

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

THIS PROGRAMMATIC AGREEMENT, made and entered into this 30th day of March 2021, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION and the STATE of NEW MEXICO acting by and through its DEPARTMENT OF TRANSPORTATION 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, the Federal Highway Administration's (FHWA) 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, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

Whereas, the New Mexico Department of Transportation 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 NMDOT 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, the FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014;

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

I. PARTIES

The Parties to this Agreement are the Federal Highway Administration New Mexico Division (“NM Division”) and the New Mexico Department of Transportation (hereinafter “NMDOT”).

II. PURPOSE

The purpose of this Agreement is to authorize NMDOT to determine on behalf of the NM Division whether a project qualifies for a CE specifically listed in 23 CFR 771.117 (listed in Appendix A and B of this Agreement). This Agreement also authorizes NMDOT to certify to the NM Division 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 environmental assessment (EA) or an environmental impact statement (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. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015).
- D. 40 CFR parts 1500 - 1508
- E. DOT Order 5610.1C
- F. 23 CFR 771.117

IV. RESPONSIBILITIES

A. The NMDOT is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:
 - a. For actions qualifying for a CE listed in Appendix A [CEs established in 23 CFR 771.117(c)] and Appendix B [CEs established in 23 CFR 771.117(d)], that do not exceed the thresholds in Section IV(A)(1)(b) below, the NMDOT may make a CE approval on behalf of FHWA. The NMDOT 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. Documentation is in the form of a Programmatic Categorical Exclusion (PCE) letter and an example can be found in Appendix C. No additional review or approval of the CE by FHWA is required.

b. For actions listed in Appendices A-B that exceed any of the thresholds listed below, NMDOT will certify [and include the information in IV(2) below] that the project meets the definition of a CE and that no unusual circumstances exist that would require the preparation of an EA or EIS. This certification is based upon information contained in a Categorical Exclusion (CE) Checklist (see Appendix D for an example) that NMDOT will provide to the FHWA for CE review and approval.

- i. Public or agency controversy on environmental grounds, as determined by NMDOT with concurrence by NM Division due to unusual media coverage or correspondence to either NMDOT or NM Division;
- ii. A request by a NMDOT for NM Division involvement/facilitation in a project's environmental review;
- iii. Involves acquisitions of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as less than five acres or in a specific case, if the NMDOT consults with the NM Division, discusses the scenario, and the NM Division concurs with the conclusion in writing;
- iv. Involves acquisitions that result in any residential or non-residential displacements;
- v. Results in capacity expansion of a roadway by addition of through lanes;
- vi. 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 on a case-by-case scenario, when the NMDOT, in consultation with NM Division, agree that the project scope will interrupt traffic patterns beyond normal project conditions. The NM Division requires a concurrence for such a NMDOT request in writing.
- vii. Involve the changes in access control that pertain to Interstate or in a case where the NMDOT concluded that an access modification may have wide reaching ramifications. Such a case will be coordinated by the Chairperson of the Access Management Committee for consideration by the NM Division;
- viii. Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act;
- ix. 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 a NM

Division *de minimis* determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges;

- x. 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;
- xi. Requires a U.S. Army Corps of Engineers Section 404 permit other than a Nationwide Permit or a General Permit;
- xii. Requires a U.S. Coast Guard bridge permit;
- xiii. 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;
- xiv. 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;
- xv. Is defined as a “Type I project” per 23 CFR 772.5 and any NMDOT noise manual for purposes of a noise analysis;
- xvi. May 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;
- 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 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, and in applicable urbanized areas, the transportation improvement program.

c. The NMDOT may not approve actions not specifically listed as CEs in 23 CFR 771.117, but meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, the NMDOT shall certify that an action will not result in significant environmental impacts if the NMDOT concludes that the action qualifies for a CE and the action does not involve unusual

circumstances that warrant the preparation of an EA or EIS. The NMDOT shall submit this certification to the NM Division for approval prior to the time the NM Division contemplates its next approval or grant action for the project.

- i. If requested by the Division Office, the NMDOT 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, the NMDOT shall submit the 4(f) documentation for the NM Division determination and approval.
 - iii. The NMDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from the NM Division once NMDOT has completed its certification that a project is a CE.
 - iv. The Division Office's objection to a NMDOT certification may not constitute a disapproval of the action, but signifies that NM Division 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 list of certified actions, pursuant to this Agreement to the Division Office quarterly and allow the Division Office [14] business days to either agree that some or all certifications are a basis for the NM Division's approval of a CE for these actions, or to object to the certification(s). The list of actions certified will contain the following information:
 - a. The NMDOT 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 not categorized."
 - 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 the NM Division for actions that involve unusual circumstances (23 CFR §771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. The NMDOT may decide or the NM Division 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 CE approvals on the NM Division's behalf and State CE certifications to the NM Division, 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 CE approvals or certifications submitted to the NM Division under this agreement. The NMDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).

B. The NM Division is responsible for:

1. Providing timely advice and technical assistance on CEs to the NMDOT, as requested.
2. Providing timely input and review of certified actions. The NM Division will base its approval of CE actions on the project documentation and certifications prepared by NMDOT under this Agreement.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.

V. DOCUMENTATION OF NMDOT CE APPROVALS AND CERTIFICATIONS

A. For State CE approvals and State CE certifications to the NM Division for approval, the NMDOT shall insure that it fulfills the following responsibilities for documenting the project-specific determinations made:

1. For actions listed in Appendix A and B, the NMDOT shall identify the applicable action, ensure any conditions specified in the NM Division regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements, and complete the review with a NMDOT signature evidencing approval.
2. In addition, for actions listed in 23 CFR 711.117 (d), the NMDOT shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.

B. The NMDOT shall maintain a project record for CE approvals it makes on the NM Division's behalf and each CE submitted to the NM Division for approval. This record shall 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 the NM Division-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 NMDOT's approval or the NM Division'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 the NMDOT shall be provided to the NM Division at their request. The NMDOT shall 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 NMDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

VI. AUTHORITY AND DELEGATIONS

- A. The NMDOT's CE approvals and CEs submitted to the NM Division for approval may only be made by officers or offices specifically identified below:
1. Approval of Appendix A CEs is delegated to the NMDOT Environmental Program Manager.
 2. Approval of Appendix B CEs is delegated to the NMDOT Environmental Program Manager.
 3. Certification of CEs is delegated to the NMDOT Environmental Program Manager.
- B. In accordance with 23 CFR 771.129, the NMDOT shall re-evaluate its determinations and certifications for projects, consult with the NM Division, and as necessary, prepare additional documentation to ensure that determinations are still valid.

VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE

A. NMDOT Quality Control & Quality Assurance

The NMDOT agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to the NM Division for approval, are made in accordance with applicable law and this Agreement.

B. NMDOT Performance Monitoring and Reporting.

1. The NM Division and the NMDOT shall cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. The NMDOT shall annually submit to the NM Division (electronically or hard copy) a report summarizing its performance under this Agreement. The report will identify any areas where improvement is needed and what measures NMDOT is taking to

implement those improvements. The report will include a description of actions taken by NMDOT as part of its quality control efforts under Section VII(a).

C. The NM Division Oversight and Monitoring

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

VIII. AMENDMENTS

This Agreement shall not be altered, changed, or amended except by an instrument in writing and executed by the Parties hereto 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. The NMDOT 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 NMDOT requests renewal and the NM Division determine that NMDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, the NM Division 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 that the NMDOT is not able to** make CE approvals on the NM Division's behalf.

X. NOTICES:

Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by facsimile) and shall be given to the relevant party at its address or facsimile number set forth below, or such other address or facsimile number as such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail, by facsimile or by other telecommunication device capable of creating a written record of such notice and its receipt.

Notices hereunder shall be addressed:

to NM Division at:
FHWA – NM Division
Attn: Environmental Program Manager
4001 Office Court Drive, STE 801
Santa Fe, NM 87507
Facsimile (505) 820-2040
E-Mail: greg.heitmann@dot.gov

to NMDOT at:
New Mexico Dept. of Transportation
Attn: Environmental Section Manager
PO Box 1149
Santa Fe, NM 87504
Facsimile (505) 827-3243
E-Mail: blake.roxlau@state.nm.us

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Section and a confirmation of such facsimile has been received by the sender, (ii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section.

XI. INDEPENDENCE OF PARTIES

In the exercise of their respective rights and obligations as the signatories to this Agreement, each signatory shall act in an independent capacity, consistent with each signatory's own statutes, regulations and fiscal constraints, and none of the signatories are to be considered the officer, agent or employee of the other.

XII. SEVERABILITY:

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

XIII. SCOPE OF THE AGREEMENT:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been

merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the Parties or their agents shall become valid or enforceable unless embodied in this Agreement.

XIV. CONSTRUCTION:

In constructing this Agreement, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

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.


Michael Sandoval (Apr 6, 2021 11:36 MDT)

Michael Sandoval
New Mexico Department of Transportation
Cabinet Secretary

Apr 6, 2021

Date

MELINDA MICHELLE ROBERSON

Digitally signed by MELINDA MICHELLE ROBERSON
Date: 2021.03.30 07:27:36 -07'00'

Melinda Roberson
Acting Division Administrator
New Mexico Division
Federal Highway Administration

03-31-2021

Date

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

- (c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and § 771.117(a) and normally do not require any further NEPA approvals by the FHWA:
- (1) Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.
 - (2) Approval of utility installations along or across a transportation facility.
 - (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
 - (4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.
 - (5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
 - (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
 - (7) Landscaping.
 - (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
 - (9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):(i) Emergency repairs under 23 U.S.C. 125; and(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and(B) Is commenced within a 2-year period beginning on the date of the declaration.
 - (10) Acquisition of scenic easements.
 - (11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.
 - (12) Improvements to existing rest areas and truck weigh stations.
 - (13) Ridesharing activities.
 - (14) Bus and rail car rehabilitation.
 - (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
 - (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
 - (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
 - (18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.
 - (19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
 - (20) Promulgation of rules, regulations, and directives.
 - (21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency

or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

(23) Federally-funded projects:

(i) That receive less than \$5,000,000 of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section. [Note: Previously 771.117(d)(1).]

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section. [Note: Previously 771.117(d)(2).]

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section. [Note: Previously 771.117(d)(3).]

(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 which themselves are within a CE.

(30): Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals

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

(d) Additional actions which 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 the FHWA approval. The applicant shall submit documentation which 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) Moved to (c) list.
- (2) Moved to (c) list.
- (3) Moved to (c) list.
- (4) Transportation corridor fringe parking facilities.
- (5) Construction of new truck weigh stations or rest areas.
- (6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
- (7) Approvals for changes in access control.
- (8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.
- (9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- (10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
- (11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
- (12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
 - (i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
 - (ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

Appendix C: Example PCE Letter

District: 4
Project #: 4100822
Control #: 4100822

July 20, 2020

J. Don Martinez
Division Administrator
Federal Highway Administration
4001 Office Court Drive, Suite 801
Santa Fe, NM 87507

RE: Programmatic Categorical Exclusion

Dear Mr. Martinez:

The New Mexico Department of Transportation (NMDOT) staff has reviewed the following project. This project meets the conditions stipulated in the agreement dated September 25, 2015, for completing the requirements of 23 CFR § 771.117(c)(22), and qualifies for the NMDOT and Federal Highway Administration Programmatic Categorical Exclusion.

<u>District</u>	<u>County</u>	<u>Project Number</u>	<u>Termini Description</u>
4	Colfax	4100822	I-25; MP 454.1 & 458.1

Project Scope: This project involves the construction and removal of two median traffic control crossovers. The crossover located at MP 454.1 is outside of the BOP of the original project and would be approximately 700-feet long. These crossovers are necessary for construction of a game fence and for performing rock fall mitigation. The original project was cleared by a categorical exclusion on June 29, 2017 under the same control number listed above. All construction work would be done within the NMDOT-owned right-of-way.

In addition, a review of the project has been completed in accordance with the requirements of the National Historic Preservation Act, as amended through 1992. The NMCRIS database was reviewed on July 17, 2020 with no historic properties within or immediately adjacent to these crossovers. We have determined the project does not include any activities or programs that can

**Michelle Lujan
Grisham**
Governor

Michael R. Sandoval
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Bruce Ellis
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

result in changes in the character or use of historic properties. The undertaking has no potential to cause effects to historic properties as defined in 36 CFR § 800.3(a)(1), with the understanding that the attached environmental commitments are followed.

NMDOT files contain documentation supporting this determination. The files are available for FHWA review. We will continue to monitor project design and development to ensure the applicability of the Programmatic Categorical Exclusion.

There are no project-specific environmental commitments.

The aforementioned project meets all of the conditions stipulated in the Programmatic Categorical Exclusion. No further coordination is necessary for environmental approval.

Sincerely,

R. Blake Roxlau digitally signed 7/17/20

R. Blake Roxlau, Environmental Bureau Manager

EXAMPLE

Appendix D: Example CE Checklist

Form No. A-1291
New 01/13



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
Title of Proposed Project:		
Location (Route and Milepost):		County:
Land Ownership:		
Engineer or Project Proponent:	Environmental Section Staff or T/LG Project Manager:	
Engineer Contact and Company:		
Environmental Consultant:		
Federal Funding for Project: <input type="checkbox"/> No <input type="checkbox"/> Yes		

This document has been prepared pursuant to 23 CFR 771.117, FHWA Technical Advisory T6640.8, and the latest Programmatic Categorical Exclusion agreement between FHWA and NMDOT. The proposed project will have no significant impact on the quality of the human or natural environment, either singularly or cumulatively, provided stipulations identified during this analysis are met. Supporting documentation is available at the NMDOT Environmental Section.

_____ Environmental Specialist	_____ Date	_____ NMDOT Project Engineer Project Proponent Tribal/Local Government Authority	_____ Date
_____ Environmental Section Manager	_____ Date	_____ FHWA NM Division Administrator	_____ Date

- ☐ Project location map with aerial photography as background layer attached as following page.
- ☐ STIP page attached.
- ☐ Project area photos attached.
- ☐ Environmental Commitments included in this project.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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PROJECT PURPOSE & NEED:**DESCRIPTION OF PROPOSED PROJECT:****DESCRIPTION OF EXISTING FACILITY:** Include the Functional Classification of the roadway and the current infrastructure conditions.**DESCRIPTION OF CURRENT, OBSERVED RIGHT-OF-WAY AND ENVIRONMENTAL SURROUNDINGS:**



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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1. **OTHER LAND JURISDICTION(S):** Select the appropriate land management entity from the list below. The appropriate land management agency shall be contacted to address the potential impacts, alternatives and possible mitigating measures for the proposed action. The Environmental Commitments section should reflect any mutually agreed upon stipulations or mitigation measures determined through coordination with the land management entity.

- ☐ Bureau of Land Management, BLM Field Office:
- ☐ U.S. Forest Service, USFS Forest and Ranger District:
- ☐ Bureau of Indian Affairs
- ☐ Tribal Entity:
- ☐ U.S. Fish and Wildlife Service
- ☐ National Park Service
- ☐ Bureau of Reclamation
- ☐ Department of Defense
- ☐ New Mexico State Land Office
- ☐ New Mexico Department of Game and Fish
- ☐ New Mexico State Parks
- ☐ Federal Aviation Administration
- ☐ Private
- ☐ Other:

Provide additional information regarding communication with land management entities below.

2. **CULTURAL RESOURCE INVESTIGATIONS:** Conduct cultural resource investigations as directed by the NMDOT Environmental Section.

NMCRIS records check date:

Cultural resource inventory conducted? ☐ No ☐ Yes Concurrence date:

- ☐ The proposed project would have no potential to affect cultural resources. (See attached letter or email from NMDOT Environmental Section.)
- ☐ The proposed project would have no effect to cultural resources. (See attached letter or email from NMDOT Environmental Section.)
- ☐ The proposed project would have no adverse effect to cultural resources. (See attached concurrence letter.)
- ☐ The proposed project would have an adverse effect to cultural resources. (See attached concurrence letter.)
 - ☐ MOA for mitigation has been developed under Section 106 of NHPA.
 - ☐ A project-specific Programmatic Agreement has been developed under Section 106 of NHPA.
- ☐ Special properties of concern (listed SRCP or NRHP properties, historic districts, historic bridges, etc) are present. Specify:
- ☐ Refer to the Environmental Commitments section for cultural resource treatment measures.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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3. TRADITIONAL CULTURAL PROPERTIES: Contact the NMDOT Native American/Tribal Coordinator in the Environmental Section.

- ☐ The proposed project has no potential to impact Traditional Cultural Properties based on coordination with NMDOT Native American/Tribal Coordinator.
- ☐ Traditional Cultural Properties identified, management recommendations developed, and coordination with land management agencies and Tribal/State Historic Preservation Officer completed.
- ☐ See attached documentation from the NMDOT Native American/Tribal Coordinator.
- ☐ Refer to the Environmental Commitments section for cultural resource treatment measures.

4. BIOLOGICAL COMMUNITY: Conduct biological investigations as directed by the NMDOT Environmental Section.

Biological report prepared? ☐ No ☐ Yes Date:

If no, explain:

Federally listed threatened, endangered, or proposed species and/or critical habitat or proposed critical habitat present within or adjacent to the project area? ☐ No ☐ Yes

- ☐ The proposed project would have no effect to federally listed threatened, endangered, or proposed species and/or modify critical habitat or proposed critical habitat.
- ☐ The proposed project may affect, is not likely to adversely affect federally threatened, endangered, or proposed species and/or adversely modify critical habitat or proposed critical habitat.
- ☐ The proposed project may affect, is likely to adversely affect federally threatened, endangered, or proposed species and/or adversely modify critical habitat or proposed critical habitat. (If selected, verify NEPA level of effort with NMDOT.)
- ☐ Consultation with regulatory agencies completed (see attached correspondence).
Describe consultation process:

Is the proposed project expected to impact state-listed species, tribal-listed species, or other agency species? ☐ No ☐ Yes If yes, explain:

Are there migratory bird concerns associated with the proposed project? ☐ No ☐ Yes
If yes, explain:

Are there wildlife issues associated with the proposed project? ☐ No ☐ Yes
If yes, explain:

Are noxious weeds, as recognized by the NM Dept. of Agriculture, present? ☐ No ☐ Yes
If yes, identify noxious weed species, classification (A, B, C), and explain mitigation measures:

Are New Mexico Rare Plants present within the project area? ☐ No ☐ Yes

Is revegetation of the project area needed after construction is completed? ☐ No ☐ Yes
If no, explain:

☐ Revegetation plan developed. Date:

Additional information regarding the biological community:

- ☐ Refer to the Environmental Commitments section for biological community mitigation measures.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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5. WATER RESOURCES: Evaluate impacts to water resources within and adjacent to the project area.

Are floodplains present within the project area? ☐ No ☐ Yes

If yes, explain:

Is a designated Wild and Scenic River present within the project area? ☐ No ☐ Yes

If yes, explain:

Is an acequia or irrigation ditch present within the project area? ☐ No ☐ Yes

If yes, explain:

Are Outstanding National Resource Waters or Impaired Surface Waters present within the project area?

☐ No ☐ Yes

If yes, explain:

Clean Water Act (CWA) Permitting: Determine if Waters of the United States, subject to jurisdictional authority under the CWA, would be impacted by the proposed project.

Are wetlands present within the proposed project area? ☐ No ☐ Yes

Are the wetlands expected to be impacted? ☐ No ☐ Yes

If yes to either question above, explain:

☐ Wetland determination and delineation report prepared. Date of report:

☐ U.S. Army Corps of Engineers CWA §404 Maintenance Exemption applies to the proposed project.

☐ CWA §404 Nationwide Permit applies: Pre-construction Notification required? ☐ No ☐ Yes

☐ CWA §404 Individual Permit required (If selected, verify NEPA level of effort with NMDOT.)

☐ CWA §401 certification required from: ☐ NMED ☐ EPA ☐ Tribal Entity:

Additional CWA permitting information:

Are there any impacts to non-jurisdictional waterway within the project area? ☐ No ☐ Yes

If yes, explain:

Erosion and Sediment Control: Determine if the provisions of the NPDES Construction General Permit (CGP) issued by the EPA applies to the proposed project. Contact the NMDOT Drainage Section with questions regarding CWA §402.

☐ The proposed project would disturb less than 1 acre of land, CGP does not apply.

☐ The proposed project would disturb less than 1 acre of land, but the project area is located near a perennial stream, therefore, a Temporary Erosion and Sediment Control Plan is being developed.

☐ The proposed project would disturb more than 1 acre of land, therefore a Stormwater Pollution Prevention Plan will be prepared in accordance with the CGP.

☐ Action area map is attached.

☐ Map of identified federally-listed species and/or critical habitat is attached.

Applicable Endangered Species Protection Criterion (for the 402 permit application):

Are there portions of the project area that should be avoided for BMP implementation? ☐ No ☐ Yes

If yes, explain:

☐ Refer to the Environmental Commitments section for water resources mitigation measures.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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- 6. RIGHT-OF-WAY REQUIREMENTS:** Determine if new NMDOT rights-of-way, construction maintenance easements (CME), temporary construction permits (TCP), work permits, federal land transfers, or acquisitions are necessary.

Are any of the above types of right-of-way required for the proposed project? ☐ No ☐ Yes
If yes, complete the table below.

Estimated number of -	Quantity	Property Details
Parcels affected		
Acres required for CME(s)		
Acres required for TCP(s)		
Acres required for work permit(s)		
Acres required for acquisition		
Acres required for federal land transfer		
Relocations (residential or business) If selected, verify level of effort with NMDOT.		

☐ Proposed right-of-way map attached (required).
Additional right-of-way information:

- 7. AIR QUALITY ANALYSIS:** Determine if the proposed project would impact air quality.

Is a Fugitive Dust Control Permit required for the proposed project? ☐ No ☐ Yes

Is the proposed project area within any of the following areas?

- ☐ Bernalillo County
☐ Sunland Park
☐ Anthony
☐ A non-attainment or maintenance area not listed above. If checked, explain:
If none of the four boxes above are checked, air quality conformity requirements are met.

If one of the geographic areas above is checked, complete the section below.

Is hotspot analysis required for the proposed project? ☐ No ☐ Yes

Describe the extent of project level air quality analysis that has been conducted for the proposed project and attach pertinent correspondence.

☐ Refer to the Environmental Commitments section for air quality mitigation measures.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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- 8. NOISE ANALYSIS:** Determine if noise levels associated with the proposed project would impact receptors on nearby properties and determine if local noise abatement ordinances apply.

Is the proposed project considered Type 1 as defined by NMDOT's current Design Directive for Abatement of Highway Traffic Noise? ☐ No ☐ Yes

Are receptors (existing or permitted) present in the project area? ☐ No ☐ Yes

Based on consultation with NMDOT a traffic noise analysis is required. ☐ No ☐ Yes

If no, explain:

If no, noise analysis is complete.

If yes, traffic noise analysis has been completed. Date of report:

Does the noise analysis identify noise impacts from the proposed project? ☐ No ☐ Yes

If yes, include applicable information in Section 17 Public Involvement.

If yes, have noise abatement measures been determined to be reasonable and feasible? ☐ No ☐ Yes

If no, explain:

☐ Refer to Environmental Commitments section for noise mitigation measures.

- 9. SECTION 4(f):** Section 4(f) refers to situations where transportation projects use parks, recreation areas, wildlife and waterfowl refuges, and historic sites.

Will the proposed project use a Section 4(f) property? ☐ No ☐ Yes (If yes, verify the level of 4(f) documentation with the NMDOT Environmental Section.)

☐ Programmatic Section 4(f) evaluation has been signed and is in the project record.

Additional Section 4(f) information:

- 10. LAND USE:** For proposed projects that add new, or substantially modify existing, transportation infrastructure, verify whether the proposed project is compatible with urban policy and/or land use plans. For proposed projects that cross federal lands, check with the land management agency for applicable land use plan(s).

Is the proposed project consistent with land use plans or zoning? ☐ No ☐ Yes

If no, explain:

- 11. HAZARDOUS MATERIALS ANALYSIS:** Determine if hazardous materials are located within or adjacent to the proposed project area.

- ☐ The EPA EnviroMapper database has been consulted and no additional investigations are required.
☐ The EPA EnviroMapper database has been consulted and additional investigations are required.
☐ The EGB has determined no additional investigations are required.
☐ The EGB has determined additional investigations are required. The EGB will coordinate the effort.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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12. SOCIOECONOMICS: Determine potential impacts to social and economic resources resulting from the proposed project.

Would the proposed project result in an adverse impact to social or economic resources? ☐ No ☐ Yes
(If yes, verify NEPA level of effort with NMDOT Environmental Section.)

Are relocations or displacements necessary to build the proposed project? ☐ No ☐ Yes

Would the proposed project result in a permanent change in access or access control? ☐ No ☐ Yes

Is the project expected to impact neighborhood continuity and/or community cohesion? ☐ No ☐ Yes

If yes to any of the questions above, explain:

13. ENVIRONMENTAL JUSTICE: Refer to FHWA Order 6640.23A to review key Environmental Justice definitions and policies. U.S. Census data may be a source to determine population characteristics.

Based on the definitions provided in FHWA Order 6640.23A, are the following populations located in or adjacent to the project area?

- ☐ Low income
- ☐ African American
- ☐ Hispanic or Latino
- ☐ Asian American
- ☐ American Indian or Alaskan Native
- ☐ Native Hawaiian and Other Pacific Islander

Would the proposed project cause disproportionately high and adverse effects on minority and/or low income populations? ☐ No ☐ Yes (If yes, verify NEPA level of effort with NMDOT Environmental Section.)

If yes, explain:

14. VISUAL RESOURCES: Determine whether the project would result in adverse impacts to visual resources, such as the landscape's foreground and background.

Would the proposed project require major cut/fills, bridges, or large retaining walls? ☐ No ☐ Yes

Would the proposed project change the vertical profile of an existing road or bridge? ☐ No ☐ Yes

Is the proposed project located along a designated Scenic Byway? ☐ No ☐ Yes

Would the proposed project result in an adverse impact to visual resources? ☐ No ☐ Yes

Additional visual resource information:

☐ Refer to the Environmental Commitments section for visual resource mitigation measures.

15. MULTI-MODAL TRANSPORTATION: Determine whether the project would impact pedestrians, bicyclists, or transit facilities.

Is the proposed project located along a proposed or designated bicycle route? ☐ No ☐ Yes

Would the proposed project impact pedestrian and/or bicycle access? ☐ No ☐ Yes

Would the proposed project impact transit facilities? ☐ No ☐ Yes

If yes to any question above, explain:

Is there an opportunity to improve multi-modal access with the proposed project? ☐ No ☐ Yes

If yes, explain:

☐ Refer to the Environmental Commitments section for pedestrian/bicyclist mitigation measures.



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:	Control Number:	NMDOT District:
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16. OTHER INFORMATION AND ANALYSIS: Determine if any other resource issues apply to the proposed project that are not addressed in the previous sections.

- ☐ No other resource issues are identified and no additional coordination required.
- ☐ Paleontological resources (for projects on federal land only)
- ☐ Prime and Unique Farmland
- ☐ Properties protected by Section 6(f) of the Land and Water Conservation Act
- ☐ Other resource issues:

Additional resource analysis:

17. PUBLIC INVOLVEMENT: Determine the level of public involvement necessary for the proposed project. The determination should be based on the resource issues identified in the previous sections and the answers to the questions listed below.

Would the project add through traffic lanes, substantially change the layout or the function of the transportation facility or connected transportation facilities, including access limitations? ☐ No ☐ Yes

Would the project have an adverse impact on abutting property? ☐ No ☐ Yes

Would the project result in noise impacts? ☐ No ☐ Yes

Would the project result in socioeconomic, visual, environmental, or other impacts? ☐ No ☐ Yes

If the answer to any of the questions above is yes, a public meeting or an opportunity for a public meeting should be considered in consultation with NMDOT.

Were scoping letters mailed for this project? ☐ No ☐ Yes

If no, explain:

What type of public involvement has been provided? Select the appropriate item(s) below. Attach documentation identifying the notice of opportunity for a public meeting, date and location of the meeting, a summary of comments, and responses to substantive comments.

- ☐ Public notice attached. Date published:
- ☐ Formal public meeting. Date:
- ☐ Open house. Date:
- ☐ Neighborhood meeting. Date:
- ☐ Agency coordination and/or meeting. Date:
- ☐ City Council Meeting. Date:
- ☐ Other:
- ☐ Public meeting notes attached.
- ☐ Summary of public and/or agency comments attached.

Additional public involvement information:



NEW MEXICO DEPARTMENT OF TRANSPORTATION CATEGORICAL EXCLUSION

Project Number:

Control Number:

NMDOT District:

18. ENVIRONMENTAL COMMITMENTS

The following environmental commitments shall be included in the final construction plans for the project:

END OF CHECKLIST

NMDOT-NM DIV - PCE AGREEMENT - Final With Appendix - 033021 REV

Final Audit Report

2021-04-06

Created:	2021-04-06
By:	Jolene Casados (jolene.casados2@state.nm.us)
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