

**PROGRAMMATIC AGREEMENT  
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, WYOMING DIVISION  
AND  
THE WYOMING DEPARTMENT OF TRANSPORTATION  
REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL  
EXCLUSIONS FOR FEDERAL-AID HIGHWAY PROJECTS**

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**THIS PROGRAMMATIC AGREEMENT (“Agreement”) made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (“FHWA”) and the STATE of WYOMING, acting by and through its DEPARTMENT OF TRANSPORTATION (“WYDOT”) hereby provides as follows:**

**I. PARTIES**

The Parties to this Agreement are the Federal Highway Administration (“FHWA”) and the Wyoming Department of Transportation (hereinafter “WYDOT”).

**II. PURPOSE**

The purpose of this Agreement is to authorize WYDOT to determine on behalf of FHWA whether a project qualifies for a Categorical Exclusion (CE) specifically listed in 23 CFR 771.117 (Appendix A and B). This Agreement also authorizes WYDOT to certify to FHWA that an action not specifically listed in 23 CFR 771.117 but meeting the CE criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CE as long as there are no unusual circumstances present that would require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS).

This agreement applies to all WYDOT and Local Government Assistant projects using Federal-aid funds under the Federal-Aid Highway Program.

This agreement supersedes the February 12, 2014 Programmatic CE agreement between FHWA and WYDOT.

**III. AUTHORITIES**

This agreement is entered into pursuant to the following authorities:

- A. National Environmental Policy Act, 42 U.S.C. 4321 - 4370
- B. Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 126 Stat. 405, Sec. 1318(d)
- C. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- D. 40 CFR parts 1500 - 1508

E. DOT Order 5610.1C

F. 23 CFR 771.117

#### IV. RESPONSIBILITIES

A. WYDOT is responsible for:

1. Ensuring the following process is completed for each project that qualifies for a CE:

- a. For actions qualifying for a CE listed in Appendix A (CEs established in 23 CFR 771.117(c) and Appendix B (CEs established in 23 CFR 771.117(d)), that do not exceed the thresholds in Section IV (A) (1) (b) below, WYDOT may make a CE approval on behalf of FHWA. WYDOT will identify the applicable listed CE, ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No separate review or approval of the CE by FHWA is required.
- b. Actions listed in Appendices A-B that exceed the following thresholds may not be approved by WYDOT. WYDOT may certify to FHWA that the action qualifies for a CE. An action requires FHWA CE review and approval based on WYDOT certification if the action:
  - i. **Right-of-Way** - Involves acquisitions (fee interest, perpetual easement) of more than a minor amount of right-of-way.
    - A minor amount of right-of-way is defined as not causing displacement of owners or tenants and personal property from residences, commercial or non-profit establishments or farms;
    - Examples of minor amounts of right-of-way acquisition include: low cost, strip acquisitions, and corner acquisitions that do not affect permanent structures;
  - ii. **Traffic Disruptions** - Involves substantial traffic disruption, including the use of a temporary access, or the closure of existing road, bridge, or ramps unless the use of such facilities satisfy the following conditions:
    - a. Provisions are made for access by local traffic and are so posted;
    - b. Through-traffic dependent businesses will not be adversely affected;
    - c. The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival;
    - d. The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action;
    - e. There is no substantial controversy associated with the temporary access, detour, or ramp closure;

- iii. **Access Control** - Involves an Interchange Justification Report (IJR) or major revisions to access on the interstate.
- iv. **Historic Preservation Act** - Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);
- v. **Section 4(f)** - Requires the use of properties protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. 303/23 U.S.C § 138) that cannot be documented with an FHWA *de minimis* determination, or a programmatic Section 4(f) evaluation other than the programmatic evaluation for the use of historic bridges;
- vi. **Section 6(f)** - Requires the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;
- vii. **US ACOE/Section 404** - Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) Individual Permit;
- viii. **Flood Plains** - Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR §650 subpart A;
- ix. **Wild and Scenic Rivers** - Requires construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture;
- x. **Noise** – Is defined as a “Type I project”, per 23 CFR 772.5, requiring a noise assessment;
- xi. **Threatened and Endangered Species** - "May Affect, Is Likely to Adversely Affect" federally listed, or proposed or designated critical habitat or projects with impacts subject to the conditions of the Bald and Golden Eagle Protection Act, except those projects included in a programmatic ESA consultation;
- xii. **Protective Land Acquisition** - Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. 108(d));
- xiii. **Air Quality** - The project does not qualify under “exempt projects” listed in 40 CFR 93.126 or does not conform to the State Implementation Plan which is approved or promulgated by the U.S. Environmental Protection Agency in air quality non-attainment area;
- xiv. **STIP** - Is not included in or is inconsistent with the statewide transportation improvement program (STIP), and in applicable urbanized areas, the transportation improvement program;

- xv. **Tribal** - Requires Tribal consultation as requested by any Tribe; or
  - xvi. **Federal land** – Requires a federal land transfer or temporary construction permit/special use permit on federal land.
- c. WYDOT may not approve actions not specifically listed as CEs in 23 CFR 771.117, but meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117(a). Instead, WYDOT shall certify that an action will not result in significant environmental impacts if WYDOT concludes that the action qualifies for a CE and the action does not involve unusual circumstances that warrant the preparation of an EA or EIS. WYDOT shall submit this certification to FHWA for approval prior to the time FHWA contemplates its next approval or grant action for the project.
- i. If requested by the Division Office, WYDOT shall provide a copy of the CE documentation prepared for the action(s) in accordance with Section V of this Agreement.
  - ii. If any project requires a Section 4(f) *de minimis* determination or programmatic evaluation, WYDOT shall submit the 4(f) documentation for FHWA determination and approval.
  - iii. WYDOT may request notice to proceed with final design, acquisition of right-of-way, or construction from FHWA once WYDOT has completed its certification that a project is a CE.
  - iv. The Division Office's objection to a WYDOT certification may not constitute a disapproval of the action, but signifies that FHWA will need to engage in project-specific review to verify that the certification is adequate, which may include consultation with other agencies.
2. Providing a list of certified actions, pursuant to this Agreement to the Division Office annually and allow the Division Office ten (10) business days to either agree that some or all certifications are a basis for FHWA's approval of a CE for these actions, or to object to the certification(s). The list of actions certified will contain the following information:
- a. WYDOT project number and a project name; including the route number or facility name where the project will occur
  - b. Identify the CE action listed in the regulation, or if the action is not listed in 23 CFR 771.117, identify the process as "CE not categorized."
  - c. Consultations or technical analyses that are pending (if applicable); and
  - d. Whether the project included a 4(f) *de minimis* or programmatic evaluation.

3. Consulting with FHWA for actions that involve unusual circumstances (23 CFR §771.117(b)), to determine the appropriate class of action for environmental analysis and documentation. WYDOT may decide or FHWA may require additional studies to be performed prior to making a CE approval, or the preparation of an EA or EIS.
4. Meeting applicable documentation requirements in Section V for WYDOT CE approvals on FHWA's behalf and WYDOT CE certifications to FHWA, applicable approval and re-evaluation requirements in Section VI, and applicable quality control/quality, monitoring, and performance requirements in Section VII.
5. Relying only upon employees directly employed by WYDOT to make CE approvals or certifications submitted to FHWA under this agreement. WYDOT may not delegate its responsibility for CE approvals or certifications to third parties (i.e., consultants, local government staff, and other State agency staff).
6. WYDOT will maintain a staff that is qualified, capable and current on NEPA to fulfill the responsibilities stated in this Agreement.

B. The FHWA is responsible for:

1. Providing timely advice and technical assistance on CEs to WYDOT, as requested.
2. Providing timely input and review of certified actions. FHWA will base its approval of CE actions on the project documentation and certifications prepared by WYDOT under this Agreement.
3. Overseeing the implementation of this Agreement in accordance with the provisions in Section VII, including applicable monitoring and performance provisions.
4. Provide timely coordination and consultation on environmental laws, regulations and executive orders. Including Section 4(f) evaluations, de minimis and temporary occupancy determinations; all formal Endangered Species Act (ESA) consultations, except those included in a programmatic ESA consultation; all Section 106 Memorandums of Agreement; and government-to-government consultation with Native American Tribes.

**V. DOCUMENTATION OF WYDOT CE APPROVALS AND CERTIFICATIONS**

A. For WYDOT CE approvals and WYDOT CE certifications to FHWA for approval, WYDOT shall insure that it fulfills the following responsibilities for documenting the project-specific determinations made:

1. For actions listed in Appendix A and B, WYDOT should identify the applicable action, ensure any conditions specified in FHWA regulation are met, verify that unusual circumstances do not apply, address all other environmental requirements and complete the review with a WYDOT signature evidencing approval.

2. In addition, for actions listed in 23 CFR 711.117 (d), WYDOT shall prepare documentation that supports the CE determination and that no unusual circumstances exist that would make the CE approval inappropriate.
3. Three levels of CE documentation will be used by WYDOT depending on the type of action being proposed.
  - a. CE1 - WYDOT Batched CE
    - i. These are actions that are predominantly actions listed in 771.117 (c) and based on past experience, FHWA has determined these actions do not result in significant natural or human environmental impacts; therefore, these actions do not require NEPA approval by the FHWA.
    - ii. CE1 actions will be processed with WYDOT batch CE template.
  - b. CE2 - WYDOT Approved CE
    - i. Actions that do not meet the requirements of a CE1 may be reviewed and documented as a CE2. For WYDOT to approve an action as a CE2, the action may not exceed the thresholds in Section IV (A) (1) (b) or include any unusual circumstances, unless agreed to by FHWA.
    - ii. For WYDOT to approve an action as a CE2, WYDOT will review all NEPA requirements and summarize the results using WYDOT Categorical Exclusion Template. CE2 actions do not require NEPA approval by the FHWA.
    - iii. When approving a CE2, WYDOT will certify the following: *"This project meets the definition for a Categorical Exclusion under 23 CFR 771.117(a), does not involve unusual circumstances as defined under 23 CFR 771.117 (b), does not require preparation of an Environmental Impact Statement or Environmental Assessment, qualifies for a Categorical Exclusion under 23 CFR 771.117(c) or 23 CFR 771.117(d) and does not exceed the threshold criteria listed in the Programmatic Agreement between FHWA and WYDOT Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects."*
  - c. CE3 - FHWA Approved CE
    - i. PCE actions that do not meet the requirements of a CE1 or CE2 may be reviewed, documented, and recommended for FHWA approval as a CE3 by WYDOT.
    - ii. For WYDOT to recommend an action for approval as a CE3, WYDOT will review all NEPA requirements and summarize the impacts on WYDOT CE template.
    - iii. FHWA's review and approval of CE3 documents will be based on the certified WYDOT CE template and any supporting documentation. This information is to be provided by WYDOT with each approval request.

B. WYDOT should maintain a project record for CE approvals it makes on FHWA's behalf and each CE submitted to FHWA for approval. This record should include at a minimum:

1. Any checklists, forms, or other documents and exhibits that summarize the consideration of project effects and unusual circumstances;

2. A summary of public involvement complying with the requirements of FHWA-approved public involvement policy (WYDOT Public Involvement Handbook);
  3. Any stakeholder communication, correspondence, consultation, or public meeting documentation;
  4. The name and title of the document approver and the date of WYDOT's approval or FHWA's final approval; and
  5. For cases involving re-evaluations, any documented re-evaluation (when required) or a statement that a re-evaluation was completed for the project (when documentation is not necessary).
- C. Any electronic or paper project records maintained by WYDOT should be provided to FHWA at their request. WYDOT should retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve WYDOT of its project or program recordkeeping responsibilities under 2 CFR § 200.333 or any other applicable laws, regulations, or policies.

## **VI. NEPA APPROVALS AND RE-EVALUATIONS**

- A. WYDOT's CE approvals and CEs submitted to FHWA for approval may only be made by the Environmental Services Manager or Environmental Services Supervisors.
- B. WYDOT shall prepare a re-evaluation on CE3 documents whenever a re-evaluation is required based on the circumstances described below.
1. A re-evaluation must occur when there is a change in the scope or location of the project, and new impacts may occur that were not previously considered in the CE.
  2. A re-evaluation must occur if major steps to advance the action (e.g. authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three (3) years after the CE was approved by FHWA or by WYDOT.

The purpose of the re-evaluation is to ensure that all CE determinations remain valid pursuant to 23 CFR §771.129 and NEPA. WYDOT shall document the outcome of any re-evaluation and include it in the project file and this documentation will be made available to FHWA upon request. Re-evaluations for CE1s and CE2s will not be required. FHWA will be responsible for reviewing and concurring on re-evaluations of CE3s.

WYDOT can re-evaluate a project in two ways after consulting with FHWA to determine the best approach

- a. Send FHWA a letter or memo to file. The memo should include the following:
  - i. A clear statement of the reason(s) for the re-evaluation.
  - ii. A summary of the impacts of the change(s).

- iii. A clear statement that the original NEPA review has been determined to still be valid.
- b. If several environmental disciplines require updating, revise the existing CE
  - i. Track all new modifications to the CE.
  - ii. Attach any updated surveys or new documentation
  - iii. Send to FHWA for approval and signature

## **VII. QUALITY CONTROL/QUALITY ASSURANCE, MONITORING & PERFORMANCE**

### **A. WYDOT Quality Control & Quality Assurance**

WYDOT agrees to carry out regular quality control and quality assurance activities to ensure that its CE approvals and CE submissions to FHWA for approval are made in accordance with applicable law and this Agreement.

### **B. WYDOT Performance Monitoring and Reporting.**

1. The FHWA and WYDOT should cooperate in monitoring performance under this Agreement and work to assure quality performance.
2. Upon request, WYDOT will submit to FHWA (electronically or hard copy) a report summarizing its performance under this Agreement. The report will identify any areas where improvement is needed and what measures WYDOT is taking to implement those improvements. The report will include a description of actions taken by WYDOT as part of its quality control efforts under Section VII (A).

### **C. FHWA Oversight and Monitoring**

1. Monitoring by FHWA will include consideration of the technical competency and organizational capacity of WYDOT, as well as WYDOT's performance of its CE processing functions. Performance considerations include, without limitation, the quality and consistency of WYDOT's CE approvals, CE submissions to FHWA for approval, adequacy and capability of WYDOT staff and consultants, and the effectiveness of WYDOT's administration of its internal CE approvals.
2. FHWA will conduct one or more program reviews as part of its oversight activities, during the term of this Agreement. WYDOT shall prepare and implement a corrective action plan to address any findings or observations identified in the FHWA review. WYDOT should draft the corrective action plan within 45 days of FHWA finalizing its review. The results of that review and corrective actions taken by WYDOT shall be considered at the time this Agreement is considered for renewal.
3. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to WYDOT's performance under this Agreement. The FHWA may require WYDOT to perform such other quality



assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.

4. WYDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.


### VIII. AMENDMENTS

If the parties agree to amend this Agreement, then FHWA and WYDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

### IX. TERM, RENEWAL, AND TERMINATION


- A. This Agreement shall have a term of five (5) years, effective on the date of the last signature. WYDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- B. This Agreement is renewable for additional five (5) year terms if WYDOT requests renewal and FHWA determines that WYDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.
- C. Either party may terminate this Agreement at any time only by giving at least 30 days written notice to the other party.
- D. **Expiration or termination of this Agreement shall mean that WYDOT is not able to make CE approvals on FHWA's behalf.**

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

  
\_\_\_\_\_  
FOR Name: Brian Cawley, P.E.  
Division Administrator, Wyoming Division  
Federal Highway Administration

9/20/18  
Date

WYOMING ATTORNEY  
GENERAL'S OFFICE

  
\_\_\_\_\_  
Name: Keith Fulton, P.E.  
Title: Assistant Chief Engineer for Engineering and Planning  
Wyoming Department of Transportation

9-25-18  
Date

AUG 28 2018  
  
Alysia Goldman #186662  
APPROVED AS TO FORM

## **Appendix A: CEs listed in 23 CFR 771.117(c)**

The following actions meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Sec. 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

(23) Federally-funded projects:

(i) That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see [www.fhwa.dot.gov](http://www.fhwa.dot.gov) or [www.fta.dot.gov](http://www.fta.dot.gov)) of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see [www.fhwa.dot.gov](http://www.fhwa.dot.gov) or [www.fta.dot.gov](http://www.fta.dot.gov)) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of

stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act ( 33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

## **Appendix B: CEs listed in 23 CFR 771.117(d)**

Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because

of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

## Appendix C: Example CE Template



Matthew H. Mead  
Governor

# WYOMING Department of Transportation

"Providing a safe, high quality, and efficient transportation system"

5300 Bishop Boulevard, Cheyenne, Wyoming 82009-3340



William T. Panos  
Director

## CATEGORICAL EXCLUSION

Project Number:	CE Number:	Date:
Project Name:		
WYDOT CE Type: <input type="checkbox"/> CE2 – WYDOT Approved CE <input type="checkbox"/> CE3 – FHWA concurred CE		CE Action per: <input type="checkbox"/> 23 CFR 771.117(c) <input type="checkbox"/> 23 CFR 771.117(d)
District:	County:	
Type of Work:		
Does project involve federal funding, permit, approval, lands or program?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Preparer:		

This document has been prepared pursuant to the National Environmental Policy Act (NEPA), 23 CFR 771.117, FHWA Technical Advisory T6640.8A, and the latest Programmatic Agreement between the Federal Highway Administration (FHWA) Wyoming Division and the Wyoming Department of Transportation (WYDOT) regarding the processing of actions classified as Categorical Exclusions for federal-aid highway projects. Additional resource-specific regulations are noted where applicable. The proposed project will have no significant impact on the quality of the human or natural environment provided stipulations identified during this analysis are met. Supporting documentation is available at WYDOT Environmental Services.

Scott Gamo, PhD Environmental Services Manager, WYDOT	Date
Bryan Cawley, P.E. Wyoming Division Administrator, FHWA	Date

### Attachments:

- |  |  |
|--|--|
| <input type="checkbox"/> Project Location Map    | <input type="checkbox"/> WGFD Comment Letter       |
| <input type="checkbox"/> SHPO Concurrence Letter | <input type="checkbox"/> BLM Scoping Documentation |
| <input type="checkbox"/> Other _____             |  |



Project Number:

Project Name:

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## Environmental Commitments Summary:

Environmental commitments for this project are incorporated into WYDOT's *Standard Specifications for Road and Bridge Construction* and Supplemental Specifications.

If any cultural materials are discovered during construction, work in the area shall halt immediately, the appropriate State and Federal agency shall be consulted, and the materials evaluated by an archaeologist or historian meeting the Secretary of Interior's Professional Qualification Standards (48 FR 22716, September 1983).

**The following project-specific commitments shall be included in the final construction plans for the project:**

## Project Location:

Project Location (Road Name):	LRS:
Reference Marker(s):	
Nearest Town(s):	
Township/Range/Section(s):	
Is all or part of the project location a designated Scenic Byway?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the project within or will it affect lands administered by any of the following:	
<input type="checkbox"/> Bureau of Land Management; list BLM Field Office(s) _____	
<input type="checkbox"/> U.S. Forest Service; list Forest(s) _____ Ranger District(s) _____	
<input type="checkbox"/> Bureau of Reclamation	
<input type="checkbox"/> National Park Service	
<input type="checkbox"/> U.S. Fish and Wildlife Service	
<input type="checkbox"/> Wind River Reservation	
<input type="checkbox"/> Wyoming Office of State Lands	
<input type="checkbox"/> Wyoming Game and Fish Department	
<input type="checkbox"/> Wyoming State Parks	

## Project Purpose and Need:

Include crash records if project purpose includes improvements to safety; include traffic volumes if project purpose includes adding capacity.



**Project Description:**

Include the following, as applicable:

- Describe existing roadway section
- Proposed scope of work
- Plant site
- Material sources(s) and haul road(s)
- Staging area
- Waste area
- Right-of-way acquisition
- Construction permit area(s)
- Utilities present

Reference figure, if applicable

**Public Involvement Level:**

<input type="checkbox"/> Level A	News release with WYDOT contact information
<input type="checkbox"/> Level B	Level A activities PLUS: Contact with local government officials, interest groups, and others Contact with affected landowners Public notification of construction details
<input type="checkbox"/> Level C	Level A and B activities PLUS: Preliminary public design meeting to discuss project scope Possible public meeting to receive comments on decision
<input type="checkbox"/> Level D	Level A, B, and C activities PLUS: <ul style="list-style-type: none"> <li>● Possibly establishing an advisory committee</li> <li>● Possibly establishing an interdisciplinary team</li> </ul>

If Level D, provide public meeting location(s), date(s), public comments, and other applicable information. Describe controversy potential.



**Agency Scoping:**

Bureau of Land Management; list BLM Field Office(s) \_\_\_\_\_

U.S. Forest Service; list Forest(s) \_\_\_\_\_  
 Ranger District(s) \_\_\_\_\_

Bureau of Reclamation

National Park Service

Wyoming Office of State Lands

Wyoming State Parks

Other: \_\_\_\_\_

Note if response letters are attached.

**AFFECTED ENVIRONMENT & IMPACT DETERMINATION**

**Cultural Resources:**

*Includes archaeological and historic resources protected under the National Historic Preservation Act (NHPA) of 1966, as amended.*

Historic properties are present in the Area of Potential Effect.  
 Determined from:

- Class III inventory
- Previous survey
- Other

The proposed project has no effect historic properties.

The proposed project has no potential to affect historic properties.

The proposed project will have no adverse effect to historic properties.

The proposed project will have an adverse effect to historic properties.

Memorandum of Agreement, or Programmatic Agreement has been developed..

Special sites of concern are present (see below).

<input type="checkbox"/> SHPO Concurrence	Date of concurrence:	
<input type="checkbox"/> THPO Concurrence	Tribe:	Date of concurrence:

Include summary of inventory, WYDOT determination, and SHPO/THPO concurrence.

**Section 4(f):**

*Includes significant historic sites, public parks/recreation areas, and wildlife/waterfowl refuges per Section 4(f) of the US Department of Transportation Act of 1966*

Will the proposed project have a Section 4(f) "use"?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
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- Exception to 4(f) approval applicable per 23CFR774.13
- De minimis* Impact Determination
- Programmatic Section 4(f) Evaluation
- Individual Section 4(f) Evaluation
- Official with Jurisdiction written concurrence (required for all of the above); documentation attached

**Include a summary of Section 4(f) properties, impacts, and determinations.**

## Water Resources:

### Waters of the U.S., including Wetlands

*Includes waters and wetlands regulated under Section 404 of the Clean Water Act (CWA)*

Are waters of the U.S. (WUS), including wetlands, present in the project area?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will any Wetlands be impacted by the proposed project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will any WUS be impacted by the proposed project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is wetland or stream mitigation required?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 404 Permit Required? If yes, select permit type: <input type="checkbox"/> Pre-authorized under Section 404 Nationwide Permit #3: Maintenance <input type="checkbox"/> Pre-authorized under Section 404 Nationwide #14: Linear Transportation Projects <input type="checkbox"/> 404 Nationwide Permit # _____ required <input type="checkbox"/> 404 Individual Permit is required	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> CWA§401 certification required from:	<input type="checkbox"/> DEQ <input type="checkbox"/> EPA <input type="checkbox"/> Tribe _____

**Include a summary of WUS, including wetlands, which intersect or are located within close proximity to the project.**



### Water Quality

Addresses discharge of pollutants or wastes into Waters of the State as regulated under Section 402 of the CWA and the Wyoming Pollutant Discharge Elimination System (WYPDES) Program

Could any water body or municipal storm sewer receive runoff from the project area?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> The receiving water body is a Class I water per the Wyoming Surface Water Classification.	
<input type="checkbox"/> The receiving water body is listed on the <a href="#">Wyoming's 303(d) report</a> as impaired.	
<input type="checkbox"/> Contractor will be responsible for WYPDES compliance.	
<input type="checkbox"/> WYDOT will be responsible for WYPDES compliance.	
<a href="#">If present, describe receiving water body and impact.</a>	

### Floodplains

Includes floodplains identified on the National Flood Insurance Program (NFIP) maps produced by the Federal Emergency Management Agency

Is all or is a portion of the project within a NFIP mapped floodplain?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has WYDOT prepared a Hydraulic Report for the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the project increase the floodplain area or cause negative impacts to the floodplain?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<a href="#">If present, describe affected floodplain and impact.</a>	

### Wild and Scenic Rivers

Includes portions of the Snake River Headwaters in Teton, Lincoln, and Fremont Counties that are designated Wild, Scenic, and Recreational under the Wild and Scenic Rivers Act of 1968

Is a designated Wild and Scenic River (WSR) located within or adjacent to the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>If yes</b> , does the project involve construction in the WSR bed or banks below the ordinary high water mark? If no, project not subject to Section 7(a).	<input type="checkbox"/> Yes <input type="checkbox"/> No
<a href="#">If present, identify WSR and impact.</a>	

### Biological Resources:

#### Wildlife and Habitat

Addresses compliance with the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Governor's Sage-Grouse Executive Order 2015-4, and recommendations from the Wyoming Game and Fish Department (WGFD)

Wyoming Game and Fish Department Comment Letter Obtained? <input type="checkbox"/> Documentation attached      Date:      WER #	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Current Governor's Sage-Grouse Executive Order Compliance Letter will be obtained?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Are raptor nests located within one mile of the project area?</p> <p><b>If yes,</b>  species _____ no.  of nests _____, and  USFWS-recommended spatial buffer/seasonal buffer? _____</p> <p>Determined from:</p> <input type="checkbox"/> Biological Inventory <input type="checkbox"/> NREX Database <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
<p>Is the project area located in designated big game crucial winter range?</p> <p><b>If yes,</b> identify species and WGFD-recommended timing restrictions below.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Is the project located in designated sage-grouse core area?</p> <p><b>If yes,</b></p> <input type="checkbox"/> Occupied leks are located within 0.6 miles of the project area. <input type="checkbox"/> Occupied leks are located within 1.9 miles of the project area. <input type="checkbox"/> Impacts are <i>de minimis</i> and activity is exempt. <input type="checkbox"/> WYDOT will prepare a worksheet and submit to WGFD. <input type="checkbox"/> WYDOT will conduct a Density and Disturbance Calculation Tool (DDCT) analysis and submit to WGFD.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If not in core area, are any occupied leks located within 2 miles of the project area?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Describe other wildlife/aquatic concerns and address G&amp;F comments (e.g. fencing, etc.). Identify whether or not the project area was identified as a hotspot by the <a href="#">Wildlife and Roads Summit</a> if scope of work includes animal-vehicle collision mitigation.</p>	

**Threatened and Endangered Species**

*Addresses compliance with the Endangered Species Act*

<p>Is project included in Appendix A of the final Programmatic Biological Assessment for WYDOT's program?</p> <input type="checkbox"/> No Effect <input type="checkbox"/> May affect, not likely to adversely affect, species: <input type="checkbox"/> May affect, likely to adversely affect, species	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Could federally-listed threatened, endangered, or proposed species occur at or near the project area and/or is critical habitat or proposed critical habitat present within or adjacent to the project area?</p> <p><b>If yes,</b> indicate species and/or critical habitat:</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

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<p>Could other Federal Agency sensitive species occur at or near the project area? If yes, species:</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Describe other threatened and endangered species concerns, Platte and Green River water depletions (see below), etc.</p> <p>The USFWS has determined that water depletions from the upper Platte River Basin may have an effect on downstream threatened and endangered species. Water depletions from the Platte River Basin will be handled under Wyoming's Depletions Plan through the USFWS' Platte River Recovery Implementation Program.</p> <p>The USFWS has determined that water depletions from the upper Colorado River Basin may have an effect on downstream threatened and endangered species. Water depletions from the Colorado (Green) River Basin will be handled through a programmatic agreement with USFWS.</p>	

**Soil and Vegetation**

<p>Will the project disturb topsoil and/or existing vegetation?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If yes,</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Temporary and/or minimal soil disturbance will occur.</li> <li><input type="checkbox"/> Topsoil will be salvaged.</li> <li><input type="checkbox"/> Disturbed areas will be re-vegetated with commercially-available species.</li> <li><input type="checkbox"/> Disturbance will be minimal (less than 10 ft adjacent to the pavement) and within the mowed area.</li> <li><input type="checkbox"/> Seed mix includes wildflowers and native species to assist in promoting the health of honey bees and other pollinators per WYDOT Operating Policy 20-1. At appropriately identified locations, seed mixes may include specific native species which blend with the local flora and are unpalatable/unattractive to big game species.</li> </ul>	
<p>Describe impacts to soil and vegetation. If in an urban area, will sod be replaced?</p>	

**Air Quality:**

*Air quality is regulated under the Clean Air Act. The Upper Green River Basin Area is the only nonattainment area (for Ozone-8Hr) in Wyoming.*

<p>Is the project located in the Upper Green River Basin Region Ozone nonattainment area? If yes, see attached FHWA Ozone Nonattainment Area Exemption Letter.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>The project will likely decrease air quality during construction but will not have a long term negative effect (e.g. dust, exhaust).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

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If yes, has WYDOT identified dust control measures?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe long term negative effects and dust control measures, etc.	

### Noise Analysis:

Addresses compliance with WYDOT's Noise Analysis and Abatement Policy dated July 13, 2011

Is the project considered Type 1 as defined by WYDOT's Noise Analysis and Abatement Policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, has a noise analysis identified: <input type="checkbox"/> exceedance of noise abatement criteria <input type="checkbox"/> noise abatement measures (see below)	
Will project temporarily increase noise levels?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, are sensitive noise receptors (e.g., church, school, residence, campground) near the project area?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If a noise analysis was conducted, describe impacts, mitigation, etc. Note that elevated noise levels due to the project will be temporary, lasting the duration of construction; best management practices and regular maintenance of equipment will minimize these temporary impacts. Project will adhere to WYDOT's Noise Analysis and Abatement Policy dated July 13, 2011.	

### Transportation:

Is the project located along a designated bicycle route?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Would the project impact pedestrian and/or bicycle access?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Would the project impact designated emergency routes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Would the project impact public transportation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Additional comments	

### Social Resources:

Address compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA) and Executive Order 12898 regarding environmental justice

#### Land Use Changes, Community Cohesion, Relocation Potential, etc.

Will the project lead to land development, redistribution of existing land development not already in a planning document, or changes to zoning?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Will the project impact community cohesion, i.e., will the project have residential impacts or create a barrier between a residential community and social or commercial resources?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the project require relocation of commercial or residential property?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, project will comply with the URA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the project impact churches or schools, including access?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Would the project cause disproportionately high and adverse effects on minority and/or low income populations?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes to any of the above, describe resource and impact.	

### Visual Resources:

*Includes determination of project impacts to visual resources, such as the landscape's foreground and background*

Is all or part of the project a designated scenic byway?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is all or part of the project within land administered by a National Forest or the Bureau of Land Management where scenic integrity objectives or visual resource management apply?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the project within ¼ mile of a Wild and Scenic River where Outstandingly Remarkable Views (ORV) need to be addressed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the project require major cut/fills, bridges, large retaining walls, or change the vertical profile of an existing road or bridge?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes to any of the above, describe visual impact (include triggers for a visual review...e.g. cultural/historic site, project located on or affecting BLM/FS land, etc.)	

### Hazardous Materials and Contamination:

*Includes hazardous materials and contamination located within or adjacent to the proposed project area*

Is any known contamination or hazardous material present within or adjacent to the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes to the above, describe contamination/hazardous material and impacts to the project.	

### Other:

Other resource issues that apply to the project that are not addressed in the previous sections:
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- Paleontological resources (for projects on federal land only)
- Prime and Unique Farmland
- Properties protected by Section 6(f) of the Land and Water Conservation Act
- Other

If any of the above boxes are checked, describe resource and impact.