

Minor Categorical Exclusion for Pavement Repairs & Treatment Within Existing Roadway

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)(22) 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 (T&E) Species, Floodplains, and Section 106. A T&E PQS determination of “No Effect” or “May Affect, Not Likely to Adversely Affect” is allowable with this MCE if no consultation with the resource agencies was required. A Section 106 determination of “undertakings with Minimal Potential to Cause Effects”, resulting in *no historic properties affected* is allowable with the MCE. Activities addressed by this MCE, which are not part of a larger undertaking, shall be administered in accordance with the following criteria to satisfy NDOT’s CE assignment responsibilities.

Scope of Work – Pavement Repairs Within Existing Roadway¹

Activities include:

- Concrete Repair – removing damaged concrete by cutting and breaking it up with a saw and jackhammer or removing slabs of concrete with a chain and backhoe; placing new concrete
- Milling and overlaying asphalt pavement up to 2” depth with no grade raise at the shoulder edge and no ADA work (Milling and/or In-place Recycling)
- Profile milling asphalt pavement to the depth of existing ruts
- Milling rumble strips (edge and/or centerline) into pavement surface
- Sealing cracks and joints on existing asphalt or concrete roadways and bridges including paved shoulders (Crack Sealing/Joint Sealing)
- Armor coating or chip sealing asphalt pavement, including milling when needed
- Fog sealing asphalt pavement (Resurfacing-Fog/Slurry Seal, Armor Coat/Chip Seal)
- Microsurfacing asphalt pavement to fill wheel ruts and entire roadway and bridge surface

¹ As defined in the Glossary of Road Design and Construction Terms, Nebraska Department of Roads

- Pavement Marking - Preparation of the roadway surface and placement of the new marking material
- Power washing and/or sealing concrete roadways, barriers, bridge rails, and/or bridge piers that do not require work in the waterway
- Traffic control including road closures/detours lasting less than 24 hours

Based on the nature of *Pavement Repair within Existing Roadway* activities, 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 impacts. These activities do not affect wetlands or Waters of the U.S., nor do they use Section 4(f) properties and they have minimal potential to affect historic properties. These activities do not affect listed species or critical habitat with the conservation conditions attached. NDOT experience has demonstrated that these types of activities do not generate controversy on environmental grounds.

Application of this MCE is dependent upon adherence with the following commitments. These Commitments shall be included in project-specific "Green-Sheets" and/or project agreement documents along with project-specific commitments included in the Threatened and Endangered Species and Historic Properties PQS memos.

To avoid impacts to the community:

- Any closures to the roadway will be for short duration (less than 24 hours). Closures or detours shall be adequately signed. Emergency services shall be given adequate notice of any closures. (Contractor)
- The Contractor shall ensure recreational trail crossings remain accessible through the use of flaggers. (Contractor)
- The Contractor 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 at all times. (Contractor)
- A minimum of one news release shall go to all local and area media, and be posted on the NDOT website, prior to the start of construction work. (NDOT District, NDOT Communications)

To avoid impacts to Wetlands, Waters of the United States, and Stormwater:

- The Contractor shall not stage, store, waste or stockpile materials and equipment in undisturbed locations, or 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. (Contractor)
- The Contractor shall conduct refueling only within non-wetland and non-stream locations. Areas adjacent to wetlands and/or streams will be avoided. The Contractor shall be responsible for cleanup of spilled fuel or any other Hazardous Materials, such as engine oil, hydraulic fluid, antifreeze, etc. The Contractor 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 Contractor 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.

- Temporary water pollution prevention practices (including sediment and erosion control measures) are required by Nebraska State Title 119. The Contractor shall exercise every reasonable precaution throughout the life of the contract to prevent sedimentation within rivers, streams, impoundments (lakes, reservoirs, etc.), the project site, and adjacent property. (Contractor)

To avoid Hazardous Material concerns:

- Any items that may contain hazardous materials, such as lead-based paint or asbestos, must be properly handled and disposed of as outlined in the standard specifications. (Contractor)
- If contaminated soils/groundwater or unexpected wastes are discovered, The Contractor shall stop all work within the immediate area. The Contractor shall secure the area of the discovery and notify the NDOT Highway Project Manager (HPM). The Contractor shall not re-enter the discovery area until notified by the HPM. At the time of discovery, the HPM and Contractor shall utilize the NDOT Unexpected Waste Action Plan (UWAP) to coordinate appropriate actions. The actions to be carried out by the HPM are (but not limited to): verification that the Contractor has suspended construction activities in the area of the discovery, contact the Environmental Section Manager and make an entry into Site Manager that an unexpected waste discovery was made. The HPM shall then utilize the UWAP Notification Form (NDOT Form 691) to properly document the extent and type of waste. The HPM will ensure that proper disposal of the waste and any required health and safety mitigation is implemented by the Contractor. The Contractor 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.

Contractor Commitment: If contaminated soils/groundwater or unexpected wastes are discovered, The Contractor shall stop all work within the immediate area. The Contractor shall limit access to authorized personnel within the area of the discovery and notify the NDOT Highway Project Manager (HPM). The Contractor shall not re-enter the discovery area until notified by the HPM. At the time of discovery, the HPM and Contractor shall utilize the NDOT Unexpected Waste Action Plan (UWAP) to coordinate appropriate actions. The Contractor 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.

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, see Chapter 2 of the Environmental Procedure Manual (EPM) for guidance on selecting the appropriate Class of Action.

This MCE is consistent with the Statewide Transportation Improvement Program (STIP) and applicable Metropolitan or Rural Planning Organizations' Transportation Improvement Programs

(TIPs) and is exempt from regional air quality conformity determinations (40 CFR parts 51 and 93).

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

NDOT Project-Specific Verification

Date:

Project Name/Activity:

Project Number:

Control Number:

List of Attachments:

- Site Map
- PQS determinations from Threatened & Endangered Species, Floodplains, and Section 106
- 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 a larger undertaking.
- The Project Sponsor will verify that Environmental Commitments listed in this MCE have been included in project Green Sheets and/or appropriate project agreement documents.
- The Project Sponsor has verified the project activities are entirely within the existing roadway.
- The NDOT NEPA Specialist has verified that no unusual circumstances have been identified.
- The NDOT NEPA Specialist has verified the activities will not occur on brick streets or brick highways.
- The NDOT NEPA Specialist has verified these activities are consistent with 23 CFR 771.117(c)(22).

Project Sponsor:

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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:

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Signature

Date