

**Instructions and Guidance  
for Completing the  
Nebraska Categorical Exclusion  
Determination Form  
for Federal-Aid Projects**

**June 2, 2015**



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## **INSTRUCTIONS**

Many projects do not result in significant social, economic, and environmental impacts and are processed as Categorical Exclusions (*CE*) as described in 23 CFR 771.117. In Nebraska, the level of Categorical Exclusion documentation required for a federal-aid project is determined by criteria contained in the 2015 Programmatic Categorical Exclusion Agreement (2015 CE PA) between the Federal Highway Administration (*FHWA*) and Nebraska Department of Roads (*NDOR*). The CE determination is based on the project action criteria (type of project being proposed) and its potential effects on the social, economic and natural environment. Projects with the potential for “significant” impacts require preparation of an Environmental Assessment (*EA*) or an Environmental Impact Statement (*EIS*). The NEPA practitioner should review and understand the supporting 2015 CE PA and Title 23 Regulations found at the following links prior to commencing a project CE determination:

2015 CE PA: [INSERT HYPER LINK WHEN AVAILABLE](#)

23 CFR 771: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr771\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr771_main_02.tpl)

The CE Determination Form and these instructions are designed to guide the practitioner through the identification of the proper CE analysis level, to document and assess project effects, and to identify and document necessary mitigation.

The 2015 CE PA describes three levels of CE actions in Nebraska, with the level of analysis and documentation increasing with the complexity of the project and the context and intensity of potential project impacts. Consistent with the 2015 CE PA, this document provides guidance in completing the NDOR CE Determination Form for Federal Aid Projects to ensure that potential environmental impacts are being considered and compliance with applicable laws, regulations, and executive orders are being properly documented.

When analyzing a Federal-aid project in Nebraska, two factors are critical in determining the appropriate CE Classification. These two factors are the scope of the project (scope) and the context and intensity of project impacts (effects). The scope and effects of the project are compared to the ‘*Action Criteria*’ and ‘*Impact Thresholds*’ found in the 2015 CE PA appendices to determine the appropriate CE analysis level.

First, the practitioner must compare the project scope to the *Action Criteria* listed in the Appendices of the 2015 CE PA to determine CE eligibility. Next, the practitioner needs to compare the effects of the project to the *Impact thresholds* identified for the eligible CE level to determine the proper CE classification. If the project meets the *Action Criteria* for a particular Level, but not the *Impact Threshold*, the project must be analyzed with a higher level of documentation. In order for a project to qualify for a particular level of analysis, the project must meet **the proper CE Action Criteria** AND all of the *Impact Thresholds* specified for the corresponding level of analysis.

NDOR may request a CE Level variance on a case by case basis as allowed in the 2015 CE PA. Variances may be granted when the context and intensity of the project impacts are minimal (as determined by FHWA). Early coordination with FHWA must occur to determine if a variance will be approved.

Appropriate documentation for each resource area must be developed to support the CE determination and to ensure the determination complies with the 2015 CE PA, supporting Resource Agency agreements, and associated laws and regulations. The practitioner shall ensure the

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appropriate documentation is attached directly to the CE Determination Form, or retained in the project file.

## **GENERAL OVERVIEW**

### **Public and Agency Coordination**

Coordination with the public and pertinent agencies (federal, state, local) is essential in the NEPA decision making process, regardless of the CE level of action described in the 2015 CE PA. Coordination activities need to be commensurate with the project scope and in compliance with the applicable regulations and existing agreements. Early coordination helps in determining the appropriate level of NEPA documentation and identifying environmental resources that may be affected by the project. The project sponsor must use specific outreach requirements referenced in the following public involvement and technical guidance/procedure documents to aid in conducting proper public and agency outreach commensurate for the proposed CE action:

- 2015 Categorical Exclusion Programmatic Agreement;
- 2015 NDOR Public Involvement Plan;
- 2015 NDOR Limited English Proficiency (LEP) Policy;
- 2012 Biological Evaluation *Matrix* Process Programmatic Agreement;
- 2015 Section 106 Programmatic Agreement;
- 2015 NDOR Hazardous Materials Manual (DRAFT);
- 2015 NDOR Wetland and Water Resources Review Manual (DRAFT).
- 2015 NDOR Environmental Justice Policy and the project-specific Environmental Justice (EJ) memo
- 2015 NDOR Section 4(f) Guidance

### **Requirements for NEPA Documentation Preparation**

The project sponsor must ensure that NEPA documentation is prepared by qualified staff or qualified consultants. The preparer [*whether it be a consultant, local government employee or NDOR Environmental Section (ES) employee*] and approver must have a minimum of a bachelor's degree within the field of environmental science, planning, engineering, or a closely related field and have completed the NEPA and Transportation Decision Making Process course (on-line course is acceptable). Considering the goals of quality environmental documents and project delivery efficiencies, the level of documentation preparation should correspond with the experience of the practitioner; i.e., an experienced practitioner should be responsible for the preparation of Level 2 or 3 CEs. For Level 3 CE's, the practitioner should have completed the instructor led NHI NEPA and Transportation Decision Making Process course (NHI-142005), have been trained on the use of this form, and must have at least 6 months of NEPA experience specific to the Nebraska federal-aid transportation program.

### **Maps**

**For all CE determinations**, attach the standard NDOR location map. Ensure the location map includes a state map inset showing the county location of the project within the state. The NDOR location map should include the following:

1. Project name, project number and control number;
2. Project location and termini points (project beginning and ending reference points);

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3. County name, north arrow, and scale.

Include a project map indicating the project Environmental Study Area considered in the CE Determination. This map can be created using an aerial map as the base or standard NDOR location maps or plans can be used if appropriate. The Environmental Study Area will be established based on the area estimated to be potentially impacted by the project and will be identified on the projects location map.

**For Level 2 and Level 3 CE determinations**, a map showing the location of resources of concern must be attached. As applicable, these map(s) should include the following:

1. Impacted noise receptor locations and any proposed noise abatement feature locations
2. The location of any known Hazardous Materials sites within the environmental study area
3. Any 4(f) resources within the study area
4. The *general* location of wetlands and jurisdictional streams, channels or rivers (i.e., the scale and detail shown in wetland review or delineation packages is not necessary).
5. The location of historic standing structures or historic districts that are directly adjacent to the project or are impacted.
6. Detour map when applicable.

The practitioner should consider use of multiple resource maps for complex projects involving numerous potential resource impacts and/or for lengthy projects as appropriate. The resource maps should be developed at a reasonable scale to efficiently display subject resources within the project study area.

If the scope of work or a particular resource impact is difficult to describe, the practitioner should attach appropriate project plans, drawings, or other displays to aid in the in the CE analysis and documentation.

### **Attachments**

**For all CE determinations**, the following NDOR resource specialist review memos must be attached to the CE Determination:

1. Section 4(f) Initial Assessment form;
2. Section 404/Wetlands memo
3. Biological Evaluation (*Matrix*) memo;
4. Section 106 Historic properties memo;
5. Hazardous Materials Memo;
6. Environmental Justice Review memo.

These memos will provide a summary of identified resource impacts, the resource specialist's determination related to corresponding resource agreements and/or regulations, and any applicable mitigation required for the project.)

As applicable, the following attachments would be required to support the CE determination: Section 4(f) Exception form, Section 4(f) *de minimis* form, Section 4(f) programmatic evaluations, any project letters received from Agencies, and the preliminary (or final, if available) floodplain impact assessment [if the project occurs within the 100 year floodplain for projects qualifying for a CE under 2015 CE PA Appendix B, paragraph (26), (27) or (28)].

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A public involvement summary memo describing the method of public outreach, comments received, and the project proponent responses to public comments must be attached to the CE determination. The full public involvement report should not be included with the documentation, but must be made available to FHWA upon request.

If a CE level variance is approved by FHWA, attach the supporting correspondence to CE form.

**For Level 3 CE determinations**, the following will be submitted to FHWA either prior to or concurrent with the CE submittal. These documents are not required to be attached to the CE:

- If there is a high potential for project conflicts with Hazardous Materials, the Hazardous Materials Report (HMR) will be provided.
- If a noise study was completed for the project, the Noise Report will be provided
- If there is potential disproportionate high and adverse impacts to protected populations, the EJ assessment will be provided

## **CE DETERMINATION FORM INSTRUCTIONS**

**CE Review Level:** Check the proper CE Level based on the Scope of work and the resulting impact threshold analysis. If the current determination constitutes a project re-evaluation, select the proper CE level based upon the current project scope and impact threshold analysis, and check the Re-evaluation box to indicate the current determination status. Additionally, select the qualifying 2015 Programmatic Agreement *Appendix Action* (project scope) category corresponding with the CE determination [e.g. Appendix: A, Paragraph: (8) – or – Appendix B, Paragraph (26)].

The intent of this section is to determine the level of CE analysis required, considering both the project scope and effects, to meet the criteria specified in the 2015 CE PA. Additionally, this section provides the NEPA reviewer an indication of CE review level and qualifying action criteria (scope and impact thresholds). The practitioner must compare the project scope to the *Action Criteria* listed in the 2015 CE PA appendices to determine which CE level(s) the project would qualify for based on the scope. Then, the practitioner must consider the appropriate impact thresholds to make the final CE determination identified in this section. In practice, this section may be the last step in completing the CE Determination Form.

**Project Name:** Provide the official project name.

**Project No:** This is the Federal-aid number assigned to the project.

**Control No:** This is the NDOR assigned number for the project. Generally, the first numeral of the control number corresponds to the NDOR District in which the project occurs.

**Location and Study Area:** Give a brief description of location, including city (or nearest city/town), county, highway/roadway name, highway number, beginning and ending mileposts,\* and, if necessary, give the distance to nearest landmark (e.g., *15 miles north of local airport*). Include a brief description of the environmental study area; the environmental study area will be established based on the area potentially impacted by the project.

- \* **NOTE:** Start and End locations can be Mileposts, Project Stations, or brief description. Ensure the project start and end points are logical, taking into consideration the scope of the

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activity, purpose of the project, and the needs of the facility.

**Project Description:** Provide a brief description of the project setting (e.g., urban, rural) and existing conditions including roadway appurtenances (e.g. sidewalks, shoulders, guardrail etc.). Describe project activities including such information as type of improvement/construction, major project features, etc. The practitioner should ensure the project description adequately describes all project features and construction activities commensurate with the CE action level and/or potential to impact identified study area resources.

For further information please refer to project description guidance, Appendix A.

Prior to finalizing CE Form for approvals, ensure the project description accurately reflects the scope and location of the federal-aid activity at the time of the approval, and that all associated technical documents and assessments were completed using the same project scope and the environmental study area of the technical document encompassed the termini points. If this project is a local government project, note the name of the sponsoring local government.

For more information on writing a Project Description, see the NDOR Project Description guidelines at: <http://www.transportation.nebraska.gov/gov-aff/pdfs-docs/environmental/guide-doc-nepa-ce-proj-descrip.pdf>

**Purpose and Need:** Clearly identify and describe the underlying problem or deficiency (e.g., congestion, safety, system linkage). In addition, explain why the project is necessary (e.g., provide system continuity, capacity improvement, correct safety or roadway deficiencies). A clear, well-justified purpose and need statement/section explains why the expenditure of funds is necessary and worthwhile. The statement length and complexity will vary with the scope of the proposed project. (e.g. If it is a 3R project, ensure there is a statement regarding a need to upgrade facility to current design criteria; if there is storm sewer work, describe why it's needed.)

**STIP Identification:** Provide date of the most recently approved State Transportation Improvement Program (STIP) or amended STIP that includes the project. For projects located within MAPA, LCLC, SIMPCO, and Grand Island MPO boundaries, the project would be listed in the TIP or amended TIP and incorporated by reference in the STIP or amended STIP. The practitioner should provide the date of the most recently approved STIP. Contact NDOR program management for the status of the projects inclusion into the STIP. 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.

For Local Public Agency projects, occasionally local governments may elect to use *property assessments* to fund a portion of the project. The practitioner must review the Local Projects programming document to identify if the sponsoring local government agency intends to use property assessments as part of their funding strategy for the project. If property assessments are planned, identify the use in the project description.

The NDOR STIP can be found at: <http://www.transportation.nebraska.gov/STIP/>

**Subsequent Phase:** Select the subsequent funded project phase as provided by Program Management shown in the fiscally constrained TIP/STIP. Generally, for state let projects, this would be "construction" only. For Local Public Agency projects, this may be Right-of-Way Acquisition or Construction when using federal-aid for those activities. Federal rules require that the project be

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funded through the next project phase prior to CE approval.

**Estimated Cost:** Include the total estimated cost shown the current STIP. For projects that use federal-aid for preliminary/final engineering, Right-of-Way acquisition and/or construction, include the total federal-aid expenditures requested for the project.

For the impact-related questions that follow, all project-related impacts (direct, indirect, and cumulative) shall be considered. The indirect and cumulative impacts should be summarized in Comment box 21.2 or 21.3 as appropriate.

**Right of Way and Property Impacts:**

**1.) Easements/ROW** – For Level 1 CE actions, no temporary or permanent Right-of-Way (ROW) acquisition, easements or relocations can occur. The following are examples of activities that would not meet the Level 1 criteria threshold for easements/ROW: any new permanent right-of-way, construction easements (temporary or permanent), utility relocations outside the existing ROW using federal funds (which would trigger a NEPA review of that activity), and new trail construction outside existing trail alignments.

- Question 1.1: If NO is answered, the action is eligible for a CE Level 1. The N/A box would be checked for CE actions that inherently would not involve the potential of ROW impacts such as “Activities that do not involve or lead directly to construction...” If YES is answered, the practitioner must answer the following Level 2 ROW questions 1.2 thru 1.7.

For Level 2 CE actions, no acquisition of more than a minor amount of right-of-way or acquisition that would result in any residential or non-residential displacements can occur. In Nebraska, minor amounts of ROW are defined as less than 2 acres per linear mile (average acres per mile), and no removal of *major* property improvements. To determine average acres per mile, include the total estimated acreage all ROW required for construction (including temporary and permanent easements). For projects under a mile in length, the estimated total acreage of easements/ROW must be less than 2 acres. Examples of *major* property improvements include residential and business structures, functional garages or outbuildings, or other features which 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 moves from a business or farm/ranch as a result of the project.

- Question 1.2: If NO is answered, the action remains eligible for CE Level 2. If YES is answered, the project review would be elevated to a Level 3 CE.
- Include the following project information for either CE Level 2 or CE Level 3 as appropriate:
  - 1.3 - Description of the property required and potential impacts to major property improvements. Describe the structure(s) affected and general disposition (Home, Business, Farm/Ranch, apartment/rental property, occupied or vacant, functional or dilapidated, etc.) of the structure. This should include any modifications or relocations of major improvements that result in the continued functionality of the property. Include potential change in functional utility of the property due to access changes/restrictions or loss of parking and potential land use changes that may occur as a result of the project.
  - 1.4 - Provide the total acres of permanent ROW/Easements required for project

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- construction.
- 1.5 - Provide the total acres of temporary ROW/Easements required for project construction.
- Question 1.6: If NO is answered, the action remains eligible for CE Level 2. If YES is answered, the project review would be elevated to a Level 3 CE. Include the following project information:
  - Description of the displacements. Describe the estimated number of relocations, including a description of 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.) Section 4(f):** Section 4(f) properties are planned or existing publicly owned parks, recreation areas, or wildlife and waterfowl refuges, or any significant historic sites (*including historic bridges eligible for National Register of Historic Places listing*) officially designated as such by a Federal, State, or local agency.

A “use” of a Section 4(f) resource occurs: 1) When land is permanently incorporated into a transportation facility; 2) When there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose as determined by the criteria in 23 CFR 774.13(d); or 3) When there is a constructive use of a Section 4(f) property as determined by the criteria in 23 CFR 774.15. A constructive use of a Section 4(f) resource occurs when the transportation project does not incorporate land from a Section 4(f) resource, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. For example, a constructive use can occur when the projected noise level increase, attributable to the project, substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by Section 4(f). The finding of constructive use is extremely rare and must be made by FHWA.

When completing the form, the practitioner must review the Section 4(f) Initial Assessment form to respond to the questions. The Assessment form will indicate whether a Section 4(f) property exists and whether there is a use of the property.

For 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 use is eligible for an exception to the requirement for Section 4(f) approval, the project shall be processed as a Level 2 CE. Address the following CE Form questions:

- Question 2.1: If NO is answered for 2.1, the project may be processed as a CE Level 1. Attach the Section 4(f) Initial Assessment Form. If a YES is answered, the practitioner must answer question 2.2.

For Level 2 actions, the project cannot result in a Section 4(f) use greater than the following: *de minimis* impacts, programmatic evaluations and Section 4(f) exceptions. Address the following CE Form questions:

- Question 2.2: If NO is answered, the action is eligible as a CE Level 2. Attach the appropriate 4(f) documentation such as the *de minimis* form, programmatic evaluation, or Section 4(f) exception.

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- If YES is checked for question 2.2 and requires a Section 4(f) Individual Evaluation, a Level 3 CE or higher NEPA classification is required. If the action results in an Individual Evaluation, coordination must occur with FHWA to determine the appropriate level of NEPA action.
- 2.3 – Describe if a Section 4(f) resource exists but will be avoided by the project (i.e., no use); name any Section 4(f) resources that were assessed during the Section 4(f) analysis; note the nature of the impact or use (if any); note whether the use or impact would interfere with the features, attributes, or functions of the property that make it eligible for Section 4(f) protection; describe the coordination with the agencies with jurisdiction; and describe Section 4(f) determination and approval date for each property. Note also the date of FHWA approval.
- 2.4 – Describe any mitigation measures associated with the 4(f) resource impact. This may include project design avoidance or minimization efforts, resource modification, relocation or replacement, etc.

The Section 4(f) project analysis are conducted and documented according to the NDOR Section 4(f) Guidance. The Section 4(f) determinations are reviewed and approved by FHWA, regardless of the class of NEPA action. The Section 4(f) analysis and approval process occurs prior to the submittal and finalization of the CE form.

For more information on Section 4(f), see the NDOR Section 4(f) Guidance and the FHWA Section 4(f) Policy Paper (links below).

Agency with jurisdiction documentation and FHWA approval shall be attached to the CE form.

Nebraska Section 4(f): [INSERT HYPER LINK WHEN AVAILABLE](#)

FHWA Section 4(f): [INSERT HYPER LINK WHEN AVAILABLE](#)

**3.) Section 6(f) - Land and Water Conservation Fund Act:** For Level 1 Actions, the project cannot result in a Section 6(f) conversion. If Land and Water Conservation Fund Act (L&WCF) funds were used to acquire property or to improve property that will be impacted by the project, the project does not qualify for a Level 1 analysis. If there are no Section 4(f) resources within the study area, then a search for Section 6(f) facilities is not necessary. The Nebraska Game and Parks Commission can assist in determining if L&WCF funds were used for a given property. Address the following CE Form questions:

- Questions 3.1: If a NO is answered, a N/A answer for 3.2 is sufficient and the action is eligible for a CE Level 1. If a YES is answered, the practitioner must answer question 3.2 to determine if there will be a conversion of a Section 6(f) property.
- Question 3.2: If NO is answered, the action is eligible for a CE Level 1. If YES is checked, complete the Level 2 questions 3.3 and 3.4.

For Level 2 Actions, if a conversion of Section 6(f) properties to other uses will occur as a result of the project and replacement lands are required, coordination with FHWA is required to determine if a Level 2 analysis is still appropriate or if a Level 3 analysis or higher is required. Address the following CE Form questions:

- Question 3.3: Name any Section 6(f) resources that were assessed during the analysis; note the nature of the impact (if any); note whether the impact would require replacement land; and describe the coordination with the agencies with jurisdiction.
- Question 3.4: Describe any mitigation measures associated with the 6(f) resource impact. This may include project design avoidance or minimization efforts, resource modification,

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relocation or replacement, etc.

Land & Water Conservation Funds land information in Nebraska can be found at (*coordination with the contact listed on the site will likely be needed*):

<http://outdoornebraska.ne.gov/parks/programs/lwcf/lwcf.asp>

**4.1) Federal and Tribal Lands:** The practitioner must check land ownership to determine whether the project occurs on or directly adjacent to tribal or federal lands. The practitioner can either check a land ownership map or coordinate with NDOR ROW to determine ownership. If this box is checked yes, note in the comment block 4.6 the name of the entity that owns/manages the land in question. In addition, coordination would need to occur with that entity during the environmental review process to inform them of the anticipated work and to determine if they have any comments or concerns. In addition, per the Section 106 PA and the Matrix PA, these entities are provided the opportunity to review and comment on the Section 106 review and the Biological Assessment generated for the project.

**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. Answer YES if federal funds will be used for utility relocation, or if the project contractor will be responsible for utility relocations. If YES is answered, the practitioner should ensure the new utility location is included in the project study area and reviewed appropriately. Include a brief discussion outlining the affected utilities in comment box 4.6 and include any pertinent mitigation in the mitigation block 4.7. If utility relocation is unknown add a commitment in the mitigation block to review the status of utilities when available and ensure the utility relocation is within the project study area. After NEPA, if a determination is made that the project contractor will relocate utilities, or that federal funds will be used for utility relocation, the practitioner shall coordinate with applicable NDOR resources specialists and initiate re-evaluation of the CE determination as appropriate.

***The following questions should only be answered when the action is processed for CE Level 2 or CE Level 3 determinations. These questions are not required for a CE Level 1 analysis.***

**4.3 Trails:** If the project will construct a new trail on ROW not previously designated for trail use, coordination with the adjacent landowners is required. The practitioner should coordinate with the NDOR Public Involvement Specialist in this instance to determine the proper outreach methods to employ, and to determine who will be responsible for the outreach.

**4.4 Farmlands:** If the proposed project has the potential to convert prime or unique farmland to non-farm use, the practitioner must complete the NRCS-CPA-106 form and check YES to Question 4.4. If the total score of Section VI is below 60, answer NO for question 4.5 and ensure the form is placed in the project file. Per 7 CFR 658.4(c)(2), "Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated." If Section VI score is less than 60, it's not possible to reach the 160 threshold.

If YES is answered for question 4.5, coordination with the Natural Resources Conservation Service (NRCS) is required. The practitioner should proactively initiate coordination with FHWA to determine the appropriate level of NEPA analysis.

Within the comment block 4.6, the practitioner shall provide a summary of farmland impacts, and any coordination with the NRCS. Include a general discussion of project activities that may impact farming or ranching procedures (such as closing or consolidating drives or access points, will impact a center pivot or irrigation practices, etc.).

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For more information, see NRCS's website: <http://www.nrcs.usda.gov/programs/fppa/>

**Water and Ecological Resources:**

**5.) Wild and Scenic/ National Recreational Rivers:** The practitioner must compare the location of the proposed project to the Wild and Scenic (WS)/Nationwide Rivers Inventory (NRI) and the National Recreational Rivers (NRR) lists found at 16 USC 1271-1287. The NDOR Initial Environmental Review (IER) will document the occurrence of WS, NRR and NRI rivers in proximity to the project study area. Designation of a River into one of these categories protects the river and a 0.5-mile corridor from development. For projects within .25 miles of listed Wild and Scenic Rivers or within a corridor 1.5 miles up or downstream of its tributaries, coordination with the Agency with jurisdiction is required.

- Question 5.1: If NO is answered, the project is eligible as CE Level 1. If YES is answered, the practitioner must consider the following and address question 5.2.

For Level 1 CE's and Level 2 CE's, excluding Level 2 projects to be reviewed and approved under Appendix B, paragraphs (26), (27), or (28), there can be NO IMPACT to these designated rivers. If a designated river segment, including the buffer areas described above, occurs with the project study area, coordination should be initiated with the agency with jurisdiction (generally the National Parks Service in the federal agency with jurisdiction but the US Fish and Wildlife Service may be the jurisdictional agency for certain designated rivers in Nebraska). If the agency with jurisdiction determines the project will not result in an impact to the designated river segment, the project would remain eligible under CE Level 1 or CE Level 2 as appropriate.

For projects to be reviewed and approved under Appendix B, paragraphs (26), (27), or (28), or if the agency with jurisdiction has determined project construction activities would result in an impact, a Level 3 CE or higher level NEPA assessment is required.

- Question 5.2: If NO is answered, attach the appropriate correspondence from the agency with jurisdiction indicating their determination of no impact resulting from the propose project construction. The project is eligible for CE Level 1 or CE Level 2 as appropriate. If YES is answered, a Level 3 CE project review is required.
- Include the following project information for either CE Level 2 or CE Level 3 as appropriate:
  - 5.3 - Describe the river resource area, potential construction impacts, and coordination conducted with officials/agencies with jurisdiction. To determine whether there is an impact to one of these resources, the practitioner should review the management plan for the River segment in question (if available) to determine the sensitive uses and values attributed to the river and assess whether the project activities would impact those uses or values. This assessment should be documented in writing (letter or email) and provided to the agency with jurisdiction for their review and concurrence. The letter or email to the agency with jurisdiction should clearly request their concurrence on potential impacts in writing.
  - 5.4 – Discuss any design avoidance or minimization efforts made, or other mitigation efforts agreed upon with the agency with jurisdiction.

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For more information, please see:

Nationwide Rivers Inventory for Nebraska: <http://www.nps.gov/ncrc/programs/rtca/nri/states/ne.html>

Nebraska Wild and Scenic Rivers: <http://www.rivers.gov/nebraska.php>

**6.) Floodplain/floodway:** To comply with Executive Order 11988 (Floodplain Management), federal agencies are required to consider alternatives to avoid *adverse effects* and incompatible development in floodplains.

The practitioner should review the FEMA floodplain maps to determine if the project is within the boundaries of a floodplain or floodway. See the FEMA link, below, for more information and for floodplain maps. Additionally, the NDOR Initial Environmental Review (IER) will document the occurrence of Zone A floodplains (100-year floodplain) and designated floodways that occur within the project study area. If the project is within the boundaries of a Zone A floodplain or floodway, early coordination should occur with the NDOR Roadway Design Hydraulics Unit and/or the Bridge Hydraulics Unit for a preliminary determination of impacts. In some instances, such as when a county does not participate in the FEMA program, an area may not be mapped for floodplains. In this instance, the state law defining floodplain areas will be used in lieu of the FEMA floodplain maps.

CE Level 1 projects evaluated under Appendix A of the 2015 CE PA are not subject to the floodplain restraint criteria required for actions processed under 771.117(c) (26), (27) and (28); therefore, minor floodplain impacts, or encroachments, are allowed for CE Level 1 projects. If a CE Level 1 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.

- Question 6.1: If NO is answered, the project is eligible as a CE Level 1. The practitioner shall ensure that proper documentation is included in the project file. (e.g. This may consist of the FIRM map panel number(s) and date(s) for the project area.) If YES is answered, the project remains eligible as CE Level 1 or CE Level 2. The practitioner should assess the following CE Determination Form questions.
- Question 6.2: If NO is answered, the project is eligible as a CE Level 1 or CE Level 2 as appropriate. If YES is answered, the project would be elevated to a CE Level 3 review (or higher level NEPA determination). The practitioner should proactively initiate coordination with NDOR Roadway Design and/or Bridge Hydraulics, and FHWA to determine the proper NEPA classification.

For projects reviewed under Appendix B of the 2015 CE PA, actions qualifying for a CE Level 2 under paragraphs (22) and (23), and any Appendix A actions that have been elevated to a CE Level 2 review, can generally be addressed as described above for CE Level 1.

For projects reviewed under Appendix B, paragraphs (26), (27) and (28), MAP-21 guidelines require FHWA CE approval 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 use (e.g. recreational trails, bicycle and pedestrian paths). Per 23 CFR 650.105(e), "Encroachment shall mean an action within the limits of the base floodplain." Projects involving parallel or perpendicular embankment encroachments (not directly associated with a bridge or culvert) or new projects on new alignment assessed under Appendix B (26), (27), or (28) will require a CE Level 3 review or higher NEPA determination.

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Note: In some instances, such as when a county does not participate in the FEMA program, an area may not be mapped for floodplains. In this instance, the state law defining floodplain areas will be used in lieu of the FEMA floodplain maps. An encroachment within these areas will be treated as a 100 year floodplain encroachment for the purposes of this form and floodplain compliance [see 23 CFR 650.111(a) for more information]. The NDOR floodplain memo will identify when a project is in such an area.

- Question 6.3: If NO is answered, project remains eligible for CE Level 2. A functionally dependent use (bridge or culvert and grading and guard rails and etc. associated or required to support or protect the bridge or culvert) would receive a NO answer. The practitioner shall ensure that proper documentation is included in the project file. If YES is answered, the project will be elevated to a CE Level 3 review requiring review and approval by FHWA. The practitioner shall proactively initiate coordination with NDOR Roadway and/or Bridge Hydraulics Units as appropriate, and FHWA.
- Question 6.4: Describe resources, impacts and the coordination conducted with officials/agencies. If question 6.3 is checked “yes”, review the NDOR floodplain memorandum and also review the requirements listed in 23 CFR 650.111(b-e). Summarize the findings as required in the referenced regulations for the project in this text block. The practitioner must review the NDOR floodplain memorandum, the hydraulic reports, and/or coordinate with the project designer and NDOR Hydraulics unit to obtain this information.
- Question 6.5: include any applicable floodplain mitigation. If a floodplain permit is required but not obtained by the time the CE is ready for approval, include a commitment to obtain the permit prior to construction.

Although final floodplain certification and permitting will generally occur during the final design phase of project development, the practitioner should seek adequate preliminary information concerning potential floodplain impacts through the NDOR Environmental Coordination Meetings (likely, the ECM 20, 30 or 40) to address CE Determination Form questions.

- Attach Floodplain permits if available. If the floodplain permit is not available, include the following commitment language: *Floodplain permits will be required for the project action. Floodplain permits will be acquired from the appropriate local Floodplain Administrator(s), in accordance with Nebraska Floodplain regulations, prior to the construction obligation phase.*

The practitioner shall ensure documentation of both the preliminary and final determination is included in the project file as appropriate. This may include the Hydraulics/Floodplain summary email or memo note, certification of compliance documents/reports, floodplain permit application or signed floodplain permits. As stated above, some or all of these activities may occur after the NEPA documentation has been approved. Appropriate documentation shall be verified prior to construction obligation.

FEMA floodplain maps can be found at: <https://msc.fema.gov/portal>

**7.) Wetlands/Waters of the US:** Waters of the U.S., including wetlands, waterways, lakes, natural ponds, and impoundments, are regulated by the U.S. Army Corps of Engineers (USACE) 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 to wetlands be avoided and minimized to the extent practicable. Wetland/Waters of the U.S. identification should occur early in the project delivery process to allow for avoidance and

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minimization measures to be accounted for during the design process and properly documented in the appropriate level NEPA determination.

If no work will occur within a water of the U.S. or if the project qualifies for a non-notifying Nationwide Permit, the project meets the Level 1 *Impact Threshold* for this criterion. In addition, a project can have a cumulative impact of up to 0.5 acres of wetland impacts and remain eligible for a CE Level 1. Projects requiring a pre-construction notification (PCN) or result in cumulative impacts greater than 0.5 acres would require a CE Level 2 review.

Upon completion of the appropriate wetland/waters determination or delineation, and receipt of preliminary impacts from Roadway Design (DR form 290), the practitioner can address the following questions. Additional resource and impact information will be developed by the Environmental Permits Unit (EPU) Biologist assigned to the project and made available to aid/guide the NEPA practitioner.

- Question 7.1: If NO is answered, the project is eligible as a CE Level 1 or Level 2 as appropriate. If YES is answered, address the following question.
- Question 7.2: If NO is answered, the project is eligible as a CE Level 1 or Level 2 as appropriate. If YES is answered, address the following question
- Question 7.3: If NO is answered, the project is eligible as a CE Level 1 or Level 2 as appropriate. If YES is answered, the project remains eligible for a CE Level 2 review. Address the following permitting questions.
  - 7.4 - Include the **estimated total permanent** acres of wetland/waters impacts resulting from the project. It is important to note that the CE Level one threshold is based on total cumulative permanent impacts, which is not consistent with Section 404 regulations that account for impacts on a “*single and complete crossing*” basis. Additionally, isolated waters or any other non-jurisdictional waters that would be considered “waters of the state,” would be included in the total cumulative impacts reported for threshold assessment.
- Question 7.5: If NO is answered, the project is eligible as a CE Level 1. If YES is answered, the project remains eligible for a CE Level 2 review. The N/A box would be checked if an Individual Permit is required, which would elevate the project review to CE Level 3.

Any project that results in an application for: (1) an Individual Section 404 Permit, (2) a Section 10 Permit from the Corps of Engineers, OR (3) a Section 9 Permit from the U.S. Coast Guard, shall be processed as a Level 3 CE or higher level NEPA assessment.

- Question 7.6: If NO is answered, the project remains eligible for a CE Level 2 review. If YES is answered, the project review is elevated to a CE 3 Level review, requiring coordination, review and approval by FHWA. The practitioner should proactively initiate coordination with FHWA when the need for an Individual Section 404 permit or a Section 9 or Section 10 permit is required. The only Section 9/10 water in Nebraska is the Missouri River. For any work occurring in, across, or within the vicinity of the Missouri River, the practitioner should ensure these potential permit issues are addressed and documented appropriately. Contact the Environmental Permits Unit for aid in determining Section 9/10 permit needs/requirements.

Adequate support documentation must be included in the project file to demonstrate either no permit is required or that a permit is required or will be obtained prior to construction

- 7.7 – Include a general discussion to describe the level of delineation/determination

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- conducted and describe the water resources identified in the project study area (this can be done a general landscape level/perspective). Briefly describe construction impacts resulting from project construction identify the applicable nationwide permit(s) that will likely apply to the project, or identify other permit strategies as warranted. Include any coordination conducted with appropriate resource/regulatory agencies with jurisdiction over the identified resources. This information should be provided to the practitioner (via a Memo) by the EPU biologist assigned to the project.
- 7.8 - Discuss any design avoidance or minimization efforts made, or other mitigation efforts agreed upon with resource/regulatory agencies with jurisdiction. Give a brief description of any mitigation proposed to offset unavoidable wetland impacts. Provide a landscape level description of onsite wetland or stream channel mitigation proposed. If credits from an approved NDOR Wetland Mitigation Bank will be used, identify the Wetland Bank and include general service area qualification. This information should be provided to the practitioner (via a Memo) by the EPU biologist assigned to the project.

If a non-notifying Nationwide Permit will be used, include the following commitment in the mitigation block of the form: *The project qualifies under Nationwide Permit #\_\_\_\_\_. The contractor shall adhere to the permit conditions, including regional and general conditions, during construction.*

If a PCN or Individual Permit is required for project construction, those permitting activities generally occur after the NEPA process in Nebraska. If a PCN or Individual Permit is required and has not been obtained prior to CE approval, include the following commitment in the mitigation block of the form: *The project will require a\_\_\_\_\_ (pre-construction notification or Individual Permit) for impacts to waters of the U.S. The permit shall be obtained prior to project letting. The contractor shall adhere to all permit conditions, including regional and general conditions, during construction.*

If wetlands exist within the environmental study area, but will be avoided by construction, include an avoidance commitment in the mitigation block. Identify whether the identified wetlands will be shown on project plans (2W sheets and/or Erosion Control plan sheets) or identified in a Project Station list format in the Project Greensheet and Contract Special Provisions.

For more information, see the *NDOR Wetland Review Requirements for Federal-Aid Transportation Projects* (link below).

NDOR Wetland Review Requirements for Federal-Aid Transportation Projects can be found at: <http://www.transportation.nebraska.gov/gov-aff/pdfs-docs/environmental/wetlands/lpa-project-wetland-review-requirements.pdf>

**8.) Impaired Waters, Section 402, and MS4:** Section 303(d) of the Clean Water Act 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 (TMDLs) for the pollutants impairing those waters (33 USC 1251 et seq.). Title 117 of NDEQ guidelines (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) (NDEQ, April 1, 2012). These waters are referred to as Impaired Waters.

- Question 8.1: Although this is not a CE level threshold, if an impaired water is identified within or adjacent (within 0.5 mile of the project boundaries) to the project, the box must be checked yes. In the additional comments block 8.4, note the name of the impaired waterbody and

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include a brief discussion concerning potential water quality impacts resulting from the project. Include any project specific mitigation needed to comply with established water quality/TMDL standard(s) identified for the impaired water resource in the mitigation block 8.5.

- Example mitigation measures include specific revegetation strategies; not using phosphorus in fertilizers of the water is impaired for dissolved oxygen, not using manure when the water is impaired for E. coli (fecal coliform bacteria), etc. The practitioner should coordinate with the NDOR Roadside Stabilization Unit (RSU) for assistance in identifying impaired waters, assessing potential water quality impacts and required mitigation measures or strategies.
- Question 8.2: The Pretreatment Program is a subprogram of the NPDES program and requires the consideration of water quality Best Management Practices 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 (MS4s). The MS4 permit requires the municipalities and counties to develop water quality programs in the areas of 1.) Public Education and Outreach; 2.) Public Involvement; 3.) Construction Site Runoff Control; 4.) Post Construction Runoff Control; 5.) Illicit Discharge Detection and Elimination; and 6.) Good Housekeeping.

Since NDOR owns and maintains Rights of Way and properties within the MS4s, NDOR is permitted as a non-traditional Phase 2 MS4. As such, NDOR has developed a transportation specific MS4 permit in coordination with NDEQ. NDOR has determined specific water quality goals that the project must meet, and determines if there are specific erosion control measures (often referred to a BMP's) that should be employed for the project meet the 6 requirements listed above.

- Question 8.2: Although this is not a CE level threshold, if the proposed project occurs within an identified MS4 community/area, the box must be checked YES. In comment box 8.4, add the following statement:  
*Stormwater Treatment consideration is a condition of NDOR's Municipal Separate Storm Sewer System MS4) permit. Stormwater treatment requirements will be applied to this project if it meets the criteria outlined in Chapter Three (Stormwater Treatment within Municipal Separate Storm Sewer System MS4 Communities) of the NDOR Drainage Design and Erosion Control Manual. This determination and any necessary coordination with the MS4 community will be made during the design process.*
- Question 8.3: Section 402 of the Clean Water Act establishes environmental programs, including the National Pollutant Discharge Elimination System (NPDES) program, to protect the nation's waters. An NPDES Construction Storm Water General Permit – Notice of Intent (CSW-NOI) and a Storm Water Pollution Prevention Plan (SWPPP) is needed if construction disturbs over one acre of land.
  - Although this is not a CE level threshold, if the proposed project will disturb more than one (1) acre of soil, the box must be checked. If YES, add a commitment in the mitigation block 8.5, indicating the SWPPP will be developed prior to construction as appropriate.
  - For the CE documentation, the acreage impact assessment will be based on preliminary design information. If required, project specific Stormwater and Erosion Control Plans (SWPPP) and/or NPDES permits will be developed/acquired after the CE determination approval, during final design.

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For more information, see:

Title 117 (303(d)): <http://deg.ne.gov/NDEQProg.nsf/%24%24OpenDominoDocument.xsp?documentId=E238CC319E38A69386257CB500746DCD&action=openDocument>

NPDES: <http://deg.ne.gov/NDEQProg.nsf/OnWeb/NPDES>

MS4: <http://deg.ne.gov/NDEQProg.nsf/OnWeb/PP>

**9.) Threatened & Endangered Species:** In January 2012, FHWA, NDOR, the U.S. Fish and Wildlife Service (USFWS), and the Nebraska Game and Parks Commission (NGPC) entered into a Programmatic Agreement for Endangered Species Act (ESA) and Nebraska Endangered Species Conservation Act (NESCA) compliance. This PA is referred to as the *Matrix*. The *Matrix* process and associated tools will be used for ESA and NESCA compliance for all projects assessed using the CE determination form.

For CE Level 1 actions, impacts to federally threatened or endangered species resulting in a “May Affect” determination per the *Matrix* cannot occur. A “May Affect” determination requires consultation with FHWA and the appropriate resource agencies.

- Question 9.1: If NO is answered, the project is eligible for a CE Level 1 or Level 2 as appropriate. Attach the T&E summary memo, Species Evaluation Form, or Overview of Effects Form as appropriate. If YES is answered, the project remains eligible for CE Level 2 and the practitioner must address the following CE Level 2 questions.

For CE Level 2 actions, impacts to federally threatened or endangered species resulting in a “May affect, likely to adversely affect” determination under ESA cannot occur. Additionally, if the project requires the implementation of unique conservation conditions not included in the *Matrix*, the project would be elevated to a CE Level 3 or higher level NEPA assessment.

- Question 9.2: If NO is answered, the project remains eligible for a CE Level 2. Attach the Biological Evaluation summary memo. If YES is answered, the project is elevated to a CE Level 3 review and requires coordination with FHWA and the appropriate resource agencies. The practitioner should proactively initiate coordination with FHWA through the NDOR Technical Documents Unit.
- Question 9.3: If NO is answered, the project remains eligible for a CE Level 2. Attach the T&E summary memo, Species Evaluation Form, or Overview of Effects Form as appropriate. If YES is answered, the project is elevated to a CE Level 3 review and requires coordination with FHWA and the appropriate resource agencies. The practitioner should proactively initiate coordination with FHWA through the NDOR Technical Documents Unit.
  - Include the NDOR PQS (the responsible TDU Biologist) Determination Date, and the USFWS and/or NGPC Concurrence dates as appropriate. Depending on the *Matrix* Evaluation level, the form may require dates in one, two or all three “Date” fields. For projects resulting in a “No effect” or a “May Affect, Not Likely to Adversely Affect” finding with standard conservation conditions implemented, generally only the NDOR PQS Determination date would be noted. If the USFWS and/or NGPC were not consulted, enter N/A as a concurrence date. If consultation with resources agencies is required, NGPC concurrence would be required for Stated Listed T&E species evaluations. If resource agency consultation involving Federal Listed T&E species are required, both NGPC and USFWS concurrence would be required and included in the

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CE documentation as an attachment.

- 9.4: As part of the Biological Assessment (the *Matrix* evaluation), potential impacts to Bald and Golden Eagles are also considered. The practitioner should review the T&E species memo provided by the TDU biologist and verify the project will comply with the BGEPA by checking the associated box on the CE form. Provide a summary of potential impacts related to project construction activities in block 9.7. Ensure any specific mitigation measures required are included in the mitigation block 9.8.
- 9.5: Migratory Bird Treaty Act (MBTA): NDOR has developed an Avian Protection Plan (APP) for compliance with the MBTA. All projects, including Local Public Agency projects using federal-aid administered by NDOR must apply and follow the NDOR APP during project construction. Verify the project will comply with the APP by checking the associated box on the CE form. If the project will not comply with the NDOR APP (due to construction phasing considerations for example), coordination with FHWA and the USFWS will be required. If coordination is required to address MBTA concerns, provide a summary of the coordination in the Additional Comments block (9.7) and ensure any specific mitigation measures required are included in the Mitigation Commitments block (9.8). When the APP is followed (the standard case), compliance with the APP is established by Section 107.01 in the NDOR *Standard Specifications for Highway Construction*.
- 9.6: Fish and Wildlife Conservation Act: Only if a Section 404 Individual Permit is required for project construction, coordination with the U.S. Fish and Wildlife Service is required during the permitting process. If FWCA coordination occurs during the NEPA process, provide a summary of potential wildlife resource impacts related to project construction activities in the Additional Comments block (19.6). Include any specific mitigation measures required in the Mitigation Commitments block (19.7).
- 9.7: List the Threatened or Endangered species evaluated that resulted in a *May affect, not likely to adversely affect* determination or higher (i.e. do not list any species that resulted in a no affect determination) and include the appropriate affect determination. This may include impacts to associated species habitat and/or designated critical habitat. This information should be provided to the practitioner (via a Memo) by the TDU biologist assigned to the project.

Summarize any agency coordination conducted as part of the *Matrix* Evaluation. This information should be provided to the practitioner (via a Memo) by the TDU biologist assigned to the project.

- 9.8: Include the following Conservation Conditions as applicable [The applicable conservation conditions should be provided to the practitioner (via a Memo) by the TDU biologist assigned to the project]:
  - *General Conservation Conditions for Specific Impacts/Activities* (general construction activity and procedural based conditions);
  - *Standard Conservation Conditions for Range* (specific to species type);
  - *Standard Conservation Conditions for Species* (specific species conditions related to specific construction activities);
  - Unique mitigation agreed upon by resource agencies

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NOTE: In Block 23.1, include all the commitments listed in 9.8 and also the *Matrix General Conservation Conditions for All Projects*,

For more information on the Matrix PA, please see:

<http://www.transportation.nebraska.gov/environment/guides/bio-eval-matrix-fed-aid-NE.pdf>

### **Human and Social Resources**

**10.) Historic Properties:** On [REDACTED], FHWA, NDOR, the State Historic Preservation Office (SHPO), and the Advisory Council for Historic Preservation entered into a Programmatic Agreement for Section 106 compliance. This PA is referred to as the Section 106 PA. The Section 106 PA procedures and associated tools will be used for Section 106 compliance for all projects.

The practitioner must review the NDOR cultural resource Professional Qualified Staff (PQS) project review memo. The memo will disclose the Section 106 determination.

For 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 shall be processed as a Level 2 CE or higher. Address the following CE form questions:

- Question 10.1: If a NO is answered, check NO for 10.2 and the action is eligible for a CE Level 1. Attach NDOR’s PQS Project Review Memo and place the memo date in question 10.3. If YES is answered, the practitioner must answer question 10.2 to determine if the action will result in a Section 106 effect other than a “No Potential to Cause Effects” or a “No Historic Properties Affected” determination.
- Question 10.2: If NO is answered, the action is eligible for a CE Level 1. Attach NDOR’s PQS Project Review Memo and place the memo date in question 10.4. If YES is checked, complete Level 2 Threshold questions 10.3 and place the PQS memo date in question 10.4.

In the event the Section 106 review for the project was completed prior to the execution of the Section 106 PA, there will be no PQS memo. In this instance, enter the date the PQS sent the Section 106 package to FHWA for processing in the 10.4 date field. Also, for some projects there may be multiple consultation or PQS review dates. When this occurs, enter the most recent date in the date field.

For Level 2 Actions, the project cannot result in an “Adverse Effect” to any historic property under Section 106 of the National Historic Preservation Act. If the project results in an “Adverse Effect”, the project shall be processed as a Level 3 CE or higher. Address the following CE form questions:

- Question 10.3: If NO is answered, the action is eligible as a CE Level 2. Complete question 10.5.
  - If YES is checked for question 10.3 and will result in an “Adverse Effect” a Level 3 CE or higher NEPA classification is required. If the action results in an “Adverse Effect”, coordination must occur with FHWA to determine the appropriate level of NEPA action. Complete question 10.5.
- For all projects include the State Historic Preservation Office (SHPO), the Tribal Historic Preservation Office (THPO), and Certified Local Government’s (CLG) concurrence dates, if applicable. The practitioner should review the Section 106 materials to determine if consultation with these entities occurred. If consultation did not occur with an entity, enter

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“NA” in the field. If consultation did occur and concurrence was requested, enter the concurrence date and attach concurrence letters. In some instances, concurrence from a tribe, CLG or consulting party is not required, but consultation letters are sent to provide the entity the opportunity to comment or to provide information. In this instance, write “see below” in the applicable date field. Then in block 10.5, briefly describe which entity(s) was coordinated with, the date the consultation letter was sent, and if a response was received.

- Question 10.5: Any NRHP eligible or NRHP listed properties or districts found within in the area of potential effect (APE) must be described in the resources box, along with the Criterion (or Criteria) under which the property is eligible for the National Register. In addition, a brief disclosure of potential impacts must also be included, as applicable. The practitioner should review the Section 106 material and the NDOR PQS memo to find this information. If per the Section 106 PA consultation is required for the project, briefly summarize the consultation that occurred and include the consulting party concurrence dates. Consultation and concurrence letters must be attached to the CE.

As noted above, in some instances, consultation with an entity will occur but their concurrence is not required. When this occurs, also briefly describe which entity(s) was coordinated with, the date the consultation letter was sent, and if a response was received.

- Question 10.6: If the NDOR PQS memo or any Section 106 consultation letters indicate mitigation is required, include the mitigation in the mitigation block of the determination form.

**NOTE:** If any above ground resources (bridges, houses, businesses, silos, grain elevators, etc.) will be impacted by the project, the practitioner must review the Section 106 material to ensure the NRHP eligibility of these resources has been determined and impacts assessed during the Section 106 process. If it isn't clear whether the property was considered, coordinate with the NDOR PQS for verification. Also, if ROW will be acquired for the project, the practitioner is responsible for ensuring the PQS is informed of the ROW acquisition and that the areas acquired are included in the Section 106 assessment.

Section 106 PA can be found at: [Insert Hyperlink when available.](#)

**11.) Hazardous Materials:** The practitioner must review both the NDOR Hazardous Materials memo and the projects Hazardous Materials Report (HMR) prior to completing this section of the CE form.

For Level 1 Actions, the project cannot result in Hazardous Materials impacts other than low potential for conflict with Hazardous Materials based on a records review and visual survey (if needed). If the project results in a moderate or high potential for encountering hazardous materials, the project shall be processed as a Level 2 CE or higher. In some older Hazardous Material memo's or HMR reports, the terminology “low, moderate, high” may not have been used. In this instance, coordinate with NDOR's Hazardous Materials PQS to ensure the proper classification is recorded in the CE form.

Address the following CE form questions:

- Question 11.1: If the proposed project would not exceed the scope in the Hazardous Materials manual exemption list, check NO and a N/A answer is appropriate for 11.2 and the action is eligible for a CE Level 1. Attach the NDOR Hazardous Materials memo and include the NDOR PQS date in the form. If YES is answered, the practitioner must answer question 11.2 to determine if there is more than a Low Potential for encountering hazardous materials during construction.

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- Question 11.2: If NO is answered, the action is eligible for a CE Level 1. Attach NDOR's Hazardous Materials memo and include the NDOR PQS date in the form. If YES is checked, complete Level 2 Threshold questions 11.3 through 11.6 discussed below.
  - Question 11.2A: If any painted components of structures are being disturbed (i.e. removal or cleaning of painted components) check YES for box 11.2A and per the PQS memo, include the standard mitigation measures for handling and disposing of potential lead-based paint in block 11.6.
  - Question 11.2B: If there is potential to encounter asbestos during construction, testing for asbestos is required. Asbestos within existing ROW may be encountered during demolition of bridges (e.g. utilities attached to bridge rails, widening, re-decking, and replacement). Testing will typically occur during NEPA if the above mentioned activities will occur during project construction. The NEPA practitioner must check the Hazardous Materials PQS memo to determine the presence of asbestos. If asbestos is present, check the box and include the standardized mitigation and NESHAP requirements in block 11.6.

NOTE: For the demolition of structures outside the existing ROW, the NDOR ROW Division conducts hazardous materials testing prior to demolition, and, if appropriate, requires proper abatement during demolition.

For 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 High Potential or will result in soil disturbance below or beyond preexisting roadway fill within an active Superfund Site, the project shall be processed as a Level 3 CE or higher. Address the following CE form questions:

- Question 11.3: If NO is answered, the action is eligible as a CE Level 2 (if 11.4 is answered NO). Enter the date of determination by the NDOR HazMat Specialist and attach the memo.
  - If YES is checked for question 11.3 and will result in a High Potential for encountering hazardous materials during construction a Level 3 CE or higher NEPA classification is required. If the action results in a High Potential, coordination must occur with FHWA to determine the appropriate level of NEPA action. Enter the date of determination by the NDOR HazMat Specialist and attach the memo
- Question 11.4: If NO is answered, the action is eligible as a CE Level 2 (if 11.3 is answered NO). Enter the date of determination by the NDOR HazMat Specialist and attach the memo.
- Question 11.5: Any potential contamination sites that may be encountered during construction must be briefly described in the comments box, along with likelihood of impact (low, moderate, or high). If consultation was required with the EPA or DEQ for the project, briefly summarize the consultation that occurred. Consultation and concurrence letters must be attached to the CE. If the project will require the demolition of existing structures outside the existing roadway ROW, the practitioner should note "structures will be inspected for hazardous materials such as LBP, mercury and asbestos prior to demolition. This is standard practice and is managed by NDOR ROW Division."
- Question 11.6: Within the mitigation block, the practitioner must include any mitigation required, as noted in the NDOR HazMat review memo and/or the HMR.

**Note:** If any standing structures (bridges, houses, businesses, silos, grain elevators, etc.) will be impacted by the project, the practitioner must review the HMR and NDOR HazMat memo to ensure they were considered during the assessment. Also, if ROW will be acquired for the project, the practitioner is responsible for ensuring the areas to be acquired are included in the HazMat assessment.

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If the HMR/Hazardous Materials memo indicates a moderate or high potential of encountering hazardous materials, additional testing may be required prior to approving the CE determination based on the NDOR Hazardous Materials Specialist's recommendations. In limited circumstances, testing may be deferred to a later phases of project delivery (post CE approval). Any deferred testing requires coordination between the NDOR Hazardous Material Specialist and FHWA. If testing is deferred, a commitment to complete necessary follow-up investigations to the extent possible during the ROW process must be included in the mitigation section. This review must be documented and retained in the project file. Re-evaluation of the CE determination may be required depending on the results of additional testing/investigations carried out after NEPA approval.

NDOR Hazardous Materials Assessment guidelines: [Include hyperlink when ready](#)

**12.) Traffic Noise:** The proposed project will be processed as a Level 3 CE or higher NEPA determination if the project is classified as a Type 1 project. A Type I project is defined per 23 CFR 772 and the NDOR Noise Policy as follows:

- (1) The construction of a highway on new location; or,
- (2) The physical alteration of an existing highway where there is either:
  - i. Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,
  - ii. Substantial Vertical Alteration. A project that removes shielding; therefore, exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,
- (3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,
- (4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,
- (5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,
- (6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,
- (7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

The NDOR Noise Specialist will indicate in the DR-53 if a noise analysis is required for the proposed action to aid the practitioner in addressing the following CE form questions:

- Question 12.1: If a NO is answered, the action is eligible for a CE Level 1. If YES is answered, action will be processed as a Level 3 CE.
- Question 12.2: If NO, discuss in 12.3 why it was not feasible and/or reasonable to abate for noise. If YES, summarize the results of the of noise analysis in 12.3.
- Question 12.3: Briefly summarize whether there are impacted noise receptors, the range of noise levels for those receptors, and discuss whether it is feasible and reasonable to abate for

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noise. In addition, summarize any noise public meetings held in this block. Within the public involvement block of the Form, refer the reader to this section for more information on the public outreach conducted specifically for noise.

- Question 12.4: Include any commitments to construct noise walls, if applicable. Also, include any required noise abatement during construction, as identified in the noise study.

**NOTE:** The project would qualify for noise abatement if, based on the noise study, it is feasible and reasonable to abate the noise impact. Refer to the project-specific noise memo to determine whether noise mitigation is feasible and reasonable for the project. Refer to the NDOR Noise Policy for more information on the reasonable and feasible criteria for abatement in Nebraska.

If the project is eligible as a Type 1 Project, attach a graphic to the CE form, showing the location of impacted receptors and the location for any proposed noise walls. The practitioner should coordinate with the NDOR Noise Specialist and review the Noise Study for the project to find the information needed to complete the comment box.

Noise Policy: <http://www.transportation.nebraska.gov/projdev/docs/noise-pol.pdf>

If there is a scope change that involves a shift of the travel lanes, adding travel lanes, the inclusion of a turn lane, or the extension of a turn lane since the time the NDOR noise PQS reviewed the project, coordination with the noise PQS is required.

**13.) Air Quality:** Projects that increase capacity in exceedance of 100,000 vehicles per day (vpd) in the 20<sup>th</sup> year following the project construction (see DEQ MOU), projects that may result in high potential for Mobile Source Air Toxics (MSAT) effects (MSAT Level 3), or a project considered *Regionally Significant* within a designated non-attainment area must be processed as a CE level 3, EA, or EIS.

MSAT Level 3 category includes projects that have the potential for meaningful differences in MSAT emissions among project alternatives. To fall into this category of analysis a project would:

- Create or substantially alter a major intermodal freight facility that has the potential to concentrate high levels of diesel particulate matter in a single location, involving a significant number of diesel vehicles for new projects or accommodating with a significant increase in the number of diesel vehicles for expansion projects; or
- Create new capacity or add substantial capacity to urban highways such as interstates, urban arterials, or urban collector-distributor routes with traffic volumes where the Annual Average Daily Traffic (AADT) is projected to be in the range of 140,000 to 150,000 or greater by the design year; and also
- Proposed to be located in proximity to populated areas.

For Level 1 and Level 2 Actions, the project cannot increase capacity in exceedance of 100,000 vehicles per day (vpd) in the 20<sup>th</sup> year following the project construction (see DEQ MOU), result in high potential for Mobile Source Air Toxics (MSAT) effects (MSAT Level 3), or cannot be considered Regionally Significant within a designated non-attainment area. If the project will exceed the above mention thresholds, the project shall be processed as a Level 3 CE or higher. The NDOR Air Analyst will review the action to confirm the project type, with a note to the file documenting the result. Address the following CE form questions:

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- Question 13.1: If a NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action will be processed as a Level 3 CE or higher
- Question 13.2: Summarize the results of the Air Quality Study
- Question 13.3: Include any mitigation as noted in the Air Quality analysis
- For projects requiring MSAT Level 2 analysis, attach the quantitative analysis memo (provided by the NDOR Air Quality Specialist).

**NOTE:** The NEPA practitioner must coordinate with the NDOR Air Specialist if a project may exceed one of these thresholds for guidance.

**14.) Roadway:** For Level 1 and Level 2 Actions, the project cannot add through-lane capacity. If the project will add through-lane capacity, coordination with FHWA is required before the environmental review begins and the project must be analyzed as a Level 3 CE or higher NEPA determination. Right turn lanes and auxiliary lanes less than a mile in length, or center turn lanes (regardless of length) are not considered capacity-adding activities.

- Question 14.1: If a NO is answered, the action is eligible for a CE Level 1 or CE Level 2 as appropriate. If YES is answered, the action will be processed as a Level 3 CE or higher

**15.) Traffic disruption:** The practitioner must consider both temporary and permanent traffic disruptions when analyzing the project and completing this section of the form. 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 phasing may be influenced by factors such as disruption encountered during construction.

If a detour is used, potential impacts must be assessed during the environmental analyses. The assessment should focus on potential social or economic impacts related to the detour.

For Level 1 Actions, the project cannot result in traffic disruptions requiring detours, temporary roads, or ramp closure that are greater than 30 working days. If the project results in traffic disruptions greater than 30 working days, the project shall be processed as a Level 2 CE or higher. Address the following CE form questions:

- Question 15.1: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the practitioner must answer question 15.2 to determine if the project will result in major traffic disruptions.
- Question 15.2: If NO is answered, the action is eligible for a CE Level 2. If YES is answered, the action requires as a CE Level 3.

Note: If a detour is used, the following commitment shall be included as mitigation for a Level 1 or Level 2 CE: *"If a detour is used, the duration of the detour must be less than \_\_\_\_\_ ('30 working days' for Level 1 - or - '135 working days' for Level 2). In addition, the detour must create less than 5 miles of adverse (out-of-direction) travel within an urban environment and less than 25 miles in a rural setting with access provisions for local traffic."*

For Level 1 Actions, the project also cannot result in temporary roads, detours, or ramp closures that substantially change the environmental consequences of the action. For example, a designated detour that may impact eligible or contributing brick streets due to increased traffic, or improvements to a designated detour route.

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- Question 15.3: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.

For Level 1 and Level 2 CE Actions, the project cannot result in adverse travel (out-of-direction) great than 5 miles in urban areas (population of 5,000 or greater) or 25 miles in rural areas.

- Question 15.4: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.

For Level 1 and Level 2 CE Actions, the project cannot interfere with local special events or festivals either on a temporary or permanent basis.

- Question 15.5: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.
  - Interference would include any construction activities occurring on the same segment of street utilized for the festivities, 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. The practitioner should be aware that during summer months many small towns in Nebraska hold festivals and carnivals, which frequently utilize the street system in the town. For projects within towns and cities, the practitioner should check town websites and with town representatives to determine if and when summer festivals or events are planned.

For Level 1 and Level 2 CE Actions, the project cannot result in an adverse effect to through-traffic dependent business either on a temporary or permanent basis.

- Question 15.6: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.
  - The determination of adverse effect to businesses cannot be made without coordination with the affected public. Please see the approved Public Involvement Plan for more information on outreach and/or coordinate with the NDOR Public Affairs office.

For Level 1 and Level 2 CE Actions, the project cannot result in substantial permanent traffic pattern changes or disruptions, such as permanently close a roadway or roadway intersection, increase through lane capacity, create new intersections, or convert a local street into a higher classification roadway.

- Question 15.7: If NO is answered, the action is eligible for a CE Level 1. If YES is answered, the action requires as a CE Level 3.
  - 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.
- Question 15.8: Within the comment box, describe the expected duration and route of any detours and discuss any social or economic impacts that may result from the detour. The outreach component of this assessment can either be captured here or in the public involvement section of the CE form.
- Question 15.9: Any mitigation measures intended to avoid, minimize or offset detours or other traffic impacts must be noted in the mitigation box. In addition, commitments to restrict detours and traffic impacts to the *Impact Thresholds* from the 2015 CE PA also need to be included in the mitigation block for all projects

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For Level 3 Actions, the practitioner should be aware of potential continuity or cohesion impacts, either permanently or temporarily as a result of the project. This could include, but not be limited to, the separation of a housing complex from its school, park, or community meeting hall. Coordination should occur with stakeholders during the environmental review process (see the NDOR public Involvement Plan and coordinate with the NDOR Public Affairs Coordinator for project-specific outreach guidance) to determine potential continuity or cohesion impacts. The practitioner shall document any potential continuity or cohesion impacts, and any coordination with local officials in the Additional Comments block 22.1. If mitigation is proposed to reduce or eliminate continuity/cohesion impacts, include those measures in the Mitigation Commitments block 23.1.

**NOTE:** If a detour or access restriction will occur for the project, the above criteria are met, there is no unresolved controversy, and there are no anticipated social or economic impacts from the detour, include the following statement in the text box of this section: *“Coordination with the affected public and emergency services has occurred, following the requirements of the approved public involvement plan. No adverse effects to businesses or emergency services were identified during the outreach.*

**16.) Access Disruptions:** The practitioner must analyze the project both in terms of temporary access restrictions during construction and permanent access restrictions. 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 Level 1 Actions, the project cannot result the complete closure of access to residential properties greater than five (5) working days, complete closure of business access during operational hours or access restrictions to emergency service facilities or providers. Address the following CE Form questions:

- Question 16.1: If a NO is answered, a N/A for 16.2 and 16.4 is sufficient and the action is eligible for a CE Level 1 (if 16.5 is NO). If a YES is answered, the practitioner must answer question 16.2 and 16.4 to determine the impact of access restrictions.
- Question 16.2: If a NO is answered, the action is eligible for a CE Level 1 (if 16.4 and 16.5 is NO). If YES is checked, the practitioner must answer question 16.3 to determine if the project will require a CE Level 3.
- Question 16.4: If a NO is answered, the action is eligible for a CE Level 1 (if 16.2 and 16.5 is NO). If YES is checked, the project will require a CE Level 3.
- Question 16.5: If a NO is answered, the action is eligible for a CE Level 1 (if 16.2 and 16.4 is NO). If YES is checked, the project will require a CE Level 3.

For 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 (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 will permanently change the functional utility of the property.

- Question 16.3: If a NO is answered, the action is eligible for a CE Level 2. If a YES is checked, the project will require a CE Level 3. Coordination with FHWA shall occur to determine proper NEPA assessment.
- Question 16.6: If a NO is answered, the action is eligible for a CE Level 2. If a YES is checked,

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the project will require a CE Level 3. Coordination with FHWA shall occur to determine proper NEPA assessment.

- Example: If the 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. Also, if the action results in a permanent access closure to a residential property or a permanent access changes to a business unless the permanent change will not adversely affect the business.
- Question 16.7: Disclose whether access closures are anticipated, note the expected duration of access closures, and assess whether any social or economic impacts may result from the closure.
- Question 16.8: Mitigation measures intended to address access impacts must be noted in the mitigation box. In addition, commitments to limit access restrictions to the Impact Thresholds noted in the 2015 CE PA also need to be included in the mitigation block.
  - If access closures will occur, the following commitment shall be included in the mitigation section: *Direct access to a residential property or driveway cannot be closed for more than \_\_\_\_ (5 working days for a Level 1 CE, or 10 working days for a Level 2 CE) and complete access closure to businesses during operational hours (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 emergency services cannot occur. During the access closure, reasonable and safe indirect access accommodation must be provided by the contractor to the property owner/tenant.*
  - If access restrictions, but not full closure, will occur due to moving equipment, milling or paving machines passing in front of access points, etc, include the following commitment: *Access to adjacent properties shall be maintained at all time during construction but may be disrupted temporarily at times due to construction activities, but will not be closed. (Contractor)*
  - Based on the needs of the project and the existing field conditions, mitigation specific to the project may be needed.

**NOTE:** During construction, events beyond the contractor's control (such as excessive rain or equipment malfunction) may interfere with their ability to comply with detour and access duration conditions. If this occurs, the project proponent will coordinate with NDOR environmental, and a reevaluation commensurate with the change will occur. In addition, outreach will occur to the affected public to explain the situation and to disclose the extended impact. If accommodations are requested by the public to alleviate impacts, they will be considered by the project proponent. This coordination shall be summarized in the reevaluation. Coordination with FHWA will occur during this process if the change exceeds any of the Level 2 thresholds noted in the NEPA PA, or if the project is included in the PoDI list (list NDOR maintains). A Level 3 assessment will not be required, but the reevaluation will need FHWA approval if a Level 2 threshold is exceeded.

**17.) Protected Populations:** *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. Also, *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

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can have meaningful access to them. NDOR has established both an FHWA-approved Limited English Proficiency Plan and Environmental Justice analysis process.

For Level 1 Actions, the project cannot result in an adverse effect to a minority or low-income population. If the project results in an adverse effect, the project shall be processed as a Level 2 CE. Address the following CE Form Questions:

- Question 17.1: If a NO is answered, a N/A answer for 17.2 is sufficient and the action is eligible for a CE Level 1. Attach the NDOR Civil Rights Specialist (HCRS) Memo and include the memo date on the form. If a YES is answered, the practitioner must answer question 17.2 to determine if there will be an adverse effect.
- Question 17.2: If NO is answered, the action is eligible for a CE Level 1. Attach the NDOR HCRS Memo and include the memo date on the form. If YES is checked, complete Level 2 threshold questions 17.3 through 17.5 discussed below.

For Level 2 Actions, the project cannot result in the potential for disproportionately high and adverse effect to a minority or low-income population. If the project results in the potential for disproportionately high and adverse effect, the project shall be processed as a Level 3 CE or higher. Address the following CE Form Questions:

- Question 17.3: If NO is answered, the action is eligible at a CE Level 2. Attach the NDOR HCRS Memo. Include the date of the NDOR HCRC approval date
  - If YES is checked for question 17.3, the action shall be processed as a CE Level 3 or higher; coordination with FHWA is required. Include the date of the NDOR HCRS approval date.
- Question 17.4: Briefly describe the protected population in the project area, summarize demographic data within the project area, 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. Also include any specific public outreach methods utilized (LEP outreach/translations and/or coordination with community leaders, etc.)
- Question 17.5: Describe any mitigation measures that were identified in the approved NDOR HCRS memo. This would include items such as document translation, specific public engagement measures, reduced bus fares, construction phasing, etc.
  - 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 FHWA will occur in order to determine the appropriate NEPA classification. In these circumstances, FHWA will make the final determination if the outreach and mitigation have successfully alleviated potential disproportionately high and adverse effects.

**NOTE:** *Adverse Effects* is defined as the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of human-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or

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low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of NDOR programs, policies, or activities.

*Disproportionately High and Adverse Effects on Minority and Low-Income Populations* is an adverse effect that: (1) is predominately borne by a minority population and/or a low-income population; OR (2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population.

*Low-Income Population* – Any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

*Minority Population* – Any readily identifiable group of minority persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

The NDOR Civil Rights Specialist (HCRS) review memo will be attached to the CE Determination Forms.

For more information on how NDOR considers EJ and LEP, see the links below and/or coordinate with NDOR's Civil Rights coordinator.

NDOR Environmental Justice process: <http://www.transportation.nebraska.gov/humanres/title-6/docs/title-vi-implementation-plan.pdf>

NDOR LEP Plan: <http://www.transportation.nebraska.gov/humanres/title-6/docs/hr-titlevi-lepplan.pdf>

**18.) Public Involvement:** In accordance with 23 CFR 771.111, early coordination with appropriate agencies and the public aids in determining the environmental review a project requires, the level of analysis, and related environmental requirements. The consideration of diverse viewpoints ensures the needs and preferences of a community are considered on these public projects, and enable transportation officials to make informed decisions based on multiple viewpoints. NDOR has developed Public Involvement Procedures, which have been approved by FHWA, and can be found at the link noted at the bottom of this subsection.

The practitioner must review the FHWA approved NDOR Public Involvement Procedures to determine what level of public outreach, if any, needs to occur for the project during NEPA. The practitioner also needs to review the Environmental Justice/Limited English Proficiency (LEP) memo generated by the NDOR Civil Rights office to determine if alternate language accommodations are needed during public outreach. If public outreach during NEPA is needed (ex, a detour), coordination needs to occur with the NDOR Public Affairs Coordinator to determine the appropriate method of outreach, and to determine who is responsible for the outreach.

The practitioner must also review the project records to determine if public or agency comments specific to the project were received by NDOR during the STIP/TIP public outreach phase, during the District Program Highway Commission Hearings (or the local government equivalent for local government federal-aid projects), or for local projects using federal-aid, if project specific comments were received during their planning process.

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- Question 18.1: If no public outreach was conducted during NEPA, note such in the comment block. If project-specific comments were received during the planning phase of the project, note those in this section. If public outreach during NEPA was conducted, a summary describing the outreach efforts performed or planned for the project must be included here (targeted mailing, public information meeting, public hearing). In addition, if LEP outreach measures were required, as outlined in the NDOR HCRS Memo, discuss the LEP requirements and the LEP outreach performed. 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 people attended.

If comments were received during public outreach, the public comments and a response to comments must be summarized and provided in this text box, preferably by inserting a comment resolution table into the comment box. In this table, it is appropriate to summarize comments, ensuring the substantive element of the comment is captured, and it is appropriate to group like comments together. For example, if 4 people expressed concern regarding impacts to their fences, it is acceptable to group those into one entry in the table, noting 4 commenters provided the comment. Provide a brief response to each of the substantive comments summarized in the table, and as appropriate, reference in the response where more information can be found (ex, see question 10 in the CE form for more information, see the attached Section 106 concurrence letter for more information, etc).

During outreach if agency feedback is received, summarize the comment(s) and response(s) in the applicable subject-matter section within the CE form.

- Question 18.2: If commitments were made to the public during outreach, include those commitments in this block. If commitments were made to agencies during outreach, include those commitments in the applicable subject-matter section within the CE form. If there are commitments to hold specific outreach prior to or during construction, note the commitment in this block. In addition if LEP requirements apply to the project and post-NEPA outreach will occur, include a commitment requiring the inclusion of LEP commitments during the future outreach.

NOTE: For Local Public Agency projects, occasionally local governments may elect to use *property assessments* to fund a portion of the project. The practitioner must review the Local Projects programming document to identify if the sponsoring local government agency intends to use property assessments as part of their funding strategy for the project. If property assessments are planned, ensure the proper public information documentation is attached to the CE determination form. The Practitioner should proactively initiate coordination with NDOR's Public Involvement Specialist and FHWA to ensure the proper level of public outreach is conducted to support the NEPA determination.

NDOR Public Involvement Plan: [Insert Hyperlink when available.](#)

NDOR LEP procedures: <http://www.transportation.nebraska.gov/humanres/title-6/docs/hr-titlevi-lepplan.pdf>

**19.) 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 aren't resolved through other means (e.g. permits, authorizations, agreements, mitigation), the project shall be processed as a CE Level 3 or higher. Examples include public concerns regarding adjacent property flooding, concerns about economic impacts during construction, concerns about aesthetic impacts, etc.

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If the project proponent 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.

For Level 1 and 2 Actions, the project cannot involve unresolved controversy. If the project involves unresolved public or agency controversy on human, natural, or economic grounds, the project shall be processed as a Level 3 CE or higher. Address the following CE Form question:

- Question 19.1: If a NO is answered, the action is eligible as a CE Level 1 or CE Level 2 review as appropriate. If a YES is answered, a Level 3 CE or higher NEPA classification is required. Coordination with FHWA shall occur to determine the proper NEPA classification.
- Question 19.2: Summarize controversy and/or refer reader to section of form where the discussion can be found.

**20.) 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. If the unknown box is checked, explain in additional comments.

**20.1 Wellhead Protection Areas:** The practitioner will answer YES if a Wellhead Protection Area occurs within the project study area. NDOR special provisions will be included in the contract to identify these sensitive areas. The provision shall direct the project contractor to coordinate with the city or county to ensure compliance with local well head protection ordinances.

For more information on Wellhead protection areas:

<http://www.deq.state.ne.us/Press.nsf/ac84d33f3c051e1e862576f00057fa81/504f9a4d2fb8fa0886257a09004f9832>

**20.2 Nationwide Permits General Conditions:** The practitioner shall review the Wetlands and Water Resources memo, provided by the EPU Biologist, and answer YES if it has been determined that the project will require a Section 404 Nationwide Permit and corresponding general conditions will apply. If YES, the practitioner shall select the corresponding Nationwide Permit number in the drop down box provided.

**20.3 FAA form/Potential Airport Conflicts:** Some projects occurring near an airport may require FAA coordination. The practitioner should refer to the PIH report to determine if coordination is required.

If FAA coordination is required, it is *recommended* that preliminary coordination start during NEPA to identify if any major issues that could affect design, construction, or impact the airport exist. If this coordination does occur, summarize in Block 22.1. Typically submittal of the FAA Form 7460-1 occurs during final design. If impacts to an airport or project changes are needed as a result of FAA coordination during final design, the NEPA determination may require reevaluation.

For more information on FAA Form 7460-1:

[http://www.faa.gov/documentLibrary/media/Form/FAA\\_Form\\_7460-1\\_2017.pdf](http://www.faa.gov/documentLibrary/media/Form/FAA_Form_7460-1_2017.pdf) or  
<https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

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**20.4 General Conservation Conditions from the Matrix:** The Matrix general conservation conditions apply to all projects; therefore, this question will always be checked YES. If checked NO, provide reasoning in the additional comments block 22.1 and include any alternate mitigation proposed in block 23.1 if appropriate. Example actions that may not require the Matrix general conservations would include “actions that do not involve or lead directly to construction activities.”

**21.1: No Indirect or Cumulative impacts:** This box 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. Since no substantial human, environmental or economic impacts have been identified for this project; no cumulative impacts are expected.”*

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

- *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 which 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 to occupied protected species habitat, adverse effects to a historic district, disproportionately high and adverse effects to 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

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required since mitigation of direct and indirect impacts will address the incremental contribution of the project's impacts to the overall health of the resource of concern.

For more information on assessing Indirect and Cumulative Impacts:

- FHWA *Questions and Answers Regarding Indirect and Cumulative Impact Considerations in the NEPA Process*: <http://www.environment.fhwa.dot.gov/guidebook/qaimpact.asp>
- AASHTO *Practitioners Handbook Assessing Indirect Effects and Cumulative Impacts under NEPA*: [http://environment.transportation.org/pdf/programs/practitioners\\_handbook\\_12.pdf](http://environment.transportation.org/pdf/programs/practitioners_handbook_12.pdf)

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

- Long Range Transportation Plans, Statewide Transportation Improvement Program, Transportation Improvement Programs (in MPO areas)
- Platted developments
- local or regional comprehensive land use plans
- Federal Land Management Plans (if within or adjacent to federal lands)
- Species Recovery Plans
- Nebraska Historical Society publications  
(<http://nlc1.nlc.state.ne.us/docs/pilot/pubs/historical.html>)

*Reminder: if there are no substantial impacts due to the project under review, which is often the case for CE's, there is no need to identify past, present or reasonably foreseeable 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 preparer determines that Indirect Impacts will result from the project, additional analysis and discussion of impacts and proposed mitigation should be provided in text box 21.2.

Information to include in text box 21.2 regarding indirect effects:

- If indirect impacts are expected, describe whether they would be temporary or permanent; 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 (i.e., negligible, moderate, significant); and 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 FHWA is needed to determine appropriate class of action.
- If indirect impacts are not expected, then the text box should be labeled with N/A.

**21.3: Cumulative Impacts:** If after careful consideration of the guidance and the facts of the project, the preparer determines that Cumulative Impacts will result from the project, additional analysis and discussion should be provided in text box 21.3.

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Information to include in text box 21.3 regarding cumulative effects:

- If there are substantial 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 FHWA is needed to determine appropriate class of action.
- If cumulative impacts are not expected, then the text box should be labeled with N/A.

**22.1 Additional Comments:** If there is information or impacts that need to be assessed or disclosed that do not logically fit into another section of the form, include them here.

For CE Level 3 projects, the practitioner should be aware of the potential for visual impact that may result from project construction. Negative visual impacts specific to Section 106 are to be discussed in the Historic properties section of the form. Others, such as the visual screening of a traffic-dependent business due to the grade separation of an intersection or visual impacts to resources or properties sensitive to visual intrusions should be discussed in the Additional Comments block 22.1.

- **NOTE:** Most lands managed by a federal agency have visual quality objectives. If a project occurs on or adjacent to federal lands, the practitioner should review their management plan to identify any visual quality objectives that may apply and assess impacts. Also, if a project occurs on a scenic byway, review the corridor management plan for the scenic byway to determine whether the project could impact the identified visual qualities of the byway.

**23.1 Mitigation Commitments:** List all mitigation commitments, including any commitments identified in associated technical documents. The 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 practitioner will coordinate internally with NDOR engineering and construction staff before finalizing this form. As applicable, commitments not to exceed impact thresholds shall be identified in this block.

Mitigation commitments shall be included in the project *Greensheet* and associated contract documents.

**Preparer signature:** By signing the CE Determination form, the preparer has determined:

- 1) The project scope is clearly and accurately described;

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- 2) The project impacts are adequately and accurately assessed;
- 3) Adequate documentation exists in the project file to support the CE determination;
- 4) The project is in compliance with applicable laws, regulations and executive orders;
- 5) Applicable avoidance and mitigation measures are included in the mitigation commitment block; and
- 6) Ensures the project complies with the 2015 CE PA.

**Approval signature:** By signing the CE Determination form, the approver has determined:

- 1) the project is clearly and accurately described in the CE form;
- 2) the project is in compliance with all applicable laws, regulations and executive orders;
- 3) all applicable avoidance and mitigation measures are included in the mitigation commitment block;
- 4) supporting material has been retained in the project file; and,
- 5) adequate QA/QC of the CE determination form and environmental analysis has occurred

For Level 1 and 2 CE's, the approver is also certifying the project has been analyzed in compliance with the 2015 CE PA, the project fits the applicable *Action Criteria* and *Impact thresholds* as outlined in the 2015 CE PA, that no significant impacts or unusual circumstances exist.

For Level 3 CE's, the approver is making a determination the project has been analyzed in compliance with the 2015 CE PA, the project fits the applicable *Action Criteria* and *Impact thresholds* as outlined in the 2015 CE PA, that no significant impacts or unusual circumstances exist.

Level 1 CE's must be approved by a government employee NDOR Document Analyst or the NDOR Documents Unit Supervisor. Level 2 CE's are approved by the NDOR Documents Unit Supervisor or the NDOR Environmental Section Manager.

All Level 3 CE determinations are made by the NDOR Environmental Documents Unit Supervisor or the NDOR Environmental Section Manager. FHWA retains approval authority for Level 3 CE's, and will indicate approval by signing the "FHWA Environmental Specialist" line in the CE Determination form.

**Reevaluation approval:** If during the development of a proposed project, a change in the project scope, project limits\*, existing conditions, or pertinent regulations occurs, the practitioner shall re-evaluate potential impacts related to the CE PA *Impact Thresholds* and *Action Criteria* to ensure the CE Determination level is appropriate. This should occur at the time the change is identified, but at a minimum, the project must be assessed for changes when the project moves to the next subsequent phase of development (final design, ROW acquisition, or construction obligation).

**\*NOTE:** If a change in the project scope or the project limits occurs, the environmental study area will be reevaluated. This may result in the need for either additional studies or a reevaluation of associated technical documents.

If a change in the project scope, project limits, existing conditions, or pertinent regulations occurs after the CE form has been approved, the approved CE determination shall be re-evaluated to ensure the CE Determination is appropriate. The re-evaluation should describe the project scope change(s) including an assessment of resulting impacts. The practitioner shall verify if the original CE determination remains valid or if an elevated review is required. Coordination should occur with FHWA as appropriate to determine if a CE Level 3 review is warranted. Include any additional

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mitigation commitments resulting from the re-evaluation.

**NOTE:** During construction, events beyond the contractor's control (such as excessive rain or equipment malfunction) may interfere with their ability to comply with detour and access duration conditions. If this occurs, the project proponent will coordinate with NDOR environmental, and a reevaluation commensurate with the change will occur. In addition, outreach will occur to the affected public to explain the situation and to disclose the extended impact. If accommodations are requested by the public to alleviate impacts, they will be considered by the project proponent. This coordination shall be summarized in the reevaluation. Coordination with FHWA will occur during this process if the change exceeds any of the Level 2 thresholds noted in the NEPA PA, or if the project is included in the PoDI list (list NDOR maintains). A Level 3 assessment will not be required, but the reevaluation will need FHWA approval if a Level 2 threshold is exceeded.

In the current format, an electronic signature is required within the re-evaluation block. The signature shall be commensurate with the resulting level of CE Determination.

For more information, please see the NDOR reevaluation guidance, 23 CFR 771, and/or the 2015 CE PA.

For addition information, see NDOR's re-evaluation procedures: [Insert Hyperlink when available.](#)