UNDERSTANDING CATEGORICAL EXCLUSIONS
FOR FEDERAL-AID HIGHWAY PROJECTS

ADOT Environmental Planning
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## CATEGORICAL EXCLUSIONS

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## PROGRAMMATIC CATEGORICAL EXCLUSIONS AGREEMENT

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## CATEGORICAL EXCLUSION SELECTION EXAMPLES

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OVERVIEW

Understanding Categorical Exclusions (CEs) will assist Arizona Department of Transportation (ADOT) staff, Local Public Agencies (LPA), and consultants in knowing when projects and actions can utilize a CE for approval by the Federal Highway Administration (FHWA) under the National Environmental Policy Act (NEPA). NEPA approval is required for construction projects under the Federal-aid Highway Program (FAHP). In addition, certain other actions that require federal approval such as right-of-way (ROW) grants by Federal Land Management agencies, permitting actions, design exceptions on the National Highway System (NHS) and a Change in Access of an Interstate highway also require NEPA approval.

ADOT and FHWA have agreements in place to help deliver the FAHP. Understanding CEs will assist ADOT in conforming to the stipulations of the FHWA-ADOT Stewardship and Oversight Agreement which includes environmental oversight and responsibility for NEPA approval. The Programmatic Agreement Between the Federal Highway Administration Arizona Division and the Arizona Department of Transportation Regarding the Determination and Approval of Categorical Exclusion Actions for Federal-Aid Highway Projects (PCE) defines the types of CEs, outlines the specific requirements ADOT must follow in documenting CEs, and defines which CEs can be approved by ADOT or require FHWA approval. This agreement classifies CE approval into two categories: ADOT Approved or FHWA Approved. Approval authority is delegated to ADOT for certain actions that qualify for a CE listed under 23 CFR 771.117 (c) or (d), but no approval authority is delegated to LPAs, including Certification Acceptance (CA) agencies which have design and construction oversight authority by agreement. Therefore, ADOT Environmental Planning is responsible for all NEPA documentation prepared by the LPAs for FAHP projects.

The PCE Agreement replaces the 2008 FHWA-ADOT Arizona Programmatic Categorical Exclusion Agreement and the 2010 Operating Agreement, which was updated in 2012. The PCE Agreement also outlines other guidelines to be utilized in the processing of CEs including; the Environmental Planning Quality Assurance/Quality Control Plan, the Environmental Planning Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions and the ADOT Communications Public Involvement Plan.

Understanding CEs is a companion to the Categorical Exclusion (CE) Checklist Guidelines and the Individual CE Guidelines. Detailed technical guidance for environmental requirements and analysis that may be required in preparing a CE is located on the ADOT Environmental Planning website. Additional technical guidance can be found in the FHWA Guidebook. Understanding CEs is intended to be utilized in electronic format with the aid of hyperlinks embedded throughout this Guidance.

Note: The CE Checklist greatly reduces the level of documentation for completing a CE. However, ADOT Environmental Planners and ADOT Project Managers need to maintain awareness that environmental analysis and technical documents under other applicable laws are typically the critical path elements in the environmental component of the project schedule. Early coordination is especially important with regard to the National Historic Preservation Act (NHPA) - (Section 106), Section 4(f) of the U.S. Department of Transportation Act (USDOT Act) of 1966 [Section 4(f)], the Clean Water Act (Section 404), and the Endangered Species Act (Section 7). Coordination and completion of environmental analysis and consultation under the other applicable key transportation related environmental laws will usually dictate the schedule for completing a project’s NEPA requirements.
1. CATEGORICAL EXCLUSIONS

1.1. REGULATORY FRAMEWORK

The National Environmental Policy Act (NEPA) of 1969 requires FHWA to consider the environmental impacts of their proposed major federal actions. The level of NEPA documentation required for FAHP projects is prescribed in three classes of action: Class I-Environmental Impact Statement (EIS), Class II-Categorical Exclusion (CE) and Class III-Environmental Assessment (EA). NEPA requires that federal agencies “include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on...the environmental impact of the proposed action.” 42 U.S.C. 4332(C). The “detailed statement” is the EIS. Not all projects have significant impacts and therefore not all projects require that an EIS be prepared. The EA was created for projects in which the level of impacts is not clearly known. The Council of Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500-1508, direct Federal agencies to “define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement” (40 CFR 1500.4). The CE was created to address projects that are in a category of actions that, based on FHWA experience, do not have significant impacts and therefore are exempt from the requirements to prepare an EIS or EA (40 CFR 1508.4). FHWA’s implementing regulations for NEPA are contained in 23 CFR 771 – “Environmental Impact and Related Procedures.”

The CEQ and NEPA regulations that describe specific requirements for EISs and EAs (NEPA scoping, purpose and need, range of reasonable alternatives, public hearings, etc.) do not apply by extension to CEs. CE projects are excluded from the requirements of an EIS/EA but require enough documentation to validate the determination of the CE.

Moving ahead for Progress in the 21st Century (MAP-21), signed into law in 2012, introduced several changes to 23 CFR 771 including the modification of existing CEs and the introduction of new CEs to the FHWA process for implementing NEPA.

1.2. DEFINITION OF A CATEGORICAL EXCLUSION

1.2.1. 23 CFR 771.117(a)

As described in 23 CFR 771.117, federal “actions”, i.e. FAHP projects can be classified as a CE if they; do not cause significant adverse environmental effects, they meet the definition contained in 40 CFR 1508.4 and are excluded from the requirements to prepare either an EIS or EA.
ADOT Environmental Planners overseeing NEPA in project development must fully understand the CE requirements of 23 CFR 771.117 in order to understand what NEPA ‘class of action’ is appropriate for each project. 23 CFR 771.117(a) outlines the requirements (definition) of a project designated as a CE as actions which:

- Do not induce significant impacts to planned growth or land use.
- 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.
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Significance is defined for NEPA under 40 CFR 1508.27. The level of significance of an impact is determined by the **context** and **intensity** of an impact. For example the difference between three acres of wetlands impact in the arid Southwest as opposed to three acres of wetland impact in the Northeastern United States and/or occurring on a small vs. large-scale project. The context and intensity of both scenarios are different. In other words significance can be relative. NEPA, as well as several other substantial federal environmental laws, have at least part of their roots in the significant impacts that resulted from the major post World War II freeway building and the Interstate Highway Era. The NEPA requirements were devised for these types of projects to prepare an EIS. During the early 1970s FHWA originally made a “negative declaration” citing that a project did not have the level of impacts requiring the preparation of an EIS. The CE was created by the CEQ in 1978 for those actions that fell below such impact levels as to be categorically excluded from the same NEPA requirements as those that had significant impacts.

Most of the FAHP projects developed by ADOT normally qualify as a CE and meet the requirements of 23 CFR 771.117(a). For these projects ADOT Environmental Planners must confirm that a project will not result in significant environmental impacts by reviewing the project’s description against the paragraph (a) criteria listed above.

**1.2.2. 23 CFR 771.117(b)**

In addition to the conditions outlined in 23 CFR 771.117(a) which define a CE classification, a CE may require additional environmental analysis and coordination to confirm the appropriateness of the designation. 23 CFR 771.117(b) cites that any action which normally would be classified as a CE but could involve “unusual circumstances” (CEQ 1508.4 “extraordinary circumstances”) will require the FHWA, in cooperation with ADOT, to conduct appropriate environmental
studies to determine if the CE determination is proper. An unusual circumstance refers to an instance in which a normally excluded action may have a significant environmental effect and, therefore, require an EA or EIS. Such unusual circumstances include:

1. Significant environmental impacts;
2. Substantial controversy on environmental grounds;
3. Significant impact on properties protected by Section 4(f) or Section 106 of the NHP; or
4. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action

ADOT Environmental Planners, in conjunction with Environmental Planning Technical Specialists, review projects against these and other “unusual circumstances” as well as the criteria listed under 23 CFR 771.117(a) and apply due diligence to assess other applicable laws and regulations on projects to validate the CE determination. For example, it may be determined through evaluation and coordination that the need to acquire new ROW from a park, though an unusual circumstance as described under 23 CFR 771.117(b)(3), will not result in a significant impact but is a de minimis impact as defined under 23 CFR 774. In such a case, the CE classification for that project can be validated.

Supporting documentation, such as technical reports, biological studies, and archaeological surveys or historic structure inventories may be required to support evaluation of unusual circumstances under 23 CFR 771.117(b). Keep in mind that impacts such as demolition, roadway excavation, embankment construction and structures placement do not normally have significant impacts under NEPA for those projects that are actions listed under 23 CFR 771.117. Projects with unusual circumstances require review and approval from FHWA that the action does not result in significant impacts and therefore can be approved as a CE.

1.3. TYPES OF CATEGORICAL EXCLUSIONS

23 CFR 771.117 defines two types of CEs: “c-list” and “d-list,” and each list contains specific project types or examples of actions that meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and 23 CFR 771.117(a). The c-list actions normally do not require any further NEPA review or approval by FHWA. The d-list actions require documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. The type of CE and required supporting documentation, if applicable, are based on project-type and site-specific factors.
1.3.1. “C-list” Categorical Exclusions

A specific list of actions that typically qualify under this category are described in 23 CFR 771.117(c), and are therefore known as “c-list” CEs. Per 23 CFR 771.117(c), these projects require limited documentation and normally can be approved by ADOT and no formal FHWA review is required. These projects are generally actions that are within the ROW of an existing roadway or require only minor amounts of new ROW. For example bicycle paths and sidewalk projects are specifically listed under 23 CFR 771.117(c)(8) – “Construction of bicycle and pedestrian lanes, paths, and facilities.” Such projects are by definition a CE by way of matching the action to the description in the regulations.

MAP-21 expanded the types of projects that qualify as CEs under this category and the degree of impacts for c-list CE projects can vary greatly from a non-construction action such as a funding approval to a large-scale construction project such as a highway expansion project.

Because the regulations call for documentation with d-list CEs but not c-list CEs, the c-list CEs are sometimes referred to as undocumented CEs. Because MAP-21 expanded the list of actions typically qualifying as a CE under 23 CFR 771.117(c), there are now more c-listed (“undocumented”) CEs that have to be reviewed for unusual circumstances and for impacts under other applicable environmental laws and regulations (Section 4(f), Section 106, the Endangered Species Act (ESA), the Clean Water Act, FHWA noise regulations, etc.). “Undocumented” in the regulations means there is no stand-alone NEPA Document that reviews and documents the impacts of the project as opposed to file documentation, such as scoping and consultation letters. Developing these projects as undocumented CEs poses a challenge because some level of documentation is necessary to ensure the appropriate level of analysis has been conducted and is contained in the project file. The ADOT Environmental Planner is required to certify that the project’s CE determination is consistent with all legal requirements. To address this challenge, where technically no environmental document is required, ADOT in cooperation with the FHWA Arizona Division, utilizes a CE Checklist for all c-list CEs.

However, for c-list projects with no potential to significantly impact the environment and that do not require review under 23 CFR 771.117(a) and (b), a CE Checklist is prepared without technical analysis. These are actions which qualify under 23 CFR 771.117(c)(1), which do not result in physical construction or are very limited (minor) in nature. Examples of c-listed actions that qualify for a CE Checklist without technical analysis include; funding authorizations, such as those for materials procurement and equipment purchase, design exceptions, and planning studies.
Under MAP-21, many more FAHP actions were made to qualify as CEs under 23 CFR 771.117 paragraph (c) including the addition of (c)(22) for projects within the existing operational right-of-way and (c)(23) for projects receiving less than $5,000,000 of Federal funds; or with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. A project such as an HOV project in a highway median (existing operational right-of-way) is an example of a project that could qualify under (c)(22). MAP-21 also introduced (c)(24) as a new CE for geotechnical and other preliminary investigations which provide information for preliminary design and for environmental analyses.

Also, the MAP-21 CE revisions include the former top three d-list CEs being moved to the c-list as; (c)(26) – highway restoration, (c)(27) – safety improvements and (c)(28) – bridge projects. However, if those actions do not meet the “constraints” listed under 23 CFR 771.117(e), the action will need to be classified as a CE under paragraph (d)(13). The “constraints” listed under paragraph (e) of 23 CFR 771.117 are Threshold Criteria (defined in the PCE Agreement). Threshold Criteria are simply a set of conditions applied for the purpose of determining whether or not a project requires additional documentation and FHWA approval. A project listed under (c)(26), (c)(27) or (c)(28) must remain below the Threshold Criteria in order to qualify as a c-list CE. This process was established in Federal rulemaking when the top three d-listed CEs moved to the c-list. Only these three actions may start out as c-listed but then become d-listed under (d)(13) if the project impacts exceed any of the paragraph (e) constraints.

As stated above the CE Checklist is used for all c-list projects. In order to make a seamless transition for the projects that may start out on the c-list, but ultimately be classified on the d-list as (d)(13), all c-listed CEs utilize the same CE Checklist as is required for specifically listed d-list CEs and thereby eliminate the need for two different CE forms; one for the c-list CEs and one for the d-list CEs. To simplify the CE process the Threshold Criteria are applied to all CEs that utilize the Checklist, not just those listed under (c)(26), (c)(27) and (c)(28). This means applying the same constraints for (c)(26), (c)(27) and (c)(28) to the other c-list actions even though such application is not strictly required under 23 CFR 771.117(e).

In addition to the CE Checklist, supplemental information is provided including technical analysis for those impacts that require additional documentation. By completing the Checklist and applying the Threshold Criteria to all c-list construction actions it also ensures that the CE determination will be consistent with paragraphs (a) and (b) of 23 CFR 771.117. If there are no Threshold Criteria exceeded, as documented in the CE Checklist, then the CE can be approved by ADOT, without further FHWA review. Some c-listed projects may require approval by FHWA, for example projects requiring a Section 4(f) use (other than a de minimis impact) or those projects with a “may affect, likely to adversely affect” under the ESA. For projects in which any Threshold Criteria are exceeded the CE must be approved by FHWA. Approval authority is further defined in the PCE Agreement and Section 2 of this Guidance.
1.3.2. “D-list” Categorical Exclusions

23 CFR 771.117(d) lists examples of actions that qualify to be processed as a CE. Projects that qualify under this list are therefore known as “d-list” projects. These are projects typically requiring additional documentation beyond the level of a “c-list” CE. These projects have a higher potential for environmental impacts, while still meeting the criteria of a CE. As described under Section 1.3.1, paragraph (d)(13) includes those projects that may start out as initially listed under (c)(26), (c)(27) and (c)(28) of 23 CFR 771.117 but are later determined through environmental analysis to not meet the constraints of 23 CFR 771.117(e). Also previously stated in Section 1.3.1, these three CEs are the former (d)(1), (d)(2) and (d)(3) actions.

CE’s under (d)(4) through (d)(12) are not utilized very often. (d)(6) – Disposal of excess right-of-way and (d)(12) – advance acquisition, are the two d-list CEs that are most likely to be used on an ADOT project. These CEs can be processed with the CE Checklist and can be either ADOT Approved or FHWA Approved, depending on whether or not any of the Threshold Criteria outlined in the PCE Agreement are exceeded.

If there are no unusual circumstances resulting in significant impacts and there are no Threshold Criteria exceeded the project can be approved as a d-list CE by ADOT, per the PCE Agreement. For projects with adverse impacts or in which any of the Threshold Criteria is exceeded, the CE must be approved by FHWA. Through evaluation and consultation under other applicable major federal laws and regulations, a determination can be made that the CE classification is still appropriate as documented in a d-list CE.

CEs not specifically listed under paragraph (d) may still qualify as a CE under paragraph (d) as an individually documented CE. These are projects which meet the definition of a CE under paragraphs (a) and (b), but do not appear on the list of examples in Section 771.117(c) or (d). These projects require an Individual CE and must be approved by FHWA (see Sections 2.1.1 and 2.2.3). Note: all specifically listed c-list CEs and d-list CEs utilize the CE Checklist and the unlisted, but qualifying d-list CEs, utilize the Individual CE format. Adding highway capacity (through-lanes), major reconstruction of an existing traffic interchange and construction of a new traffic interchange are examples of projects that, though not specifically listed on the d-list, may still qualify under paragraph (d) as an Individual CE.
1.4. CLASSIFYING CATEGORICAL EXCLUSIONS

1.4.1. Planning and Programming Phase

An initial determination of a project NEPA classification will be made during the Planning and Programming phase of a project. Projects will have impacts. It is the level of significance that is the determinant of the level of NEPA documentation required. The level of significance of project impacts is determined by the context and intensity of the impacts. Projects that will require an EIS or EA are typically identified at the Planning and Programming stage because a substantial amount of funding must be programmed to develop an EIS or EA. Any large-scale project that anticipates the preparation of an EIS or EA should be discussed with FHWA prior to the programming of PE funds for their development. 23 CFR 771.115 lists new access-controlled and multi-lane highways as actions requiring an EIS. These types of projects are included in long-range planning and programming and their anticipated development costs are also included in the programming. Expanding a two-lane highway to a four-lane divided highway, reconstructing a freeway system interchange or a new bridge in a sensitive environmental area are examples of projects that are likely to be documented with an EA. The CEQ regulations also outline decision-making for whether or not to prepare an EIS (40 CFR § 1501.4).

For the vast majority of projects the initial determination of the NEPA classification will be that the project qualifies as a CE. This preliminary determination helps define project development costs and the scope of work for inclusion in project budgets and Joint Project Agreements (for LPA projects). An estimation of the appropriate environmental studies that need to be conducted should be part of the project pre-scoping phase (LPA Manual Chapter 7).

1.4.2. Design Phase

At the start of project design any previously made pre-scoping decisions should be reviewed. The ADOT Environmental Planner, in cooperation with the Environmental Planning Technical Sections, will review any previously made determination of the appropriate type of CE to be utilized or make a determination if one has not previously been made. As mentioned under Section 1.4.1, EIS or EA screening will have been completed during the Planning and Programming Phase and therefore the primary question at the start of design is the type of CE to be prepared. By definition the projects that are listed as qualifying as a CE in 23 CFR 771.117 are not likely to result in significant impacts. Therefore, the focus of analysis is in determining which type of CE in relation to the c-list and d-list the project may qualify under, whether or not there are unusual circumstances and whether the project will be ADOT or FHWA approved.

The ADOT Environmental Planner and Environmental Planning Technical Sections must review the scope in relation to other environmental laws and regulations and determine what has the
potential to impact the projects under: Section 4(f), Section 106, Section 404, Section 7, 23 CFR 772 (noise), etc. Familiarity with the project and an understanding of the interactive nature of all relevant environmental laws and regulations will allow the ADOT Environmental Planner, in conjunction with the Environmental Planning Technical Sections, to confirm the appropriate type of CE that should be prepared and whether or not the project can be approved by ADOT or requires approval from FHWA. For example, impacting a bridge that is eligible under the National Register of Historic Places and Section 4(f) is an example of “unusual circumstances” for a project that would normally be considered qualifying for a CE. The need to review for “unusual circumstances” may result in a CE needing to be approved by FHWA as opposed to being approved by ADOT. However, the evaluation of “unusual circumstances” is highly unlikely to change the classification of a project from a CE to an EA or EIS after the initial project NEPA classification has been determined as a qualified CE.

Understanding environmental impacts early in the design process helps determine if alternatives analysis may be needed in relation to evaluating unusual circumstances. For example impacts to historic properties and projects with impacts to wetlands require alternatives to be evaluated early in the design before determining the type and approval level of the CE as well as determining when the final design can advance.

For ADOT projects the initial CE determination is made before the project design and NEPA process are fully underway, and is therefore a risk-based decision. Initial determinations are made based on preliminary project descriptions and the professional judgment of the ADOT Environmental Planner and Technical Sections. Questions on what type of CE is the appropriate classification in developing a project should be confirmed with FHWA as needed. Detailed information on CE documentation, information on how to fill out the Checklist, and information on how to analyze environmental impacts are contained in the NEPA Guidance on the Environmental Planning website.
2. PROGRAMMATIC CATEGORICAL EXCLUSION (PCE) AGREEMENT

2.1. AUTHORITY

Pursuant to Section 1318(d) of MAP-21 and 23 CFR 771.117(g), the FHWA Arizona Division and ADOT have entered into a Programmatic Categorical Exclusion (PCE) Agreement for processing actions that may be classified as a CE under NEPA for FAHP Projects. The PCE Agreement allows ADOT to determine (approve) whether a project qualifies for a CE on FHWA’s behalf, for CEs specifically listed in paragraph 23 CFR 771.117(c) and 23 CFR 771.117(d). ADOT provides CE certification (i.e. an ADOT recommendation to FHWA for NEPA approval) for actions that exceed the Threshold Criteria defined in the PCE Agreement. The PCE Agreement also outlines actions that qualify as a CE under the case-by-case CE authority in 23 CFR 771.117(d).

The PCE Agreement outlines: Environmental Planning roles and responsibilities, documentation requirements, proper CE determination under 23 CFR 771.117(c) and (d), Threshold Criteria including the constraints identified in 23 CFR 771.117(e), environmental analysis, re-evaluation under 23 CFR 771.129, evaluation of unusual circumstances, the inclusion of environmental commitments, exercise of proper approval authority, and proper filing conventions and record keeping.

The heading of the PCE Agreement is shown below and the complete PCE Agreement is located on the Environmental Planning website.

PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION ARIZONA DIVISION
AND
THE ARIZONA DEPARTMENT OF TRANSPORTATION
Regarding the Determination and Approval of Categorical Exclusion Actions for Federal-Aid Highway Projects

The PCE Agreement was approved by FHWA on July 7, 2015. This PCE Agreement replaced the 2008 FHWA-ADOT Arizona Programmatic Categorical Exclusion Agreement, the 2010 Operating Agreement and the 2012 Update to the 2010 Operating Agreement.

2.1.1. Approval Authority

Section V of the PCE Agreement defines the Threshold Criteria that determine whether a project CE will be considered ADOT Approved or FHWA Approved. ADOT can approve CEs for
which none of the Threshold Criteria are exceeded. FHWA approves CEs for which any of the Threshold Criteria are exceeded.

2.1.2. ADOT Approved

Actions identified in 23 CFR 771.117(c) or (d) that do not exceed the Threshold Criteria specified in Section V of the PCE Agreement, do not require further approval by FHWA and will be documented in a CE Checklist. Also, a CE Checklist will be used to document non-construction projects or projects of limited construction utilizing a (c)(1) CE. A CE Checklist documents the conditions specified in the PCE Agreement. A copy of the approved CE will be sent to FHWA for their records.

2.1.3. FHWA Approved

Actions identified in 23 CFR 771.117(c) or (d) that exceed the Threshold Criteria specified in Section V of the PCE Agreement or for certain actions not specifically listed under (d), may be designated as CEs upon approval from FHWA. ADOT shall submit a CE Checklist and any additional documentation that demonstrates the criterion for a CE is satisfied. Actions consistent with but not specifically listed under (d) will be documented as an Individual CE. An Individual CE will utilize a long-form CE document.

2.2. CE DETERMINATIONS

The type of CE documentation may have been preliminarily determined during the pre-scoping phase, programming or task order development for a project. The two types of CE documentation as outlined in the PCE Agreement are the CE Checklist and the Individual CE. The CE Checklist is prepared by the ADOT Environmental Planner. An Individual CE may be included in a task order for consultant services. The specific type of CE (“c” or “d” list) will be dependent on the project specific scope of work and context of the project as described previously in this Guidance.

For ADOT projects, the preliminary CE determination should be based on the description of the project (Type of Work) that matches one of the listed CEs. For example, use (c)(3) – “construction of bicycle and pedestrian lanes, paths, and facilities” for a pedestrian path. Many projects may qualify for a CE using (c)(22) – a project within the operational ROW or (c)(23) – a project receiving less than $5 million in total federal funds.

The most utilized c-list and d-list CEs from 23 CFR 771.117 are listed below:

**23 CFR 771.117(c)**

| (c)(1) | Activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives. |
| (c)(3) | Construction of bicycle and pedestrian lanes, paths, and facilities. |
| (c)(7) | Landscaping. |
| (c)(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. |
(c)(9) Emergency repairs under 23 U.S.C. 125 damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President.

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

(c)(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.

(c)(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.

(c)(23) Federally-funded projects: (i) That receive less than $5,000,000 of Federal funds; or (ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

(c)(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.

(c)(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.

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

(c)(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.

(c)(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.

23 CFR 771.117(d)

(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.

(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.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e).
2.2.1. CE Type and Approval Matrix

The matrix below outlines the combinations of approval authority, type of CE, documentation format and project impact thresholds for the c-list and d-list CEs defined in 23 CFR 771.117(c) and (d) and outlined in the PCE Agreement and Sections 1.3.1 and 1.3.2 of this Guidance.

<table>
<thead>
<tr>
<th>Level of NEPA Approval</th>
<th>Approval Authority</th>
<th>Type of Categorical Exclusion</th>
<th>Documentation</th>
<th>Threshold of project impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Categorical Exclusion (CE)</td>
<td>ADOT Approved</td>
<td>c-list or d-list</td>
<td>CE Checklist</td>
<td>Below All Checklist Threshold Criteria</td>
</tr>
<tr>
<td></td>
<td>FHWA Approved</td>
<td>c-list or d-list</td>
<td>CE Checklist</td>
<td>Exceed Any Checklist Threshold Criteria</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d-list</td>
<td>Individual CE</td>
<td>Any project not specifically listed on the d-list</td>
</tr>
</tbody>
</table>

2.2.2. CE Checklist

As noted previously in Section 1.3.2., all specifically listed c-list CEs and d-list CEs utilize the CE Checklist. The CE Checklist has been designed to simplify and streamline the process for providing the information needed to document the CE determination for a project as outlined in 23 CFR 771.117.

The CE Checklist Threshold Criteria are defined in Section V of the PCE Agreement. Threshold Criteria are used to determine the appropriate CE type and approval level. General guidance for the completion of each major section of the CE Checklist is provided in the Categorical Exclusion (CE) Checklist Guidelines.

For projects that have been designated as a CE under 23 CFR 771.117(c)(1) that do not result in construction and require no technical review or environmental analysis, there is a note with instruction on the CE Checklist to move to the ‘approvals section’ on the CE after selecting the (c)(1) CE. Examples of c-listed actions that qualify for a CE Checklist without technical analysis include; funding authorizations, such as those for materials procurement and equipment purchase, design exceptions, and planning studies.
2.2.3. Individual CE

The Individual CE is utilized to document the CE determination for actions that are; not specifically listed under 23 CFR 771.117(d), consistent with the definition of a CE and that will not result in a significant impact on the natural or human environment. These actions will be documented in an Individual CE that utilizes a more comprehensive documentation format as outlined in the Individual CE Guidelines.

**REMININDER:** The CE Checklist greatly reduces the level of documentation for completing a CE. However, ADOT Environmental Planners and ADOT Project Managers need to maintain awareness that environmental analysis and technical documents under other applicable laws are typically the critical path elements in the environmental component of the project schedule. Early coordination is especially important with regard to Section 106 of the NHPA, Section 4(f) of the DOT Act of 1966, Section 404 of the Clean Water Act, and Section 7 of the ESA. Coordination and completion of environmental analysis and consultation under the other applicable key transportation related laws will usually dictate the schedule for completing a project’s NEPA requirements.
3. CATEGORICAL EXCLUSION SELECTION EXAMPLES

3.1 EXAMPLE 1:

Per 23 CFR 771.117 a new railroad grade separation qualifies as a c-list CE under (c)(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.” An action that qualifies for a c-list CE is one that “…on the basis of past experience, normally does not require further environmental review” (CEQ’s CE Guidance). However, all actions that qualify for a CE must be reviewed for unusual circumstances. A preliminary review of the project scope identifies that the project is in a historic district. The context of the project indicates the need for review of unusual circumstances (23 CFR 771.117(b)) and a higher potential for significant impacts. One should make an initial determination that a CE under (c)(28) will not likely be appropriate and a higher level of environmental analysis should be assumed. This will also help in determining a project development budget. A further review of the project scope and discussion with FHWA should be undertaken during the planning and programming phase to discuss whether or not an EA should be planned for in the Preliminary Engineering design budget.

It is possible the certain projects could qualify for more than one type of listed CE. For any project multiple categories of listed actions on the c-list can be considered. For example if an action does not qualify for a particular listed c-list CE such as (c)(28), it is not precluded from qualifying for another listed CE such as (c)(22) or (c)(23). In looking at the above example further it is possible that the project could be constructed within the operational ROW and therefore may qualify under (c)(22). In considering the project under (c)(22) the “adverse effect” under Section 106 and the location in the historic district means that the project is still evaluated for unusual circumstances. Assuming the project requires new ROW, and therefore did not qualify under (c)(22), the next step would be to consider (c)(23) for Federally-funded projects: (i) That receive less than $5,000,000 of Federal funds; or (ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost. But, assuming that project programming has determined a preliminary construction cost of greater than $5 million, the project does not qualify under (c)(23).

In conclusion the entire list of c-list and d-list CEs may be considered and no specifically listed CE can be identified to fit the description and anticipated impacts of that particular project. In this example the conclusion would be that an Individual CE needs to be completed.
3.2  EXAMPLE 2:

Example: Highway modernization project that costs $12 million, requires new ROW and needs a Section 404 Individual Permit (former (d)(1)). Selection of the appropriate type of CE to use can be a process of asking and answering questions in relation to the type of project and the context of the project as each project unique in its own way.

? Does the description fit under (c)(22)
- No. The project is not fully contained within the “operational right-of-way”

? Does the description fit under (c)(23)
- No. The total project cost is greater than $5M in total federal funds

? Does the description fit under (c)(26)
- Yes. But the project requires a 404 Individual Permit which means it does not meet the constraints of 23 CFR 771.117(e)

– The project can be processed as a CE using (d)(13)
- FHWA determines the (d)(13) is appropriate and approves the CE