

Minor Categorical Exclusion for Emergency Repair Projects – 23 CFR 771.117(c)(9)

Under the *Memorandum of Understanding Between Federal Highway Administration, Nebraska Division and the Nebraska Department of Transportation, State Assumption of Responsibility for Categorical Exclusions*, as authorized by 23 USC §326 (herein referred to as the CE MOU and CE Assignment), the Federal Highway Administration (FHWA) has delegated approval authority of certain Categorical Exclusion (CE) actions to the Nebraska Department of Transportation (NDOT).

NDOT has developed this programmatic Minor Categorical Exclusion (MCE) to document review and approval of certain activities listed under 23 CFR 771.117(c)(9) that, based on past experiences with similar actions, do not involve significant environmental impacts to natural, social and economic resources.

NDOT has determined that technical resource reviews from the following Professionally Qualified Staff (PQS) are required for actions that comply with the terms and conditions of this MCE: Threatened and Endangered Species and Section 106. Activities addressed by this MCE, which are not part of a larger undertaking, shall be administered in accordance with following criteria to satisfy NDOT's CE assignment responsibilities.

Scope of Work – Emergency Repairs and Permanent Repairs Incidental to Emergency Repairs

This MCE includes the repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, or transit facility (such as a bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged.

The above activities must occur within the existing right-of-way. Temporary easements needed for temporary work outside of the operational right-of-way would be permitted for projects using this MCE, based on supplementary rulemaking information clarifying that the geographic reference in the CE is for the final project.¹ The above activities must also occur in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction).

These activities must be commenced within a 2-year period beginning on the date of the emergency declaration.

Based on the nature of emergency repairs and permanent repairs incidental to emergency repairs as described above, NDOT does not anticipate negative impacts to natural, cultural, historic or recreational resources; these activities do not negatively impact air, noise, water quality, hazardous materials, or travel patterns, and do not present any negative civil rights or cumulative

¹ [Federal Register, Volume 79 Issue 8, p 2113 \(Monday, January 13, 2014\) \(govinfo.gov\)](#)

impacts. These activities do not affect listed species, historic properties, wetlands or Waters of the United States (WOUS), nor do they use Section 4(f) properties. NDOT experience has demonstrated that these types of activities do not generate public controversy on environmental grounds.

Individual project actions approved under this MCE shall be reviewed to ensure unusual circumstances as outlined by 23 CFR 771.117(b) do not exist. If an unusual circumstance is identified, a project-specific NEPA document, in compliance with NDOT's Environmental Procedure Manual (EPM) and Nebraska Categorical Exclusion (NECE) guidelines shall be developed to approve the action.

Use of this MCE is only allowed if all criteria set forth herein are met.

NDOT Project Specific Verification

Date:	List of Attachments:
Project Name/Activity:	<input type="checkbox"/> Site Map
DDIR ID:	<input type="checkbox"/> PQS determinations from Threatened & Endangered Species, Historic Properties, and Wetlands/WOUS
Control Number:	<input type="checkbox"/> Other (please describe):

The above listed project has been determined to comply with the terms and conditions of this MCE and NDOT has verified the following:

- The Project Sponsor has verified the project activities are not part of larger undertaking.
- The Project Sponsor has verified the project does not require permanent easements or right-of-way.
- The NDOT NEPA Specialist has verified that no unusual circumstances have been identified.
- The NDOT NEPA Specialist has verified these activities are consistent with 23 CFR 771.117(c)(9).

Project Sponsor:

PLEASE PRINT

Signature

Date

This is a stand-alone NEPA determination for this project; no further environmental analysis is required. If there is a change in environmental conditions or scope of work, coordination with NDOT Environmental is required to determine if this determination remains valid.

The State has determined that this project has no significant impact(s) on the environment and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under the NEPA. The State has been assigned, and hereby

certifies that it has carried out, the responsibility to make this determination pursuant to 23 U.S.C. §326 and a Memorandum of Understanding executed between FHWA and the State.

NDOT NEPA Specialist:

PLEASE PRINT

Signature

Date

General Environmental Commitments for Emergency Repair (ER) Projects

Below are the environmental commitments that shall be followed by the Sponsor to the maximum extent practicable for emergency repair or permanent repair incidental to emergency repair projects that do not require permanent easements or right-of-way. All conditions and regulations of any permit obtained for this project shall also be followed by the Sponsor.

Threatened and Endangered Species:

The Sponsor shall reference the [Nebraska Game and Parks Commission guidance](#) for identification of potential federal and state listed species that may occur in the project vicinity.

If federal or state listed species are observed during emergency repairs and permanent repairs incidental emergency repairs, the Sponsor shall stop work and contact Nebraska Department of Transportation (NDOT) Environmental section to determine action required prior to resuming work.

The following project activities shall, to the extent practicable, be located within the operational right-of-way.

- Construction debris waste disposal areas
- Haul roads
- Stockpiling areas
- Staging areas
- Material storage sites

Construction waste/debris shall be disposed of in areas and manner which will not adversely affect state and/or federally listed species and/or designated critical habitat.

The Sponsor shall exercise all reasonable precautions to avoid a "Take" of nesting migratory birds by following guidance in the [Avian Protection Plan](#) to comply with the Migratory Bird Treaty Act.

Wetlands and Waters of the United States:

The Sponsor shall not stage, store, waste or stockpile materials and equipment in known/potential wetlands and/or known/potential streams that exhibit a clear "bed and bank" channel. Potential wetland areas consist of any area that is known to pond water, swampy areas or areas supporting known wetland vegetation or areas where there is a distinct difference in vegetation (at lower elevations) from the surrounding upland areas. Please see the attached Wetland Fact Sheet for more information regarding the identification of wetlands.

The Sponsor shall conduct refueling only within non-wetland and non-stream locations. Areas adjacent to wetlands and/or streams will be avoided. The Sponsor shall be responsible for cleanup of spilled fuel or any other Hazardous Materials, such as engine oil, hydraulic fluid, antifreeze, etc. used during emergency repair operations. The Sponsor is required by [NDOT's Standard Specification Section 107](#) (Legal Relations and Responsibilities to the Public) to

handle and dispose of contaminated material in accordance with applicable laws. The Sponsor shall follow Nebraska Department of Environment and Energy (NDEE) notification procedures for all spills in excess of a reportable quantity as defined by [NDEE Title 126, Chapter 18](#).

Stormwater:

Temporary water pollution prevention practices (including sediment and erosion control measures) are required by [NDEE Title 119](#). The Sponsor shall exercise every reasonable precaution to prevent sedimentation within rivers, streams, impoundments (lakes, reservoirs, etc.), the project site, and adjacent property.

Hazardous Materials:

If contaminated soils/groundwater or unexpected wastes are discovered, The Sponsor shall stop all work within the immediate area. The Sponsor shall limit access to authorized personnel within the area of the discovery and notify the NDOT Highway Project Manager (HPM). The Sponsor shall not re-enter the discovery area until notified by the HPM. At the time of discovery, the HPM and Sponsor shall utilize the NDOT Unexpected Waste Action Plan (UWAP) to coordinate appropriate actions. The Sponsor is required by NDOT's Standard Specification section 107.11 (Hazardous Material Discoveries) to handle and dispose of regulated material in accordance with applicable laws.

Any items that may contain hazardous materials, such as lead-based paint or mercury, must be properly handled and disposed of as outlined in the standard specifications.

Historic Properties/Section 106:

The Sponsor shall comply with the [Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, Sections 12-1201 – 12-1212](#). If human skeletal remains or burial goods associated with an unmarked human burial in the ground or on the ground are discovered, then all work in the immediate area of the discovery shall stop and the Sponsor shall contact the NDOT Environmental. NDOT Environmental will then comply with Section 12-1205, notification of local law enforcement in the county in which the remains or burial goods are found. NDOT Environmental will promptly consult with the appropriate federal, state, and tribal agencies to determine if further field investigations are required before the project may resume. Pertinent legal authorities covering such discoveries include: the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Archeological Resources Protection Act, the Nebraska Unmarked Burial Sites and Skeletal Remains Protection Act, and the Nebraska Archeological Resources Protection Act.

Any discovered archeological or paleontological objects or deposits are not the property of the Sponsor or Contractor. NDOT Environmental will consult with appropriate federal, state, or tribal agencies to determine the proper disposition of such remains. Archaeological and Paleontological discoveries are addressed in [NDOT Standard Specification](#) 107.10.

Wildlife and Public Recreation Properties/Section 4(f):

The Sponsor shall not complete work, stage, stockpile or store materials within the boundaries of public parks, recreation areas and wildlife refuges and access shall be maintained to the maximum extent practicable.

Site Restoration:

Following emergency repair work that requires grading or earthwork, the operator shall restore the area as described in the [NDOT Roadside Vegetation Establishment and Management Manual](#). The following stages of restoration should be followed:

- Roadside Stabilization Practices
 - Temporary: silt fence, contour tillage, cover crop seeding
 - Permanent: seeding, erosion control products, sediment control products
- Seeding including use of the suggested seed mixtures

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