



## **18 Month CE Delegation Performance Report**

**Pursuant to 23 U.S.C. 326  
State Assumption of Responsibility for Categorical Exclusions**

**March 10, 2010**

**Prepared by: Kevin Kilpatrick, NEPA Oversight Manager,  
UDOT Environmental Services**

## **A. Background**

On July 1, 2008, the Utah Department of Transportation (UDOT) and the Federal Highway Administration (FHWA) signed a Memorandum of Understanding (MOU), pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 6004, codified in 23 U.S.C. 326, that delegated to the UDOT the authority and responsibility to determine whether a transportation project qualifies as a Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA). Under the MOU, the UDOT's delegated CE determinations, authorities and responsibilities were limited only to those projects that met the conditions specified in 23 CFR 771.117. For projects determined to be CEs under 23 CFR 771.117, the UDOT also was delegated the FHWA's responsibilities for consultation with all Federal resource agencies and for compliance with all applicable Federal regulations.

For the CE determinations delegated under the July 1, 2008 MOU, the State of Utah assumed the legal responsibility for its NEPA decisions, and it is subject to Federal court jurisdiction. Utah waived its 11<sup>th</sup> Amendment sovereign immunity against actions brought by its citizens in Federal court for these delegated CE determinations.

Stipulation IV(F)(2) of the July 1, 2008 MOU requires the UDOT to submit to the FHWA reports summarizing its performance under the MOU at the conclusion of the 18<sup>th</sup> month and the 30<sup>th</sup> month of the MOU. For the UDOT, the 18<sup>th</sup> month is December 2009 and the 30<sup>th</sup> month will be December 2010. The reports are required to:

1. Identify any areas where improvement is needed and what measures the UDOT is taking to implement these measures.
2. Summarize actions taken by the UDOT as part of its quality control efforts described in Stipulation IV.

This report, submitted on January 7, 2010, is the 18 Month Performance Report. In February 2010, the UDOT will meet with the FHWA to discuss the findings of the 18 Month Performance Report, the UDOT's performance administering the responsibilities delegated to it under the MOU, and the results of the FHWA's monitoring activities.

## **B. Purpose**

The primary objective of the 18 Month Performance Report is to provide the FHWA a summary of the UDOT's performance administering the CE authorities and responsibilities delegated to it under the July 1, 2008 MOU. This report will provide the following information:

1. A Statistical Summary of the CEs for which the UDOT Assumed Responsibility (Section C)
2. Areas for Improvement and the UDOT Improvement Measures Taken (Section D)

3. A Qualitative Discussion of the UDOT's Performance of the Six Quality Measures and One Timeliness Measure described in the MOU Monitoring Plan (Section E)
4. UDOT Recommendations for Improving the MOU (Section F)

Additionally, the 18 Month Performance Report includes appendices that detail the UDOT CE Procedures, Class of Action (COA) procedures, the CE Checklist and the CE Manual of Instruction section.

**C. Statistical Summary from Quarterly Reports**

Stipulation IV(F)(1) of the July 1, 2008 MOU requires the UDOT to provide a quarterly summary report to FHWA on all CE determinations made by the UDOT. Information included in these quarterly summary reports includes the project's: name, project number, title, classification, location, preparer, reviewer, approver, approval date and a link to the project's archived electronic document. The UDOT has met this stipulation for every quarter of the MOU to date. All of the quarterly reports are available on the UDOT website at: <http://udot.utah.gov/main/f?p=100:pg:0:::1:T,V:2053>,

Through December 31, 2009, the UDOT has assumed responsibility for and approved 212 CEs under the July 1, 2008 MOU.

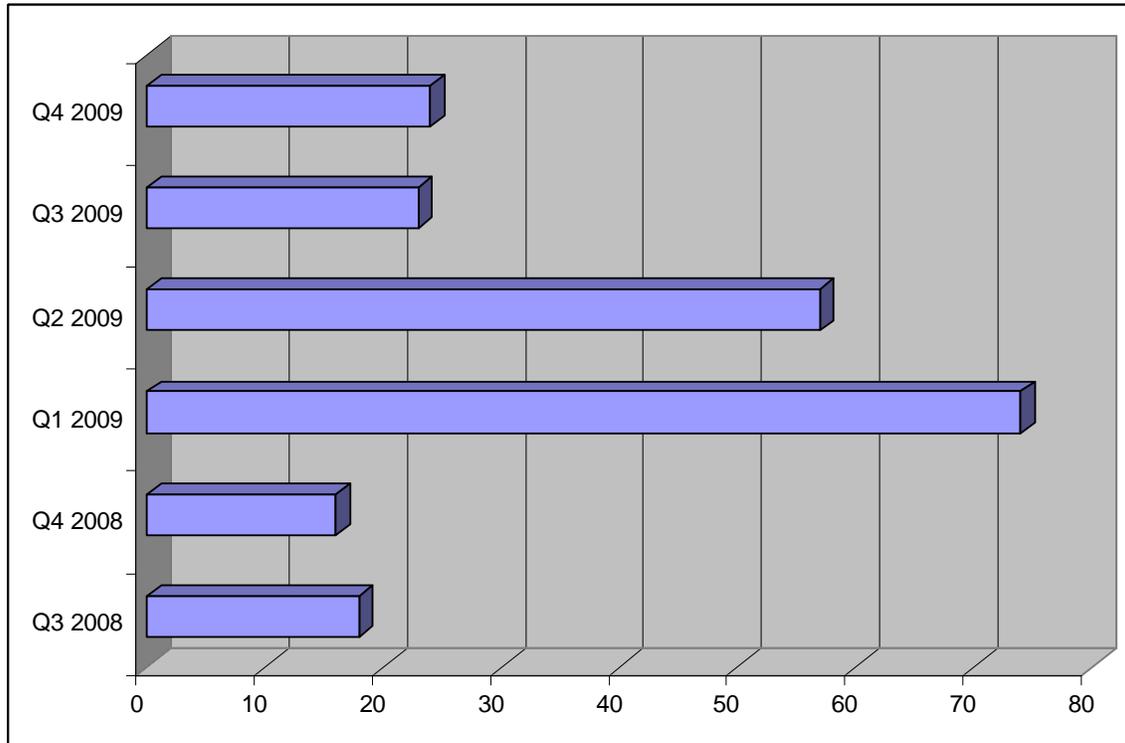
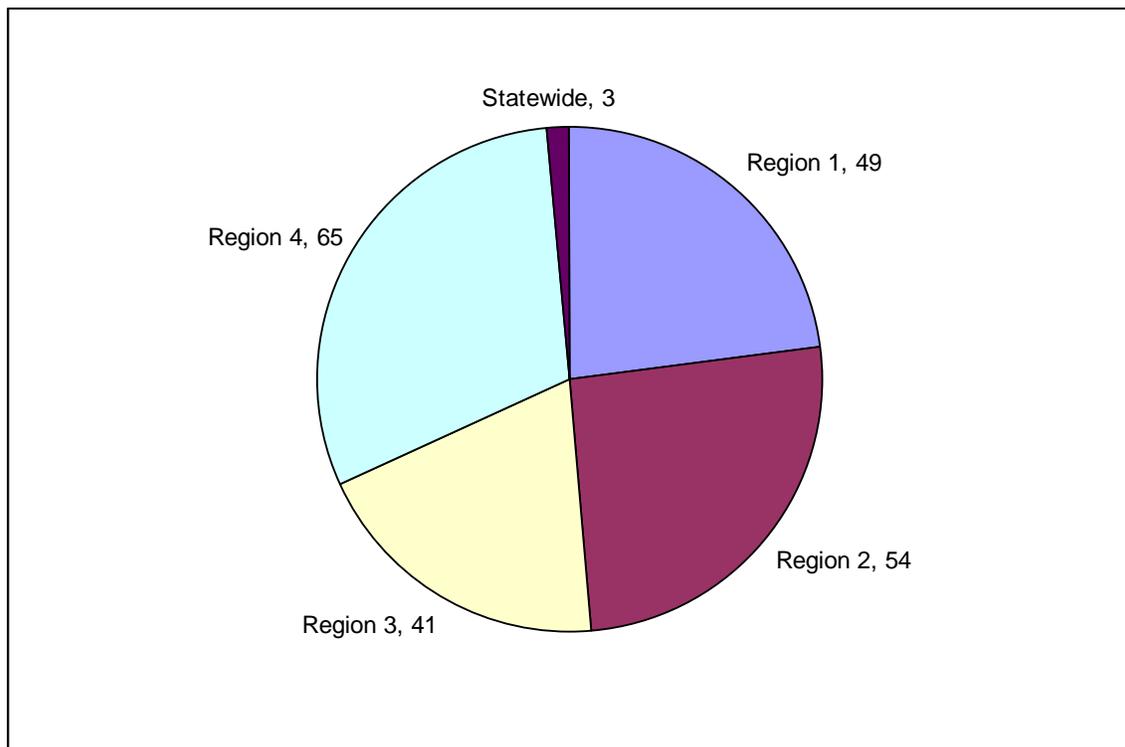


Figure 1 – CEs completed by Quarter

Figure 1 shows that, with the exception of Quarter 1 and Quarter 2 of 2009, the UDOT completed between 15-25 CEs per quarter. Quarter 1 and Quarter 2 of 2009 had significantly higher numbers of CEs due to the additional projects that were part of the American Recovery and Reinvestment Act (ARRA) of 2009. The UDOT received funding for 98 projects through ARRA, of which 84 received NEPA approval with a CE processed under conditions of the July 1, 2008 MOU.

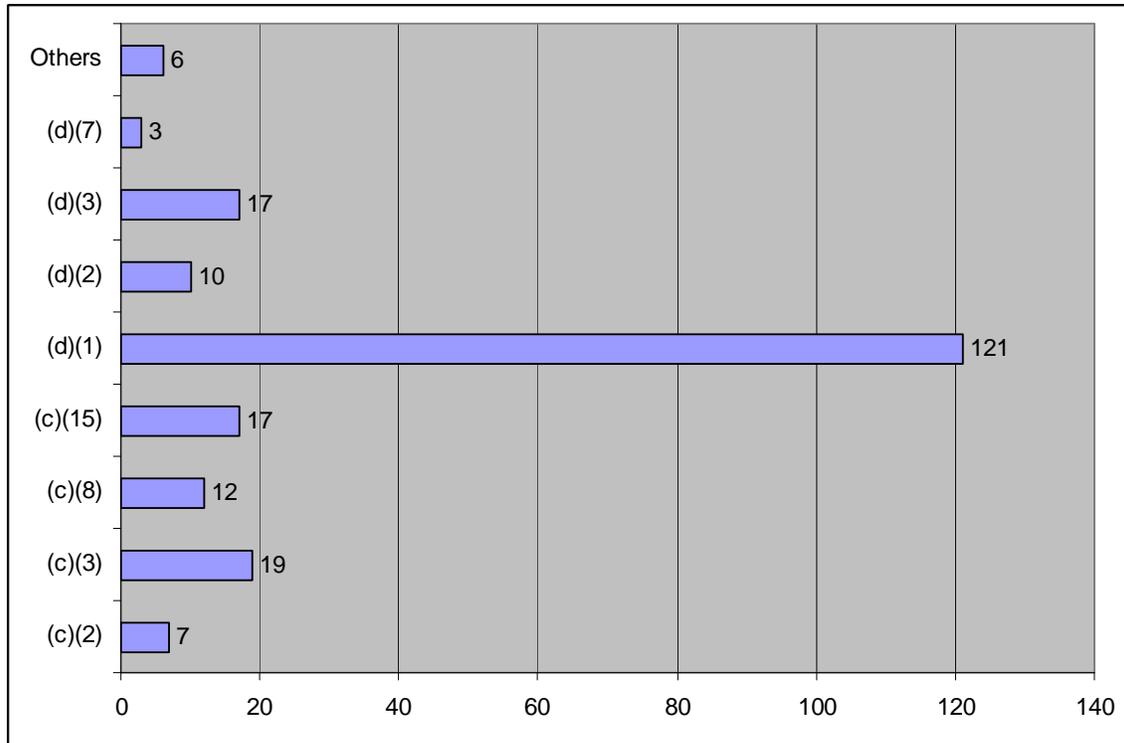
The UDOT has four Regions, whose Environmental Managers approve the CEs under the July 1, 2008 MOU and UDOT’s CE Procedures. Figure 2 shows the number of CEs completed by each UDOT Region since July 1, 2008.



**Figure 2 – CEs Completed by UDOT Region Office**

Figure 3 shows the categories of CE projects approved by the UDOT under the July 1, 2008 MOU. As evidenced in Figure 3, 57% (121 of 212) of the CEs have been 23 CFR 771.117 (d)(1) projects, which includes all highway modernization projects, such as resurfacing, restoration, rehabilitation, the addition of shoulders or the addition of auxiliary lanes. Other types of projects that were frequently approved by the UDOT under the July 1, 2008 MOU included:

- bridge rehabilitation, reconstruction or replacement projects (d)(3) (8.0 %)
- highway safety or traffic operation projects (d)(2) (4.7 %)
- handicap or elderly accessibility projects (c)(15) (8.0 %)
- fencing, signing or signal projects (c)(8) (5.7 %)
- bicycle or pedestrian facility projects (c)(3) (9.0 %)



**Figure 3 – CEs completed by 23 CFR 771.117 Category**

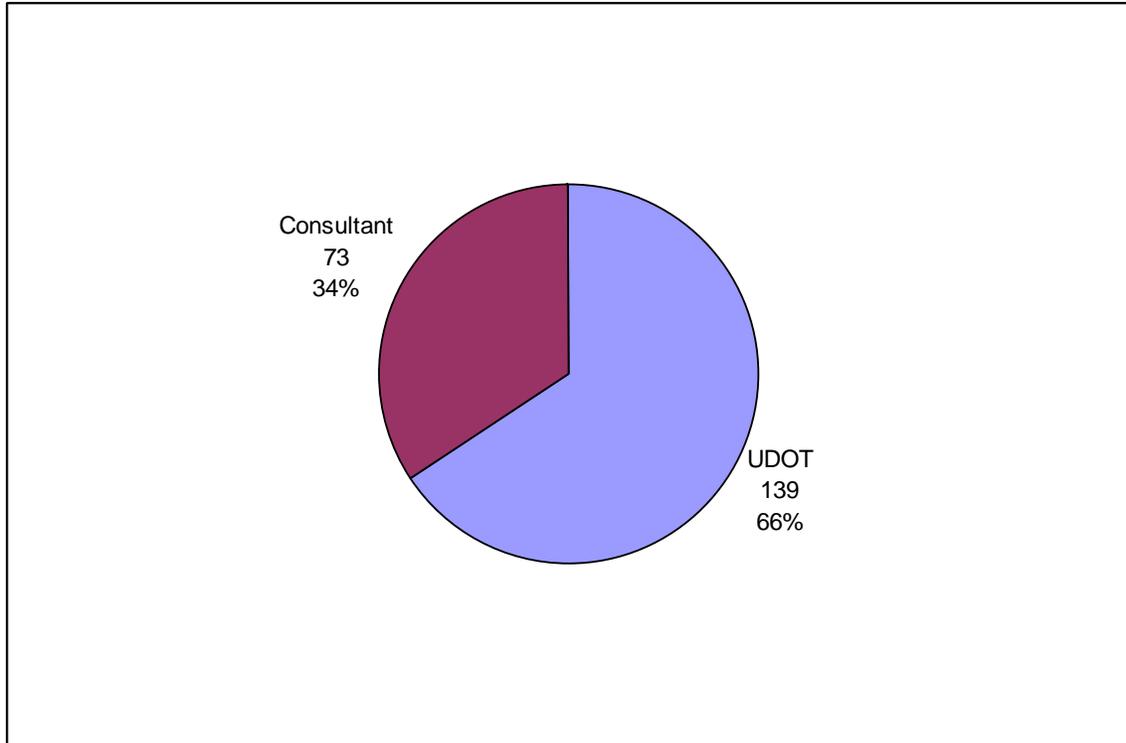
Additional responsibilities assigned to the UDOT under the July 1, 2008 MOU included the responsibility to determine the 4(f) impacts of the delegated projects. Since signing the MOU, the UDOT has made the following number of 4(f) determinations:

Type of 4(f) Determination	Number
Individual 4(f)	1
Programmatic 4(f)	3
<i>De Minimis</i> 4(f)	10

**Table 1 – 4(f) Determinations**

As evidenced in Table 1, only 14 of the 212 projects (6.6%) that the UDOT has processed under the July 1, 2008 MOU have had 4(f) impacts. The one Individual 4(f) determination involved an adverse effect on historic properties on the I-215/SR-68/6200 South project. For this project, the UDOT obtained legal counsel to ensure legal sufficiency on the Individual 4(f) determination.

Figure 4 shows the number of CEs prepared by the UDOT environmental staff compared to the number of CEs prepared by consultants. Approximately 2/3 of all CEs were prepared by the UDOT staff, while approximately 1/3 were prepared by consultants.



**Figure 4 – CE Preparers**

**D. Areas for Improvement and the UDOT Improvement Measures Taken: QC Efforts Summary**

Since July 1, 2008, the UDOT has carried out a Quality Control (QC) process consistent with the requirements of Stipulation IV(E) of the MOU and State Performance Requirement (A)(7) of the Section 6004 CE Delegation Process and Monitoring Agreement.

To summarize the UDOT QC efforts, each delegated CE must be reviewed by someone who was not the preparer of the CE. Additionally, the UDOT Environmental Manager/Environmental Engineer for each Region must approve the CE and cannot be the reviewer. This insures that two reviews take place for each CE before approval. Additionally, UDOT Environmental Services staff reviews every delegated CE to ensure the CE was classified correctly, that it was prepared correctly, and that all of the necessary documentation has been uploaded to the UDOT ProjectWise document management system. Any errors that are encountered by UDOT Environmental Services staff are relayed to the UDOT Region Environmental Manager/Environmental Engineer and are corrected as soon as possible.

UDOT Environmental Services staff provided training to other UDOT Environmental Services staff and UDOT Region environmental staff on the following dates:

<b>Date</b>	<b>Type of Training</b>	<b>Notes on Training</b>
7/2/2008	Instruction on Processing CEs under the July 1, 2008 MOU	Provided UDOT Environmental Services staff and Region environmental staff final MOU, CE Procedures & Exclusion forms and trained them on what the new requirements were with the MOU.
7/8/2008 – 7/21/2008	In person	Provided in-person instruction to Region environmental staff during visits to each Region office.
8/14/2008	Reference Material	Created CE Checklist and posted to UDOT website. Notified Region environmental staff of availability.
12/1/2008	Reference Material	Updated CE Checklist. Notified Region environmental staff of availability.
12/4/2008	In person – Environmental Staff Meeting	Provided CE QC at the Quarterly Region Environmental staff meeting. Discussed preparer/reviewer issues and emphasized better clarity for purpose and need and descriptions.
6/11/2009	In person- Environmental Staff Meeting	At the Quarterly Region Environmental staff meeting, UDOT Environmental Services discussed a few QC issues, including the updating/consistency of mitigation commitments, using the correct CE form, and providing project limits in the project descriptions.
8/26/2009	Personal Instruction	UDOT Environmental Services trained the new Region 4 Environmental Manager on CE procedures and items to review before approval. UDOT Environmental Services provided the new Region 4 Environmental Manager with the UDOT CE Procedures and the CE Checklist and answered questions he had regarding his responsibilities.
11/4/2009	Instruction & Update	Provided updates and statistics on the CE delegation in the “Improving Quality of Environmental Documents” session at the UDOT Engineer’s Conference. QC items listed below in Table 3 were summarized and addressed. The session was attended by UDOT Environmental staff and consultants.

**Table 2 – CE Delegation Training**

In addition to training the UDOT environmental staff and consultants, the UDOT QC process has included efforts by UDOT Environmental Services staff to notify and work with the UDOT Region Environmental Managers to rectify errors found during the QC process. Table 3 summarizes the QC issues that have occurred since the July 1, 2008 MOU along with the corrective actions that were taken to rectify the errors.

QC Issue	Number of Occurrences	Resolution of Issue
Preparer and Reviewer were the same person.	11	This issue was common in the 3 <sup>rd</sup> Quarter 2008, after the MOU was signed. For the first two quarters of the CE Delegation, UDOT treated this error as a training/procedural issue. Notification of the error was provided to the Region Environmental Managers and training was provided to all UDOT Environmental staff in July 2008 and December 2008 to explain the rationale behind this requirement. If the CEs did not have any additional QC issues, the CEs were not re-signed retroactively. The training that was provided to the Region environmental staff has resulted in no additional occurrences since January 2009. Any future CEs that have this issue will be required to be re-signed.
Vague Purpose and Need or description statements.	9	Most of these issues occurred in the 3 <sup>rd</sup> Quarter 2008. For most instances of this error, UDOT Environmental Services did not require an amendment or resubmittal of the CE. However, UDOT Environmental Services did notify the UDOT Region Environmental staff and prepared a CE Checklist that provided guidance on what needed to be in the purpose and need and description section, emphasizing project limits and the problems/needs of the project. UDOT Environmental Services provided updates and training to environmental staff in July 2008 and December 2008.
Wrong Classification	4	The first instance of this error involved UDOT Region environmental staff inadvertently choosing the wrong category of project; they had intended to select (d)(1), but selected (d)(2) accidentally. UDOT Environmental Services informed the Region Environmental Manager of the

		<p>mistake and the project was reclassified correctly and the CE was amended.</p> <p>The second instance involved three improperly classified consultant prepared and approved CEs that were submitted at the same time to a new UDOT Region Environmental Manager who was unfamiliar with the UDOT CE Process and Procedures. In this case, UDOT Environmental Services immediately contacted the UDOT Region Environmental Manager and all three CEs were properly reclassified and approved by the Region Environmental Manager. UDOT Environmental Services provided personal training to the new Environmental Manager and provided him with the CE Procedures and CE Checklist to aid on future projects.</p>
CE was prepared on the wrong form.	3	Three projects either used a state-study CE form or the old 2003 CE form. In all three of these cases, UDOT Environmental Services contacted the Region Environmental Managers, and they changed forms on the UDOT ePM system and re-signed the CEs on the correct form.
Incorrect answers on CE form	3	Two of the three instances of this error involved inconsistencies on the project mitigations, where mitigation was listed in project correspondence, but the mitigation was not included in the CE mitigations. The third instance was not answering YES for a <i>de minimis</i> impact when the project had a <i>de minimis</i> 4(f) impact. In all three of these instances, the mistake was relayed to the UDOT Region Environmental Manager, the problem was corrected and the CE was amended.
Consultant Approved CEs	3	Three improperly classified consultant prepared and approved CEs were submitted at the same time to a new UDOT Region Environmental Manager who was unfamiliar with the UDOT CE Process and Procedures. In this case, UDOT Environmental Services immediately contacted the UDOT Region Environmental

		<p>Manager and all three CEs were properly reclassified and approved by the Region Environmental Manager. UDOT Environmental Services provided personal training to the new Environmental Manager and provided him with the CE Procedures and CE Checklist to aid on future projects.</p>
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**Table 3 – CE QC Issues and Resolutions**

Overall, the QC process has been very effective and there have been progressively fewer errors in the CE documents since the signing of the MOU. Approximately 2/3 of the errors occurred during the first three months following the signing of the MOU and only five errors occurred in the last two quarters of 2009.

An additional effort that the UDOT has taken to help improve the quality of CE documents is an update to the Environmental Manual of Instruction (MOI). The UDOT MOI was updated in October 2009. Included in the MOI is an updated, detailed section on the process and procedures for CE documents included and excluded from the MOI. This section of the MOI is included as Appendix D with this report.

**E. Quality & Timeliness Discussions**

As part of the *FHWA Monitoring Review of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* document, six quality measures and one timeliness measure are being qualitatively evaluated to help determine the efficacy of the Section 6004 delegation. These measures are:

**1. Quality Measures**

- a. CE decisions are appropriately and timely documented
- b. CE decisions are factually and legally supportable at the time the decision is made
- c. CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the July 1, 2008 MOU
- d. UDOT has met staffing and quality control requirements of the MOU
- e. UDOT has complied with other State and Federal legal requirements
- f. UDOT has complied with recordkeeping requirements

**2. Timeliness Measure**

- a. The CE assignment reduces the time required for processing assigned CEs.

For the qualitative evaluation of the Quality Measures, the UDOT is relying on the UDOT Quality Control Form and on the issues that have arisen since the MOU was signed. There is no baseline information for the quality of the CEs, as no quality measures were recorded prior to the July 1, 2008 MOU being signed. As a general qualitative assessment, the UDOT feels that the overall quality of the CE documents has notably improved as a result of the CE Delegation and the QC efforts. Prior to the

approval of the July 1, 2008 MOU, the FHWA Utah Division office was responsible for conducting QC efforts per the December 31, 2003 *Agreement between UDOT and FHWA for Environmental Approval Authority for Selected Categorical Exclusion Documents* (2003 CE PA). However, these QC efforts were infrequent and were only conducted on a small percentage of the projects. The UDOT's QC efforts under the July 1, 2008 MOU have been inclusive of all CE projects approved, and as a result, the overall quality of the CEs has noticeably improved. Specifically, the UDOT qualitatively feels that the CEs processed under the MOU have clearer purpose and need sections, better defined project descriptions and are more consistently correctly answering the questions on the ePM CE form.

- a. Based on the UDOT Quality Control Form, only four of the 212 projects (1.9 %) approved under the July 1, 2008 MOU were improperly classified at the time of initial submission. These four projects were correctly identified as CE projects, but had the wrong category of CE selected at the time of original submission. Those four projects were quickly reclassified to the correct category based on the results of the QC program. Additionally, it is worth noting that no EA or EIS types/scopes of projects were submitted as CE projects. All of the UDOT Region Environmental staff made appropriate Class of Action decisions and consulted with UDOT Environmental Services staff or the FHWA Utah Division office on projects excluded from the July 1, 2008 MOU or if there was a question concerning the appropriate scope of the project. As such, the UDOT feels that it has been successful in making appropriate decisions on CE projects.
- b. Based on the UDOT Quality Control Form, only three of the 212 projects (1.4 %) approved had filled out the UDOT ePM CE form incorrectly. These three incorrect CEs were successfully updated to reflect accurate information. As such, UDOT feels that the CE decisions have been made appropriately and based on legal and factual information.
- c. The UDOT feels that all decision-making, in regards to which projects are CEs has been in accordance with 23 CFR 771.117 and the July 1, 2008 MOU, with the exception of the four instances mentioned in part a of this discussion. Per the discussion in part a above, the UDOT QC efforts only found four of the 212 projects that were not classified correctly when they were initially submitted and no instances where EA or EIS types of projects were submitted as CEs approved under the MOU. Overall, the UDOT feels that the decisions and decision making has been done appropriately. When questions have arisen, the UDOT has consulted with the FHWA Utah Division office to determine the appropriate level of environmental documentation under NEPA. The FHWA Utah Division has approved four CEs that were not delegated to the UDOT in the July 1, 2008 MOU in the 18 month period ending on December 31, 2009.
- d. UDOT feels that they have met the staffing and quality control requirements listed in Stipulation (IV)(D) of the July 1, 2008 MOU. Kevin Kilpatrick has been the UDOT Environmental Services employee administering the CE Delegation program under the July 1, 2008 MOU. Kevin helped draft the MOU, monitoring agreement, UDOT guidance, UDOT procedures, CE Checklist, and has been the main Quality Control for the UDOT Environmental Services. The UDOT Environmental Services staff, which consists of five resource specialists and the

Environmental Program Manager, has also remained constant throughout the duration of the MOU. Three of the four Region Environmental Managers have been constant throughout the CE Delegation process. The one new Region Environmental Manager has been trained on the procedures and responsibilities prescribed by the MOU. Since being trained, the new Region Environmental Manager has not had any additional errors or QC issues on any CEs he has approved.

- e. Based on the UDOT Quality Control Form, the UDOT has not had any issues complying with any other Federal or State legal requirements.
- f. In March 2009, the UDOT instituted the ProjectWise document management database system. All CEs completed since March 2009 have the final CE and all associated documentation stored electronically on the ProjectWise system. For CEs completed prior to the rollout of the ProjectWise system, the UDOT has a digital copy of all of the final CEs completed under the July 1, 2008 MOU at the UDOT Environmental Services office.

For evaluating the Timeliness Measure, the UDOT considered three factors qualitatively:

- a. The qualitative time savings associated with the UDOT approving the CEs instead of the FHWA
- b. The amount of additional staffing hours required from the UDOT
- c. The potential time savings for the FHWA's environmental staff

a. For context in evaluating time savings, it is worth noting that the approval time needed for UDOT approved CE projects vary. The UDOT has tracked the review and approval dates as part of the CE Delegation. Most UDOT approved CEs are approved the same day or the day after they are submitted and reviewed. However, some UDOT approved CEs have had an additional time period, ranging from two days to 33 days, between the review date and the approval date. Additionally, it is worth noting that the UDOT review times are necessary even for CEs that are approved by the FHWA Utah Division, so the requirement for FHWA approval does not preempt the need for a UDOT review period.

The July 1, 2008 CE Delegation allows UDOT to approve all 23 CFR 771.117 (c) or (d) list projects without FHWA review and approval. Prior to the July 1, 2008 CE Delegation, the FHWA Utah Division office did have to approve more CE projects. While there is no baseline data by which to evaluate the time savings that have resulted from the lack of FHWA review on projects approved under the CE Delegation, the UDOT does have time information for nine CE projects that FHWA approved in 2007 and four CE projects excluded from the July 1, 2008 MOU that were approved by the FHWA Utah Division in 2009. For the nine projects completed in 2007 before the MOU and approved by FHWA, the range of time needed to obtain FHWA approval ranged between 1 and 77 days. Figure 5 shows the range of these projects:

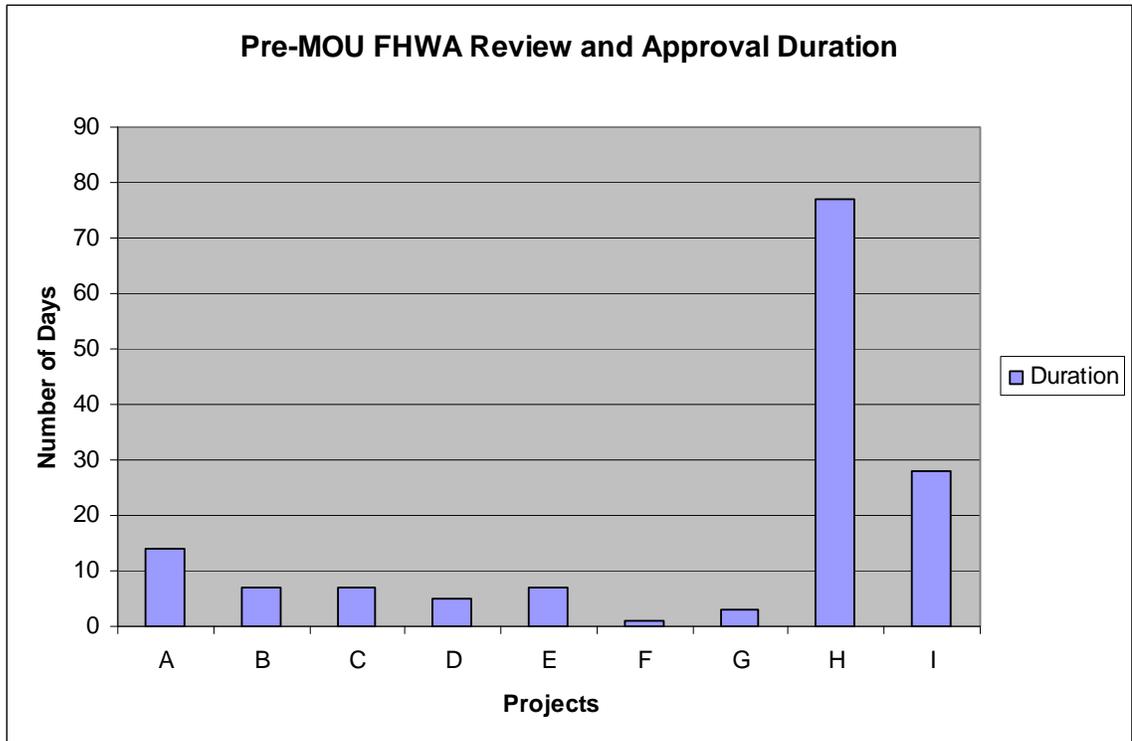


Figure 5 – 2007 FHWA CE Approval Duration (in days)

For the four CE projects approved by FHWA since the July 1, 2008 MOU was signed, the extra time needed to obtain FHWA approval ranged between 1-11 working days. So, based on the 2007 data and the four projects approved through FHWA since the July 1, 2008 MOU, having the CE Delegation does save the UDOT time in obtaining approval for each CE that it approves under the MOU. The significance of these time savings has not been determined. For the four projects that the FHWA approved in 2009, the extra time needed for the FHWA approval did not adversely impact the project’s construction schedule. However, on some projects on a tighter schedule, an extra eleven days could put an extra constraint on the project. Overall, the UDOT has been satisfied with the time savings experienced as a result of the CE Delegation MOU.

b. By administering the July 1, 2008 MOU, the UDOT has undertaken additional staffing hours and administrative duties than it had previously. UDOT Region Environmental staffs have not noticed a large increase in their workload as a result of the CE delegation. Additional administrative duties that UDOT Environmental Services has undertaken include the QC efforts for every CE that is approved, quarterly reports compilation, and coordination with the UDOT Region Environmental Managers on determining the appropriate category of CE for some projects. It is estimated that the UDOT Environmental Services spends approximately 20-30 minutes for the reporting and QC of each CE approved under the July 1, 2008 MOU. For 212 CEs, this would result in around 106 hours of administrative effort. Additionally, UDOT Environmental Services averages around 3-4 hours of effort per quarterly report. As six quarterly reports have been submitted

so far, this roughly equates to another 18-24 hours of effort. Miscellaneous administrative and overhead duties associated with the MOU probably average out to around 15 hours per month. Overall, the UDOT probably expends an extra 260 hours per year performing the responsibilities delegated to it with the CE Delegation MOU.

Additionally, prior to the signing of the MOU, the UDOT estimates that the Environmental Services personnel spent over 300 hours of time preparing the MOU and the associated guidance materials and monitoring plan.

Overall, by signing the July 1, 2008 MOU, the UDOT has taken on additional duties and has expended additional time administering these duties. However, the UDOT feels that the additional time and effort has been worthwhile, due to the improved quality of the CEs and the time savings that have resulted from not needing FHWA approval on as many CE projects.

c. When pursuing the CE delegation, the UDOT also hoped that the FHWA Utah Division office would be able to expend more effort on Environmental Assessment (EA) and Environmental Impact Statement (EIS) projects in the state. No data currently exists to support or refute this idea, but it is a potential time savings benefit that could be associated with the CE Delegation. The UDOT would be interested in hearing from the FHWA Utah Division office whether this has been a beneficial time savings that has resulted from the CE Delegation MOU. The UDOT feels that the FHWA Utah Division's current performance and response times on EA/EIS documents could be done more promptly and that there is still room for improvement in this area.

## **F. Recommendations**

At this time, the UDOT intends to continue administering the CE Delegation per the terms of the existing July 1, 2008 MOU.

In the future, the UDOT would like to consider adding all CE projects to the terms of the July 1, 2008 MOU, specifically the "Wetland Banking" and "Construction of Replacement Wetlands" projects that are Level II, Type 21 and 22, respectively, and the "addition of through travel lanes" projects that are Level III, Type 1 CE projects under the December 31, 2003 *Agreement between UDOT and FHWA for Environmental Approval Authority for Selected Categorical Exclusion Documents* (2003 CE PA).

The two wetland projects are still approved by UDOT Environmental Managers under the 2003 CE PA, but if an amendment or reauthorization of the July 1, 2008 MOU were to take place, the UDOT would prefer that these two categories of project be included as part of the amendment or reauthorization.

The UDOT understands there are potential difficulties associated with adding the "addition of through travel lanes" projects to the MOU, as these types of projects, by

definition, are not a category defined in 23 CFR 771.117, and therefore must meet more stringent conditions and require more discretion on the part of the decision makers. The UDOT realizes that these conditions or contingencies would need to be clarified in the MOU before the UDOT could be delegated the responsibility to make these determinations. Based on the UDOT's experience drafting the July 1, 2008 MOU, the UDOT realizes that the Council on Environmental Quality (CEQ) has reservations about delegating these types of CE projects to the states and that amending the MOU to include these types of projects would likely be a timely process. However, based on the UDOT's current performance administering the terms of the July 1, 2008 MOU and on the UDOT's experience and familiarity with the scopes and impacts of past "addition of through travel lanes" CE projects, the UDOT feels that they could effectively administer these types of decisions in the future.

Moreover, if the UDOT were able to assume responsibility for these types of CE projects, it would allow the FHWA Utah Division office to not have to deal with any CE projects and would result in additional time savings for the UDOT, and potentially, indirect time savings for the FHWA Utah Division's staff. The UDOT is not requesting an amendment to the July 1, 2008 MOU at this time, but may request the addition of these types of projects as part of a future renewal of the MOU in 2011.

# **Appendices**

**Appendix A:** UDOT CE Procedures

**Appendix B:** UDOT Class of Action Procedures

**Appendix C:** UDOT CE Checklist

**Appendix D:** UDOT Manual of Instruction (MOI) CE Preparation  
Section

## **Appendix A: UDOT CE Procedures**

## **UDOT Categorical Exclusion Procedures July 2008**

As a result of the July 1, 2008 Memorandum of Understanding (MOU) between the Federal Highway Administration, Utah Division (FHWA) and the Utah Department of Transportation (UDOT), the UDOT will separate and process Categorical Exclusion (CE) projects using the following three categories:

- Federally Funded projects **included** in the July 1, 2008 MOU
- Federally Funded projects **excluded** from the July 1, 2008 MOU
- State Funded projects

The procedures and processing details for each of the CE categories are detailed below.

### **FEDERALLY FUNDED CE PROJECTS COVERED UNDER THE JULY 1, 2008 MOU**

- 1. Applicability:** Under the July 1, 2008 MOU between FHWA and UDOT, any project that is listed in 23 CFR 771.117 (c) or 23 CFR 771.117 (d) that conforms to the provisions of 23 CFR 771.117(a) and after an assessment pursuant to 23 CFR 771.117(b) for unusual circumstances where the result is a determination that a CE classification is proper can be processed under the terms and conditions of the July 1, 2008 MOU.
- 2. Preparation:** UDOT Region Environmental staff or consultants prepare the CE documentation using the ePM CE module. The record keeping should be thorough and complete and should include all appropriate correspondence, clearance letters, and determinations. These records may be retained in electronic or paper format. If retained as paper records, they should be bound by staple, 3 ring binder, or comb to make it easy to replace pages if needed.
- 3. Mitigation Commitments:** Mitigation commitments are expected to be entered into the ePM Environmental Management System while preparing the CE. The completion of each commitment is to be assigned to a project phase and an individual who will be responsible for the implementation of the commitment.
- 4. Review:** The documentation for each project proposed as a CE must be reviewed by a competent reviewer who is not the individual who prepared the documentation. A record of this review including who performed the review and the date it occurred must be recorded and included with the project documentation.
- 5. Approval:** The approval or determination that the proposed project is properly classified as a CE under the provisions of the MOU is made by the UDOT Region Environmental Manager. The name of the individual approving the CE, the date of the approval, and the statement that the approval was made according to the provisions of the MOU must be included with the project documentation.
- 6. Archive & Records Retention:** The UDOT Region Environmental staff will provide a hard copy or a digital copy (in .pdf format) of the completed CE document and all relevant clearance memos, determinations, correspondence and technical studies to UDOT Environmental Services staff. UDOT Environmental

Services staff will: (1) digitally archive the CE document and all relevant documentation, (2) update the statewide list of CE's completed under the July 1, 2008 MOU and (3) report all completed CE projects on a quarterly basis to the FHWA Utah Division Office. The UDOT Environmental Services staff will keep a copy of all Federally funded CE documents completed under the July 1, 2008 MOU for a period of no less than 3 years from the signature date.

Once the Project Wise data management system becomes available, UDOT Environmental Services will archive all completed CE documents using this system.

If electronic signature ability becomes feasible for the CE documents, UDOT will electronically sign all CE documents.

Records will be available for inspection by FHWA at any time.

- 7. UDOT Process Review:** UDOT Environmental Services staff will review Federally funded CE documents completed pursuant to the July 1, 2008 MOU at a frequency of no less than once every month to ensure that:
- a. The projects were classified correctly under the July 1, 2008 MOU.
  - b. The ePM form was filled out correctly, signed and dated, all applicable mitigation commitments have been entered and assigned, and that the completion date was entered in ePM.
  - c. The purpose and need statements and descriptions are clearly written and accurately described.
  - d. The project files contain all relevant clearance memos, determinations, correspondence and technical studies.

If UDOT Environmental Services finds any classification errors per statement 7(a) during the Process Review, they will immediately notify the Region Environmental Manager and the FHWA Utah Division office and they will reclassify the project appropriately. Any 7(b), 7(c) and 7(d) errors that are found will be documented on the CE Quality Control Form. UDOT Environmental Services will then collaboratively work with the Region Environmental Manager to amend the CE so that the errors are corrected and identify ways to ensure the errors are not repeated on future projects.

UDOT Environmental Services will maintain a CE Quality Control Form, which will be a record of the errors found during the Quality Control process and the actions taken to ensure the errors were corrected.

- 8. 4(f) Impacts:** If a Federally funded CE project that is processed under the July 1, 2008 MOU requires either a Programmatic 4(f) or an Individual 4(f) evaluation, UDOT Environmental Services must review and concur in writing with the Programmatic 4(f) or Individual 4(f) determinations prior to the approval of the CE document. If UDOT Environmental Services determines legal review is

9. **Endangered Species Act Section 7:** If a Federally funded CE project that is processed under the July 1, 2008 MOU involves a formal Endangered Species Act Section 7 consultation for a threatened or endangered species, UDOT Environmental Services must be involved with the consultation and concur in writing with the determination prior to the approval of the CE document.
10. **Native American Consultation:** Per Stipulation II (B) of the July 1, 2008 MOU, for any Federally funded CE project that is processed under the July 1, 2008 MOU that requires government-to-government consultation with Native American tribes as described in 36 CFR 800.16(m), UDOT Region Environmental staff will provide the FHWA Utah Division Office with the appropriate documentation and information necessary for the Native American consultation. The FHWA Utah Division Office will be responsible for conducting the Native American consultation. UDOT may assist FHWA in consultation according to the terms of any Native American consultation agreements executed with Federally-recognized Tribes.

**FEDERALLY FUNDED CE PROJECTS THAT ARE EXCLUDED FROM THE  
JULY 1, 2008 MOU**

1. **Applicability:** Under the July 1, 2008 MOU between FHWA and UDOT, any project that is not listed in 23 CFR 771.117 (c) or 23 CFR 771.117 (d) is excluded from assignment according to the provisions of the July 1, 2008 MOU and must be processed according to the procedures listed in this section and approved by FHWA.
2. **Preparation:**
  - a. *If the project involves the addition of through travel lanes:* UDOT Region Environmental staff will complete and submit the CE Exclusion Form to UDOT Environmental Services. UDOT Environmental Services will review the project to ensure that it can be processed as a CE III under the December 31, 2003 MOU between FHWA & UDOT. If UDOT Environmental Services concurs with the CE classification, the UDOT Region Environmental staff or consultants prepare the CE using the ePM CE module. The document should be thorough and complete and the project files should include all appropriate correspondence, clearance letters, determinations and other documentation. It is suggested to bind by staple, 3 ring binder, or comb to make it easy to replace pages if needed.
  - b. *If the project does not involve the addition of through travel lanes:* UDOT Region Environmental staff will complete and submit the CE Exclusion Form to UDOT Environmental Services. UDOT Environmental Services will review the CE Exclusion Form and forward the CE Exclusion Form to the FHWA Utah Division office if it concurs that the project would be appropriately classified as a CE. The FHWA Utah Division office will review the CE Exclusion Form and notify UDOT Environmental Services

once it has determined whether the project can be classified as a CE. Once FHWA has concurred with the project classification as a CE, the Region Environmental staff or consultants will then prepare the CE using the ePM CE module. The document should be thorough and complete and the project files should include all appropriate correspondence, clearance letters, determinations and other documentation. It is suggested to bind by staple, 3 ring binder, or comb to make it easy to replace pages if needed.

3. **Mitigation Commitments:** Mitigation commitments are expected to be entered into the ePM Environmental Management System while preparing the CE. The completion of each commitment is to be assigned to a project phase and an individual who will be responsible for the implementation of the commitment.
4. **Review:** The CE is reviewed, signed and dated by a competent reviewer who was not the preparer. Additionally, the Region Environmental Manager will review, sign and date the CE document on the line titled "Review/Concur".
5. **Approval:** The UDOT Region Environmental Manager will send three hard copies of the complete CE document to UDOT Environmental Services, who will review the document and send the CE document to the FHWA Utah Division office for final signature. The FHWA Area Engineer will review the CE document and sign and date as the Approver.
6. **Archive & Records Retention:** After the CE document has been signed, the FHWA Utah Division office will provide a final hard copy of the completed CE document and all relevant clearance memos, determinations, correspondence and technical studies to UDOT Environmental Services staff and an additional final hard copy to the UDOT Region Environmental Manager. UDOT Environmental Services staff will archive the CE document and all relevant documentation and keep a copy for a period of no less than 3 years from the signature date.

#### **STATE FUNDED CE PROJECTS**

1. **Preparation:** UDOT Region Environmental staff or consultants prepare the CE documentation using the ePM CE module. The record keeping should be thorough and complete and should include all appropriate correspondence, clearance letters, and determinations. These records may be retained in electronic or paper format. If retained as paper records, they should be bound by staple, 3 ring binder, or comb to make it easy to replace pages if needed.
2. **Mitigation Commitments:** Mitigation commitments are expected to be entered into the ePM Environmental Management System while preparing the CE. The completion of each commitment is to be assigned to a project phase and an individual who will be responsible for the implementation of the commitment.
3. **Review:** The documentation for each project proposed as a CE must be reviewed by a competent reviewer who is not the individual who prepared the documentation. A record of this review including who performed the review and the date it occurred must be recorded and included with the project documentation.
4. **Approval:** The UDOT Region Environmental Manager will sign and approve the State CE. The name of the individual approving the CE and the date of the approval must be included with the project documentation.

5. **Archive & Records Retention:** The Region Environmental staff will be responsible for archiving the State CE documents. The Region Environmental staff will keep a copy of all State CE documents for a period of no less than 3 years from the signature date.

## **Appendix B: UDOT Class of Action Procedures**

The UDOT's Class of Action procedures are taken from the December 31, 2003 *Agreement between UDOT and FHWA for Environmental Approval Authority for Selected Categorical Exclusion Documents*. The paragraph below is found on page 2 of the December 31, 2003 MOA.

### **Project Classification**

On a Region basis, FHWA and UDOT representatives meet at least annually to review the STIP (Statewide Transportation Improvement Program) and identify categorical exclusion projects not yet classified as Level I, II, or III that are designated to advance into the three-year program. UDOT representatives will provide information to reasonably determine project classification based on project concept, environmental impact and potential for controversial issues. Any proposed changes to document classifications require written justification and final approval by FHWA.

## **Appendix C: UDOT CE Checklist**

## UDOT Categorical Exclusion Reviewer QC Checklist

Section	Question
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Title/Signature</b></p> <p>Has the project been properly categorized? Is the (c) or (d) list description appropriate for the project as it is described in the CE?            Has someone who is not the preparer (or the Region Environmental Manager/Engineer) reviewed the document and signed and dated the title/signature page as the reviewer?            Has the Region Environmental Manager/Engineer reviewed the document and signed and dated as the approver?</p>
<input type="checkbox"/> <input type="checkbox"/>	<p><b>Purpose &amp; Need</b></p> <p>Does the P&amp;N section clearly describe the transportation problems/deficiencies in the project area (e.g., congestion, safety, traffic, unsafe geometries, lack of trail facilities)? Can it answer the question: why is this project necessary?            Does the P&amp;N section describe a solution? If YES, please revise so that this information is included in the Description section.</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Description</b></p> <p>Does the Description section clearly &amp; accurately describe what actions are proposed with this project?            Does the Description section detail the length and location of the project? (E.g., Project activities will occur on approximately 2.4 miles of I-15, between MP 303.1 and 305.5).            Are any referenced maps, typical sections, etc. included in the Appendix or as an attachment?            Do the proposed actions detailed in the Description section address the identified needs for the project? Are there any needs that are not addressed by this project?</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Public Involvement</b></p> <p>Was a public meeting needed for this project? Public meetings are needed for projects that add additional through travel lanes, substantially change the layout of the facility or result in substantial adverse impacts.            If there were public meetings or hearings, are the comments summarized and included in an Appendix or attachment?            If comments were received, have the comments been addressed? Is a typed response to the comments included in an Appendix or attachment?            If a public hearing was held, is a copy of the public hearing transcript and certification of public hearing attached?</p>
<input type="checkbox"/>	<p><b>Right of Way</b></p> <p>If there are right-of-way impacts, are the number of parcels and number of acres summarized in the comment section? (E.g., 5 partial takes and 0.25 acres of right-of-way are required).</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Cultural</b></p> <p>Are all of the appropriate clearance memos from the Region Archaeologist, SHPO, THPO and Native American consultation letters included in an Appendix or Attachment?            If necessary, is the signed MOA attached?            Are any mitigation measures included in the project commitments?</p>
<input type="checkbox"/> <input type="checkbox"/>	<p><b>Paleontological</b></p> <p>Is the appropriate memo from the UGS or the UDOT Region Archaeologist attached?            Are any mitigation measures included in the project commitments?</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>T&amp;E Species</b></p> <p>For projects that have No Affect on T&amp;E Species, is a clearance memo from UDOT's Wildlife Biologist attached?            If a Section 7 consultation was required (projects with affects on T&amp;E species), is there a written concurrence memo from the USF&amp;WS attached?            Are any mitigation measures included in the project commitments?</p>
<input type="checkbox"/> <input type="checkbox"/>	<p><b>Wildlife</b></p> <p>Is the memo from UDOT's Wildlife Biologist attached?            Are any mitigation measures included in the project commitments?</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Noise</b></p> <p>Was a noise study necessary?            If YES, is the noise study attached?            Does it reflect the newest policy (January 15, 2008)?            Are any mitigation measures included in the project commitments?</p>
<input type="checkbox"/> <input type="checkbox"/>	<p><b>Wetlands, Water</b></p> <p>If NO is the answer for the first question, is the Landscape Architect memo or Army Corps of Engineers letter attached?            Are any stream alteration conditions or 404 permit conditions included or referenced in the project commitments?</p>
<input type="checkbox"/> <input type="checkbox"/>	<p><b>Air Quality</b></p> <p>If YES is the answer to the 2nd question, has the air quality supplement been completed?            If YES is the answer to the 2nd question, are the applicable CO or PM10 analyses attached?</p>
<input type="checkbox"/>	<p><b>Relocations</b></p> <p>If YES is the answer to the question, are the number and the addresses of the relocations listed in the comment box? If there are a lot, this could be an attachment/appendix item.</p>
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Section 4(f)</b></p> <p>If <i>deminimis</i>, are the SHPO or government official with jurisdiction concurrence letters attached?            If <i>deminimis</i> impact and not historical, has UDOT Environmental Services concurred with the <i>deminimis</i> finding? Is the concurrence letter attached?            If there is an Individual or Programmatic 4(f) evaluation, is the Individual or Programmatic 4(f) evaluation attached? Is UDOT Environmental Services written concurrence attached?</p>
<input type="checkbox"/>	<p><b>Mitigation Commitments</b></p> <p>Have all applicable mitigation commitments described in the CE, clearance memos or technical studies been entered into ePM's project commitments? Check the Project Commitments page.            Has the Region Project Manager or District Engineer seen and agreed with all of the listed mitigation commitments?</p>

**Appendix D: UDOT Manual of Instruction (MOI) CE  
Preparation Section**

## 4.2 Categorical Exclusion (CE)

A Categorical Exclusion (CE) is prepared for actions that do not individually or cumulatively have a significant effect on the environment. Under 23 CFR 771.117 and CEQ Section 1508.4, and based on past experience with similar actions, FHWA has developed lists of actions that are to be documented as a CE (23 CFR 771.117(c) and (d)). These are actions that do not:

- Induce significant impacts to planned growth or land use for the area;
- Require the relocation of significant numbers of people;
- Have a significant impact on any natural, cultural, recreational, historic, or other resource;
- Involve significant air, noise, or water quality impacts;
- Have significant impacts on travel patterns; and
- Otherwise, either individually or cumulatively, have any significant environmental impacts (23 CFR 771.117(a)).

The level of documentation for a particular CE depends on which category the action falls under. If the likelihood of significant impacts is uncertain even after CE-related studies have been conducted, UDOT should consult with FHWA to determine whether an EA or an EIS should be prepared. If significant impacts are likely to occur, an EIS must be prepared (23 CFR 771.123(a)).

FHWA and UDOT have a Memorandum of Understanding (MOU) (dated July 1, 2008) under which FHWA assigns to UDOT FHWA's responsibility for determining whether certain specific federal-aid highway projects are categorically excluded from preparation of an EA or an EIS. The MOU also assigns to UDOT the responsibility for conducting and approving environmental reviews, consultations, and related activities for projects UDOT determines are categorically excluded.

As a result of the July 1, 2008, MOU, most of the projects that were formerly classified as Level II and Level III CEs are now classified according to their project type as defined in 23 CFR 771.117(c) or 23 CFR 771.117(d). CE projects are no longer classified by impacts. UDOT separates and processes CE projects using the following three categories:

- Federally funded projects included in the July 1, 2008, MOU
- Federally funded projects excluded from the July 1, 2008, MOU
- State-funded projects

Additionally, with the exception of projects that add through-travel lanes or are not covered by the July 1, 2008, MOU, the UDOT Region Environmental Manager now signs

all CE projects. However, CEs that have Individual or Programmatic 4(f) Evaluations or require Endangered Species Act Section 7 consultation need review and concurrence from UDOT Environmental Services.

#### A. Federally Funded CE Projects Covered under the July 1, 2008, MOU

##### 1. Applicability

Under the July 1, 2008, MOU between FHWA and UDOT, any project that is listed in 23 CFR 771.117(c) or 23 CFR 771.117(d) can be processed under the terms and conditions of the July 1, 2008, MOU if it meets the following two conditions:

- It conforms to the provision of 23 CFR 771.117(a).
- FHWA and UDOT assess the project according to 23 CFR 771.117(b) for unusual circumstances and determine that a CE classification is proper.

Section 771.117(c) of 23 CFR includes the following actions:

1. Activities that 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 USC 307; approval of a unified work program and any findings required in the planning process pursuant to 23 USC 134; approval of statewide programs under 23 CFR 630; approval of project concepts under 23 CFR 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 that 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 USC 402.
5. Transfer of federal lands pursuant to 23 USC 317 when the subsequent action is not an FHWA action.
6. The installation of noise barriers or alterations to existing publicly owned buildings to reduce noise.
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 USC 125.

10. Acquisition of scenic easements.
11. Determination of payback under 23 CFR 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.

Section 771.117(d) of 23 CFR includes the following actions:

1. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (for example, parking, weaving, turning, and climbing lanes).
2. Highway safety or traffic operations improvement projects including installing ramp metering control devices and lighting.
3. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
4. Construction of 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 consistent with existing zoning and is located on or near a street with enough 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 enough 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 consistent with existing zoning and where there is no significant noise impact on the surrounding community.
12. Acquisition of land for hardship or protective purposes; advance land acquisition loans under Section 3(b) of the Urban Mass Transportation Act. 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 might be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

## 2. Preparation

UDOT Region Environmental staff or consultants prepare the CE documentation using the Environmental Study form in ePM (screen 770). Keep thorough and complete records and include all appropriate correspondence, clearance letters, and determinations. Retain these records in electronic format.

## 3. Mitigation Commitments

When preparing the CE, enter mitigation commitments in the Project Commitment database in ePM (screen 775). Assign the completion of each commitment to a project phase and a person who is responsible for implementing the commitment.

## 4. Review

The CE must be reviewed by a person who was not the preparer. The reviewer must sign and date the signature page on the line labeled Reviewer's Signature.

## 5. Approval

The UDOT Region Environmental Manager approves the CE by signing and dating the signature page.

## 6. Archive and Records Retention

The UDOT Region Environmental staff provides a digital copy (as a PDF, or portable document format, file) of the completed and signed CE document and all relevant clearance memos, determinations, correspondence, and technical studies to UDOT Environmental Services staff. UDOT Central Environmental Services staff: (1) digitally archives the CE document and all relevant documentation; (2) updates the statewide list of CEs completed under the July 1, 2008, MOU; and (3) reports all completed CE projects on a quarterly basis to the FHWA Utah Division Office. UDOT Central Environmental Services keeps an electronic copy of all CE documents completed under the July 1, 2008, MOU for at least 3 years from the signature date.

Records will be available for inspection by FHWA at any time.

## 7. UDOT Process Review

UDOT Environmental Services staff reviews federally funded CE documents completed according to the July 1, 2008, MOU at least once a month to ensure that:

- a. The projects were classified correctly under the July 1, 2008, MOU.
- b. The Environmental Study form in ePM (screen 770) was filled out correctly and was signed and dated, all applicable mitigation commitments have been entered and assigned, and the completion date was entered in ePM.
- c. The purpose and need statements and descriptions are clearly written and accurately described.
- d. The Environmental Study contains all relevant clearance memos, determinations, correspondence, and technical studies.

If UDOT Environmental Services finds any classification errors per statement 7(a) during the process review, they will immediately notify the Region Environmental Manager and the FHWA Utah Division Office and will reclassify the project appropriately. UDOT Environmental Services will document any 7(b), 7(c), and 7(d) errors that are found on the CE Quality Control Form. UDOT Environmental Services will work with the Region Environmental Manager to amend the CE so that the errors are corrected and to identify ways to ensure that the errors are not repeated on future projects.

UDOT Environmental Services maintains a CE Quality Control Form, which is a record of the errors found during the quality control process and the actions taken to ensure that the errors were corrected.

## 8. Section 4(f) Impacts

If a CE project that is processed under the July 1, 2008, MOU requires either a programmatic 4(f) or an individual 4(f) evaluation, UDOT Environmental Services must review and concur in writing with the programmatic 4(f) or individual 4(f) determinations before the CE document is approved. All individual Section 4(f) evaluations require a legal review. If UDOT Environmental Services determines that a legal review is needed, UDOT will hire an attorney to provide a legal sufficiency review of the 4(f) evaluation and determination.

## 9. Endangered Species Act Section 7

If a CE project that is processed under the July 1, 2008, MOU involves a formal Endangered Species Act Section 7 consultation for a threatened or endangered species, UDOT Environmental Services must be involved with the consultation and must concur in writing with the determination before the CE document is approved.

## 10. Native American Consultation

Per Stipulation II (B) of the July 1, 2008, MOU, for a CE project that is processed under the July 1, 2008, MOU, UDOT Region Environmental staff provides the FHWA Utah Division Office with the appropriate documentation and information necessary for the Native American consultation. The MOU requires government-to-government consultation with Native American tribes as described in 36 CFR 800.16(m). FHWA and UDOT have executed a number of Section 106 Programmatic Agreements (PAs) with Native American tribes that authorize UDOT to initiate and conduct the consultation. Where the PAs apply, the UDOT Region Archaeologist conducts the consultation.

## B. CE Projects That Are Excluded from the July 1, 2008, MOU

### 1. Applicability

Under the July 1, 2008, MOU between FHWA and UDOT, any project that is not listed in 23 CFR 771.117(c) or 23 CFR 771.117(d) (see Section 4.2(A)(1) above) is excluded from assignment according to the provisions of the July 1, 2008, MOU and must be processed according to the procedures listed in this section and approved by FHWA.

### 2. Preparation

#### a. **Project That Involves the Addition of Through Travel Lanes**

*If the project involves the addition of through travel lanes:* UDOT Region Environmental staff completes the CE Exclusion Form and submits it to UDOT Environmental Services. UDOT Environmental Services reviews the project to ensure that it can be processed as

a CE III under the previous December 31, 2003, MOU between FHWA and UDOT. If UDOT Environmental Services concurs with the CE classification, the UDOT Region Environmental staff or consultants prepare the CE using the Environmental Study form in ePM (screen 770). Create a thorough and complete document and include all appropriate correspondence, clearance letters, determinations, and other documentation in the project files.

**b. Project That Does Not Involve the Addition of Through Travel Lanes**

*If the project does not involve the addition of through travel lanes:* UDOT Region Environmental staff completes the CE Exclusion Form and submits it to UDOT Environmental Services. UDOT Environmental Services reviews the CE Exclusion Form and forwards the CE Exclusion Form to the FHWA Utah Division Office if it concurs that the project would be appropriately classified as a CE. The FHWA Utah Division Office reviews the CE Exclusion Form and notifies UDOT Environmental Services once it has determined whether the project can be classified as a CE. Once FHWA has concurred with the project classification as a CE, the Region Environmental staff or consultants prepare the CE using the ePM CE module. Create a thorough and complete document and include all appropriate correspondence, clearance letters, determinations, and other documentation in the project files.

3. Mitigation Commitments

When preparing the CE, enter mitigation commitments in the Project Commitment database in ePM (screen 775). Assign the completion of each commitment to a project phase and an individual who is responsible for implementing the commitment.

4. Review

The CE must be reviewed by a person who was not the preparer. The reviewer must sign and date the signature page on the line labeled Reviewer's Signature. Additionally, the Region Environmental Manager reviews, signs, and dates the CE document on the line titled Review/Concur.

5. Approval

The UDOT Region Environmental Manager sends an electronic copy of the complete CE document to UDOT Environmental Services, which reviews the document and sends the CE document to the FHWA Utah Division Office for a final signature. The FHWA Area Engineer reviews the CE document and signs and dates it as the Approver.

## 6. Archive and Records Retention

After the CE document has been signed, the FHWA Utah Division Office provides a final hard copy of the completed CE document and all relevant clearance memos, determinations, correspondence, and technical studies to UDOT Environmental Services staff and an additional final hard copy to the UDOT Region Environmental Manager. UDOT Environmental Services staff archives the CE document and all relevant documentation and keep a copy for at least 3 years from the signature date.

## C. CE Process Steps

For uniformity and consistency, UDOT uses ePM for all CEs. The ePM form allows the user to select the applicable form for federal-aid projects that qualify as CEs and for state-funded projects. Users need to get access to ePM in order to work in it. To get access, visit the [ePM website](#). From there, fill out the user request, and ePM staff will assign you a username and password. Once you have access, follow these steps to complete the CE form:

- Complete each section/tab (section status will indicate if complete).
- Watch the document status indicator.
- Print the form.
- Attach supporting documentation.
- Review for quality and completeness.
- Circulate for signature per the requirements in the previous sections.

## 1. CE Content

Each section of the CE Environmental Study form is described below. Other useful references are the [UDOT Categorical Exclusion Reviewer QC Checklist](#), the FHWA Technical Advisory T6640.8A, the [UDOT Design Process Procedures](#), and the applicable individual regulations. Check each of the appropriate boxes of the Environmental Study form and add information as needed. For detailed discussion regarding project impact analyses by resource, see Chapter 6 of this manual.

1. **Title/Signature.** Categorize the project as federal-aid or state-funded project. Have someone who is not the preparer review, sign, and date the form. Have the Region Environmental Manager review, sign, and date the form as the approver.
2. **Purpose and Need.** Clearly describe the transportation problems and deficiencies in the project area and describe why the project is necessary. See UDOT's [Guidance on Purpose and Need Statements](#).
3. **Description.** Clearly and accurately describe what actions are proposed with the project. The proposed actions detailed in the Description section should address the identified needs for the project. Describe the length and location of the

project. Include any referenced maps, typical sections, etc. in the appendix or as an attachment.

4. **Public Involvement.** Determine if a public meeting or hearing is needed for the project. Public hearings are needed for projects that add additional through-travel lanes, substantially change the layout of the facility, or result in substantial adverse impacts. If there were public meetings or hearings, summarize the comments and include in an appendix or attachment. If comments were received, address the comments and include responses to the comments in an appendix or attachment. If a public hearing was held, include a copy of the public hearing transcript and certification of public hearing in an appendix or attachment (see Chapter 5, Public and Agency Involvement).
5. **Right-of-Way.** If there are right-of-way impacts, summarize in the comment section the number of parcels and number of acres affected.
6. **Cultural.** Submit a request in writing early in the project for cultural clearances from the UDOT Region NEPA/NHPA Specialist. Include a set of project plans that show the relationship of the project to any eligible sites. Federal law restricts the disclosure of archaeological site locations to that of a “need to know” basis, so do not include this information in any public documents. Include all cultural clearance memos, including those from the Region Archaeologist, State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Native American consultation letters, Certified Local Governments, historical societies and, if applicable, a signed MOA in an appendix or attachment. Include any mitigation measures in the project commitments.
7. **Paleontological.** Attach Utah Geological Survey (UGS) correspondence and a clearance memo from the UDOT Region Archaeologist in an appendix or attachment. Include any mitigation measures in the project commitments.
8. **Threatened and Endangered (T&E) Species.** Attach a memo from UDOT’s Wildlife Biologist in an appendix or attachment. If a Section 7 consultation was required (projects with effects on T&E species), attach a written concurrence memo from UDOT’s Wildlife Biologist. Include any mitigation measures in the project commitments.
9. **Wildlife.** Attach a memo from UDOT’s Wildlife Biologist in an appendix or attachment. Include any mitigation measures in the project commitments.
10. **Invasive Species.** Determine if the project could introduce or spread invasive species included on the state or county noxious weed list. If so, list appropriate best management practices (BMPs) in the mitigation section that will be incorporated on the project to minimize the spread of invasive species.
11. **Noise.** If applicable, attach a noise study in an appendix or attachment. The noise study must reflect UDOT’s latest policy. When a noise study is conducted,

provide information in the environmental document stating the conclusions of the noise study. Include any mitigation measures in the project commitments.

12. **Water Pollution, Wetlands, Floodplains, and Stream Encroachments.** If NO is the answer for the second question, attach the concurrence letter from the UDOT Landscape Architect or the U.S. Army Corps of Engineers (USACE) in an appendix or attachment. If YES is the answer to the second question, reference any stream alteration conditions or 404 permit conditions in the project commitments. Attach in an appendix correspondence and permits received from USACE or the Utah Division of Water Rights.
13. **Hazardous Waste.** Conduct an on-site inspection. If hazardous waste could be present, identify what the potential is in the environmental document and contact UDOT Risk Management for further direction. The U.S. Environmental Protection Agency (EPA) Enviromapper and Utah Division of Environmental Response and Remediation (DERR) websites can also be used to conduct research for projects.
14. **Prime Farmland, Unique Farmland, and Farmland of Statewide or Local Importance.** When the project is within city limits or does not require right-of-way acquisition, check NO for the first question. If YES, go to the next question and submit a letter and Form AD-1006 (see Appendix C for a copy of this form) with the top section completed to the Natural Resources Conservation Service (NRCS) for a determination of any prime farmland, unique farmland, or farmland of statewide or local importance. If NRCS states that farmlands are present, finish completing Form AD-1006 by following the instructions on the back of the form and resubmit it to NRCS. Include NRCS letters and Form AD-1006 in an appendix or attachment.
15. **Air Quality.** Determine if the project adds or alters roadway capacity or will result in increased traffic volumes (including addition of through-traffic lanes or intersection/signal improvements). If YES, attach the Air Quality Supplement and applicable carbon monoxide (CO) or particulate matter (PM<sub>10</sub>) analyses.
16. **Relocations.** If relocations are possible, consider the information in the Technical Advisory and in Executive Order 12898 on environmental justice. In the environmental document, indicate the approximate number and type of property acquisitions as well as the addresses of the acquisitions. Include a statement in the environmental document that “the acquisitions and relocations program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and relocation resources are available to all relocated residents and businesses without discrimination.”
17. **Land Use/Urban Policy.** Verify with the local government and any other applicable land management agencies whether or not the project is compatible with land-use plans and, where applicable, urban policy.

18. **Section 4(f) Properties.** If the project uses land from or could cause indirect impacts to a publicly owned park, recreation area, wildlife or waterfowl refuge, historic site or historic bridge, or archaeological site, Section 4(f) likely applies. If impacts are determined to be *de minimis*, include in an appendix or attachment the concurrence letter from the SHPO or government official with jurisdiction. Attach an Individual or Programmatic 4(f) Evaluation if applicable. If a Programmatic or Individual Section 4(f) Evaluation is required, attach UDOT Environmental Services' written concurrence.
19. **Other Environmental Factors Considered.** If any of the resources listed under this section would have disproportionate, serious, or lasting effects, check YES and explain why.
20. **Conclusion.** If the project could create substantial controversy or could have significant impacts, a CE is not applicable.
21. **Mitigation Commitments.** Describe all applicable mitigation commitments in the CE. Enter mitigation commitments in the Project Commitment database in ePM (screen 775). The UDOT Region Environmental staff ensures that the Region Project Manager and District Engineer approve all of the listed mitigation commitments before they are entered in ePM on screen 775.