

## IX. NEPA and Other Environmental Requirements

**Overview.** The National Environmental Policy Act of 1969 (NEPA) was signed into law on January 1, 1970. NEPA established the basic framework for integrating environmental consideration into decision making. NEPA requires the identification and consideration of potential impacts to the social and natural environment when considering approval of proposed transportation projects. The overall goal of the NEPA process is to engage in a sound process by which agency decisions are made. The NEPA document is the record of those decisions and how they are to be carried out through the design, construction, and future maintenance of the project.

Section 2 of NEPA states that its purposes are to:

- declare a national policy which will encourage productive and enjoyable harmony between man and his environment;
- to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- to enrich the understanding of the ecological systems and natural resources important to the Nation; and
- to establish a Council on Environmental Quality.”

***NOTE:** A Tribe has several options in the development of NEPA documents. A Tribe can develop NEPA documents in house or subcontract the service out to a consultant, BIA, or FLH. In any option, the FLH will be the lead Federal agency and will approve the NEPA documents.*

*Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used (see example 9.4- Agency Request for New Services form).*

### A. Statutory/Regulatory Requirements

Regulations for implementing NEPA for IRR projects are found in the Council on Environmental Quality (CEQ) regulations (40 CFR 100-1508) and the FHWA implementing regulations (23 CFR 771). The cultural resource and environmental requirements for the IRR Program are listed in 25 CFR 170, Subpart D, Appendix A and includes the following:

- 16 U.S.C. 1531-1544, Endangered Species Act;
- 16 U.S.C. 4601, Land and Water Conservation Fund Act (Section 6(f));
- 16 U.S.C. 661-667d, Fish and Wildlife Coordination Act;
- 16 U.S.C. 470-470x-6 National Preservation Act;
- 16 U.S.C. 470aa-470mm, Archaeological Resource Protection Act;
- 16 U.S.C. 1451-1466 Coastal Zone Management Act;
- 23 U.S.C. 138, Preservation of Parklands (Section (4f));
- 25 U.S.C. 3001-1013, Native American Graves Protection and Repatriation Act;
- 33 U.S.C. 1251-1387, Federal Water Pollution Control Act;
- 42 U.S.C. 6901-6992k, Resource Conservation and Recovery Act;

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- 42 U.S.C. 7401-7671q, Clean Air Act;
- 42 U.S.C. 4321-4347, National Environmental Policy Act;
- 49 U.S.C. 303, Preservation of Parklands (Section (4f));
- 7 U.S.C. 4201-4209, Farmland Protection Policy Act;
- 7 CFR part 658, Farmland Protection Policy Act regulations;
- 23 CFR part 774, Parks, Recreations Areas, Wildlife and Water-fowl Refuges and Historic Sites (Section 4(f));
- 23 CFR part 771, Environmental Impact and Related Procedures;
- 23 CFR part 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises;
- 23 CFR part 777, Mitigation of Impacts to Wetlands and Natural Habitat;
- 36 CFR part 800, Protection of Historic Properties;
- 40 CFR part 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally Funded Transit Programs;
- 40 CFR parts 260-271, Resource Conservation and Recovery Act;
- 50 CFR part 402, Endangered Species Act regulations;
- Applicable Tribal/State laws; and
- Other applicable Federal laws and regulations.

**NOTES:**

- 1. FHWA Agreement Tribes must follow 23 CFR Part 771.**
- 2. NEPA is a government inherited function and cannot be delegated.**

**B. Guidelines/Procedures**

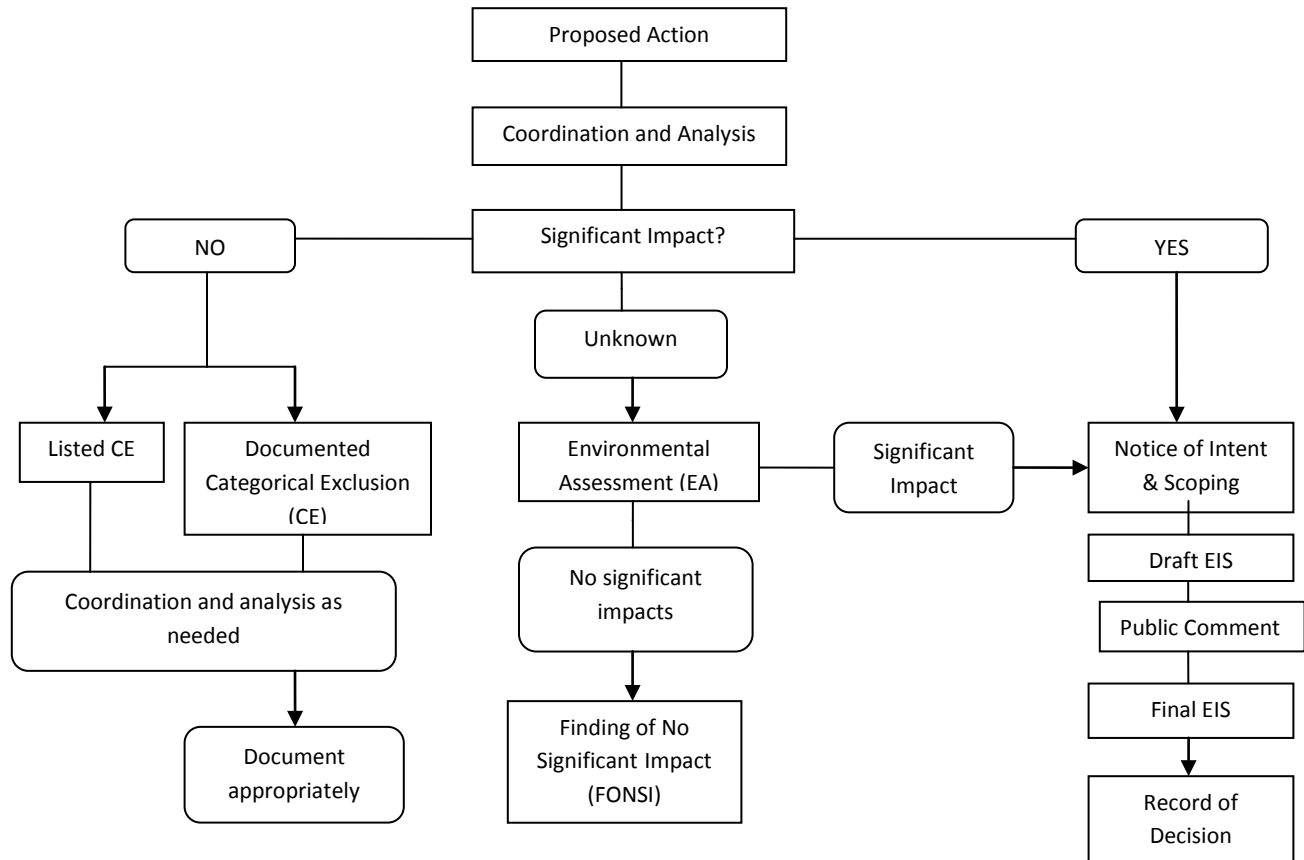
Early in the project development process a tentative NEPA classification should be selected in accordance with 23 CFR 771.115 – Classes of Actions.

There are three levels of environmental documents under NEPA to carry out the regulations; Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS).

When it is determined that the project fits within an established categorical exclusion (see 23 CFR 771.117) and there are no unusual circumstances as defined therein, a CE document can be prepared. If it has been determined that project actions will cause significant impacts, an EIS will need to be prepared. If the level of significance of impact is unknown or uncertain, an EA may be prepared. If in the preparation of the EA it is determined that there will be significant impacts, an EIS document will need to be prepared.

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The general NEPA process is depicted in the following flow chart below.



### Definitions

- **Categorical Exclusion (CE)** – Action, based on past experience that does not involve individually or cumulatively significant environmental impacts (23 CFR 771.117).
- **Environmental Assessment (EA)** – Documentation prepared for an action that is not a CE but does not clearly require the preparation of an environmental impact statement (EIS) or when it will assist in determining the need for an EIS (23 CFR 771.119).
- **Finding of No Significant Impact (FONSI)** – A concise document presenting the basis for the decision, prepared at the conclusion of the EA, when it is determined that an action will not have significant environmental impacts and will not require preparation of an EIS (23 CFR 771.121)
- **Environmental Impact Statement (EIS)** – Documentation that is a detailed written statement prepared for an action that will likely cause significant environmental impacts (23 CFR 771.123)
- **Record of Decision (ROD)** – Documentation prepared after the final EIS that presents the basis for the decision and, summarizing any mitigation measures that will be incorporated into the project. (23 CFR 771.127)
- **Section 4(f) Evaluation** – Documentation presenting the basis for use of Section 4(f) property and the determination that there is no feasible and prudent alternative to the use of such property

and that the proposed action includes all possible planning to minimize harm to the property resulting from that use. (23 CFR 774)

The NEPA process is completed when the action has been classified with appropriate documentation, as appropriate, as a CE, or a FONSI has been approved after an EA, or a ROD has been signed and published in the Federal Register after an EIS.

There should be no approval of right-of-way (ROW) acquisition, final design, purchase of construction materials, or construction prior to completion of the NEPA process.

If a CE or an EA is the appropriate classification, the FLH will be the NEPA lead Federal agency responsible for approving the NEPA documentation.

**NOTE:** The FLH will be available upon request to facilitate discussions between the Tribal governments and the FHWA Federal-Aid Division to help the Tribe make a well informed designation. To avoid delays in the approval process, the lead agency (FLH) should be consulted throughout development of the NEPA document.

**Categorical Exclusion.** CEs are actions that do not individually or cumulatively have a significant effect on the environment. 23 CFR 771.117 (a) defines CEs as actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

There are two types or levels of CEs: “C list” and Documented CEs or “D list”.

**C list:**

23 CFR 771.117(c) contains a list of actions that meet the criteria for CEs; these are sometimes referred to as “C list.”

- These actions normally require no further NEPA approvals.
- These actions may require other environmental consultations or approvals, such as Endangered Species Act consultation or a Clean Water Act permit.
- This list is all-inclusive
- The FHWA remains responsible for compliance under NEPA and related laws.

There should be a decision memo in the FHWA project file that documents that (1) the action is on the C list, (2) an explanation why no unusual circumstances apply, and (3) demonstrate compliance with applicable environmental laws and regulations.

**D list:**

- 23 CFR 771.117(d) contains a list of examples of actions that may be designated as CEs after FHWA approval. These are sometimes referred to as “D list.”
- Types of documentation that may be needed:
  - Definition of the extent of impacts
  - Identification of mitigation and commitments
  - Addressing known or foreseeable public and agency concerns
  - Addressing Federal or other actions required

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- Individual project approval requires submitted documentation. That is why these are referred to as Documented CEs.
- Actions other than those listed at 23 CFR 771.117(d) may meet the criteria for a CE. Therefore, unlike the C list CE's, the D list is not all-inclusive.

There should be a decision memo in the FHWA project file that documents that (1) the action is a CE, (2) significant environmental effects will not result, (3) there is compliance with applicable environmental laws and regulations, (4) a list of any environmental commitments is created and, (5) there has been individual project approval.

**Process – Determining appropriate classification.** Early discussions between the Tribe and FHWA on the scope of work proposed for a project can help determine the appropriate classification of NEPA documentation (CE, EA, or EIS). The “*Environmental Documentation Checklist for CE and EA Projects*” is provided for Tribes to complete (see **Example 9.1 – Environmental Documentation Checklist for CE and EA Projects**). The information provided in this checklist will aid in ensuring all information and supporting documentation has been assembled in order to properly determine the appropriate classification (CE or EA). Based on the record and recent outcomes in determining appropriate classification of NEPA documentation, it is expected that most projects will be appropriately classified as a CE.

**NOTE:** Depending on the scope of the project, portions or the entire checklist may be needed to determine the classification. Early coordination with FHWA can help determine the amount of effort needed in completing the checklist.

**See Example 9.2 – Outline for a Documented Categorical Exclusion (CE) for documenting a CE.**  
**See Example 9.3 – Outline for an Environmental Assessment (EA) formats for documenting an EA.**

**CE Process** - Before the CE is approved by FHWA, adequate documentation and supporting information will need to be reviewed by the FHWA Environmental Specialist. Major comments will need to be revised to the satisfaction of the Environmental Specialist and the recommending official (FHWA Tribal Coordinator).

To avoid delays in CE approval, the Tribe should develop an environmental compliance schedule for each project showing major environmental compliance milestones and submit the schedule to FHWA shortly after approval of the TTIP. The FHWA may provide comments on the schedule to ensure adequate review time by FHWA.

**EA Process** - Before the EA approved by FHWA, adequate documentation and supporting information will need to be submitted by the Tribe for review by the FHWA Environmental Specialist. Major comments will need to be revised to the satisfaction of the Environmental Specialist and recommending official (FHWA Tribal Coordinator). Approval of an EA is documented by a signature of the approving official on the title page of the EA. After the Tribe submits the CE documentation and FHWA finds the documentation satisfactory, FHWA will approve the CE. The Tribe will then submit the EA for a 30 day public comment period.

After the EA is approved, the Tribe will then submit the EA for a public comment period. If the EA receives relatively few or no comments or changes are not required, and no significant impact have been identified, and the EA also identified a preferred alternative, then a Finding of No Significant Impact (FONSI) can be prepared and signed. However, if there are substantial comments to the EA, or changes are required, or a preferred alternative was not identified, then an amended EA will need to be prepared.

After the amended EA is approved by FHWA, the EA will then be released for public comment. If the amended EA receives relatively few or no comments or changes are not required, and no significant impact have been identified, and the EA also identified a preferred alternative, then a Finding of No Significant Impact (FONSI) can be prepared and signed.

To avoid delays in EA approval, the Tribe should develop an environmental compliance schedule for each project showing major environmental compliance milestones and submit the schedule to FHWA shortly after approval of the TTIP. The FHWA may provide comments on the schedule to ensure adequate review time by FHWA.

**Environmental Impact Statements (EIS).** In accordance with SAFETEA-LU Section 6002, FHWA shall be the lead agency or joint-lead agency for projects when an EIS is prepared. In accordance with the Council on Environmental Quality (CEQ) and FHWA regulations and guidance, the lead agency determines the NEPA class of action and the purpose and need for the project, and is responsible for ensuring that NEPA requirements and other environmental requirements are met. Section 6002 also specifies changes from current NEPA procedures, including new obligations for a public comment process for project purpose and need and for project alternatives, and requires the development of a coordination plan and schedule that must be provided to all participating agencies and made available to the public. All Title 23 funded projects, for which the Notice of Intent was published in the Federal Register after August 11, 2005, must designate FHWA as lead agency or joint-lead agency and follow the specified process.

**NOTE:** It is expected that few if any IRR projects will be appropriately classified as an EIS. Therefore, the Guide will not provide any further information on an EIS. However, if an EIS is required, FHWA will work closely with the Tribe to address all requirements.

### **Resources.**

- Guidance for preparing NEPA documents in accordance with CEQ and FHWA implementing regulations is provided in the “FLH Project Development and Design Manual” (PDDM) at the following website address: [FLH > Resources > Manuals > PDDM > Archives > 2008 Edition](#)
- Chapter 3 of the PDDM includes a flow chart of the environmental process used by FLH to develop projects. Chapter 3 also includes guidance for compliance with other environmental laws that typically apply to transportation projects.
- FHWA recommends that Tribes and Tribes consultants refer to the FLD PDDM for guidance on environmental compliance requirements and activities. The FLH Environmental Specialists are also available to provide technical assistance and guidance to Tribes.

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## Example 9.1 - Environmental Documentation Checklist for CE and EA Projects

**Please complete the following form.** The information provided in this form will help FHWA obtain most of the information necessary to approve a NEPA project, and will subsequently reduce the number of questions and information requests. Following a YES or NO response or where indicated, provide a description of the potential impact. Document all consultation with resource agencies. Attach all supporting documentation including descriptions of resources, type of impact expected, what measures were taken to avoid or minimize the impact, why the impact is not significant, **and the source of information used to make these determinations.** Use additional sheets to respond to questions, as needed.

<b>Block 1. Project Description and Design Information</b>		
Date: _____		
Project Name: _____		
Project Number: _____		
IRR Route/Section Number(s): _____ (attach map)		
BIA Route/Section Number(s): _____ (attach map)		
Project Contact (include name, phone number, street address and email address):  _____		
<b>Project Name and Location</b> (include county, township, municipality, etc.). <b>Please attach Project Vicinity map and photos of the project area:</b>  _____		
Latitude: _____	Longitude: _____	
Section: _____	Township: _____	Range: _____
Limits of Work:		
Start: _____	End: _____	Total Length: _____

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**Project Description** Include narrative to describe project scope of work - include type of construction, logical termini, setting, and distinct project features. Please include in your project description any culverts/bridges or other project features being replaced or repaired, if applicable. Please compare the proposed changes to what currently exists. If developed, please provide current plans showing construction limits and right-of-way (ROW) boundaries:

**Purpose and Need for Project** Include narrative on why the project is needed, what is to be achieved, and what would happen if the project was not constructed:

**Design Criteria for Roadway:**

Functional Classification: \_\_\_\_\_  
 Current ADT: \_\_\_\_\_ vpd ( )  
 Design Year ADT: \_\_\_\_\_ vpd ( )  
 DHV: \_\_\_\_\_ Trucks: \_\_\_\_\_ % Directional Distribution \_\_\_\_\_ %  
 Design Speed: \_\_\_\_\_  
 Posted Speed: \_\_\_\_\_  
 Setting:  Urban  Suburban  Rural  
 Topography:  Flat  Rolling  Other Explain:



<b>Roadway Character (Existing and Proposed):</b>		
	<b>Existing</b>	<b>Proposed</b>
Number of Lanes:	_____	_____
Surface Type:	_____	_____
Travel Lane Width (ft):	_____	_____
Shoulder Width (ft):	_____	_____
Median Width (ft):	_____	_____
Clear zone (ft):	_____	_____
Average ROW Width (ft):	_____	_____

<b>Design Criteria for Bridges / Culverts (if known):</b>		
	<b>Existing</b>	<b>Proposed</b>
Bridge Number:	_____	_____
Sufficiency Rating:	_____	_____
Estimated Remaining Life:	_____	_____
Bridge Type:	_____	_____
Number of Spans:	_____	_____
Structure Length:	_____	_____
<p>Are any substructure elements (e.g., piers, abutments, wingwalls, footers, etc.) below the Ordinary High Water Mark (OHWM)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>Will additional rip-rap be added? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p><b>1a). TTIP</b></p>		
<p>Is the project in the Tribal Transportation Improvement Plan (TTIP)?</p>		<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If yes: Phase: _____</p>		<p>Date: _____</p>

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<b>Block 2. Alternatives Considered</b>	
<p>2) Were other alternatives considered for the proposed action?</p> <p>If YES, describe all reasonable alternatives considered including a description of the preferred:</p>          <p>Does the project impact wetlands, floodplains, Section 4(f) properties, or threatened and endangered species?</p> <p>If YES, describe all avoidance, minimization, and mitigation considered including a description of the preferred:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>          <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<b>Block 3. Right-of-Way, Relocations, Utility Coordination</b>	

<p>3a) Will the proposed action require new right-of-way (ROW) or easement or temporary construction easement?</p> <p>If YES, provide the following information:</p> <p>Approximate area of temporary ROW/easement: _____ acre(s)</p> <p>Approximate area of permanent ROW/easement: _____acre(s)</p> <p>Reason for ROW/easement:</p> <p>Current Land Use:</p> <p>Will any tribal trust, individual trust or individual restricted land be involved in this project?</p> <p>Will the project use any Public Park ROW?</p> <p>Is it anticipated that construction will require a borrow site, construction staging area for batch plant or equipment, or a waste site outside the project area?</p> <p>Provide additional information for questions answered yes:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3b) Will the proposed action cause relocation of any residential homes, businesses, farms, or public institutions?</p> <p><b>NOTE:</b> If relocations are anticipated, relocation services will need to be provided per the Uniform Relocation Assistance Act.</p> <p>If YES, indicate the following:</p> <p>Number of displacements:</p> <p>Residential: _____ Businesses: _____ Farms: _____ Public Institutions: _____</p> <p>Discuss displacements:</p> <p>Are there properties within the local area available for relocation?</p> <p>If YES, describe:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>3c) Will the proposed action need to accommodate for utilities in the study area?</p> <p>If YES, state type of utilities and anticipated work involved (e.g., relocation, temporary disruption of service). Note if utility providers have been consulted.</p> <p>If known, indicate if utility crossing(s) will have the potential to impact stream, open water, or wetlands, or if the proposed action will require clearing and grubbing by utilities:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3d) Describe the involvement with any railroad (active or inactive) including all rail lines, crossing, bridges, or signals.</p>	
<p><b>Block 4. Socio-Economic</b></p>	
<p>4a) Environmental Justice: Are the anticipated environmental impacts resulting from the proposed action likely to fall disproportionately on the minority and/or low income populations, including populations with Limited English Proficiency (LEP)?</p> <p>If YES, describe any potential adverse effects and the affected population (e.g., minority, low-income, elderly, or disabled), and describe proposed measures to mitigate for any adverse impacts:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4b) Will the proposed action require temporary and/or permanent access changes?</p> <p>If YES, describe the access changes (temporary or permanent) and impacts to businesses (disruption, loss or restricted parking), residential neighborhoods, or individual residents:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4c) Will the proposed action have an impact on travel patterns (e.g., does the action include a bypass or convert a local street into a higher order roadway)?</p> <p>If YES, describe any permanent traffic diversion or change of traffic patterns that would occur:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4d) Is the proposed action consistent with local land use plans?</p> <p>If YES, identify area plans and assess consistency:</p> <p>If NO, provide details of coordination with local government:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4e) Will the proposed action cause economic impacts (temporary or permanent, positive or negative) to the local economy (e.g., adjacent highway-related and other businesses, employment gains or losses, etc.), local tax base or property values?</p> <p>If YES, describe impacts and any proposed measures to minimize economic impacts:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4f) Will the proposed action result in impacts on fire, police, emergency services, health and educational facilities, school bus route, religious institutions, public transportation,</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>or pedestrian and bicycle facilities? If YES, describe impacts and any proposed measures to minimize impacts:</p>	
<p>4g) Will the proposed action result in impacts to community cohesion (e.g., separation from community facilities or isolated portions of a neighborhood)?  If YES, describe impacts and any proposed measures to minimize community division or separation:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4h) Will the proposed action induce secondary growth?  If Yes, explain:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4i) Does the project incorporate bicycle or pedestrian facilities into the overall design or operations.  If Yes, explain:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>Block 5. Historic and Cultural Resources (Section 106) (SHPO/THPO CONCURRENCE REQUIRED)</b></p>	
<p>5) Describe the Area of Potential Effect (APE) and attach a figure showing the APE. (The Area of Potential Effect for highway projects is typically the limit of highway construction where there could be surface disturbance extending out to the clear zone. The APE may extend further in some instances due to visual or noise impacts.)  Will there be any new ground disturbance associated with the project? If so, the SHPO/THPO (THPO with formal assumption of SHPO responsibilities) must be consulted under Section 106. An archaeological survey will likely be necessary.  Are there any historic, cultural, Traditional Cultural, burial, or archaeological resources, <u>including historic bridges or roads</u>, that are/or <b>may</b> be eligible for or listed in the National Register of Historic Places (NRHP) (i.e., older than 50 years old)? If so, the SHPO/THPO must concur with eligibility determination. If no, please provide a summary of how this was determined.  For any resources listed in or eligible for listing in the NRHP, will the proposed action have an effect on these resources?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>NOTE:</b> FHWA, in coordination with the Tribe, will need to complete Section 106 consultation &amp; documentation <u>separately</u> from the CE Process. Please contact FHWA to initiate the Section 106 process.</p>	



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<p>If previously a BIA project, is SHPO Coordination complete?</p> <p>Attach concurrence(s) letter: Date(s) received: _____</p> <p>NOTE: If Section 106 consultation results in an "adverse effect" finding, then additional consultation will be needed.</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p><b>Block 6. Section 4(f) and Section 6(f)</b></p>	
<p>6a) Will the proposed action have a constructive use or a temporary or permanent occupancy of any Section 4(f) resource (publicly owned parks, recreation areas, and wildlife/waterfowl refuges, and NRHP eligible or listed historic properties)?</p> <p>Avoidance is always preferred. If YES, a Section 4(f) individual, programmatic, or <i>de minimis</i> evaluation will need to be prepared. Consult with FHWA to determine appropriate 4(f) document.</p> <p>Describe all 4(f) mitigation alternatives, including variations in design, used to minimize impact.</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p>NOTE: FHWA, in coordination with the Tribe, will need to complete 4(f) documentation <u>separately</u> from the CE Process. Section 4(f) has a public information component.</p>	
<p>6b) Does the proposed action require the use of any property (public recreation sites or facilities) protected by Section 6(f) of the Land &amp; Water Conservation Fund Act (LWCFA)?</p> <p>If YES, describe any property that may be impacted that was purchased or improved through the LWCFA, size /acreage impacted, and the impact (e.g., temporary or permanent, conversion to non-recreation uses).</p> <p>Concurrence from official with jurisdiction of resource obtained? _____</p> <p>Attach correspondence: Date received: _____</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>          <p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p>NOTE: FHWA, in coordination with the Tribe, will need to complete 6(f) documentation <u>separately</u> from the CE Process.</p>	

<b>Block 7. Threatened and Endangered Species</b>	
<p>7a) Are there any federally listed threatened or endangered species with potential to occur in the project area? This list is obtained from the USFWS Ecological Services Field Office website.</p> <p>If yes, is there any potential suitable habitat located within or near the project area? If NO FHWA with a brief rationale of this determination for the project file.</p> <p>Will the proposed action affect any federally threatened or endangered species or protect YES ("may affect"), FHWA will NEED to consult with USFWS for concurrence. If NO ("no provide FHWA with a brief rationale of this determination for the project file.</p> <p>If YES, and it was previously a BIA project, please provide a summary of the informal consultation with the USFWS. Please attach USFWS concurrence letters of effect determination.</p> <p>USFWS Concurrence, Date Received: _____</p> <p>If a determination was made that adverse impacts may occur, contact FHWA for further guidance.</p> <p><b>NOTE:</b> Summary of project commitments need to be described in Block 18b-Environmental</p>	<p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> No, "No effect"</p> <p><input type="checkbox"/> Yes, "May affect, but not likely to adversely affect"</p> <p><input type="checkbox"/> Yes, "May affect, and is likely to adversely affect"</p>
<p>7b) Will the proposed action affect any of the following:</p> <p style="padding-left: 40px;">Birds or bird nesting areas?</p> <p style="padding-left: 40px;">Water that is important for fish or wildlife?</p> <p style="padding-left: 40px;">Bald or Golden Eagles or potential habitat?</p> <p>If YES, please describe any measures to avoid or minimize impacts:</p>	<p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p>
<p><b>NOTE:</b> FHWA will need to complete all Section 7 consultation &amp; documentation <u>separately</u> from the CE</p>	



Process.

**Block 8. Farmland**

<p>8) Does the proposed action involve acquisition of prime, unique, statewide or local important farmland that would be converted to non-agricultural use?</p> <p>If YES, Indicate the size of area impacted:                  Farmland: _____ acres</p> <p>Describe or attach:</p> <ul style="list-style-type: none"> <li>• Farmland conversion impacts or coordination with the Natural Resources Conservation Service (NRCS)</li> <li>• Farmland Conversion Impact Rating Sheet (Form AD-1006).</li> </ul>	<p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p>
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<b>Block 9. Wetlands / Waters of the U.S.</b>				
9a) If there are no wetlands or waters of the U.S. located within the study area, check "N/A": Individual/Organization that made the determination: _____ Date of Field Visit: _____ Please provide FHWA with a memo documenting the absence of waters of the U.S.  Are wetlands/waters of the U.S. <u>present</u> within the study area <u>but will be avoided</u> by construction? Discussion:			<input type="checkbox"/> N/A       <input type="checkbox"/> Yes <input type="checkbox"/> No	
9b) Does the proposed action involve impacts to wetlands?  If YES, what is the total wetland area impacted: _____ acre(s)			<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Presence		Impacts	
	Not Present	Present	No	Yes
Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Open Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vegetated				
Emergent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scrub Shrub	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Forested	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rain Water Basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Saline	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Western Alkaline	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discussion:				



<p>9d) Will the proposed action require the following permits under the Clean Water Act?</p> <ul style="list-style-type: none"> <li>• Section 404 Nationwide Permit (USACE)</li> <li>• Section 404 Individual Permit (USACE)</li> <li>• Section 401 Individual Water Quality Certification</li> </ul> <p>Has coordination with USACE been initiated?</p> <p>If YES, attach any coordination with USACE or other applicable resource agency.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Water related permits such as Section 404 and 401 are typically acquired after approval of the CE during final design. This is typically handled by the Tribe. Tribes would be responsible for determining appropriate mitigation and developing a mitigation and monitoring plan if necessary.</p>	

<p><b>Block 10. Floodplains</b></p>	
<p>10a) Is the proposed action located within the 100-year base floodplain?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>10b) Will the proposed action cause an encroachment or impacts to the 100-year Zone A floodplain?</p> <p>If YES, describe potential impacts and include the Federal Emergency Management map with the project location identified. Include any consultation with the floodplain a project area:</p> <p>If there is encroachment to the 100-year floodplain, FHWA should be contacted to determine appropriate level of documentation.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>Block 11. Regulated Materials</b></p>	
<p>11a) Is there any known or potential contamination at the project site (e.g., previous land uses with possible hazardous waste involvement), or additional remediation work that has to be done regarding hazardous or contaminated material?</p> <p>Will a building (age) or insulated pipe possibly containing asbestos or lead based paint be removed as part of this project?</p> <p>If a bridge replacement is part of the proposed action, is there the potential that lead paint</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

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<p>was used on the structure?</p> <p>Discussion:</p> <p><b>NOTE:</b> If YES, and there is the potential for CERCLA, SARA, RCRA, TSCA, UST/LUST, lead, or asbestos issues on the project, notify and coordinate with FHWA.</p>	
<p>11b) Will the project action impact any registered or known groundwater monitoring wells?</p> <p>If Yes, identify any groundwater monitoring wells in the right of way, in the adjacent right of way, and the owner of said wells.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>Block 12. Air Quality / Noise</b></p>	
<p>12a) Is the proposed action in an air quality non-attainment or maintenance area?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>12b) Will the project involve the addition of one or more through lanes?</p> <p>Will the project involve a change in vehicle mix or speed?</p> <p>Will the project involve a change in vertical or horizontal alignment?</p> <p>Will the project involve new roadways or change the shielding effect of existing roadways?</p> <p>If YES to any of the questions above, then a noise analysis is warranted, provided there are noise sensitive land uses in the project area. Attach Noise Analysis to CE Form.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>12c) If yes to any of the questions in 12b, are there possible sensitive noise receptors present?</p> <p>If Yes, how many noise sensitive receptors are within the proposed action area? _____</p> <p>If Yes, what type(s) of noise sensitive receptors are present? List below:</p> <p>Attach a map of the sensitive noise receptors.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>12d) If a noise analysis was performed, are the predicted noise levels approaching or exceeding noise abatement criteria stated in 23 CFR 772 Table 1 for the appropriate land use activity category?</p> <p>Will there be a substantial increase in decibels over existing level?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No

<p>If YES, describe impacts and mitigation measures, if applicable.</p>	
<p><b>NOTE:</b> Mitigation for noise impacts has a public information component.</p>	
<p><b>Block 13. Water Quality</b></p>	
<p>13a) Indicate if any of the groundwater resources, drinking and/or non-drinking water resources listed below are present in the project area:</p> <p><u>Groundwater Resources:</u></p> <p style="padding-left: 20px;">Well Head Protection Area</p> <p style="padding-left: 20px;">Community Wells</p> <p style="padding-left: 20px;">Residential Wells</p> <p style="padding-left: 20px;">Sole Source Aquifer(s)</p> <p><u>Drinking Water:</u></p> <p style="padding-left: 20px;">Surface water intake structures</p> <p><u>Non-Drinking water:</u></p> <p style="padding-left: 20px;">Agricultural groundwater wells and surface water intake structures</p> <p style="padding-left: 20px;">Irrigation re-use pit; Irrigation canal;</p> <p style="padding-left: 20px;">Storm water detention impoundments;</p> <p style="padding-left: 20px;">Agricultural waste impoundments;</p> <p style="padding-left: 20px;">Ground water connected wetlands &amp; surface water</p> <p><u>Water Quality Impacts:</u></p> <p>For the resources marked Yes above, discuss the following.</p> <p style="padding-left: 20px;">If the resource is present but will not be impacted, state how the impact will be avoided.</p> <p style="padding-left: 20px;">If an impact to water quality will occur, indicate which water resource will be impacted and list any mitigation measures proposed to minimize impacts.</p>	<p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p>

<p>13b) Does the proposed action require a NPDES storm water permit?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Note: Water related permits such as NPDES can be acquired by the Tribe after approval of the CE during final design.</p>	
<p><b>Block 14. Wild and Scenic Rivers / Nationwide Rivers Inventory</b></p>	
<p>14a) Will the project involve construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in the Wild and Scenic River System? (i.e. Is the project is within 1/2 mile of a protected river area)</p> <p>If YES, discuss or attach record of consultation with the responsible agency for managing the listed or study river:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>14b) Will the project cross over a river or portion of river that is listed on the Nationwide Rivers Inventory (NRI)?</p> <p>If Yes, list in Block 18b the Best Management Practices or recommendations by NPS to be implemented to reduce impacts to these rivers.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>Block 15. Construction Impacts</b></p>	
<p>15a) Will the proposed action involve construction-related impacts such as detours, lane/road closures, loss of parking, air quality impacts (dust), etc.?</p> <p>If YES, provide details of proposed measures to minimize impacts (erosion control, Best Management Practices, dust abatement).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>15b) Will the proposed action require temporary channel crossing structures such as shoofly, work platform, causeway, or crossing?</p> <p>If YES, provide details on temporary structure alternatives (type of structure, temporary impacts involved, how long needed, etc):</p> <p>Are impacts caused by the:</p> <p>Installation before or during active aquatic life migration periods?</p> <p>Impacts to streambed or width of channel?</p> <p>Flow characteristics of the stream – frequency and duration of flow?</p> <p>If impacts are YES, provide mapping and photos showing following information:</p> <ul style="list-style-type: none"> <li>Identify maximum limits of impacts below the ordinary high water</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

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<p>mark. Identify ordinary high water mark on photos.</p> <ul style="list-style-type: none"> <li>• Identify maximum limits of impacts within the floodway.</li> <li>• Identify any fringe or adjacent wetlands.</li> </ul> <p>Discussion:</p>	
<p>15c) Maintenance of Traffic During Construction (if applicable)</p> <p>Is a temporary bridge proposed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a temporary roadway proposed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will the project involve the use of a detour or require a ramp closure? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made for access by emergency services? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made for access by local traffic and so posted? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made for through-traffic dependent of businesses? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will provisions be made to accommodate any local special events or festivals? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Will the proposed Maintenance of Traffic substantially change the environmental consequences of the action? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is there controversy associated with the proposed method for maintenance of traffic? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Are there impacts to bicycles or pedestrian routes? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES to any of the above questions, provide additional discussion.</p> <p>List in Block 18b the commitments or recommendations for maintenance of traffic to be implemented to reduce impacts.</p>	
<p>15d) Detours <span style="float: right;">Attach a detour map.</span></p> <p>Approximate length of detour: _____</p> <p>Select the best description of the planned detour:</p>	



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<input type="checkbox"/> Detour will use local roads with no improvements. <input type="checkbox"/> Detour will involve improvements to local roads with no resulting impacts on safety or the environment. <input type="checkbox"/> Detour will involve improvements to local roads and will impact safety and/or the environment. <input type="checkbox"/> Detour will use only state owned road Describe impacts:	
<b>Block 16. Public Involvement</b>	
16a) <i>Will the project involve controversy concerning community and /or natural resource impacts?</i> Discussion:	<input type="checkbox"/> Yes <input type="checkbox"/> No
16b) <i>Is a public information meeting held or tentatively planned?</i>  If YES, give Date & Location: Discussion:	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Block 17. Aesthetics and other values</b>	
17a) Will the project be visually intrusive to the surrounding environment?  If Yes, discuss.	<input type="checkbox"/> Yes <input type="checkbox"/> No
17b) Will the project provide multiple use opportunities?  If Yes, discuss.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Block 18. Permitting and Environmental Commitments</b>	
18a) Indicate whether the proposed action is likely to require actions by agencies listed above or by other Agencies (e.g., permits, approval) and attach correspondence.	
USACE Section 404 Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No

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Floodplain Development Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 401 Water Quality Certificate	<input type="checkbox"/> Yes <input type="checkbox"/> No
NPDES / SWPPP	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 106 – Historic and Culturally Significant Properties	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 4(f) – Parklands, Recreation Areas, Refuges, Historic	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 6(f) – Land & Water Conservation Funds	<input type="checkbox"/> Yes <input type="checkbox"/> No
Coast Guard Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Local Building or Site Development Permits	<input type="checkbox"/> Yes <input type="checkbox"/> No
Local Clearing and Grubbing Permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Erosion and Sediment Control Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No
Others (list below):	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>18b) <b>Environmental Commitments:</b> Describe any measures, including Best Management Practices, recommended by resource agencies through informal consultation or those measures to be taken to mitigate project impacts. Include any environmental commitments agreed upon or those resources to be avoided. <b>All commitments made and documented in this form are to be listed here.</b></i></p>	

### 19. Environmental Documentation Recommendation

19a. The Project is listed as a CE, per FHWA 23 CFR 771.117(c), and is recommended for FHWA approval.

Yes  No  N/A

The Project is listed as a documented CE, per FHWA 23 CFR 771.117(d), and is recommended for FHWA approval.

Yes  No  N/A

The Project is listed as an EA, per FHWA 23 CFR 771.119 and 771.123, and is recommended for FHWA approval.

Yes  No  N/A

<p><b>Prepared by:</b> _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title &amp; Organization*: _____</p> <p>Phone &amp; email: _____</p> <p><b>Reviewed by**:</b> _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title &amp; Organization*: _____</p> <p>Phone &amp; email: _____</p>
<p><b><u>Tribe Review/Concurrence** of Environmental Documentation Recommendation:</u></b></p> <p><b>Reviewed by:</b> _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title and Organization*: _____</p> <p>Phone and email: _____</p> <p><b>Concurred by:</b> _____ (print) _____ (sign)</p> <p>Date: _____</p> <p>Title and Organization*: _____</p> <p>Phone and email: _____</p>

\*Organization refers to either the Contractor or the Tribe, depending on who prepared the Form.

\*\*Add additional "Reviewed by" and "Concurred by" as necessary, per Tribal processes.

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**Enclosed Attachments**

- Project Vicinity Map (State, local, and project maps)
- State Historic Preservation Office (SHPO) letter(s) of concurrence
- FHWA Section 4(f) approval documentation
- U.S. Fish and Wildlife Service letter(s) of concurrence
- Wetland Determination Memorandum
- U.S. Army Corps of Engineers / Clean Water Act correspondence
- Natural Resource Conservation Service Farmland Conversion Form AD1006
- Tribal consultation letter(s)
- Other Agencies (e.g., USEPA, NPS, BIA, USCG)

## **Example 9.2 - OUTLINE FOR A DOCUMENTED CATEGORICAL EXCLUSION (CE)**

*The following format generally complies with requirements for documented categorical exclusions (CEs) (23 CFR 771.117 (d)).*

**INTRODUCTION** - The CE begins with an introduction with a brief description of the:

- proposed project,
- project location,
- project sponsors, and
- project funding.

**PURPOSE AND NEED** - This section briefly describes the condition or conditions that require relief and the purpose in taking action.

**PROPOSED ACTION** - In this section of the CE, the project details are identified. This includes the actions for the entire footprint of the project that will be awarded under contract, including but not limited to:

- type of work,
- corridor location,
- length,
- road width,
- number of lanes,
- design speed,
- surface type,
- major structures,
- material sources,
- staging areas,
- waste areas,
- mitigation areas, and
- any other major features.

It should be clear to the reader how the proposed action will address the problem identified in the purpose and need.

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**ENVIRONMENTAL ACTIVITIES** - To demonstrate that a federally-funded action is categorically excluded under the National Environmental Policy Act (NEPA), the project must demonstrate compliance with the following related environmental laws and Executive Orders. In analyzing the project impacts for compliance with these laws, you must consider the effects of the entire area of the proposed action described above. Please note that this is not a comprehensive list of all environmental laws but a list of those that are typically addressed)

**Clean Water Act and Executive Order 11990- Wetlands Finding** – The Clean Water Act regulates any discharge of a pollutant into waters of the United States. The most common type of discharge from road construction projects is fill material into wetland areas and waters of the U.S. If wetlands are determined to be in the area, a wetland delineation must be completed following the methods in the 1987 Army Corps of Engineers Wetland Delineation Manual. Executive Order (EO) 11990 requires a finding must demonstrate that there is no practical alternative to the proposed construction in wetlands, and the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use.

For this requirement, the CE must identify the number of wetlands identified from the delineation that will be impacted by the proposed action and any mitigation, if applicable, Furthermore, FHWA must demonstrate compliance with EO 11990 by providing a finding that there is no practicable alternative to construction in wetlands.

**Coastal Zone Management Act-** If the project is within an area with an approved coastal zone management plan, the CE must have a consistency determination to demonstrate that the project is consistent to the maximum extent practicable with the enforceable policies of the plan. Coordination with the agency responsible for the State's Coastal Zone Management Plan must occur. If possible, the CE should show the date of responsible agency's concurrence with the consistency determination.

**Endangered Species Act-** The Endangered Species Act (ESA) provides for the conservation of endangered and threatened species and the ecosystems upon which they depend. Section 7 of the act requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and National Oceanic Atmospheric Administration (NOAA) -Fisheries, as appropriate, to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of threatened or endangered (T&E) species or result in the destruction or adverse modification of critical habitat for these species. A Biological Assessment may need to be prepared if there are known listed species in the project area. Contact USFWS and NOAA for a listing of these species in your area.

The CE should document what T&E species are in the project area and the project's effect to these species. The CE should use the effect determinations as provided in the ESA and document when the consulting agency (NOAA Fisheries or USFWS) concurred with FHWA's effect determination if the project was determined to have a potential effect to T&E species. The CE should describe any commitments and mitigation if applicable.

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**National Historic Preservation Act-** The National Historic Preservation Act (NHPA) applies to all properties on or eligible for inclusion on the National Register of Historic Places (NRHP). A cultural resources survey must be completed to identify potentially eligible properties. Consultation with the State Historic Preservation Officer (SHPO), and/or the Tribal Historic Preservation Officer (THPO) as appropriate will result in concurrence on the identification and assessment of these properties.

The CE needs to document compliance with Section 106 of the NHPA by documenting what the project's effects are to properties on or eligible to NRHP and the date SHPO/THPO concurred with the effect determinations. The CE should describe any mitigation, if applicable.

**Section 4(f)-** A Section 4(f) analysis is needed only when an alternative uses a resource protected under Section 4(f) of the US DOT ACT 1966. These resources include publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance as determined by such officials. A use is defined as permanently incorporating the 4(f) resource into a transportation facility. A 4(f) analysis must document that (1) there is no prudent and feasible alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge, or historic site resulting from such use.

The CE should demonstrate compliance with Section 4(f). If it was a full or programmatic Section 4(f), it should briefly describe the activities conducted and how the conclusions were reached. If a *de-minimis* 4(f) applied to the project, this Section should document how the requirements of the *de-minimis* were met.

**Public Involvement -** In this section of the CE, there should be a brief discussion of the agency coordination and public involvement activities.

**Permits -** The section should list all permits and any stipulations known at this time. This could include, but is not limited to:

- 404 authorization from the U.S. Army Corps of Engineers for dredge or fill materials into waters of the U.S.
- Water quality certification may be required from the appropriate Regional Water Quality Control Board (Section 401).

**CONCLUSION -** On a separate and last page of the CE, provide the conclusion that project qualifies as a categorical exclusion. The CE should reference categorical exclusion justifications in 40 CFR 1508 and 23 CFR 771.117. The language normally used is:

*Based on the information listed above, FHWA has determined this project; (1) will not have a significant effect on the human environment, and (2) falls within the category of actions covered by FHWA's categorical exclusion regulations. Therefore, this work*

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*meets the definition of a Categorical Exclusion (CE) contained in 40 CFR 1508.4. FHWA finds this work constitutes an action covered under the National Listing of Categorical Exclusions, 23 CFR 771.117 (a) because: 1) the action will not induce significant impacts to planned growth or land use for the area; 2) the action will not require the relocation of any people; 3) the action will not have a significant impact on any natural, cultural, recreational, historic, or other resource; 4) the action will not involve significant air, noise, or water quality impacts; 5) the action will not have significant impacts on travel; and 6) the action will not otherwise, either individually or cumulatively, have any significant environmental impacts. Furthermore, FHWA finds this work constitutes an action within the National Listing of Categorical Exclusions, 23 CFR 771.117 (d)(1), because it is a modernization of a highway by rehabilitation. The proposed rehabilitation does not include any unusual circumstances as listed in 23 CFR 771.117(b) that would make the CE classification improper.*

In the yellow-highlighted section, the CE should reference which category the project qualifies, in this example it is 23 CFR 771.117 (d) (1).

**SIGNATURES** – Following the **CONCLUSION**, the CE should have two signature blocks. The first is by the appropriate Tribe representative recommending approval of the CE, which is under **RECOMMENDED BY:**. The last signature is the approval, which is titled, **APPROVED BY:** which is for the approving official (FHWA Environmental Protection Specialist). Both need to be dated.



## EXAMPLE 9.3 - OUTLINE FOR AN ENVIRONMENTAL ASSESSMENT

*The following format generally complies with requirements for environmental assessments for environmental assessments (EAs) and finding of no significant impacts (FONSI) as specified in 23 CFR 771.119 and 771.123.*

The following outline is generally used for chapters when preparing an EA.

1. Cover Sheet
2. Signatory Sheet
3. Table of Contents
4. List of Abbreviations
5. Description of the Proposed Action
6. Purpose of and Need for the Project
7. Alternatives
8. Affected Environment or Environmental Setting
9. Environmental Consequences <sup>1</sup>
10. Section 4(f) (if applicable)
11. Coordination
12. Appendices

1. **COVER SHEET**- The cover sheet lists the title of the project, the type of NEPA document (Environmental Assessment), the location, the project sponsor, and the date (month & year).
2. **SIGNATORY SHEET** - The signatory sheet contains the following:
  - a. The title, *Environmental Assessment*
  - b. The information, *Submitted Pursuant to Public Law 91-190, National Environmental Policy Act*
  - c. *Our full title, U.S. Department of Transportation, Federal Highway Administration*
  - d. The list of cooperating agencies
  - e. A signature block, including the date, for the IRR Field Team Leader.
  - f. The contact person, including address and phone number.
3. **TABLE OF CONTENTS**
4. **LIST OF ABBREVIATIONS** – Provides a list of abbreviations one would find listed in the EA for the reader to easily reference.
5. **DESCRIPTION OF THE PROPOSED ACTION** – This is the opening chapter of the EA that contains introductory information such as a brief project description, lead, cooperating, and partner agencies, funding and a description of the following items:

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<sup>1</sup> The Chapters on *Affected Environment* and *Environmental Consequences* can be combined.

- a. **Location of the Proposed Project** – This text is often accompanied by maps and figures.
  - b. **Scope and Nature of the Proposed Work**
    - i. **Funding**
    - ii. **Planning by Others**
6. **PURPOSE OF AND NEED FOR THE PROJECT** - This chapter of the EA describes the condition or conditions requiring relief and purpose in taking action. Often the EA describes the problems and the consequences of not taking action. This section should clearly demonstrate that a need exists and should define the need terms understandable to the general public. It is critically important to provide sufficient data to convince the reader that the need exists. Therefore, it is recommended that each need be discussed in turn, with accompanying data. The purpose and need will be the basis for development of the alternatives, including the identification of the preferred alternative. Charts, tables, maps, and other illustrations are encouraged as useful presentation techniques.
7. **ALTERNATIVES** – This chapter identifies the alternatives developed throughout the scoping and NEPA process. In it, it describes the:
- a. **No Action Alternative** – The no action alternative provides the baseline and the consequences should nothing be done to address the conditions requiring relief. It is preferable to give an estimated cost for the *no action* alternative.
  - b. **All Reasonable Alternatives** – All reasonable alternatives should be developed to a comparable level of detail. If a preferred alternative has been identified, this should be documented in this chapter, and the reasons should be stated why it is preferred. It is preferable to give estimated costs.
  - c. **Other Alternatives - Alternatives** that were considered but rejected should be briefly discussed with the reasons why they were eliminated or rejected.
  - d. **Entire Action** – As stated for CEs, the alternatives should take into account the entire action, not just the road project itself. This would include, but would not be limited, to the following:
    - i. **Type of work**
    - ii. **Corridor location**
    - iii. **Length**
    - iv. **Road width**
    - v. **Number of lanes**
    - vi. **Design speed**
    - vii. **Surface type**
    - viii. **Major structures**
    - ix. **Material sources**
    - x. **Staging areas**
    - xi. **Waste areas**
    - xii. **Mitigation areas**
    - xiii. **Other major features**

- 8. AFFECTED ENVIRONMENT OR ENVIRONMENTAL SETTING.** In this chapter of the EA, there needs to be a description of the environmental conditions in the study area. For this chapter, the study area needs to be defined, and it may need to be defined differently depending on the resource described. The setting topic areas usually covered are (only topics applicable to the particular project should be covered):
- a. **Geology**
  - b. **Soils**
  - c. **Climate**
  - d. **Air Quality**
  - e. **Noise**
  - f. **Waters and Water Quality**
  - g. **Wetlands**
  - h. **Vegetation, including T&E species**
  - i. **Wildlife and Fish, including T&E species**
  - j. **Land Use**
  - k. **Socioeconomics**
  - l. **Transportation**
  - m. **Historic and Archaeological Resources**
  - n. **Hazardous Materials**
  - o. **Public Services and Utilities**
  - p. **Recreation**
  - q. **Aesthetics**
- 9. ENVIRONMENTAL CONSEQUENCES** – In this chapter, the EA describes how the environmental topic areas listed in the chapter above will be affected by all the reasonable alternatives. The discussion should be limited to information and issues that have a bearing on potential important impacts, including the mitigation. Impacts may be adverse or beneficial, and the data and analyses should be commensurate with the importance of the impacts. Cumulative and secondary impacts need to be summarized for each alternative. In this chapter of the EA, the text must show how all applicable executive orders and environmental laws and regulations were met (some are listed in the text on CEs). Photographs, illustrations, tables, figures, and other graphics should be used with the text.
- 10. SECTION 4(F)** – In the EA, insert a section for 4(f) analysis if needed. Some of the 4(f) discussion may be pertinent to both the *Environmental Setting* and *Environmental Consequences* chapters also.
- 11. COORDINATION** – Comments received from public involvement efforts should be described in this chapter. Usually a chronology of coordination and consultation efforts is provided.
- 12. APPENDICES** – Usually pertinent coordination results are provided in the appendices such as concurrence letters under Section 7 of the ESA, Section 106 of the NHPA, Consistency Concurrence for the Coastal Zone Management Act, etc.

### EXAMPLE 9.4 - TRIBAL REQUEST FOR SERVICES FROM THE WESTERN FEDERAL LANDS HIGHWAY DIVISION

**NOTE:** Please check with the agency from which you are requesting services before using this form.

Please provide the information requested below. **Be as detailed and specific as possible.** Your answers will help determine whether we have the ability to meet your needs.

**Name of Project:** \_\_\_\_\_

**Location of Project:** (Please attach a map.)

State: \_\_\_\_\_

County/Borough/Tribal Lands: \_\_\_\_\_

GPS Coordinates: Latitude \_\_\_\_\_ Longitude \_\_\_\_\_

**Purpose, Need, and Major Objectives of Project:**

*What transportation need does the existing road serve?*

\_\_\_\_\_  
\_\_\_\_\_

*What transportation need will the new project solve?*

\_\_\_\_\_  
\_\_\_\_\_

*What type of vehicles will use this transportation project?*

\_\_\_\_\_  
\_\_\_\_\_

*What is the population base or traffic volume that it will serve?*

\_\_\_\_\_  
\_\_\_\_\_

*What is the desired season of use? (e.g. year round all weather, seasonal use only, etc.)*

\_\_\_\_\_  
\_\_\_\_\_

*Why is this project so important?*

\_\_\_\_\_  
\_\_\_\_\_

What would result if the project does not get delivered?

\_\_\_\_\_  
\_\_\_\_\_

Is this project adjacent to or associated with other anticipated work?

\_\_\_\_\_  
\_\_\_\_\_

**Existing Conditions:** (Please attach photos.)

What does the existing road template look like? Width, road surface type, road surface condition, drainage conditions, culvert condition, slope condition, bridge condition:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Scope of Project:** (Attach any scope defining documents.)

Starting point of project: \_\_\_\_\_

Ending point of project: \_\_\_\_\_

Length of project: \_\_\_\_\_

**Major items of work anticipated:** Check all that apply.

- reconstruct new roadway
- spot alignment improvements
- large culverts
- slope stabilization
- repairing frost heaves/soft spots
- paved surface
- recondition existing roadway
- bridges
- fish passage culverts
- retaining walls
- aggregate surface
- Other: \_\_\_\_\_

Is a current Right-of-Way or are Easements in place for construction and maintenance of the entire new project?

- Yes
- No

Who are the underlying landowners?

\_\_\_\_\_  
\_\_\_\_\_

Do the landowners support the project?

\_\_\_\_\_  
\_\_\_\_\_

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*Are utilities located within the roadway template that would be affected when constructing the new project?*

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*Where are the closest material sources and disposal sites?*

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*When are the typical construction months?*

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**Work accomplished to date either by you, or work to have been known performed by others:** (Please attach work documents. Check all that apply.)

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> scoping reports                 | <input type="checkbox"/> conceptual studies       | <input type="checkbox"/> technical reports |
| <input type="checkbox"/> alternative analysis clearances | <input type="checkbox"/> environmental studies    | <input type="checkbox"/> environmental     |
| <input type="checkbox"/> construction permits clearance  | <input type="checkbox"/> plan sets                | <input type="checkbox"/> right-of-way      |
| <input type="checkbox"/> utility relocation              | <input type="checkbox"/> construction procurement | <input type="checkbox"/> construction      |

**Requested development activities and deliverables:** (Specify activities and objectives you want Western Federal Lands (WFLHD) to perform. Check all that apply.)

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> scoping reports                 | <input type="checkbox"/> conceptual studies       | <input type="checkbox"/> technical reports |
| <input type="checkbox"/> alternative analysis clearances | <input type="checkbox"/> environmental studies    | <input type="checkbox"/> environmental     |
| <input type="checkbox"/> construction permits clearance  | <input type="checkbox"/> design plan sets         | <input type="checkbox"/> right-of-way      |
| <input type="checkbox"/> utility relocation              | <input type="checkbox"/> construction procurement | <input type="checkbox"/> construction      |
| <input type="checkbox"/> Other: _____                    |   |  |

**Critical delivery dates of major deliverables listed above:**

<b><u>Major Deliverable</u></b>	<b><u>Critical Date</u></b>	<b><u>Reason for criticality</u></b>
<i>Design plans completed</i>		
<i>Construction end</i>		
<i>Construction start</i>		

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**What work will you perform:** (Specify activities and objectives you will perform. Check all that apply.)

- staff*
- technical reports*
- environmental clearances*
- right-of-way clearance*
- procurement*
- construction*
- scoping reports*
- alternative analysis*
- construction permits*
- utility relocation*
- conceptual studies*
- environmental*
- plan sets*
- construction*

**Current cost estimate for this project:**

*Engineering:* \_\_\_\_\_

*Construction:* \_\_\_\_\_

*Construction Administration:* \_\_\_\_\_

**What guidelines to be followed:** Include requirements such as road standards, agency specific regulations, MOUs with regulatory agencies, etc. Please be specific: (e.g., 36 CFR NEPA, AASHTO Very Low Volume Local Roads Guidelines, etc.)

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**Issues or unusual aspects of this project that we need to be aware of:**

(Risks, environmental issues, public controversy, realty issues, etc.)

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**Funding Information:**

*Is the project approved through federal/state/local/tribal planning committee? (Attach supporting STIP, Tribal Transportation Improvement Program, or approval document.)*

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*What specific type and amount of the funds are to be used for this work?*

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*Who has the funds at the current time?*

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*Is there any time criteria or expiration date limit associated with the funding?*

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*How will you compensate WFLHD for this service (transfer funds, check, etc.)?*

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**Requestor Information**

**Contact for technical questions:**

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Authorized person to enter into agreement:**

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**Date submitted:** \_\_\_\_\_

**Attach Additional Pages for Comments or to provide more information.**

**Please return completed form to an FHWA Tribal Coordinator or [IRR\\_FIELD@dot.gov](mailto:IRR_FIELD@dot.gov), 360- 619-7957.**