. Requires a U.S. Army Corps of Engineers Section 404 permit other than a Nationwide Permit or a General Permit;
- x. Requires a U.S. Coast Guard bridge permit;
- xi. 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;
- xii. Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture;
- xiii. Is defined as a “Type I project” per 23 CFR 772.5;

- xiv. May adversely affect federally listed or candidate species, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act; excluding Mojave desert tortoise which is addressed in the 2022 USFWS Programmatic Biological Opinion and its appended actions);
 - xv. Involves properties with recognized environmental conditions (REC), previous land uses with potential for such, or potential for such to remain in the right-of-way. A REC is the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not REC. (REC is defined in ASTM E1527);
 - xvi. Has an adverse effect on minority and/or low-income populations;
 - xvii. Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project [23 U.S.C. 108(d)];
 - xviii. Does not conform to the State Implementation Plan (SIP) which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas;
 - xix. Is not included in or is inconsistent with the statewide transportation improvement program (STIP), and in applicable urbanized areas, the transportation improvement program (TIP).
- c. NDOT may not approve actions not specifically listed as CEs in 23 CFR 771.117, but meeting the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, NDOT shall certify the action will not result in significant environmental impacts. If NDOT concludes the action qualifies for a CE and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS, then NDOT shall submit this certification to FHWA for concurrence that the project qualifies for a CE and to grant NDOT authority to process the CE according to this Agreement.
- i. If requested by the Division Office, NDOT shall provide a copy of the CE documentation prepared for the action(s) in accordance with Section V of this Agreement.
 - ii. If any project requires a Section 4(f) *de minimis* determination or programmatic evaluation, NDOT shall submit the 4(f) documentation for FHWA determination and approval.

- iii. NDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from FHWA once NDOT has classified the action as a CE in accordance with 23 CFR 771.113(a)(1)(i). A CE Classification Memo (Appendix B) should be prepared by qualified NDOT staff and placed in the project file.
 - iv. The FHWA Nevada Division Office's objection to a NDOT certification may not constitute a disapproval of the action, but signifies that FHWA will need to engage in project-specific review to verify that the certification is adequate, which may include consultation with other agencies.
 2. Providing a certified action, pursuant to this Agreement to FHWA and allow FHWA 14 calendar days to either agree that the certification is a basis for FHWA's approval of a FACE for the action, or to object to the certification. The action will contain the following information:
 - a. NDOT project number and a project name; including the route number or facility name where the project will occur
 - b. Identify the CE action listed in the regulation, or if the action is not listed in 23 CFR 771.117, identify the process as "CE unlisted."
 - c. Consultations or technical analyses that are pending (if applicable); and
 - d. Whether the project included a 4(f) *de minimis* or programmatic evaluation.
 3. Consulting with FHWA for actions that involve unusual circumstances (23 CFR §771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. NDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
 4. Meeting applicable documentation requirements in Section V for State PCE approvals on FHWA's behalf and State CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
 5. Relying only upon employees directly employed by the State to make PCE approvals or certifications submitted to FHWA under this Agreement. NDOT may not delegate its responsibility for PCE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).

B. FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to NDOT, as requested.

2. Providing timely input and review of certified actions. FHWA will base its approval of FACE actions on the project documentation and certifications prepared by NDOT under this Agreement. FHWA shall review and approve (or object to) a certification or FACE prepared by the NDOT within 14 calendar days from the date of electronic submittal by NDOT to the FHWA.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF NDOT PCE APPROVALS AND CERTIFICATIONS

- A. For State PCE approvals and State CE certifications to FHWA for approval, NDOT shall insure that it fulfills the following responsibilities for documenting the project-specific determinations made:
 1. For actions listed in 23 CFR 771.117 (c), NDOT should identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a NDOT signature evidencing approval. These approvals can be documented using the Combined PCE Memo and Long Checklist (Appendix C). NDOT is to ensure documentation of review by discipline specialists is in the project file.

In addition, NDOT can use the Combined PCE Memo and Short Checklist (Appendix D) for projects classified as (c) 1, 4, 5, 11,16, 17, 19 and 20, if they desire.
 2. For certifications to FHWA for a FACE, or for certifications to process unlisted actions as a PCE, NDOT will provide a cover letter making the certification, the FACE Checklist (Appendix E), and all supporting documentation.
- B. NDOT should maintain a project record for PCE approvals it makes on FHWA's behalf and each FACE submitted to FHWA for approval. This record should include at a minimum:
 1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;
 2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy;
 3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
 4. The name and title of the document approver and the date of NDOT's approval or FHWA's final approval; and

5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).

C. Any electronic or paper project records maintained by NDOT should be provided to FHWA at their request. NDOT should retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve NDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. NEPA APPROVALS AND RE-EVALUATIONS

A. NDOT's PCE approvals and CE certifications submitted to FHWA for approval may only be made by as identified below:

1. Approval of 23 CFR 771.117 (c) and (d) PCEs is delegated to the NDOT Environmental Division Chief or designated representative.
2. Approval of certifications of a FACE or certifications to process unlisted actions as a PCE, is delegated to NDOT Environmental Division Chief or designated representative.
3. Designated individuals are limited to the Environmental Services Program Chief, Environmental Services Manager, Environmental Engineering Manager, or NEPA Coordinator-Social Economic Specialist in accordance with Section VII.4 of this Agreement.

B. In accordance with 23 CFR 771.129, NDOT shall re-evaluate its determinations and certifications for projects, consult with FHWA, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. NDOT Quality Control & Quality Assurance

NDOT agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE certifications to FHWA for approval, are made in accordance with applicable law and this Agreement.

1. FHWA and NDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. Within each federal fiscal year two audits of NDOT processed PCEs will be conducted by the NDOT Environmental Chief.

3. Annual training will be provided for NDOT Environmental staff regarding the requirements of this Agreement and their administrative obligations.
4. NDOT will request concurrence by FHWA of those individuals the NDOT Environmental Division Chief designates for approval authority under this Agreement.
5. Unless precluded by staff vacancies PCE approvals and CE certifications are to be prepared and subsequently approved by separate qualified NDOT Environmental staff.

B. NDOT Performance Monitoring and Reporting.

1. FHWA and NDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. NDOT agrees to electronically submit to FHWA an annual report of the previous federal fiscal year summarizing its performance under this Agreement. The report will provide a complete list of PCEs issued by NDOT, CEs approved by FHWA, NDOT internal audit results, recommendations for improvements, and what measures NDOT is taking to implement those improvements. The report will include a description of actions taken by NDOT as part of its quality control efforts under Section VII(A).

C. FHWA Oversight and Monitoring

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of NDOT, as well as NDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of NDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of NDOT staff and consultants, and the effectiveness of NDOT's administration of its internal CE approvals.
2. FHWA will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. NDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. NDOT should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by NDOT shall be considered at the time this Agreement is considered for renewal.
3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to NDOT's performance under this Agreement. FHWA may require NDOT to perform such other quality assurance activities, including other types of monitoring, as may be

reasonably required to ensure compliance with applicable Federal laws and regulations.

- 4. NDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

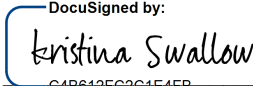
VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and NDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

IX. TERM, RENEWAL, AND TERMINATION

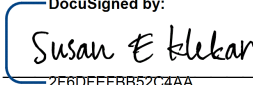
- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. NDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if NDOT requests renewal and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

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

DocuSigned by:

G4B612FG2C1E4FB...
 Kristina Swallow, P.E.
 Director, Nevada Department of Transportation

02/11/2022

 Date

DocuSigned by:

2F6DFEFBB52C4AA...
 Susan E. Klekar
 Division Administrator, Nevada Division
 Federal Highway Administration

02/15/2022

 Date

Appendix A: 23 CFR 771.117 Regulations as of January 2022

Appendix B: CE Classification Memo

Appendix C: Combined PCE Memo and Long Checklist

Appendix D: Combined PCE Memo and Short Checklist

Appendix E: FHWA Approved CE (FACE) Checklist

(19)

(20)

(21)

APPENDIX A

(22) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(23) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities, and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(24) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

(d) Any action qualifying as a CE under § 771.117 or § 771.118 may be approved by FRA when the applicable requirements of those sections have been met. FRA may consult with FHWA or FTA to ensure the CE is applicable to the proposed action.

§ 771.117 FHWA categorical exclusions.

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FHWA's past experience with similar actions, do not involve significant environmental impacts. They 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; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

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

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

- (1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions that establish classes of highways on the Federal-aid highway system.
- (2) Approval of utility installations along or across a transportation facility.
- (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (4) Activities included in the State's highway safety plan under 23 U.S.C. 402.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- (7) Landscaping.
- (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- (9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - (i) Emergency repairs under 23 U.S.C. 125; and

- (29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities that themselves are within a CE.
- (30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.
- (d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:
- (1)-(3) [Reserved]
- (4) Transportation corridor fringe parking facilities.
- (5) Construction of new truck weigh stations or rest areas.
- (6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
- (7) Approvals for changes in access control.
- (8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- (9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.
- (10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
- (11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning, and where there is no significant noise impact on the surrounding community.
- (12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
- (i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
- (ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
- (13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.
- (e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:
- (1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;
- (2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;
- (3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;
- (4) Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;
- (5) Changes in access control;
- (6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

- (f) Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.
- (g) FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf, for CEs specifically listed in paragraphs (c) and (d) of this section and that meet the criteria for a CE under 40 CFR 1508.4, and are identified in the programmatic agreement. Such agreements must be subject to the following conditions:
 - (1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;
 - (2) The agreement may not have a term of more than five years, but may be renewed;
 - (3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. FHWA must take into account the State DOT's performance when considering renewal of the programmatic CE agreement; and
 - (4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed.
- (h) Any action qualifying as a CE under § 771.116 or § 771.118 may be approved by FHWA when the applicable requirements of those sections have been met. FHWA may consult with FRA or FTA to ensure the CE is applicable to the proposed action.

§ 771.118 FTA categorical exclusions.

- (a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FTA's past experience with similar actions, do not involve significant environmental impacts. They 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; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.
- (b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:
 - (1) Significant environmental impacts;
 - (2) Substantial controversy on environmental grounds;
 - (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
 - (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
- (c) Actions that FTA determines fall within the following categories of FTA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section normally do not require any further NEPA approvals by FTA.
 - (1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: Utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.
 - (2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: A multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.
 - (3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: Noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.
 - (4) Planning and administrative activities that do not involve or lead directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.
 - (5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.
 - (6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: Acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.

APPENDIX B



1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7013
Fax: (775) 888-7104

MEMORANDUM

Environmental Division

January 19, 2022

To: Project File
From: Chris Young
Subject: Classification of a Project as a Categorical Exclusion (CE)
NDOT Project No.: 74352
FHWA Project No.: SPF-395-2(046)

Project Description

COLDMILL AND OVERLAY, PLANTMIX BITUMINOUS SURFACE AND OPEN GRADED WEARING COURSE

Project Location

US 395, WASHOE COUNTY, FROM THE 0.2 MI EAST OF THE COLD SPRINGS INT TO THE CA/NV STATE LINE; MP WA 38.37 TO MP WA 42.16

Based on a review of the available preliminary project information, this action should not induce significant impacts to planned growth or land use for the area; should not require the relocation of significant numbers of people; should not have a significant impact on any natural, cultural, recreational, historic or other resources; should not involve significant air, noise, or water quality impacts; should not have significant impacts on travel patterns; or should not otherwise appear to, either individually or cumulatively, result in any significant environmental impacts.

The **NDOT Environmental Chief, Environmental Services Program Chief, Environmental Services Manager, Environmental Engineering Manager, NEPA Coordinator-Social Economic Specialist (two must be identified in the actual memo)** have reviewed the available project information and classify this action as a CE in accordance with 23 CFR 771.113(a)(1)(i). NDOT may request notice from FHWA to proceed with final design or the acquisition of right-of-way.

This classification may change as the project specific environmental studies and consultations are completed or if the project scope changes enough to where the project may have significant environmental impacts. Currently, the project is most likely to be processed as **(c) 26**.

APPENDIX C



1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7013
Fax: (775) 888-7104

MEMORANDUM

Environmental Division

September 22, 2021

To: Project File

From: My-Linh Nguyen, Ph.D., P.E., Chief Environmental Division

Subject: Programmatic Categorical Exclusion and Checklist

Project No.: SPF-095-2(055)

PIN: 61009/74164/74284

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

This project qualifies as a Programmatic Categorical Exclusion (PCE) under the Programmatic Agreement (PA) completed between the Nevada Department of Transportation (NDOT) and the Federal Highway Administration (FHWA), effective February 15, 2017. Further approval by FHWA is not required. Information and documentation are preserved in the project administrative record.

Project Description

Project Location

Map in project E-file

Programmatic Categorical Exclusion Checklist 23 CFR 771.117		
Section I. THRESHOLD QUESTION		
Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?		No
If YES, FHWA shall be consulted. The project may not qualify as a Categorical Exclusion and environmental studies may be needed to determine the proper classification.		
If NO, continue to Section II.		
Section II. PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)		
The project action is listed in 23 CFR 771.117 (c)		26
The project action is listed in 23 CFR 771.117 (d)		
The project action is listed in 23 CFR 771.117 (e)		
Does the project contain actions described in paragraphs (c)(26), (c)(27), (c)(28) that meet paragraph (e) of this section? If yes, coordinate a FACE with FHWA.		No
Does the project exceed the thresholds outlined in the current Programmatic Agreement between the Federal Highway Administration (FHWA) and Nevada Department of Transportation?		No
Section III. CE PA THRESHOLD CRITERIA Section IV(A)(1)(b)		
i.	Involves acquisitions of more than a minor amount of right-of-way. Acquisition of right-of-way shall be examined in the context and intensity of the project and setting. It may be that amount right-of-way that may produce an adverse effect or other non-desirable result in comparison to the project.	No
ii.	Involves acquisitions that result in any residential or non-residential displacements.	No
iii.	Results in capacity expansion of a roadway by the addition of through lanes.	No
iv.	Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions as defined in the CE PA	No
v.	Involves changes in access control that adversely affect traffic patterns as defined in the CE PA.	No
vi.	Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act.	No
vii.	Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with an FHWA <i>de minimis</i> determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges.	No
viii.	Requires the acquisition of lands under the protection of Section 6(f) as described in the CE PA.	No
ix.	Requires a U.S. Army Corps of Engineers Section 404 permit other than a Nationwide Permit or a General Permit.	No
x.	Requires a U.S. Coast Guard bridge permit.	No
xi.	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	No

	Executive Order 11988 and 23 CFR §650 subpart A.	
xii.	Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture.	No
xiii.	Is defined as a "Type I project" per 23 CFR 772.5	No
xiv.	May adversely affect federally listed or candidate species, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act (Excluding Mojave desert tortoise which is addressed in the 2022 USFWS Programmatic Biological Opinion and its appended actions)	No
xv.	Involves properties with recognized environmental conditions (REC), previous land uses with potential for such, or potential for such to remain in the right-of-way.	No
xvi.	Has an adverse effect on minority and/or low-income populations.	No
xvii.	Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project [23 U.S.C. 108(d)]	No
xviii.	Does not conform to the State Implementation Plan (SIP) which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas.	No
xix.	Is not included in or is inconsistent with the statewide transportation improvement program (STIP), and in applicable urbanized areas, the transportation improvement program (TIP)	No
<p>This project has been reviewed, qualifies as a PCE, and does not exceed the thresholds outlined in the current Programmatic Agreement between the Federal Highway Administration (FHWA) and Nevada Department of Transportation (NDOT) that would necessitate issuing a Categorical Exclusion for FHWA approval (FACE). (NOTE: There may be specific environmental issues that require an action such as EO 11990 Wetland Finding or a determination of effect on cultural resources. However, the project can still qualify as a PCE. The necessary action and documentation will be kept in the project file. Contact NDOT Environmental Division for assistance.)</p>		

Approved
 My-Linh Nguyen, Ph.D., P.E.
 Chief Environmental Division

APPENDIX D



1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7013
Fax: (775) 888-7104

MEMORANDUM

Environmental Division

September 22, 2021

To: Project File

From: My-Linh Nguyen, Ph.D., P.E., Chief Environmental Division

Subject: Programmatic Categorical Exclusion and Checklist

Project No.: SPF-095-2(055)

PIN: 61009/74164/74284

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

This project qualifies as a Programmatic Categorical Exclusion (PCE) under the Programmatic Agreement (PA) completed between the Nevada Department of Transportation (NDOT) and the Federal Highway Administration (FHWA), effective February 15, 2017. Further approval by FHWA is not required. Information and documentation are preserved in the project administrative record.

Project Description

Project Location

Map in project E-file

Programmatic Categorical Exclusion Checklist 23 CFR 771.117	
Section I. THRESHOLD QUESTION	
Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?	No
If YES, FHWA shall be consulted. The project may not qualify as a Categorical Exclusion and environmental studies may be needed to determine the proper classification.	
If NO, continue to Section II.	
Section II. PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)	
The project action is listed in 23 CFR 771.117 (c)	26
The project action is listed in 23 CFR 771.117 (d)	N/A
Does the project contain actions described in paragraphs (c)(26), (c)(27), (c)(28) that meet paragraph (e) of this section? If yes, coordinate an FA-CE with FHWA.	No
Does the project exceed the thresholds outlined in the current Programmatic Agreement between the Federal Highway Administration (FHWA) and Nevada Department of Transportation?	No
<p>This project has been reviewed, qualifies as a PCE, and does not exceed the thresholds outlined in the current Programmatic Agreement between the Federal Highway Administration (FHWA) and Nevada Department of Transportation (NDOT) that would necessitate issuing a Categorical Exclusion for FHWA approval (FACE). (NOTE: There may be specific environmental issues that require an action such as EO 11990 Wetland Finding or a determination of effect on cultural resources. However, the project can still qualify as a PCE. The necessary action and documentation will be kept in the project file. Contact NDOT Environmental Division for assistance.)</p>	

_____ for
 Approved
 My-Linh Nguyen, Ph.D., P.E.
 Chief Environmental Division

APPENDIX E

FHWA Approved Categorical Exclusion (FACE) Checklist		
Federal Project #:		State Project #:
Route:		
Location:		
Description:		
Documentation Attached Following Checklist		
Section I. THRESHOLD QUESTION		
Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?		No
If YES, FHWA shall be consulted. The project may not qualify as a Categorical Exclusion and environmental studies may be needed to determine the proper classification.		
If NO, continue to Section II.		
Section II. CATEGORICAL EXCLUSION CHECKLIST		
Is the project action listed in 23 CFR 771.117 (c)		26
Is the project action listed in 23 CFR 771.117 (d)		N/A
Is the project action listed in 23 CFR 771.117 (e)		N/A
Does the project contain actions described in paragraphs (c)(26), (c)(27), (c)(28) that meet paragraph (e) of this section? If yes, coordinate a FACE with FHWA.		No
Does the project exceed the thresholds outlined in the current Programmatic Agreement between the Federal Highway Administration (FHWA) and Nevada Department of Transportation?		Yes
Section III. CE PA THRESHOLD CRITERIA Section IV(A)(1)(b)		
i.	Involves acquisitions of more than a minor amount of right-of-way. Acquisition of right-of-way shall be examined in the context and intensity of the project and setting. It may be that amount right-of-way that may produce an adverse effect or other non-desirable result in comparison to the project.	No
ii.	Involves acquisitions that result in any residential or non-residential displacements.	No

iii.	Results in capacity expansion of a roadway by the addition of through lanes.	No
iv.	Involves the construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions as defined in the CE PA	No
v.	Involves changes in access control that adversely affect traffic patterns as defined in the CE PA.	No
vi.	Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act.	No
vii.	Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) that cannot be documented with an FHWA <i>de minimis</i> determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges.	No
viii.	Requires the acquisition of lands under the protection of Section 6(f) as described in the CE PA.	No
ix.	Requires a U.S. Army Corps of Engineers Section 404 permit other than a Nationwide Permit or a General Permit.	No
x.	Requires a U.S. Coast Guard bridge permit.	No
xi.	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.	No
xii.	Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture.	No
xiii.	Is defined as a "Type I project" per 23 CFR 772.5	No
xiv.	May adversely affect federally listed or candidate species, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act (Excluding Mojave desert tortoise which is addressed in the 2022 USFWS Programmatic Biological Opinion and its appended actions)	No
xv.	Involves properties with recognized environmental conditions (REC), previous land uses with potential for such, or potential for such to remain in the right-of-way.	No
xvi.	Has an adverse effect on minority and/or low-income populations.	No
xvii.	Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project [23 U.S.C. 108(d)]	No
xviii.	Does not conform to the State Implementation Plan (SIP) which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment areas.	No
xix.	Is not included in or is inconsistent with the statewide transportation improvement program (STIP), and in applicable urbanized areas, the transportation improvement program (TIP)	No
NDOT Recommended Approval		
Printed Name	Title	Signature
		Date

FHWA CE Approval

Printed Name

Title

Signature

Date