

Nebraska Categorical Exclusion Guidance

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Acronyms, Abbreviations, and Terms

ACM	Asbestos Containing Materials
APE	area of potential effects
APP	Avian Protection Plan
AWJ	Agency with Jurisdiction
BFE	Base Flood Elevation
BMPs	best management practices
CE	Categorical exclusions are used to document actions that meet the definition contained in 40 CFR 1508.4 and, based on past experience with similar actions, do not involve significant environmental impacts.
CFR	Code of Federal Regulations
CLG	Certified Local Government
Control Number	The NDOT assigned identification number for the project
document author	The primary author of a document, whether developed internally at NDOT, or externally by a Local Public Agency or consultant
EDU	Environmental Documents Unit
EDU Manager	The NDOT Environmental Program Manager that oversees the EDU
FHWA	Federal Highway Administration
LBM	Lead Based Materials
LEP	limited English proficiency
LPA	Local Public Agency
L RTP	long-range transportation plan
LWCF	Land and Water Conservation Fund
Matrix	<i>2017 Programmatic Agreement Among the Federal Highway Administration, U.S. Fish and Wildlife Service, Nebraska Department of Roads, and Nebraska Game and Parks Commission for the Determination of Effects to State and Federally Listed Species from the Federal-Aid Highway Program</i>
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer Systems
MSAT	Mobile Source Air Toxics
NDEQ	Nebraska Department of Environmental Quality
NDOT	Nebraska Department of Transportation
NDOT-53	NDOT Probable Class of NEPA Action Form

NDOT NEPA Specialist	NDOT environmental staff or embedded consultant staff specializing in NEPA compliance
NEPA	National Environmental Policy Act
NGPC	Nebraska Game and Parks Commission
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NRI	Nationwide Rivers Inventory
NWP	Nationwide Permit
OWJ	Official with Jurisdiction
PA	Programmatic Agreement
PQS	Professionally Qualified Staff
Project Name	The official project name
Project Number	The federal-aid number assigned to the project
ROW	right-of-way
Section 106	Section 106 of the National Historic Preservation Act of 1966
Smartform	A custom, web-based software application that NDOT uses to document project impacts and mitigation on CE Levels 1, 2, and 3
STIP	State Transportation Improvement Program
T&E	threatened and endangered
TIP	Transportation Improvement Program
USC	United States Code
USFWS	U.S. Fish and Wildlife Service
WOUS	waters of the U.S.
WSR	National Wild and Scenic Rivers System

Introduction

Categorical exclusion (CE) is defined as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and ...for which, therefore, neither an environmental assessment nor an environmental impact statement is required” (40 Code of Federal Regulations [CFR] 1508.4).

The Federal Highway Administration (FHWA) describes CEs as actions that meet the above definition and, based on past experience with similar actions, do not involve significant environmental impacts. According to the FHWA CE definition in 23 CFR 771.117(a), CE actions do not:

- Induce significant impacts on 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;
- Otherwise, either individually or cumulatively, have any significant environmental impacts.

FHWA’s CE definition further specifies that any action that would normally be classified as a CE but could involve unusual circumstances requires appropriate environmental studies to determine if the CE classification is proper. These unusual circumstances include (23 CFR 771.117(b)):

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impacts on properties protected by Section 4(f) of the U.S. Department of Transportation Act of 1966 or Section 106 of the National Historic Preservation Act of 1966;
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action

The Nebraska Department of Transportation (NDOT) *Environmental Procedures Manual*, Chapter 4, Categorical Exclusion, provides additional information on the CE determination process.

NDOT participates in the CE Assignment Program authorized by 23 United States Code (USC) 326, which allows FHWA to assign to a state FHWA’s responsibilities for determining whether a project is categorically excluded from preparation of an environmental assessment or environmental impact statement. NDOT assumed FHWA’s responsibilities for CE determination through a Memorandum of Understanding (MOU) with the FHWA Nebraska Division, dated September 5, 2018, and titled *State Assumption of Responsibility for Categorical Exclusions* (CE Assignment MOU). CE Assignment applies to only the following:

- Activities listed in 23 CFR 771.117(c)
- Example activities listed in 23 CFR 771.117(d)
- Any activities added to the (c) or (d) list through FHWA rulemaking (CE Assignment MOU, Stipulation I.B)
- Activities not specifically excluded from Assignment by the CE Assignment MOU, Stipulation II.B.2 and Stipulation III

CEs not assigned to NDOT under the CE Assignment MOU continue to be processed in accordance with the processes contained in the *Environmental Procedures Manual*, with the exception that review and approval are retained by FHWA.

For the purposes of carrying out its responsibilities under CE Assignment, NDOT has assumed responsibility as the lead agency for the federal environmental laws under which Nebraska exercises responsibilities. As part of CE Assignment, NDOT assumes FHWA's responsibilities for environmental review and documentation, interagency and federal resource agency consultation and coordination, and regulatory compliance for all assigned projects, with limited exceptions pertaining to government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m), Tribal Consultation (see CE Assignment MOU, Stipulation II.B.1). Additional information on CE Assignment is provided in the *Environmental Procedures Manual*, Chapter 1, Overview.

This *Nebraska Categorical Exclusion Guidance* provides instructions for preparing an NDOT CE, whether approved by NDOT or FHWA. NDOT CEs are prepared with the CE Smartform. The Smartform is a custom, web-based software application used to document project impacts and mitigation on CE Levels 1, 2, and 3 (see the *Environmental Procedures Manual*, Chapter 4, Section 4.4.4). Higher CE Levels indicate a higher intensity of potential impacts and thus result in an elevated level of analysis and review. Use of the Smartform results in complete CE documentation when combined with the necessary attachments. The Smartform includes programming logic and streamlines CE preparation. The Smartform cannot be used to generate documentation for Minor CEs, environmental assessments, and environmental impact statements. Separate documents or memos would be required for these National Environmental Policy Act (NEPA) analyses. Further information regarding Minor CEs, including forms and guidance, can be found in the *Environmental Procedures Manual*, Chapter 4 and Appendix B.

Section 1 Accessing the Smartform

1.1 Getting Access

Document authors will be assigned to a user group set up by NDOT within the Smartform. This will allow document authors in each group to read or modify NEPA documentation for any projects that are assigned to that group. Groups are created for NDOT, each Local Public Agency (LPA), and each consulting firm. To add a document author to a group, the group leader (for example, the contract manager) will need to provide NDOT with the document author's preferred first and last name (Kate, Katie, Katherine, etc.) and the group they should be added to. With this information, NDOT will generate a username and password. This username, password, and a link to the Smartform will be provided to the document author from the NDOT Business Technology Support Division or Help Desk. Additionally, if a member of a group leaves, it is the responsibility of the group leader to notify NDOT to remove that document author's information and revoke his or her access to the Smartform.

1.2 Logging In

The Smartform is not directly linked to the NDOT Environmental Section's website but can be found [here](#). The username will be "firstname.lastname," and the password will be the one provided by NDOT. If a document author has problems logging in, he or she should contact the NDOT Help Desk (402-471-4567).

NOTE: If a password is entered incorrectly more than three times, the Smartform will lock out the user. The NDOT Help Desk should be contacted to fix the issue.

1.3 Project Access

All projects will be created in the Smartform by NDOT, and each project will be assigned to the appropriate group. If a project does not show up or cannot be accessed, or if the project questions cannot be modified, contact the NDOT NEPA Specialist. Additionally, if a group has access to projects that it is not contracted for, the group leader should contact the NDOT NEPA Specialist for removal.

Section 2 Completing a Nebraska Categorical Exclusion

2.1 Smartform Navigation

The Smartform has five links in the black menu bar at the top of the page. These links serve as quick references and are as follows:

- CE Smartform: Returns the document author to the Smartform homepage
- Guidance: Provides links, via drop-down menu, to the CE Assignment MOU, this *Nebraska Categorical Exclusion Guidance*, and the *Smartform User Guide*
- Comments: Opens a Smartform comment submittal box, which allows document authors to provide feedback to NDOT on the Smartform or on issues they have encountered within the Smartform
- About: Provides Smartform information (for example, version)
- Contact: Provides NDOT Help Desk contact information for Smartform support

Once a project is selected, the Smartform has eight tabs under the project name, control number, and recommended CE level. These tabs correspond to the sections of the Smartform and resources that are reviewed in Nebraska CEs, which are as follows:

- Form Administration
- Project Information
- Right-of-Way (ROW) & Property Impacts
- Water & Ecological Resources
- Human & Social Resources
- Other Impacts
- Indirect & Cumulative
- Mitigation

2.2 Form Administration

2.2.1 Paragraph and Activity

Identify the proper 23 CFR 771.117 paragraph, (c) or (d), and the action type (activity) based on the scope of work and the resulting impact threshold analysis. When analyzing a federal-aid project in Nebraska, two factors are critical in determining the appropriate CE classification: the scope of the project (scope) and the context and intensity of project impacts (effects). Compare the scope and effects of the project to the activities listed in 23 CFR 771.117(c) and (d), and the impact thresholds found in the NDOT *Environmental Procedures Manual*, Chapter 4, to determine the appropriate CE level.

NOTES:

If paragraph (d) is selected, the document will automatically become a CE Level 3.

A CE Level 3 document that falls under the actions described in (c)(26), (27), or (28) must avoid the constraints listed in 23 CFR 771.117(e) to be processed as a (c) listed activity. If these constraints cannot be avoided, the project will be processed as a (d)(13) activity.

The document author is responsible for determining which CE activity to assign a project. In the instance that a project fits under more than one CE activity, the document author will determine which CE activity most closely captures the project's scope of work. If uncertain, the document author should coordinate with the NDOT NEPA Specialist or Environmental Documents Unit (EDU) Manager to determine the appropriate activity.

2.2.2 Preparer Information

Enter information requested about the document author. The document author should ensure that the date in the Submitted Date block is up-to-date prior to each CE submission.

2.2.3 Project Sponsor Information

Enter information requested about the project sponsor. On LPA projects, the project sponsor is a local official or project responsible charge; on state projects, the project sponsor is a representative from NDOT's Roadway Design Division. If the project sponsor information is unknown, coordinate with the NDOT NEPA Specialist.

2.3 Project Information

The Project Information tab includes three sections: General, Project Description, and Purpose & Need. The General tab includes project information such as CE level, and location and study area. The Project Description and Purpose & Need tabs include discussions about the project scope and why the project is needed.

2.3.1 General

2.3.1.1 Recommended CE Level

The Recommended CE Level will change automatically as the Smartform is completed. If there is a discrepancy, verify that the information in the form is correct.

2.3.1.2 Project Name, Control Number, and Project Number

The project name, control number, and project number will automatically populate from NDOT's internal project scheduling system. If there are discrepancies, notify the NDOT NEPA Specialist.

2.3.1.3 Multiple Projects

For convenience and streamlining, NDOT may elect to process multiple projects as one CE during project development.

Is this project being reviewed with another project(s)?

- NO: Leave the box unchecked and proceed.
- YES: Check the check box. Three additional fields will appear for the additional project(s) name, control number, and project number. The order in which the projects are listed should be consistent with the list elsewhere in the NEPA documentation.

2.3.1.4 Location and Study Area

Briefly describe the location of the proposed project, including the roadway name or highway number, city (or nearest city/town), county, and the distance to nearest landmark, highway, or intersection. Include a brief description of the environmental study area and how the logical termini were determined. A project location figure depicting the project location should be attached to the CE. Further information about figure requirements is provided in Section 4 of this guidance document.

2.3.1.5 Start Points, End Points, and Highway Number, Street, etc.

Provide where the project starts and ends, and the name of the roadway, street, or trail where the project occurs. Start and end points can be mile markers or a brief description. Ensure that the project start and end points are logical, taking into consideration the scope of the activity, purpose of the project, and needs of the facility.

NOTE: These blocks should not include references to stationing or reference posts, but rather mile markers or descriptive text.

2.3.1.6 STIP Identification

A project must be included in the current approved State Transportation Improvement Program (STIP) or amended STIP prior to CE approval. If a project is listed in the current STIP or amendment, provide the date. For projects located within Metropolitan Planning Organization (MPO) boundaries for Omaha (Omaha-Council Bluffs Metropolitan Area Planning Agency), Lincoln (Lincoln MPO), South Sioux City (Siouxland Interstate Metropolitan Planning Council), or Grand Island (Grand Island Area Metropolitan Planning Organization), the project must be listed in the most recent Transportation Improvement Program (TIP) or amended TIP that has been incorporated by reference in the current approved STIP or its approved amendment. This reference is in the cover letter of the STIP or STIP amendment. If the TIP has not been referenced, contact the NDOT Program Management Division to determine the schedule for including the TIP in a STIP amendment. Additionally, the cost and scope must be accurately represented in the most recently approved TIP. Projects from the Transportation Alternatives List, Minor Safety Projects List, and Recreational Trails List are incorporated by reference in the NDOT STIP; for these types of projects, ensure that the project is included in the most current applicable list. If a project is not listed in the most current STIP, TIP, or other applicable list above, contact the assigned NDOT NEPA Specialist.

Federal funding requires that the project be included in the STIP prior to CE approval; therefore, only the date of the STIP is applicable. The TIP information may be useful to find the appropriate STIP, but the date of the TIP should not be entered in the block. Ensure that the STIP date is verified and updated throughout the review and approval process.

The NDOT STIP and references to the MPO TIPs can be found on the NDOT [website](#).

2.3.1.7 LRTP Conformance

If a project (state or LPA) is included within an MPO boundary, the project cost and scope must be accurately represented in the most recently approved MPO's Long-Range Transportation Plan (LRTP). For NDOT-sponsored projects, the document author will coordinate with the NDOT NEPA Specialist and Program Management Division. For LPA-sponsored projects, the document author will coordinate with the NDOT NEPA Specialist and the Local Assistance Division. The following information needs to be verified and documented:

- The MPO LRTP must be consistent with the MPO TIP.

- If the MPO LRTP and MPO TIP are not consistent, contact the Strategic Planning Division to determine if an LRTP amendment is currently pending.
- If an MPO LRTP amendment is not pending, the project sponsor must work with the Strategic Planning Division to initiate an amendment. If the project cost or scope, or both, is not accurately represented in these planning documents, an amendment may also be required based on the following thresholds:
 - 20% or \$2 million, whichever is greater, of the federal dollars
 - Project termini changes greater than 0.25 mile

A project will need to be fiscally constrained in the STIP, TIP (if applicable), and LRTP within the entire planning area boundary prior to NEPA approval. FHWA defines “fiscally constrained” as a demonstration of sufficient funds (federal, state, local, and private) to implement proposed transportation system improvements, as well as to operate and maintain the entire system, through the comparison of revenues and costs. If it is determined that the project is not fiscally constrained, an amendment(s) will be needed before the CE can be approved.

If it is determined that the project is fiscally constrained, the CE can be approved, and the STIP date and MPO LRTP verification are recorded in the Smartform.

MPO LRTP accurately reflects project?

- N/A: The project is not located within an MPO boundary.
- YES: The project is located within an MPO boundary and is consistent with the design concept and scope as described in the MPO LRTP. Documentation is located in the project file.

2.3.1.8 Subsequent Phase

Select the subsequent federally funded project phase as shown in the fiscally constrained STIP or TIP. Federal rules require that the project be funded through the next project phase prior to CE approval.

2.3.1.9 Estimated Cost

Include the total estimated cost shown in the current STIP or TIP. For projects that use federal aid for preliminary/final engineering, ROW acquisition, and/or construction, include the total federal-aid expenditures requested for the project. If the project is using (c)(23) as the activity, an additional cost block will appear. Enter the total amount of federal funds found in the cost breakdown in the STIP or TIP. If the total federal funds cost is close to the federal limit identified in 23 CFR 774.117(c)(23) ([adjusted annually](#)), verify the cost with the NDOT NEPA Specialist. Save the verification to the project file.

NOTE: For multiple projects that are reviewed in one CE, include the combined project cost in this block and place the individual costs in the project description with the respective project.

2.3.2 Project Description

The project description will be developed by the roadway designer, LPA project responsible charge, or consultant consistent with *NDOT Project Description Template*. The document author should ensure that the project description adequately describes project features and construction activities commensurate with the CE Level and/or potential to impact identified study area resources.

The project description should not include location information that was previously discussed in the Location and Study Area block (mile markers, etc.); the word “will”; stationing; plus signs (+); references

to determinations at plan-in-hand; or references to specific amounts or locations (for example, inches of a grade raise and number of culverts).

2.3.3 Purpose and Need

The purpose and need statement is included only if the project is a CE Level 3, would obtain a Clean Water Act Section 404 Nationwide Permit (NWP) 23, or has a Section 4(f) Programmatic Evaluation or higher. The purpose and need should clearly identify and describe the underlying problem or deficiency (for example, congestion, safety, system linkage) and explain why the project is necessary (for example, to provide system continuity, to improve capacity, and to correct safety or roadway deficiencies). Ensure that all references to dates, such as bridge determinations, are up-to-date throughout project development.

The following Smartform sections (1–21) will determine the level of the CE if it has not already been determined by the 23 CFR 771.117 action type. Each section should be considered individually for CE level and then reconsidered as a whole after completing a CE. The CE level for one section does not necessarily affect the CE level of another. For example, if Section 1 is a CE Level 2, Section 6 is a CE Level 1, and Section 15 is a CE Level 3, the document as a whole is a CE Level 3.

2.4 Right-of-Way and Property Impacts

The ROW and Property Impacts tab includes sections 1 through 4: ROW & Easements, Section 4(f), Section 6(f), and Other Property Impacts.

2.4.1 Right-of-Way and Easements

For CE Level 1 actions, *no permanent ROW or easement acquisition or relocations can occur*. For CE Level 2 actions, no acquisition of more than minor amounts of ROW (that is, 4 acres per linear mile), no removal of major property improvements, or no residential or non-residential displacements can occur. Examples of major property improvements include residential and business structures, functional garages or outbuildings, or other features that would change the functional utility of the property. Removal of minor improvements, such as fencing, landscaping, sprinkler systems, and mailboxes, would be allowed. A displacement would occur if any owner, occupant, or tenant is required to move from a dwelling (including mobile homes), or to move from a business or farm/ranch as a result of the project. ROW and easement data can be obtained from the NDOT ROW Designer (preferred), Roadway Design Division, or the design consultant.

1.1: Will the action require the acquisition of temporary easements?

- NO: The project review is eligible for a CE Level 1.
- YES: The project review is eligible for a CE Level 1. Question 1.7 and Blocks 1.4–1.6 will appear and must be answered to further determine the CE level for this section.

1.2: Will the action require the acquisition of permanent right-of-way or easements?

- NO: The project review is eligible for a CE Level 1.
- YES: The project review is elevated to a CE Level 2. Questions 1.3 and 1.7 and Blocks 1.4–1.6 will appear and must be answered to further determine the CE level for this section.

1.3: Will the action result in acquisition of greater than 4 acres per linear mile (*estimated*) or the removal of major property improvements?

- NO: The project review remains eligible for CE Level 2. Blocks 1.4–1.6 and Question 1.7 must be completed to further determine the CE level for this section.
- YES: The project review is elevated to a CE Level 3. Blocks 1.4–1.6 and Question 1.7 must be completed.

NOTE: The document author will coordinate with the NDOT NEPA Specialist (if applicable), project designer, and NDOT Right of Way Division to determine the average ROW and easement acquisition per mile. Projects that are less than 1 mile in length are assumed to be a full mile for this determination and cannot exceed 4 acres per mile.

1.4: Describe the type of property required for ROW and/or potential impacts on major property improvements:

Describe the property(ies) affected and general disposition (residential, business, farm/ranch, apartment/rental property, occupied or vacant, functional or dilapidated, etc.) of the property. This should include any modifications or relocations of major improvements that affect the continued functionality of the property. Include any potential changes in functional utility of the property due to access changes or restrictions, loss of parking, or land use changes that may occur as a result of the project. If the project may result in impacts on major property improvements, coordination will occur with the EDU Manager to determine the appropriate level of NEPA documentation. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.

1.5: Estimated Acres of Permanent ROW and Easements:

Provide the total acres of permanent ROW and easements required for project construction. Round to the nearest hundredth.

1.6: Estimated Acres of Temporary Easements:

Provide the total acres of temporary easements required for project construction. Round to the nearest hundredth.

1.7: Will the action result in any residential or non-residential displacements?

- NO: The project review remains eligible for CE Level 1 or 2. This section is complete.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Coordination will occur with the EDU Manager to determine the appropriate level of NEPA documentation. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. Block 1.8 will appear and must be completed.

1.8: Describe the displacements:

Describe the displacements and estimated number of relocations, including whether the displacements are residential or non-residential. If the project involves a residential displacement, describe the adequacy of replacement housing in the area. If the project involves a non-residential displacement, describe the type or activity of the business or farm and availability of replacement sites in the area.

2.4.2 Section 4(f)

Section 4(f) properties are existing or planned publicly owned parks, recreation areas, or wildlife and waterfowl refuges, or any significant historic sites (listed in, or eligible for listing in, the National

Register of Historic Places [NRHP]) officially designated as such by a federal, state, or local agency. The Section 4(f) analyses and approvals are conducted and documented according to the *NDOT Guidance for Completing the Section 4(f) Review Process in Nebraska for Federal-Aid Projects* (NDOT Section 4(f) Guidance). The Section 4(f) process occurs prior to the submittal and finalization of the CE form. Further information regarding Section 4(f) can be found in the NDOT Section 4(f) Guidance and the FHWA Section 4(f) Policy Paper.

When completing a CE, the document author should consult the Section 4(f) Initial Assessment, Exception, *de minimis*, Programmatic Evaluation, and/or Individual Section 4(f) Evaluation to answer the questions. The Section 4(f) Initial Assessment form will indicate whether a Section 4(f) property exists and whether there is a use of a property.

For CE Level 1 actions, the project cannot involve a Section 4(f) use (temporary or permanent) or a determination of a Section 4(f) Exception. If the project results in a use of a Section 4(f) property or if a determination is made that the property qualifies for an exception to the requirement for Section 4(f) protection, the project will (at a minimum) be elevated to a CE Level 2. For CE Level 2 actions, the project cannot result in a Section 4(f) use greater than a Section 4(f) Exception, *de minimis* impact, or Programmatic Evaluation.

2.1: Will the action result in a Section 4(f) use or qualify for Section 4(f) Exception?

- NO: The project review is eligible for a CE Level 1. If Section 4(f) properties are in the study area, Blocks 2.3 and 2.4 will be completed.
- YES: The project review is elevated to a CE Level 2. Question 2.2 will appear and must be answered to further identify the CE level for this section.

2.2: Will the action result in an Individual Section 4(f) Evaluation?

- NO: The project review remains eligible for a CE Level 2. Complete Blocks 2.3 and 2.4.
- YES: The project review requires a Section 4(f) Individual Evaluation and a CE Level 3 or higher class of action. Coordination must occur with the EDU Manager to determine the appropriate level of NEPA documentation. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.

2.3: Describe resources, impacts, and the coordination conducted with officials/agencies:

If a Section 4(f) property(ies) exists but will be avoided by the project (that is, there is no use), list the property(ies) that were assessed during the Section 4(f) analysis. Briefly discuss why there would be no use and how the property would be avoided during construction (for example, marked as a sensitive area on plan sheets). If a Section 4(f) property(ies) exists and there will be a use, note the nature of the use or impact; note whether the use or impact would interfere with the activities, features, or attributes of the property that make it eligible for Section 4(f) protection; and describe the coordination with the Official with Jurisdiction (OWJ), including concurrence dates. Additionally, include the Section 4(f) determination and the EDU Manager approval date for each property.

2.4: Section 4(f) Mitigation:

Describe any mitigation measures and responsible parties associated with the Section 4(f) property. Such measures may include project design minimization efforts, marking properties as sensitive areas in project plans, listing a property as an avoidance area in the contract documents, resource modification, or relocation or replacement, and should be taken directly from the Section 4(f) documentation.

2.4.3 Section 6(f)

Properties that have used funds from the Land and Water Conservation Fund (LWCF) Act are considered to be Section 6(f) properties. For CE Level 1 actions, the project cannot result in a Section 6(f) conversion (that is, changing the land use to something other than recreation). If LWCF funds were used to acquire property or to improve property that will be converted by the project, the project does not qualify for a CE Level 1 analysis.

If there are no Section 4(f) properties in the study area or there will be no Section 4(f) analysis beyond an Initial Assessment, then a search for Section 6(f) facilities is not necessary. If a Section 4(f) analysis beyond an Initial Assessment is needed (for example, Exception or *de minimis*), coordination with the Nebraska Game and Parks Commission (NGPC) should be completed to determine if LWCF funds were used for a given property. NGPC has been delegated the authority over the LWCF program in Nebraska. NGPC must be contacted to determine if a Section 6(f) property is present and has the potential to be impacted by a project; searches of the National Park Service or NGPC websites are not sufficient to satisfy this review requirement. Further information regarding Section 6(f) properties can be found in the *NDOT Resource Analysis Guidance – Land and Water Conservation Fund Recreation Areas (Section 6(f))*.

If a conversion of a Section 6(f) property(ies) to other uses will occur as a result of the project and replacement lands are required, coordination with the EDU Manager is required to determine if a CE Level 2 analysis is appropriate or if a CE Level 3 or higher class of action is required. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. If a project will not result in a conversion but will result in an impact (for example, temporary easements or traffic/access disruptions), mitigation may be required.

3.1: Are there any Section 6(f) Land and Water Conservation Fund Act properties within the study area?

- N/A: There will be no use of Section 4(f) properties, and no Section 6(f) analysis is required. The project review is eligible for a CE Level 1. If further reasoning is needed for an N/A, include it in Block 3.3.
- NO: The use of a Section 4(f) property(ies) in the study area will occur. Coordination was completed with NGPC to determine the presence of Section 6(f) properties, but no Section 6(f) properties were identified. Coordination will be attached to the CE, and a brief discussion of the coordination will be included in Block 3.3. The project review is eligible for a CE Level 1.
- YES: Question 3.2 will appear and must be answered to further identify the CE level for this section.

3.2: Will the action result in a conversion of a Section 6(f) property?

- NO: The project review is eligible for a CE Level 1. Coordination with NGPC was completed and is attached to the CE. Complete Block 3.3 and include any required mitigation and their responsible parties in Block 3.4.
- YES: The project review is elevated to a CE Level 2. Complete Blocks 3.3 and 3.4.

3.3: Describe resources, impacts, replacement lands (if applicable), and the coordination conducted with officials/agencies:

Identify all Section 6(f) resources that were assessed during the analysis, note the nature of the impact, and note whether the impact would be considered a conversion. Additionally, describe the coordination with the Agency(ies) with Jurisdiction (AWJ), and include coordination dates.

3.4: Section 6(f) Mitigation:

Describe any mitigation measures and their responsible parties associated with the Section 6(f) resource impact. Such measures may include project design avoidance or minimization efforts, resource modification, or relocation or replacement.

2.4.4 Other Property Impacts

Other property impacts include topics that will be considered in the NEPA evaluation but do not impact the level of CE review. These topics include proximity to federal or tribal lands, utilities, and farmland.

2.4.4.1 Federal and Tribal Lands

The document author must check land ownership to determine whether the project occurs within or directly adjacent to federal lands (for example, Oglala National Grassland, Valentine National Wildlife Refuge) or tribal lands (for example, Santee Sioux Indian Reservation, Winnebago Indian Reservation). The NDOT-53 Probable Class of NEPA Action form (NDOT-53) will be used to document this determination. If the NDOT-53 indicates that there is a presence, the NDOT NEPA Specialist will send a letter to the AWJ for federal land (see the *Environmental Procedures Manual*, Chapter 10, for further information regarding tribal coordination). Federal and tribal lands coordination under Section 106 of the National Historic Preservation Act (Section 106) and Section 7 of the Endangered Species Act will be documented in their respective sections.

4.1: Will the action take place on or adjacent to tribal lands or other federal lands?

- NO: Discussion of this topic in Block 4.5 is not needed.
- YES: Coordination needs to occur with the AWJ or tribe. In Block 4.5, include the name of the property, the name of the entity that owns/manages the land(s), the date(s) of coordination, and a brief discussion of the actions resulting from the coordination. Any commitments should be included in Block 4.6.

2.4.4.2 Utilities

If any federal funds are used to relocate utilities, or if the project contractor will be responsible for utility relocation, the relocation is considered a federal action subject to NEPA review. Generally, state-sponsored projects would not include federal funds for utilities, and locally sponsored projects would include federal funds for utilities. To determine if a project will use federal funds for utility relocations, consult the Plan-in-Hand Report or contact the NDOT NEPA Specialist.

4.2: Will federal funds be used to relocate utilities, or will the project contractor be responsible for the relocation of the utilities?

- UNKNOWN: Include in Block 4.6 a commitment to review the status of utilities, when available, and to ensure that the utility relocation is within the project study area.
- NO: No discussion is required in Block 4.5, and mitigation measures and their responsible parties should be included in Block 4.6.
- YES: Ensure that the new utility location was included in the project study area and was reviewed as part of the impact analyses. Briefly discuss the affected utilities in Block 4.5, and include any pertinent mitigation and their responsible parties in Block 4.6.

The following questions will appear only when the action is processed for CE Level 2 or CE Level 3 documentation. Ensure that these questions are answered if the project is elevated to a CE Level 2 or CE Level 3 at a later point in development. At this time, the Smartform will not notify the document author of the need to return to these questions.

2.4.4.3 Farmland

Federal agencies are required under the Farmland Protection Policy Act of 1981 to evaluate the impacts of federally funded projects that may involve converting prime or unique farmlands to non-agricultural uses, and to consider alternative actions that would lessen the adverse effects of the land conversion. For Nebraska CEs, it is assumed that if a project is acquiring ROW or permanent easements in rural areas, the land is prime or unique farmland.

4.3: Would the project convert prime or unique farmland or land of state importance to a non-farm use?

- NO: ROW or easements are located entirely in an urban area, or the project would not convert prime or unique farmland or land of state importance via ROW or permanent easements. Question 4.4 will automatically check N/A, and discussions in Blocks 4.5 and 4.6 are not required.
- YES: ROW or easement acquisitions are located within a rural area, and the project would convert prime or unique farmland or land of state importance to non-farm use. The applicable section of the NRCS-CPA-106 (linear projects) or NRCS-AD-1006 (point projects) form must be completed. Question 4.4 must be answered.

4.4: If Yes, does the affected property accumulate 60 points or more in Part VI of the appropriate NRCS Farmland Conversion Impact Rating Form?

- NO: The total score of Section VI is below 60, coordination with NRCS is not required. The CPA-106 or AD-1006 should be placed in the project file and not attached to the CE.
- YES: The total score of Section VI is above 60, and coordination with NRCS is required. If NRCS determines that there will be impacts, the document author should initiate coordination with the EDU Manager to determine the appropriate level of NEPA analysis. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. A discussion of the NRCS coordination should be included in Block 4.5.

4.5: Describe resources, impacts, and the coordination conducted with officials/agencies:

Include all applicable discussions from Questions 4.1–4.4.

4.6: Other Property Impacts Mitigation

Describe any mitigation measures and their responsible parties associated with Questions 4.1–4.4.

2.5 Water and Ecological Resources

The Water and Ecological Resources tab includes sections 5 through 9: Wild & Scenic Rivers, Floodplain/Floodway, Wetlands & Waters of the U.S. (WOUS), Impaired Waters, and Threatened and Endangered (T&E) Species.

2.5.1 Wild and Scenic Rivers

The Wild and Scenic Rivers Act established the National Wild and Scenic Rivers System (National System) to preserve rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the benefit and enjoyment of present and future generations. There are two National System designated rivers in Nebraska, the Niobrara National Scenic River and the Missouri National Recreational River. The Nationwide Rivers Inventory (NRI) is a registry of river segments that potentially qualify as national wild, scenic, or recreational river areas. There are eight NRI-listed segments on six waterways in Nebraska.

To determine if a designated Wild and Scenic River segment is in the project area, the document author should visit the [Wild and Scenic Rivers website](#). It is the responsibility of the document author to determine whether a project is located within or across the boundaries of a river area designated under the Wild and Scenic Rivers Act. Both of the designated rivers in Nebraska have identified boundaries.

To determine if a river segment listed on the NRI is in the project area, the document author should visit the [NRI website](#). It is the responsibility of the document author to determine whether a project is located within, across, or adjacent to the boundaries (0.5 mile from the river centerline) of a river listed on the NRI.

Following designated river identification and confirmation that a project has the potential to impact a designated river segment or an NRI-listed segment based on scope of work within or adjacent to a boundary, the document author will coordinate with the NDOT NEPA Specialist and NDOT will begin early coordination with the AWJ (that is, National Park Service or U.S. Fish and Wildlife Service [USFWS] for Wild and Scenic Rivers, and National Park Service for NRI-listed segments). Coordination with the AWJ is generally initiated through a letter from NDOT that informs the agency of the nature and location of the project and requests comment.

To qualify for CE Level 1 or 2, there can be no impact to a designated river or NRI-listed segment. If the AWJ determines the project will not result in an impact to a designated or NRI-listed river segment, the project would remain eligible under CE Level 1 or CE Level 2, as appropriate. For projects that are reviewed under 23 CFR 771.117(c)(26), (27), or (28) and have construction activities in, across, or adjacent to a designated river segment, a CE Level 3 or higher class of action is required regardless of the AWJ impact determination. If the AWJ has determined that project construction activities would result in an impact, a CE Level 3 or higher class of action is required.

5.1: Will the action cross or occur within the boundaries of a designated Wild and Scenic River or a river listed on the Nationwide Rivers Inventory?

- NO: There are no Wild and Scenic River designated or NRI-listed segments within the study area. The project review is eligible for a CE Level 1.
- YES: The document author must answer Questions 5.2 and 5.3 to further identify the CE level for this section.

5.2: For actions processed under 23 CFR 771.117(c)(26), (27), or (28), a Level 3 review will be required.

If the project will be processed under a 23 CFR 771.117(c)(26), (27), (28), this question will be checked and the CE will be processed as a CE Level 3 regardless of the AWJ determination.

5.3: Is the action considered an impact to the National System of Wild and Scenic Rivers by the Agency of Jurisdiction?

- NO: The project review is eligible for a CE Level 1 or CE Level 3 depending on the answer to Question 5.2. Complete Blocks 5.4 and 5.5.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Complete Blocks 5.4 and 5.5.

5.4: Describe resources, impacts, and the coordination conducted with officials/agencies:

Describe the river resource area, potential construction impacts, coordination conducted with the AWJ, and the results of the coordination. All coordination documentation with the AWJ should be attached to the CE.

5.5: Wild and Scenic River Mitigation:

Discuss any design avoidance or minimization efforts made, or other recommendations agreed upon, with the AWJ and those who will be responsible for completing the efforts.

2.5.2 Floodplain/Floodway

The Federal Emergency Management Agency's National Flood Insurance Program requires communities to manage development within designated floodplains to limit increases of the 100-year flood elevation. If a project crosses a mapped Zone A floodplain or floodway, the action cannot cause greater than a 1-foot rise in the Base Flood Elevation (BFE), any rise in a floodplain that potentially impacts an adjacent structure, or any rise in a floodway. In some instances, such as when a county does not participate in the National Flood Insurance Program, an area may not be mapped for floodplains. In this instance, Nebraska Administrative Code Title 455, Chapter 1, which defines floodplain areas, will be applied in lieu of Federal Emergency Management Agency floodplain maps. To accurately answer Questions 6.1 and 6.2, review the Floodplain Professionally Qualified Staff (PQS) Memo.

Projects evaluated under 23 CFR 771.117(c)(1–23) are not subject to the floodplain restraint criteria required for actions processed under 23 CFR 771.117(c)(26), (27), and (28); therefore, minor floodplain impacts, or encroachments, are allowed for CE Level 1 projects. For projects reviewed under 23 CFR 771.117(c)(26), (27), and (28), MAP-21 guidelines require CE approval by the EDU Manager if there are any floodplain encroachments other than a functionally dependent use such as bridges (any water conveyance structures) or actions that facilitate the use of open space (for example, recreational trails, bicycle and pedestrian paths). Projects involving parallel or perpendicular embankment encroachments (not directly associated with a bridge or culvert) or new projects on new alignment assessed under 23 CFR 771.117(c)(26), (27), and (28) will require a CE Level 3 review or higher class of action. The Floodplain PQS will identify the requirement for a 23 CFR 650.111 analysis and provide it with the Floodplain PQS Memo.

6.1: Will the action occur within the boundary of a regulatory floodway, mapped base floodplain, or potential base floodplain in an unmapped community?

- NO: The project review is eligible for a CE Level 1.
- YES: Questions 6.2 and 6.3 and Blocks 6.4 and 6.5 will appear and must be answered to further determine the CE level.

NDOT PQS Determination Date:

Enter the date of the NDOT Floodplain PQS Memo. For some projects, there may be multiple consultation or PQS review dates. When this occurs, enter the original date here and describe the other review dates and the reason for them in Block 7.4. The date here should always match the date of the memo and not supplemental evaluations.

6.2: Will the action cause a greater than 1-foot rise in the Base Flood Elevation (BFE), an increase in the potential for property loss and hazard to life, or any rise in a regulatory floodway?

- NO: The project review is eligible for a CE Level 1.
- YES: The project review is elevated to a CE Level 3 review or higher class of action.

6.3: Will the actions reviewed under 23 CFR 771.117(c)(26), (27), and (28) result in a floodplain encroachment other than functionally dependent uses or actions that facilitate open space use?

- N/A: The project is being processed as something other than a 23 CFR 771.117(c)(26), (27), or (28). The project review is eligible for a CE Level 1 or 3.

- NO: The project review is eligible for a CE Level 1 or 3. A functionally dependent use would receive a NO answer.
- YES: The project review is elevated to a CE Level 3 or higher class of action. A memo consistent with 23 CFR 650.111(b-e) will be attached to the CE.

6.4: Describe resources, effects, and the coordination conducted with officials/agencies:

Describe the resources (location and name of associated waterway[s]), impacts and any coordination conducted with officials/agencies. The document author should review the available floodplain information (for example, emails, certifications, hydraulics reports) and/or coordinate with the NDOT Hydraulics Engineer or design consultant to complete this block. If applicable, summarize the findings from the 23 CFR 650.111 memo in this block.

6.5: Floodplain/Floodway Mitigation:

If a floodplain permit (mapped) or certifications (unmapped) are required but not obtained by the time the CE documentation is ready for approval, include a commitment to obtain the permit prior to construction. Other applicable floodplain mitigation and their responsible parties should be included here.

2.5.3 Wetlands and Waters of the U.S.

Waters of the U.S., including wetlands, waterways, lakes, natural ponds, and impoundments, are regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act, which requires a permit to authorize the discharge of dredged or fill material into waters of the U.S. (33 USC 1344). Federal regulations require that impacts on wetlands and other waters of the U.S. be avoided and minimized to the extent practicable. Further information regarding wetlands and water resources is available in the *NDOT Wetland and Water Resource Procedure Document*.

If no work will occur within a wetland or other water of the U.S., or if the project qualifies for a non-notifying Nationwide Permit, the project is eligible for a CE Level 1 review. In addition, a project can have a cumulative impact of up to 0.5 acre of permanent wetland impacts and remain eligible for a CE Level 1 review. Projects requiring a pre-construction notification or result in cumulative permanent impacts greater than 0.5 acre will require a CE Level 2 review or higher class of action. Projects that result in an application for (1) an Individual Section 404 Permit, (2) a Section 10 Permit from the U.S. Army Corps of Engineers, OR (3) a Section 9 Permit from the U.S. Coast Guard, will be elevated to a CE Level 3 or higher class of action. Information regarding impacts and mitigation can be found in the project-specific NDOT Wetlands PQS memo.

7.1: Are there wetlands, stream channels, or other waters within the study area?

- NO: The project review is eligible for a CE Level 1. Complete Question 7.8 and Blocks 7.9 and 7.10.
- YES: Questions 7.2–7.7 will appear and must be answered to determine the appropriate CE level for this section.

NDOT PQS Determination Date:

Enter the date of the NDOT Wetlands PQS Memo. For some projects, there may be multiple consultation or PQS review dates. When this occurs, enter the original date here, and describe the other review dates and the reason for them in Block 7.8. The date located here should always match the date of the memo and not supplemental evaluations.

7.2: Will the action result in wetland impacts in accordance with Section 404 of the Clean Water Act and/or Nebraska Administrative Code Title 117?

- NO: The project review is eligible for a CE Level 1. Question 7.3 will automatically check NO and Block 7.4 will input N/A. Complete Questions 7.5–7.8 and Blocks 7.9 and 7.10.
- YES: Questions 7.3–7.8 must be answered to determine the appropriate CE level for this section.

7.3: Will the action result in greater than 0.5 acre (total permanent) of wetland impacts?

- NO: The project is eligible for a CE Level 1. Complete Questions 7.5–7.8 and Blocks 7.4, 7.9 and 7.10.
- YES: The project review is elevated to a CE Level 2. Questions 7.4–7.8 must be answered to further determine the appropriate CE level for this section.

7.4: Estimated Permanent Wetlands Impacts (acres):

Include the estimated total permanent acres of wetland impacts resulting from the project. Round to the nearest hundredth.

7.5: If the project is processed with a Nationwide Permit, is a Pre-construction Notification required?

- NO: The project review is eligible for a CE Level 1 or 2.
- YES: The project review is elevated to a CE Level 2. Questions 7.6 and 7.8 must be answered to further determine the appropriate CE level for this section.
- N/A: An Individual Permit is required, or there are no impacts on streams or wetlands.

7.6: Anticipated Nationwide Permit:

- Choose the appropriate permit option from the dropdown. If a permit is not required, select N/A. If there is more than one permit, select "Other" as the permit type and add a brief discussion to Block 7.9.

7.7: Will the action require an Individual Permit (IP) or Section 10 Permit from the U.S. Army Corps of Engineers or a Section 9 Permit from the U.S. Coast Guard?

- NO: The project review is eligible for a CE Level 1 or 2. Complete Blocks 7.9 and 7.10.
- YES: The project review is elevated to a CE Level 3 or higher class of action. The document author should proactively initiate coordination with the EDU Manager when the need for an Individual Section 404 permit or a Section 9 or Section 10 permit is required to determine the appropriate level of NEPA analysis. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. Complete Blocks 7.9 and 7.10.

NOTE: The only Section 9 and 10 water in Nebraska is the Missouri River. For any work occurring in, across, or in the vicinity of the Missouri River, the document author should ensure these potential permit issues are addressed and documented appropriately. Contact the NDOT Wetlands PQS for help in determining Section 9 and 10 permit needs and requirements.

7.8: Is the project within 500 feet of a levee constructed by the U.S. Army Corps of Engineers or other Civil Works project that may require coordination with the U.S. Army Corps of Engineers?

- NO: The project will not temporarily or permanently alter a U.S. Army Corps of Engineers Civil Works project.

- YES: The project will either temporarily or permanently alter a U.S. Army Corps of Engineers Civil Works project. Complete Blocks 7.9 and 7.10.

NOTE: In addition to levees, common Civil Works projects in Nebraska also include floodwalls, dams, reservoirs, federally maintained waterways, and federally maintained river training structures. For any work that would alter a Civil Works project, the document author should ensure that these potential authorization issues are addressed and documented appropriately. The NDOT NEPA Specialist will consult the NDOT-73 or Roadway Designer to determine if a levee is present. If a levee is present, the NDOT NEPA Specialist will coordinate with the NDOT Wetlands PQS and Roadway Designer.

7.9: Describe resources, potential impacts, and any coordination conducted to date with officials/agencies:

Include a general discussion about the level of delineation or determination conducted (for example type of review and date the review was conducted). Briefly describe all impacts, including the type of wetlands or waters of the U.S. and the reason for the impact. Identify other permit strategies as warranted. Include coordination conducted with appropriate resource or regulatory AWJ over the identified resources. Give a brief description of any mitigation proposed to offset unavoidable wetland impacts, including the wetland bank being used. All information should be provided to the document author by the NDOT Wetlands PQS assigned to the project.

7.10: Wetlands/Waters of the U.S. or Levees Mitigation:

Discuss any design avoidance or minimization efforts made, or other mitigation efforts agreed upon, with resource or regulatory AWJ and those who will be responsible for completing the efforts. Mitigation measures will be listed in the wetlands PQS memo. If a Section 404 Nationwide Permit or Individual Permit has been obtained for the project(s) prior to CE approval, include the general, regional, or project-specific conditions from the permit here.

2.5.4 Impaired Waters, MS4, and Section 402

The three questions in this section will not affect the overall level of the CE, but should be considered in the environmental analysis.

2.5.4.1 Impaired Waters

The Clean Water Act, Section 303(d), requires states, territories, and authorized tribes to identify waters for which existing required pollution controls are not sufficiently stringent to maintain applicable water quality standards and to establish total maximum daily loads for the pollutants impairing those waters (33 USC 1251 et seq.). In Nebraska Department of Environmental Quality (NDEQ) guidelines, *Title 117, Nebraska Surface Water Quality Standards*, classifies uses of the surface waters within the state and identifies criteria to be used to protect these waters and meet the requirements of Section 303(d). These waters are referred to as impaired waters.

8.1: Are there any impaired waters within or adjacent to (0.5 mile) the project study area?

- NO: Blocks 8.4 and 8.5 can be left blank for this question.
- YES: A Category 5 impaired water(s) is within 0.5 mile of the project. Block 8.4 should include a brief discussion including the name of the impaired waterbody, segment number, location in reference to the project, and potential water quality impacts resulting from the project. The NDOT Roadside Development and Compliance Unit will provide a PQS memo including this information along with mitigation measures or strategies.

2.5.4.2 Municipal Separate Storm Sewer Systems

The Pretreatment Program is a subprogram of the National Pollutant Discharge Elimination System (NPDES) program and requires the consideration of water quality best management practices (BMPs) within the local municipalities and counties. To accomplish this, NDEQ has permitted municipalities with a population of 10,000 or greater and highly urbanized counties as Municipal Separate Storm Sewer Systems (MS4). Because NDOT owns and maintains ROW and properties within the MS4s, NDOT has developed a transportation-specific MS4 permit in coordination with NDEQ. NDOT has determined specific water quality goals that the project must meet, and determines if there are specific erosion control measures (often referred to as BMPs) that should be employed for a project.

8.2: Does the project occur within an MS4 community?

- NO: Blocks 8.4 and 8.5 can be left blank for this question.
- YES: The project occurs in an identified MS4 community. Block 8.4 should include the name of the MS4 community and the applicable statement below:

State:

Stormwater Treatment consideration is a condition of NDOT's Municipal Separate Storm Sewer System (MS4) permit. Stormwater treatment requirements will be applied to this project if it meets the criteria outlined in the *NDOT Drainage Design and Erosion Control Manual*, Chapter 3, Stormwater Treatment within Municipal Separate Storm Sewer System MS4 Communities. This determination and any necessary coordination with the MS4 community would be made during the design process.

LPA:

A Local Public Agency (LPA) permitted as an MS4 operates under its own NPDES permit; therefore, the requirement to establish stormwater treatment controls is guided by that specific permit. NDOT's stormwater treatment program does not supersede an LPA's stormwater treatment program or act as a minimum standard, except when an LPA project is being constructed on a state or federal highway located within an MS4 community. In those instances, the LPA may use its own program as long as it meets the minimum requirements established in the *NDOT Drainage Design and Erosion Control Manual*, Chapter 3.

2.5.4.3 Section 402: NPDES

The Clean Water Act, Section 402, establishes environmental programs, including the NPDES program, to protect the nation's waters. An NPDES Construction Storm Water General Permit – Notice of Intent and a Storm Water Pollution Prevention Plan are typically needed if construction disturbs 1 acre or more of land.

8.3: Does the project require a NPDES storm water permit (ground disturbance of 1 acre or more)?

- NO: Block 8.4 can be left blank for this question, and mitigation will be included for BMP compliance.
- YES: An environmental commitment will be included in Block 8.5 indicating that a Storm Water Pollution Prevention Plan will be developed prior to construction as appropriate.

8.4: Describe resources, impacts, and the coordination conducted with officials/agencies

Include all applicable discussions from Questions 8.1–8.3.

8.5: Impaired Waters, MS4, and Section 402 Mitigation

Describe any mitigation measures and their responsible parties associated with Questions 8.1–8.3.

2.5.5 Threatened and Endangered Species

NDOT, USFWS, and NGPC participate in a Programmatic Agreement (PA) for the Endangered Species Act and the Nebraska Endangered Species Conservation Act compliance, *Programmatic Agreement for the Determination of Effects to State and Federally Listed Species from the Federal-Aid Highway Program*, and the *Nebraska Biological Evaluation Process for the Federal-Aid Transportation Program*, commonly referred to as the Matrix. The Matrix process, and associated tools, will be used for Endangered Species Act and Nebraska Endangered Species Conservation Act compliance for projects. Further information regarding state or federally threatened or endangered (T&E) species and the parties involved in the agreement are provided in the Matrix document and PA.

For CE Level 1 actions, impacts on state or federal T&E species resulting in a “May Affect, Not Likely to Adversely Affect” with resource agency coordination cannot occur. For CE Level 2 actions, impacts on state or federal T&E species resulting in a “May Affect, Likely to Adversely Affect” determination under the Endangered Species Act cannot occur. The project would be elevated to a CE Level 3 or higher class of action.

9.1: Will the action result in a “May Affect” determination per the Nebraska Biological Evaluation Process Matrix that requires further consultation with the resource agencies?

- NO: The project review is eligible for a CE Level 1. Enter the NDOT PQS determination date, answer Questions 9.3–9.5 and 9.7, and complete Blocks 9.6 and 9.8.
- YES: The project review is elevated to a CE Level 2. Question 9.2 and boxes for the concurrence dates for USFWS and NGPC will appear and must be answered to further determine the appropriate CE level for this section.

9.2: Will the action result in a “May Affect, Likely to Adversely Affect” determination for threatened or endangered species or designated critical habitat?

- NO: The project review remains eligible for a CE Level 2. Enter the NDOT PQS determination date and the agency concurrence dates. Answer Questions 9.3–9.5 and 9.7, and complete Blocks 9.6 and 9.8.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Coordination will occur with the EDU Manager to determine the appropriate level of NEPA documentation if the project will result in an adverse effect on a threatened or endangered species. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. Enter the agency concurrence dates. Complete Questions 9.3–9.5 and 9.7, and complete Blocks 9.6 and 9.8.

NDOT PQS Determination Date and USFWS and NGPC Concurrence Dates:

Enter the date of the respective signatures, if applicable. For some projects, there may be multiple PQS review or concurrence dates. When this occurs, enter the original date here and describe the other review dates and the reason for them in Block 9.6. The date(s) located here should always match the date of the memo and not supplemental evaluations.

9.3: Has it been determined that there is suitable habitat within 0.5 mile of the environmental study area for bald or golden eagles?

- NO: No mitigation is needed.
- YES: Ensure that the appropriate mitigation from the NDOT T&E PQS is included in Block 9.8.

9.4: Migratory Bird Treaty Act (MBTA):

NDOT has developed an Avian Protection Plan (APP) for compliance with the Migratory Bird Treaty Act. All projects, including LPA projects using federal-aid administered by NDOT, must apply and follow the NDOT APP during project construction. Verify that the project will comply with the APP by checking the associated checkbox on the CE form. If the project will not comply with the NDOT APP (because of construction phasing considerations, for example), coordination with the EDU Manager and USFWS will be required. If coordination is required to address Migratory Bird Treaty Act concerns, provide a summary of the coordination in Block 9.6 and ensure that any specific mitigation measures and their responsible parties are included in Block 9.8. When the APP is followed (the standard case), compliance with the APP is established by Section 107.01 in the *NDOT Standard Specifications for Highway Construction*, and no mitigation is needed for the CE.

9.5: Fish and Wildlife Conservation Act (FWCA):

Coordination with USFWS is required during the permitting process if a Section 404 Individual Permit is required for project construction. If Fish and Wildlife Coordination Act coordination occurs during the NEPA phase, provide a summary of potential wildlife resource impacts related to project construction activities in Block 9.6. Include any specific mitigation measures and their responsible parties in Block 9.8.

9.6: Describe resources, potential impacts, and any coordination conducted to date with officials/agencies:

List the T&E species evaluated that resulted in a “May Affect, Not Likely to Adversely Affect” determination or higher (that is, do not list any species that resulted in a “No Effect” determination), and include the appropriate effect determination. This may include impacts on associated species habitat and/or designated critical habitat. Summarize any additional agency coordination (other than USFWS and NGPC) conducted as part of the Matrix evaluation. This information is provided to the document author in the T&E PQS Memo.

9.7: General Conservation Conditions from the Matrix PA:

- NO: Provide reasoning in Block 9.6, and include any alternate mitigation and their responsible parties in Block 9.8, if applicable.
- YES: The Matrix general conservation conditions apply to the project.

9.8: Species and Habitat Mitigation:

Include all conservation conditions listed exactly as they are written in the T&E PQS Memo. General Conservation Conditions, if applicable, will automatically populate in Block 23.1 and do not need to be included here.

2.6 Human and Social Resources

The Human and Social Resources tab includes sections 10 through 19: Historic Properties, Hazardous Materials, Noise, Air Quality, Roadway, Traffic Disruption, Access Disruption, Environmental Justice, and Public Involvement.

2.6.1 Historic Properties

NDOT, the State Historic Preservation Office (SHPO), and the Advisory Council for Historic Preservation entered into the *Programmatic Agreement among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, The Advisory Council on Historic Preservation, and The Nebraska Department of Roads to Satisfy the Requirements of Section 106 for the Federal-Aid*

Highway Program In The State of Nebraska (Section 106 PA). The Section 106 PA procedures and associated tools will be used for Section 106 compliance for CEs. Further information regarding the Section 106 process and the parties involved in the agreement are provided in the Section 106 PA.

For CE Level 1 actions, the project cannot result in Section 106 effects other than a “No Potential to Cause Effects” or a “No Historic Properties Affected” determination. If the project results in an effect other than what is identified above, the project will be elevated to a CE Level 2 or higher class of action. For CE Level 2 actions, the project cannot result in an “Adverse Effect” on any historic property under Section 106 of the National Historic Preservation Act. If the project results in an “Adverse Effect,” the project will be elevated to a CE Level 3 or higher class of action. The document author must review the NDOT Section 106 PQS Tier Memo for the project determination and pertinent resource information.

10.1: Are there any properties listed in, or eligible for listing in, the National Register of Historic Places (NRHP) in the area of potential effects (APE)?

- NO: The project review is eligible for a CE Level 1. Projects reviewed under a Section 106 PQS Tier 1 Memo will have NO checked. Answer Question 10.2, and if applicable, complete Blocks 10.3 and 10.4.
- YES: Question 10.2 must be answered to determine the CE level for this section.

10.2: Project Effects Determination:

Choose the appropriate effects determination from the dropdown:

- *No Potential to Cause Effects*: The project review is eligible for a CE Level 1. Complete Blocks 10.3 and 10.4, if applicable.
- *No Historic Properties Affected*: The project review is eligible for a CE Level 1. Complete Blocks 10.3 and 10.4, if applicable.
- *No Adverse Effect*: The project review is elevated to a CE Level 2. Complete Blocks 10.3 and 10.4.
- *Adverse Effect*: The project review is elevated to a CE Level 3 or higher class of action. Complete Blocks 10.3 and 10.4.

NDOT PQS Determination Date:

Enter the date of the NDOT Section 106 PQS signature. For some projects, there may be multiple consultation or PQS review dates. When this occurs, enter the original date here and describe the other review dates and the reason for them in Block 10.3. The date located here should always match the date of the memo and not supplemental evaluations.

Coordination with SHPO, THPO, and CLG:

- NO: Consultation with the respective entity did not occur.
- YES: Coordination with the State Historic Preservation Office (SHPO), the Tribal Historic Preservation Office (THPO), or Certified Local Government (CLG) was completed, and concurrence dates should be included.

10.3: List NRHP-eligible resources or NRHP-listed resources, impacts, and coordination:

Discuss the NRHP-eligible or NRHP-listed properties or districts found within the area of potential effect (APE) as listed in the Section 106 PQS Tier Memo, along with the Criterion under which the property is eligible for listing in the NRHP. In addition, a brief disclosure of potential impacts must be included, as applicable. If, per the Section 106 PA, additional consultation occurs with parties other

than SHPO, THPO, or CLG, or more than one CLG or THPO is required for the project, briefly summarize the consultation that occurred and include the concurrence dates.

10.4: Historic Property Mitigation:

If the NDOT Section 106 PQS Tier Memo or any Section 106 consultation letters indicate that mitigation is required, include the mitigation and their responsible parties.

2.6.2 Hazardous Materials

For CE Level 1 actions, the project cannot result in hazardous materials impacts other than a low potential for encountering hazardous materials based on a records review and visual survey (if needed) or disturb soil below or beyond preexisting roadway fill within an active Superfund Site. If the project results in a medium potential for encountering hazardous materials, the project will be elevated to a CE Level 2 or higher class of action. For CE Level 2 actions, the project cannot result in a high potential for encountering hazardous materials during construction or disturb soil below or beyond preexisting roadway fill within an active Superfund Site. If the project results in a high potential, the project will be elevated to a CE Level 3 or higher class of action.

The document author will review the NDOT Hazardous Materials PQS Memo prior to completing this section. Further information regarding hazardous materials is provided in the *NDOT Hazardous Material Review Guidance Manual*.

11.1: Will the project actions exceed the scope of the listed exemption identified in NDOT's Hazardous Materials Assessment Guidance?

- NO: The project review is eligible for a CE Level 1. Enter the NDOT PQS Determination Date, and complete Blocks 11.4 and 11.5.
- YES: Questions 11.2–11.5 will appear and must be answered to determine the CE level for this section.

11.2: What is the potential for an action to encounter hazardous materials?

Choose the appropriate potential from the dropdown:

- Low: The project review is eligible for a CE Level 1. Answer Questions 11.3–11.5, and complete Blocks 11.6 and 11.7.
- Medium: The project review is elevated to a CE Level 2. Answer Questions 11.3–11.5, and complete Blocks 11.6 and 11.7.
- High: The project review is elevated to a CE Level 3 or higher class of action. Answer Questions 11.3–11.5, and complete Blocks 11.6 and 11.7.

11.3: There is potential for the project to encounter Lead Based Materials (LBM). LBM standard specifications shall apply to the proposed project.

- N/A: The project will not disturb components that contain LBM. Answer Questions 11.4 and 11.5 to further determine the CE level for this section.
- YES: Components of a structure containing LBM are being disturbed (for example, removal or cleaning of painted components). Answer Questions 11.4 and 11.5 to further determine the CE level for this section, and include LBM-specific mitigation in Block 11.7.

11.4: Asbestos Containing Materials (ACM) have been identified on bridge structures. ACM specifications will be included in the contract by special provisions.

- N/A: ACM was not identified on the project. Answer Question 11.5 to further determine the CE level for this section.
- YES: ACM was identified on a bridge structure and may be encountered during construction. Answer Question 11.5 to further determine the CE level for this section, and include ACM-specific mitigation in Block 11.7.

11.5: Will any soil disturbance occur below or beyond preexisting roadway fill within an active Superfund Site?

- NO: The project review is eligible for a CE Level 1 or 2 if this project review has not already been determined to be a CE Level 3 in this section. Enter the determination date of the NDOT Hazardous Materials PQS.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Coordination with the EDU Manager will occur to determine the appropriate level of NEPA action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.

NDOT PQS Determination Date:

Enter the date of the NDOT Hazardous Materials PQS signature. For some projects, there may be multiple consultation or PQS review dates. When this occurs, enter the original date here, and describe the other review dates and the reasons for them in Block 11.6. The date located here should always match the date of the memo and not supplemental evaluations.

11.6: Describe potential conflicts and the coordination with officials/agencies:

Briefly describe any potential contamination sites that may be encountered during construction, along with the likelihood of impact at the site and any consultation with resource agencies such as the U.S. Environmental Protection Agency or NDEQ.

11.7: Hazardous Materials Mitigation:

Include any mitigation and their responsible parties as noted in the NDOT Hazardous Materials PQS Memo.

2.6.3 Noise

The proposed project will be processed as a CE Level 3 or higher class of action if the project is classified as a Type I project per 23 CFR 772 and the *NDOT Noise Analysis and Abatement Policy*. The NDOT Noise PQS will indicate on the NDOT-53 if a noise analysis is required for the proposed action. If there is a scope change that involves shifting the travel lanes, adding travel lanes, or extending a turn lane that is greater than 1 mile in length since the time the NDOT Noise PQS reviewed the project, additional coordination with the NDOT Noise PQS is required. The document author should coordinate with the NDOT Noise PQS and review the Noise Study, if applicable, for the project to find the information needed to complete this section. Further information regarding noise is provided in the *NDOT Noise Analysis and Abatement Policy* and the *NDOT Traffic Noise Analysis Guidance Manual*.

12.1: Does the project qualify as a Type I Project under NDOT's Noise Policy?

- NO: The project review is eligible for a CE Level 1, and this section is complete.
- YES: The project review is elevated to a CE Level 3 or higher class of action, and Questions 12.2–12.4 will appear.

12.2: Based on the noise analysis, does the project qualify for abatement?

- NO: Discuss in Block 12.3 why noise abatement was not feasible and/or reasonable.
- YES: Summarize the results of the noise analysis in Block 12.3.

12.3: Summarize the results of the noise analysis:

Briefly summarize the impacted noise receptors, the range of noise levels for those receptors, and whether noise abatement is feasible and reasonable. In addition, summarize any noise abatement public stakeholder meetings.

12.4: Noise Mitigation:

Include any commitments to construct noise walls, if applicable. Also, include any required noise abatement during construction, as identified in the Noise Study.

2.6.4 Air Quality

For CE Level 1 and CE Level 2 actions, the project cannot result in Level III Mobile Source Air Toxics (MSAT) effects or be considered Regionally Significant within a designated non-attainment area. Projects that exceed these conditions must be elevated to a CE Level 3 or higher class of action. The NDOT Air Quality PQS will identify, via the NDOT-53, those projects that require an air analysis and MSAT Analysis Level. Further information regarding air quality is provided in the *Federal Highway Administration Mobile Source Air Toxics Guidance Document*, and the *Nebraska Department of Transportation and Nebraska Department of Environmental Quality Memorandum of Understanding Regarding Air Quality Analysis for Environmental Documents*.

13.1: Will the action result in Level III Mobile Source Air Toxics effects or is it considered Regionally Significant within a designated non-attainment area?

- N/A: Due to the nature of CE Level 1 projects, an MSAT analysis is not needed. N/A should be selected only if the CE as a whole is eligible for a CE Level 1 review. A CE Level 2 or CE Level 3 review will require a Yes or No answer for this question.
- NO: The project review as a whole is eligible for a CE Level 2, and an MSAT analysis is not needed. This section is complete.
- YES: The project review will be elevated to a CE Level 3 or higher class of action. Blocks 13.2 and 13.3 will appear and must be completed.

13.2: Air Quality Comments:

Summarize the results of the Air Quality Study.

13.3: Air Quality Mitigation:

Include any mitigation as noted in the Air Quality Analysis.

2.6.5 Roadway

For CE Level 1 and CE Level 2 actions, the project cannot add through-lane capacity. An increase to through-lane capacity can be described as physically adding through traffic lanes, grade separation for either roads or railroads, or adding auxiliary lanes that are at least 1 mile long or are made continuous through a series of successive interchanges. Coordination with the EDU Manager is required before the environmental review begins if through-lane capacity will be added because the project must be analyzed as a CE Level 3 or higher class of action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. Right turn lanes and

auxiliary lanes less than 1 mile in length, or center turn lanes (regardless of length) are not considered capacity-adding activities.

14.1: Will the action result in the addition of through-lane capacity?

- NO: The project review is eligible for a CE Level 1.
- YES: The project review will be elevated to a CE Level 3 or higher class of action.

2.6.6 Traffic Disruption

The document author must consider both temporary and permanent traffic disruptions when analyzing a project. Traffic management phasing will have an environmental impact, either beneficial or adverse, as a result of the changes in driver expectancy. In addition, the public's perception of traffic management and phasing may be influenced by factors such as disruption encountered during construction. If a traffic disruption will be used to construct a project, potential impacts and improvements to detour routes must be assessed during the PQS reviews.

For CE Level 1 actions, the project cannot result in traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 30 working days in duration. If the project results in traffic disruptions greater than 30 working days in duration, the project will be elevated to a CE Level 2 or higher class of action. Additionally, the project cannot result in temporary roads, detours, or ramp closures that substantially change the environmental consequences of the action. For example, a designated detour may impact NRHP-eligible brick streets due to increased traffic or improvements to the designated detour route.

For CE Level 1 and CE Level 2 actions, the project cannot result in adverse (out-of-direction) travel greater than 10 miles in urban areas (population of 5,000 or greater) or 30 miles in rural areas. Projects with detours will be considered on a case-by-case basis to ensure that routes under the mileages specified above do not cause additional impacts on a community (for example, cohesion, protected populations, emergency services). Additionally, CE Level 1 and CE Level 2 actions cannot interfere with known local special events or festivals, either on a temporary or permanent basis. Interference would include any construction activities occurring on the same segment of street used for the festivities that impedes their use, closure of a road used for festivities, closure of access for any duration to an adjacent property used for the festivities during the event, or complete closure of a main route to the town during the festivities. For projects within towns and cities, the document author should check town and/or county websites or speak with local representatives to determine if and when events are planned.

Projects processed as CE Level 1 and CE Level 2 actions cannot result in an adverse effect on through-traffic dependent business, either on a temporary or permanent basis. The determination of adverse effects on businesses cannot be made without coordination with the affected public. This information will be in the Public Involvement Summary Memo. Additionally, CE Level 1 and CE Level 2 actions cannot result in substantial permanent traffic pattern changes or disruptions, such as permanently closing a roadway or roadway intersection, increasing through-lane capacity, creating new intersections, or converting a local street into a higher classification roadway.

For CE Level 3 actions, the document author should be aware of potential continuity or cohesion impacts, either permanently or temporarily as a result of the project. Examples of this could include the separation of a housing complex from its school, park, or community meeting hall. Coordination with the NDOT Civil Rights Officer and NDOT Public Involvement PQS should occur during the environmental review process to determine potential continuity or cohesion impacts and appropriate outreach methods. The document author will document any potential continuity or cohesion impacts, and any coordination with local officials in Block 15.8. If mitigation is proposed to reduce or eliminate continuity or cohesion impacts, include those measures in Block 15.9.

15.1: Will the action result in minor traffic disruptions requiring detours, temporary roads, or ramp closures that are greater than 30 working days?

- NO: The project review is eligible for a CE Level 1.
- YES: The project review is elevated to a CE Level 2. Question 15.2 will appear and must be answered to determine if the project will result in major traffic disruptions.

15.2: Will the action result in major traffic disruption requiring detours, temporary roads, or ramp closures that are greater than 135 working days?

- NO: The project review remains eligible for a CE Level 2.
- YES: The project review is elevated to a CE Level 3 or higher class of action.

15.3: Will temporary roads, detours, or ramp closures substantially change the environmental consequences of the action?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or 3 in this section.
- YES: The project review is elevated to a CE Level 3.

15.4: Will the action result in adverse travel (out-of-direction) greater than 10 miles in urban areas or 30 miles in rural areas?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section.
- YES: The project review is elevated to a CE Level 3.

15.5: Will the action result in temporary or permanent interference with known local special events or festivals?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section.
- YES: The project review is elevated to CE Level 3.

15.6: Will the action result in temporary or permanent adverse effects on through-traffic dependent business?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section.
- YES: The project review is elevated to CE Level 3.

15.7: Will the action result in permanent traffic pattern changes or disruptions?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section.
- YES: The project review is elevated to CE Level 3. Blocks 15.8 and 15.9 will be answered, if applicable.

15.8: Traffic disruption comments

Discussions commensurate with the impacts identified above will be included. If no discussions were identified as needed above, leave this block blank.

For example, discussions for Questions 15.1 and 15.2 will describe the expected duration of a traffic disruptions, identify the route of detours, and discuss the social or economic impacts that may result from the traffic disruption.

15.9: Traffic Disruption Mitigation

Mitigation measures intended to avoid, minimize, or offset detours or other traffic impacts will be noted in this block, along with the responsible parties. In addition, commitments to restrict detours and traffic impacts to the impact thresholds from the *Environmental Procedures Manual*, Table 4-2, will be included in this block.

2.6.7 Access Disruptions

Access is defined as a means of vehicle ingress or egress between a highway and abutting property or an intersecting local public road or street. Access is also defined as entrances or driveways from properties to a public road system.

For CE Level 1 actions, the project cannot result in the complete closure of access to residential properties for greater than 5 working days, complete closure of business access during operational hours (that is, when the facility is open to the public, normal working hours when employees are present, or any time when shipping or receiving materials/products), or access restrictions to emergency service facilities or providers.

For CE Level 2 actions, the project cannot result in the complete closure of access to residential properties greater than 10 working days, complete closure of business access during operational hours, or a permanent change to the functional utility of the property. A change to the functional utility could, for example, occur when an adjacent property requires heavy truck access and the access change is such that heavy trucks could no longer make the revised turn radii into the property. This would change the functionality of the adjacent property. A second example would be if the action results in a permanent access closure to a residential property or a permanent access change to a business. This modification would be considered a change in the functional utility unless the permanent change will not adversely affect the residence or business, which would be determined through coordination with the affected property.

16.1: Will the action require any access closures to businesses or residences?

- NO: The project review is eligible for a CE Level 1.
- YES: Questions 16.2 and 16.4 will appear and must be answered to determine the impact of access restrictions.

16.2: Will the action result in complete closure to residential properties for greater than 5 working days?

- NO: The project review is eligible for a CE Level 1.
- YES: The project review is elevated to a CE Level 2. Question 16.3 will appear and must be answered to determine if the project review will require a CE Level 3.

16.3: Will the action result in complete closure to residential properties for greater than 10 working days?

- NO: The project review remains eligible for a CE Level 2.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Coordination with the EDU Manager will occur to determine the proper class of action. Coordination with the EDU

Manager and the final determination of the class of action should be documented in the project file.

16.4: Will the action result in closure of business access during operational hours?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Coordination with the EDU Manager will occur to determine the proper class of action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.

16.5: Will the action result in access restrictions to emergency service facilities or providers?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section.
- YES: The project review is elevated a CE Level 3 or higher class of action.

16.6: Will the action change the functionality of adjacent properties?

- NO: The project review is eligible for a CE Level 1 if this project review has not already been determined to be a CE Level 2 or CE Level 3 in this section. Blocks 16.7 and 16.8 should be completed.
- YES: The project review is elevated to a CE Level 3 or higher class of action. Blocks 16.7 and 16.8 should be completed.

16.7: Access disruption comments:

Disclose whether access closures are anticipated, note the locations and expected duration of access closures, and assess whether any social or economic impacts may result from the closure. If no access disruptions will occur due to project construction, leave this block blank. Additionally, if there will be restrictions to emergency service providers, discuss coordination with the providers. This information will be in the Public Involvement Summary Memo.

16.8: Access Disruption Mitigation:

Mitigation measures intended to address access impacts must be noted in this block. In addition, commitments to limit access restrictions to the impact thresholds noted in the *Environmental Procedures Manual*, Chapter 4, also need to be included in this block. Based on the needs of the project and the existing field conditions, additional mitigation specific to the project may be needed.

2.6.8 Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that an agency identify and address the disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority and low-income populations.

For CE Level 1 actions, the project cannot result in an adverse effect on a minority or low-income population. If the project results in an adverse effect, the project will be elevated to a CE Level 2. For CE Level 2 actions, the project cannot result in the potential for disproportionately high and adverse effects on a minority or low-income population. If the project results in the potential for disproportionately high and adverse effects, the project will be elevated to a CE Level 3 or higher class of action. The Civil Rights memo or NDOT-53 will provide the analysis from the NDOT Civil Rights

Officer needed to complete the questions in this section. Further information regarding environmental justice is provided in the NDOT *Title VI Implementation Plan*.

17.1: Are environmental justice populations present within the study area?

- NO: The project review is eligible for a CE Level 1. Enter the NDOT Civil Rights Officer determination date, and complete Block 17.4.
- YES: Question 17.2 will appear and must be answered to determine if there will be an adverse effect.

17.2: Will the project have an adverse effect on environmental justice populations per NDOT's Environmental Justice Policy?

- NO: The project review is eligible for a CE Level 1. Enter the NDOT Civil Rights Officer determination date, and complete Blocks 17.4 and 17.5.
- YES: The project review is elevated to a CE Level 2. Question 17.3 will appear and must be answered to determine if there is a potential for disproportionately high and adverse impacts on minority or low-income populations.

17.3: Will the action result in a potential for disproportionately high and adverse effects on environmental justice populations?

- NO: The project review is eligible for a CE Level 2. Enter the NDOT Civil Rights Officer determination date, and complete Blocks 17.4 and 17.5.
- YES: The project review is elevated to a CE Level 3 or higher class of action; the EDU Manager, in coordination with the Civil Rights Officer, determines the appropriate documentation. Enter the NDOT Civil Rights Officer determination date, and complete Blocks 17.4 and 17.5.

NDOT Civil Rights Officer Determination Date:

Enter the determination date of the NDOT Civil Rights Officer. For some projects, there may be multiple consultation or review dates. When this occurs, enter the original date here, and describe the other review dates and the reason for them in Block 17.4. The date located here should always match the date of the memo and not supplemental evaluations.

17.4: Describe resources, impacts, and the coordination conducted with officials/agencies:

When present, briefly describe the protected population, summarize demographic data in the project area, and note what steps were taken to avoid, minimize, or mitigate either the adverse effects on low-income and minority populations or the potential disproportionately high and adverse effects.

17.5: Environmental Justice Mitigation:

Any mitigation measures that were identified in the Civil Rights PQS Memo should be added exactly as they appear in the memo. This would include items such as specific public engagement measures, reduced bus fares, and construction phasing. For projects where mitigation is required in order to avoid potential disproportionately high and adverse effects, or when protected populations or social service providers express project-related social or economic impact concerns, coordination with the EDU Manager will occur in order to determine the appropriate class of action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file. In these circumstances, the NDOT Civil Rights Officer will make the final determination if the outreach and mitigation have successfully alleviated potential disproportionately high and adverse effects.

2.6.9 Public Involvement

In accordance with 23 CFR 771.111, early coordination with appropriate agencies and the public assists in determining the appropriate environmental review, level of analysis, and related environmental requirements. The consideration of diverse viewpoints ensures that the needs and preferences of a community are considered during project development, and enables transportation officials to make informed decisions based on multiple viewpoints. Further information about public involvement is provided in the *Environmental Procedures Manual*, Chapter 9.

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, requires agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. NDOT has established a *Limited English Proficiency Plan* to identify those projects that will need LEP requirements during public involvement.

The NDOT Public Involvement PQS will make a preliminary determination on public involvement needs via the NDOT-53. The document author will review the NDOT-53 to determine what level of public outreach, if any, needs to occur during the NEPA phase. Additionally, the document author will review the Civil Rights Memo or NDOT-53 to determine if alternative language accommodations are needed during public outreach. If public outreach during the NEPA phase is warranted, coordination will occur with the NDOT Public Involvement PQS to determine the appropriate method of outreach and who will be responsible for the outreach.

The document author must also review the project records to determine if public or agency comments specific to the project were received during the STIP or TIP outreach, the NDOT District Program Highway Commission Hearings, or the local government equivalent for LPA projects.

For LPA projects, occasionally local governments may elect to use property assessments to fund a portion of the project. The document author will review the programming document to identify whether the sponsoring local government agency intends to use property assessments as part of its funding strategy for the project. If property assessments are planned, ensure that the proper public involvement documentation is attached to the CE. The document author should proactively initiate coordination with the NDOT Public Involvement PQS and the EDU Manager to ensure that the proper level of public outreach is conducted to support the NEPA documentation.

18.1: Are limited English proficiency (LEP) populations present within the study area?

- NO: LEP populations are not present within the study area. Complete Block 18.2.
- YES: LEP populations are present within the study area. Complete Block 18.2, and include LEP-specific mitigation in Block 18.3.

18.2: Public involvement summary:

- If project-specific comments were received during the planning phase of the project, note those in this section.
- If public outreach was conducted during the NEPA phase, a summary describing all outreach efforts performed or planned for the project will be included here (for example, targeted mailing, public information meeting, public hearing). Disclose the date the meeting was held, the time, the location, if the facility was ADA accessible, how the meeting was advertised, and how many comments were received during the comment period. This information will be located in the project file. The comments and responses will be referenced here. During outreach, if agency feedback is received, summarize the comment(s) and response(s) in the applicable subject-matter section within the CE form.

- If coordination with the NDOT Aeronautics Division was completed during the NEPA phase, that is discussed here. The document author should refer to the Plan-In-Hand Report or coordinate with the project designer to determine if coordination with the NDOT Aeronautics Division was completed following plan-in-hand. The NDOT Roadway Design Division or LPA design consultant will be responsible for completing and providing this coordination to the NDOT NEPA Specialist or document author.

18.3: Public Involvement Mitigation:

Mitigation would include commitments for future public involvement or commitments that resulted from public or agency comments that do not fit in technical resource sections above. In addition, if LEP requirements apply to any future outreach, include the commitments from the Civil Rights Memo requiring the inclusion of LEP populations during future outreach.

2.6.10 Unresolved Controversy

If, based on public or agency outreach, the project sponsor receives notification of human, natural, or economic impact concerns as a result of the project that are not been resolved through other means (for example, permits, authorizations, agreements, mitigation), the project will be elevated to a CE Level 3 or higher class of action. Examples include public concerns regarding adjacent property flooding, economic impacts during construction, and aesthetic impacts.

If the project sponsor is made aware of an issue raised by the public, business owners, emergency services, etc. that is documented as being resolved through continued coordination, the impact would not be considered an unresolved controversy. If a commitment is made as a means to resolve the issue, include the commitment and a description of the outreach in the most appropriate section of the CE.

19.1: Based on public involvement carried out per NDOT's procedures, is there any known public or agency controversy on human, natural, or economic grounds associated with the action?

- NO: The project review is eligible for a CE Level 1 for this section.
- YES: The project review is elevated to a CE Level 3 or higher class of action, and Block 19.2 will appear. Coordination with the EDU Manager will occur to determine the proper class of action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.

19.2: Unresolved Controversy Comments:

Summarize the controversy, and/or refer the reader to the section of the CE where the discussion is provided.

2.7 Other Impacts

The Other Impacts tab includes sections 20 and 22: Contract Provisions Required and Additional Comments.

2.7.1 Contract Provisions Required

There are several environmental permits that may be required prior to construction obligation. Identify those permits that appear to be appropriate for the proposed project action.

NOTE: All commitments for this section should be placed at the end of Block 23.1 under Additional Mitigation.

20.1: Wellhead Protection Special Provisions:

- NO: A Wellhead Protection Area is not located within or directly adjacent to the study area.
- YES: A Wellhead Protection Area is within or directly adjacent to the project study area. Commitments will be included in the contract to identify these sensitive areas.

20.2: Federal Aviation Administration (FAA) Form 7460-1:

- NO: A public use airport has not been identified.
- YES: A public use airport has been identified. Coordination with the NDOT Aeronautics Division will determine if the project will violate public airport airspace or landing zones. The contractor will verify, prior to construction, that all project equipment will be in compliance with FAA regulations. If the need for FAA coordination is identified early and during the NEPA phase, summarize the coordination in Block 18.2.

2.7.2 Additional Comments

22.1:

If there is information or impacts that needs to be assessed or disclosed that do not logically fit into another section of the form, include them in this block.

2.8 Indirect and Cumulative Impacts

The Indirect and Cumulative Impacts tab includes section 21.

21.1: No Indirect or Cumulative Impacts:

The checkbox can be checked if, after careful consideration of the guidance contained below and the facts of the project, the following statement is determined to be true:

"Indirect effects from this project are not anticipated. This project will not induce growth, change land uses, substantially change travel patterns within a community, or substantially impact water quality, drainage patterns, or other resources of concern. Because no substantial human, environmental, or economic impacts have been identified for this project; no cumulative impacts are expected."

In making this determination, the document author should be aware of the different types of impacts and the requisite methodology for assessing each type of impact, as follows:

- Direct impacts are those that are caused by the proposed action and occur at the same time and place.
- Indirect or secondary impacts are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems" (40 CFR 1508.8). CE level transportation activities that may generate indirect impacts include:
 - Projects that have the potential to induce growth or change land uses (such as new interchanges, projects that increase the capacity of the facility, and projects creating new access points to undeveloped areas),
 - Projects that may influence water quality or drainage patterns, and
 - Projects that may permanently change travel patterns within a community.

- Speculative impacts would not be considered an indirect effect. Current or planned growth that is occurring regardless of whether the project is constructed is also not considered an indirect effect.
- Cumulative impacts are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions” (40 CFR 1508.7). Cumulative impacts analysis should focus only on resources (human or natural environment) that are substantially impacted (directly or indirectly) by the project. Examples of substantial impacts may include impacts on occupied protected species habitat, adverse effects on a historic district, disproportionately high and adverse effects on protected populations, adverse business impacts caused by the project construction, and detours that may cause social or economic impacts. Other current actions, reasonably identifiable past actions, and reasonably foreseeable future actions that may also impact the resource of concern must be considered. Separate mitigation of cumulative impacts is not required because mitigation of direct and indirect impacts will address the incremental contribution of the project’s impacts on the overall health of the resource of concern.

Sources of information that may be used to determine past, present, or reasonably foreseeable actions in Nebraska may include, but are not limited to, the following:

- LRTP (including MPO areas), STIP, and TIP (in MPO areas), such as:
 - [NDOT STIP Interactive Map](#)
 - [NDOT STIP and MPO TIPs](#)
- Platted developments
- Local or regional comprehensive land use plans
- Federal land management plans (if within or adjacent to federal lands)
- Species recovery plans
- Nebraska State Historical Society publications
- Coordination with local officials (for example, County, City)

If there are no substantial impacts due to the project under review, which is often the case for CEs, there is no need to identify past, present, or reasonably foreseeable future actions. Substantial impacts are not minor, routine, non-controversial impacts that are easily mitigated to an inconsequential, neutral, or negligible impact level.

21.2: Indirect Impacts and Mitigation:

If after careful consideration of the guidance and the facts of the project, the document author determines that indirect impacts will result from the project, additional analysis and discussion of impacts and proposed mitigation should be provided in Block 21.2. If indirect impacts are not expected, then this block should be left blank.

Information to include in Block 21.2 regarding indirect effects is as follows:

- If indirect impacts are expected, describe whether they would be temporary or permanent; note whether the impacts result from induced growth, changed land uses, or substantially altered travel patterns within a community; include an assessment of the severity of those impacts (that is, negligible, moderate, significant); and discuss whether mitigation is required (if the mitigation is already included in the resource-specific section, note such here).

- If the context and intensity of any indirect impact rises to a level of potential significance, immediate coordination with the EDU Manager is needed to determine the appropriate class of action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.

21.3: Cumulative Impacts:

If after careful consideration of the guidance and the facts of the project, the document author determines that cumulative impacts will result from the project, additional analysis and discussion should be provided in Block 21.3. If cumulative impacts are not expected, then this block should be left blank.

Information to include in Block 21.3 regarding cumulative effects is as follows:

- If there are major impacts from the project to resources of concern, include the following information regarding the cumulative impact review. Describe the substantial resource(s) of concern and the sources of information reviewed to identify other past, present, and reasonably foreseeable future actions. Note the actions (if any) identified through the data review that also impacted (or may impact in the future) the resource(s) of concern. Assess the cumulative impacts of all actions on the resource of concern, and then conclude with an assessment on the intensity of the cumulative impact on the resource(s) of concern.
- If the context and intensity of any cumulative impact rises to a level of potential significance, immediate coordination with the EDU Manager is needed to determine the appropriate class of action. Coordination with the EDU Manager and the final determination of the class of action should be documented in the project file.
- If other projects will be in the vicinity of the proposed project, these projects should be listed, including the anticipated year of construction, type of work, and location from the proposed project. This includes projects that may use the proposed project as a detour route or vice versa. State whether cumulative impacts are anticipated or why they are not anticipated. If commitments are necessary to ensure that no cumulative impacts are created later in project development or construction (for example, changes in traffic control plans), the commitment will be included in Block 21.3 and at the end of Block 23.1 under Additional Mitigation.

A project is considered to be in the vicinity of another project if it does the following:

- Uses the same detour route as the project during the same construction period.
- Is located on an emergency route for an interstate (for example U.S. Highways 6, 30, and 34 to Interstate 80).
- Uses the project for a detour route.
- Is located on the project's detour route.
- Is directly adjacent to the project.
- Any additional project criteria as determined by NDOT.

2.9 Mitigation

The Mitigation tab includes section 23 and all mitigation measures that will be carried forward to the project construction contracting documents.

23.1: Project Mitigation Preview:

All commitments that are entered into their respective section's mitigation block will automatically populate in this block. For commitments that result from Section 20, enter those at the end of this block under Additional Mitigation.

Mitigation commitments must be clear and concise, and include applicable timing, location, and responsible party information. To ensure that the mitigation commitments can be fulfilled, the document author should coordinate with NDOT engineering and construction staff before finalizing this form. As applicable, commitments not to exceed impact thresholds shall be identified in this block.

Section 3 Nebraska Categorical Exclusion Approval

3.1 Nebraska Categorical Exclusion Submittal

Prior to finalizing a Nebraska CE for approval, ensure that the project description accurately reflects the scope of the federal-aid activity, that all associated technical documents and reviews were completed using the same project scope, and that the environmental study area of the technical document encompassed the termini points.

The document author will perform the following steps to complete the CE and submit it for review:

- Print the CE to a .pdf file.
- Compile the CE attachments into a single .pdf file. The attachments will be in the same order that they appear in the CE. Further information is provided in Section 4.
- Create a .pdf portfolio that contains two files: the CE (with signed signature page) and the CE attachments. If the project is sponsored by an LPA, ensure that the project sponsor has signed prior to submittal.
- Provide the CE portfolio and associated quality control certification, if applicable, to the appropriate NDOT reviewer.

Consultant submittals should be posted on the NDOT ShareFile site, and a transmittal email sent to the NDOT NEPA Specialist. Consultant submittals must include a quality control certification statement that attests to the accuracy and completeness of the submitted CE per the *NDOT NEPA Documentation Quality Assurance/Quality Control Manual*.

3.2 Approval Signature

Nebraska CE approvals will follow the process outlined in the *Environmental Procedures Manual*, Chapter 4.

Section 4 Nebraska Categorical Exclusion Attachments

Attachments will support the CE determination and should include all documentation provided by the PQS. This can include concurrence emails, concurrence letters, and new PQS memos. The attachments will be placed in the same order in which they appear in the CE. A PQS reviewer may complete a supplemental evaluation prior to NEPA approval if there are circumstances that could affect the original determination. If a supplemental evaluation was completed and the PQS provided additional documentation to support the original PQS memo, the documentation should be placed in chronological order following the original PQS memo. If a PQS elected to issue a new memo instead of supplemental documentation, the original PQS memo can be removed and replaced with the new memo.

4.1 Project Location Maps

Project location maps should include, at a minimum, the following:

- An aerial image depicting the project location with start and end points labeled
- An inset map with the project location or county identified within the state
- North arrow
- Scale bar
- Legend
- Project information: project name, control number, and project number

4.2 Section 4(f)

Section 4(f) attachments will always include the Section 4(f) Initial Assessment. Other Section 4(f) forms (Exception, *de minimis*, etc.) should be attached as needed. Any associated attachments with these documents should be included. Public Involvement Summary Memos and Section 106 PQS Tier Memos can be removed from the Section 4(f) form attachments if it will result in duplication of attachments. The document author should verify that those two attachments are included in their respective sections before removing them.

4.3 Section 6(f)

Documentation of any required coordination with NGPC is required to be attached.

4.4 Other Property Impacts

4.4.1 Federal and Tribal Lands

Any coordination with tribes or federal agencies regarding their respective lands should be attached. Resource specific (for example, Section 106 and T&E) coordination with these entities should be included in their respective sections and not here.

4.4.2 Farmland

If coordination with the NRCS was conducted, the NRCS-CPA-106 or NRCS-AD-1006 should be attached. Additionally, the coordination letter with the NRCS should be attached. NRCS forms that did not result in a Part VI score of more than 60 should be included in the project file and not attached to the CE.

4.5 Wild and Scenic Rivers

Coordination documents with the AWJ, including associated attachments, should be attached.

4.6 Floodplain/Floodway

The required floodplain attachments will include the Floodplain PQS Memo and its associated attachments.

4.7 Wetlands and Waters of the U.S.

Adequate support documentation must be included in the project file to demonstrate that either no permit is required or that a permit is required and will be obtained prior to construction (for example 2E sheets). The Wetlands PQS Memo and either the 2E sheets or delineation figures should always be attached if available.

4.8 Threatened and Endangered Species

The required T&E species attachments will include the T&E PQS Memo and its associated attachments.

4.9 Historic Properties

Attachments for this section should consist of the Section 106 PQS Tier Memo and its associated attachments.

4.10 Hazardous Materials

Attachments should include the NDOT Hazardous Materials PQS Memo and its associated attachments.

4.11 Noise

The approved NDOT-53 without attachments should be attached to the CE for those projects that answer NO to Question 12.1. For those projects that have an NDOT-53 that was not routed through the Noise PQS, the document author should ensure that appropriate replacement documentation, such as email correspondence, is attached. If the project is eligible as a Type 1 Project and a noise study was completed, the complete noise study should be attached to the CE and not the NDOT-53.

4.12 Air Quality

The approved NDOT-53 without attachments should be attached to the CE for those projects that answer N/A or NO to Question 13.1. For those projects that have an NDOT-53 that was not routed through the Air Quality PQS, the document author should ensure that appropriate replacement

documentation, such as email correspondence, is attached. For projects requiring MSAT Level 2 analysis, attach the quantitative analysis memo provided by the NDOT Air Quality PQS and not the NDOT-53.

4.13 Traffic and Access Disruption

A map depicting the traffic disruption (for example, ramp closures) or detour route should be attached and placed with the other project maps at the beginning of the attachments.

4.14 Environmental Justice

Two different documents can be attached. The NDOT-53 will indicate if a Civil Rights PQS Memo is required for the project. If one is not indicated, the approved NDOT-53, without attachments, should be attached to the CE. If the NDOT-53 indicates that a Civil Rights Memo is required, one will be provided by the NDOT Civil Rights PQS and should be attached instead of the NDOT-53 for this section. For those projects that have a NDOT-53 that was not routed through the Civil Rights PQS, the document author should ensure that appropriate replacement documentation, such as email correspondence, is attached.

4.15 Public Involvement

Public involvement attachments for this section include either the approved NDOT-53 without attachments or comments and responses from outreach events that were completed prior to or during the NEPA phase. LEP attachments include either the approved NDOT-53 without attachments or the Civil Rights PQS Memo, if not already attached. For those projects that have an NDOT-53 that was not routed through the Public Involvement PQS, the document author should ensure that appropriate replacement documentation, such as email correspondence, is attached.

Airport attachments include the coordination letters and any responses that were received.