Chapter 3
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Chapter 3
CATEGORICAL EXCLUSIONS

3.1 CATEGORICAL EXCLUSION COMPLIANCE PROCEDURES

Categories of Federally funded, approved or permitted NDOT projects that do not individually or cumulatively have a significant environmental effect are Categorical Exclusions (CEs) and are excluded from the requirement to prepare an EA or EIS. They are projects that do not:

- induce significant impacts to planned growth or land use for the area;
- require the relocation of significant numbers of people;
- have a significant impact on any natural, cultural, recreational, historic or other resource;
- involve significant air, noise or water quality impacts;
- have significant impacts on travel patterns; or
- individually or cumulatively, have any significant environmental impacts.

NDOT’s CE compliance process is outlined in Figure 3A. If FHWA is not the lead Federal agency for the project, different procedures may apply, based on the NEPA requirements of that agency (e.g., BLM).

3.2 PROGRAMMATIC CATEGORICAL EXCLUSIONS

The CE Programmatic Agreement (PA) between NDOT and FHWA establishes procedures required for projects proposed by NDOT as a CE defined in 23 CFR Part 771.117 – Categorical Exclusions. NDOT may process and approve such projects as a Programmatic Categorical Exclusion (PCE) per the procedures of the current CE PA, generally undertaken as follows.

1. Review project information, regulatory definitions, and current version of the CE PA.
2. If a project qualifies, a PCE will be prepared. Necessary documentation will be electronically stored in the project administrative record.
3. The prepared PCE will be provided to the Environmental Services Division Chief (or designee) for signature and electronically stored in the administrative record.

Regulations and Guidance

23 CFR Part 771.117 – FHWA Categorical Exclusions
FHWA and NDOT Programmatic Agreement for Categorical Exclusions – February 15, 2017

3.3 FHWA-APPROVED CATEGORICAL EXCLUSIONS

For a CE that cannot be approved as a PCE under the CE PA, the Environmental Services Division will submit a CE to the FHWA for approval as an FHWA-Approved CE (FACE), generally undertaken as follows.
1. Review project information, regulatory definitions, and the CE PA.
2. Per the CE PA and FACE Checklist, assess and document those identified areas that exceed established thresholds.
3. Prepare and provide the FACE to the Environmental Services Division Chief (or designee) for signature and then submit to the FHWA for review, approval, and signature, per the CE PA approval process.

Relevant information and documentation will be included with the FACE for those impact areas that exceed thresholds established by the CE PA requiring preparation of a FACE. The executed FACE and documentation will be electronically filed in the administrative record by project number.

### 3.4 ACTIVITIES

**Figure 3-A — CE COMPLIANCE PROCESS**

ACTIVITY NO. 1: INITIATE CE PROCESS

The Environmental Services Division will initiate the CE process by compiling the pertinent information from the data gathering and field review activities that provided the basis for the determination of impacts for the project. The information will be organized by environmental areas involved with the project and will be reviewed for completeness and compliance with 23 CFR 771.117 and the CE PA.

ACTIVITY NO. 2: OBTAIN SECTION DETERMINATIONS

The Environmental Services Division will coordinate the environmental information for the project with each of the Sections in the Division (i.e., Cultural Resources, Environmental Studies, Environmental Engineering) and other NDOT Divisions (e.g., Stormwater), as needed. The Sections will review the pertinent information for its area of responsibility, as needed, and will initiate appropriate action to prepare and process compliance documentation, as necessary. These reviews will evaluate the project for unusual circumstances to ensure the CE classification is valid.

If the additional environmental studies raise questions as to whether the project may involve a significant impact, the Environmental Services Division will confer with the FHWA to determine if preparation of an EA (see Chapter 4) or EIS (see Chapter 5) is appropriate.
Regulations and Guidance

23 CFR 771.117(b) “Categorical exclusions” (Unusual circumstances)

**ACTIVITY NO. 3:** PREPARE CE DOCUMENTATION

If the project meets the requirements of the CE PA, the Environmental Services Division will prepare a PCE and checklist (Figure 3-B) or a FACE and checklist (Figure 3-C).

**ACTIVITY NO. 4:** SECURE CE APPROVAL

NDOT’s Environmental Services Chief (or designee) provides the approval of a PCE and the signature of the FHWA Division Administrator (or designee) provides the approval of a FACE, thereby completing the NEPA process. Compliance with other environmental requirements applicable to the project, other than construction-stage permitting, will have been accomplished by the time of CE approval.

See Section 2.4 “Preparing an Administrative Record”.

### 3.4 RE-EVALUATIONS

After approval of the CE, NDOT shall assess if there are any changes to the project or changes in the project area that would warrant a re-evaluation or issuance of a new CE. If needed, the project will be reevaluated, and, per the CE PA, NDOT will consult with FHWA.

If a change to the project or project area indicates the CE designation may no longer be valid, FHWA will be consulted. These consultations will be documented, per 23 CFR 771.129 “Re-evaluations”.
## Programmatic Categorical Exclusion Checklist 23CFR771.117(c) or (d)

<table>
<thead>
<tr>
<th>FEDERAL PROJECT #:</th>
<th>State EA/PIN/District #:</th>
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<tbody>
<tr>
<td>ROUTE:</td>
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<td>TERMINI:</td>
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**MAP INCLUDED:**
- [ ] YES
- [ ] NO

**In project E-file**

**PROJECT DESCRIPTION:**

See information in project file.

### I. THRESHOLD QUESTION

Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?

- [ ] YES
- [ ] 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.*

### II. PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)

The project action is listed in 23 CFR 771.117 (c) or (d)

Does the project exceed the thresholds outlined in the current Programmatic Agreement between the Federal Highway Administration (FHWA) and Nevada Department of Transportation?

- [ ] YES
- [ ] NO

*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 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 Programmatic Categorical Exclusion. The necessary action and documentation will be kept in the project file. Contact the NDOT Environmental Services Division for assistance.)*

**APPROVED BY:**

<table>
<thead>
<tr>
<th>Printed Name</th>
<th>Title</th>
<th>Signature</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>Chief</td>
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**Figure 3-B — PCE CHECKLIST**
### FHWA Approved Categorical Exclusion (FACE) Checklist

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<thead>
<tr>
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**PLANS OR MAP INCLUDED:** □ YES □ NO

**PROJECT DESCRIPTION:**

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### I. THRESHOLD QUESTION

1. Does the project involve unusual circumstances as described in 23 CFR §771.117(b)? □ YES □ 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.*

### II. PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)

2. Is the project an action listed in 23 CFR 771.117 (c) or (d)? □ YES □ NO

   - C List Action(s) #
   - D List Action(s) #

   *This project has been reviewed and qualifies as a PCE, but it exceeds one or more of the following thresholds outlined under Section IV(A)(1)(b) of the Programmatic Agreement (PA) between the Federal Highway Administration (FHWA) and Nevada Department of Transportation (NDOT) necessitating issuing a Categorical Exclusion requiring FHWA approval. The associated administrative record for the referenced exceedence(s) is (are) attached documenting the outcome and supporting this action as a Categorical Exclusion.*

### 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. □ YES □ NO

- ii. Involves acquisitions that result in any residential or non-residential displacements. □ YES □ NO

- iii. Results in capacity expansion of a roadway by addition of through lanes. □ YES □ 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. □ YES □ NO

- v. Involves changes in access control that adversely affect traffic patterns as defined in the CE PA. □ YES □ NO

- vi. Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act. □ YES □ NO

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**Figure 3-C — FACE CHECKLIST**
Figure 3-C — FACE CHECKLIST (continued)