

## PROGRAMMATIC AGREEMENT

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

(CDOT CatEx Agreement)

June 2022

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

**I. Introduction**

FHWA and CDOT entered into this agreement in order to better execute and deliver categorical exclusion (CatEx) level projects. This agreement is the result of strong working relationships between FHWA and CDOT.

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded. FHWA's NEPA implementing procedures (23 CFR part 771) list a number of CatEx for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS (23 CFR 771.117).

FHWA follows the philosophy that the goal of the NEPA process is better decisions and not bigger documents. This Agreement is intended to increase flexibility and streamline the environmental process. This Agreement provides for the expeditious processing of CatEx level actions by CDOT, under the guidance and with the approval of FHWA.

FHWA retains full federal authority and responsibility on all federal aid projects, and reserves the right to modify document classification on a case-by-case basis. This Agreement shall also not preclude FHWA's right to request individual review and/or approval of any CatEx action.

FHWA relies on the expertise and experience of CDOT staff for implementation of this Agreement. FHWA will provide guidance, oversight, technical assistance, and approval as appropriate. CDOT may request technical assistance from FHWA at any time. Such requests do not override the provisions contained in this Agreement.

This Agreement does not preclude CDOT from requesting individual CatEx review and approval from FHWA when deemed necessary even though the action falls within the bounds of this Agreement. This Agreement does not preclude processing projects outside the bounds of this Agreement with FHWA's participation and approval.

## II. Purpose

- a. The purpose of this Agreement is to authorize CDOT, under certain circumstances, to determine on behalf of FHWA whether a project qualifies for a CatEx action specifically listed in 23 CFR 771.117 (listed in Appendices A and B of this Agreement). This Agreement also authorizes CDOT to certify to FHWA that an action that cannot be approved on behalf of FHWA according to the terms of this Agreement, but meeting the CatEx criteria in 40 CFR 1508.4 and 23 CFR 771.117(a), qualifies for a CatEx as long as there are no unusual circumstances present that could require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS). Unusual circumstances, as defined in 23 CFR 771.117(b), include: *(1) Significant environmental impacts; (2) Substantial controversy on environmental grounds; (3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.*

## III. Authorities

This agreement is entered into pursuant to the following authorities:

- a. National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- b. Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015)
- c. CEQ NEPA implementing regulations, 40 CFR parts 1500 - 1508
- d. Procedures for Considering Environmental Impacts, DOT Order 5610.1C
- e. FHWA Categorical Exclusions regulation, 23 CFR 771.117

#### IV. Definitions

- a. For the purposes of this Agreement, the following classifications of CatEx documents are defined:
  - i. Programmatic Categorical Exclusion: An action that, based on past experience, does not involve significant environmental impacts and may be processed by CDOT under this Agreement. FHWA concurs in advance, on a programmatic basis, with CDOT's designation that those types of projects that satisfy certain conditions identified in this Agreement qualify as CatExs. CDOT signs the Form 128 documenting the environmental clearance, and no project-specific FHWA review or approval is necessary.
  - ii. Non-Programmatic Categorical Exclusion: An action that does not individually or cumulatively have significant environmental impacts, but requires additional review by FHWA. CDOT prepares and signs the Form 128, which is then approved and signed by FHWA.
  - iii. "C" list: Actions or projects listed in 23 CFR 771.117(c).
  - iv. "D" list: Actions or projects listed in 23 CFR 771.117(d).
  - v. Form 128: CDOT's NEPA Determination/Project Certification.
- b. Other terms used in this agreement are defined:
  - i. Agreement: The agreement between FHWA and CDOT for execution of CatEx level projects and the reporting mechanism set forth.
  - ii. CDOT: The Colorado Department of Transportation
  - iii. CatEx: Categorical Exclusions (CatExs) are the most common National Environmental Policy Act (NEPA) documents and are actions that do not individually or cumulatively have a significant environmental impact and are excluded from the requirement to prepare an EA or an EIS. The FHWA/FTA regulations describe activities that are CatExs (FHWA, 23 CFR § 771.101 – 771.118).
  - iv. Certification: An action taken by CDOT that approves the project and its CatEx category.
  - v. Criteria Checklist: A form listing all 21 criteria that would require that a project be processed as a non-programmatic CatEx. This form will be an appendix to this agreement and it (or equivalent information) is a required piece of each project file. The intent of the Checklist is to consolidate and provide an easy reference for multiple regulatory requirements, which can affect NEPA and CatEx classification.
  - vi. CFR: Code of Federal Regulations.

- vii. EA: Environmental Assessment.
- viii. EIS: Environmental Impact Statement
- ix. FHWA: Federal Highway Administration

## V. CDOT Responsibilities

- a. Ensuring the following process is completed for each project that qualifies for a CatEx:
  - i. For all CatExs, CDOT will fill out a CDOT Form 128 (see *Appendix A – Form 128*).
  - ii. CDOT may approve, on behalf of FHWA, those CatExs specifically listed in 23 CFR 771.117(c) and (d) (see <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-771#771.117>) that do not exceed the thresholds in Section V.a.v. below (see also *Appendix B – Criteria Checklist*). CDOT will identify the applicable CatEx category from 23 CFR 771.117(c) or (d), ensure any conditions or constraints are met, verify that unusual circumstances do not apply, address any and all other environmental requirements, and complete the review with a signature evidencing approval. No project-specific review or approval of the CatEx by FHWA is required.
  - iii. If FHWA adds, through rulemaking, additional CatEx categories to 23 CFR 771.117(c) and/or (d), those categories can be used by CDOT.
  - iv. For projects that meet the definition of a CatEx in 23 CFR 771.117 (a) and (b), but is not covered by a category in 23 CFR 771.117(c) and (d), it will be considered a non-programmatic CatEx and the category DX will be used on the Form 128.
  - v. CDOT may not approve actions listed in 23 CFR 771.117(c) or (d) that exceed any of the following thresholds. CDOT is responsible for certifying to FHWA that the action qualifies for a CatEx. An action exceeding any threshold requires FHWA CatEx review and approval, based on CDOT certification of the action or may require an EA or EIS.
    - 1. **Significant Impacts:** Has any significant environmental impacts as described in 23 CFR 771.117(a).
    - 2. **Unusual Circumstances:** Involves unusual circumstances as described in 23 CFR 771.117(b).
      - a. Significant environmental impacts;
      - b. Substantial controversy on environmental grounds;
      - c. Significant impact on properties protected by section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or

- d. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.
3. **Through Lanes:** Results in capacity expansion of a roadway by addition of through lanes;
4. **Right of Way<sup>1</sup>:** Involves acquisitions (fee simple) of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as not more than 10% of any adjacent parcels for transportation related facilities (e.g. rest areas, intersections, maintenance yards) (note, this requirement does not apply to “perfection of title for ROW” projects under 23 CFR 771.117(c)(5));
5. **Displacements<sup>1</sup>:** Involves acquisitions that result in any residential or non-residential displacements;
6. **Early Acquisition:** Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(c));
7. **Section 404 Permit<sup>1</sup>:** Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit or a Regional General Permit;
8. **Bridge Permit<sup>1</sup>:** Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);
9. **Historic Properties<sup>1</sup>:** Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);
10. **Section 4(f)<sup>1</sup>:** Requires the use of properties protected by Section 4(f) (49 U.S.C. § 303/23 U.S.C. § 138) that cannot be documented with an FHWA *de minimis* determination (as defined in 23 CFR 774.17) or exception (23 CFR 774.13);
11. **Section 6(f):** Converts lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669j; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;

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<sup>1</sup> If the project is category C26, C27, or C28, exceeding any of the criteria referenced to this footnote would require that category D13 be used instead.

12. **Endangered Species<sup>1</sup>:** Requires formal consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536);
13. **Temporary Access and Road Closures<sup>1</sup>:** Involves the construction of temporary access, or the temporary closure of existing road, bridge, or ramps, that would result in major traffic disruptions, unless the use of such facilities satisfy the following conditions:
  - a. Provisions are made for access by local traffic and so posted;
  - b. The temporary access or closure, to the extent possible, will not interfere with any local special event or festival;
  - c. The closure does not substantially change the environmental consequences of the action;
14. **Permanent Road Closures<sup>1</sup>:** Involves the permanent closure of existing road, bridge, or ramps, unless the following conditions are met:
  - a. No major traffic disruptions;
  - b. No substantial adverse effects to through-traffic dependent businesses;
  - c. No substantial changes to the environmental consequences of the action as a result of the closure;
  - d. No substantial controversy associated with the closure;
15. **Involvement with Interstate:** Involves the use (under, over, or through) of the Interstate ROW whether by CDOT or a third party. This also includes Interstate frontage roads which are within the Interstate ROW.
16. **Access Control<sup>1</sup>:** Involves changes in access control of an Interstate highway: or disposal of Interstate right-of-way (note: for C(26), (27), and (28), *any* change in access control will require the use of D(13) instead);
17. **Floodplains<sup>1</sup>:** Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A;
18. **Wild and Scenic Rivers<sup>1</sup>:** Requires a Wild and Scenic River (WSR) Section 7 determination from the river-administering agency. There is only one WSR river in Colorado; Cache La Poudre River in CDOT R4 near Ft. Collins;
19. **Noise:** Is defined as a “Type I project” per 23 CFR 772.5 and/or CDOT Noise Guidance and results in impacted receptors;
20. **Air Quality:** Requires a project level air quality conformity analysis;
21. **Statewide Planning:** Is not included in or is inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the

transportation improvement program;

22. **Emergency Relief:** Involves Emergency Relief funding or approvals; or

23. **Other Circumstances:** For situations that are atypical. (e.g. Superfund site, Emergency Relief, projects that involve other states, other atypical situations).

vi. For non-programmatic CatExs, CDOT shall submit the CatEx to FHWA for approval, prior to the time FHWA contemplates its next approval or grant action for the project, including:

1. The CDOT Form 128 (see Appendix A) and the criteria checklist (see Appendix B) or equivalent documentation, including information describing why the project is a non-programmatic CatEx;
2. If requested by the Division Office, a copy of the CatEx documentation prepared for the actions(s); and
3. The already-completed Section 4(f) determination or approval or the Section 4(f) documentation for FHWA's determination or approval (if required).

vii. For fully documented non-programmatic CatExs, CDOT shall submit:

1. CDOT Form 128; and
2. The Documented Categorical Exclusion Template or other FHWA-approved document format.

viii. CDOT may request notice to proceed with acquisition of right-of-way or construction from FHWA once CDOT has completed its certification that a project is a CatEx (Part B of Form 128).

ix. The Division Office's objection to a CDOT certification signifies that FHWA will need to engage in project-specific review to verify that the certification is adequate, which may include consultation with other agencies. It may or may not constitute a disapproval of the action.

b. Consulting with FHWA for actions that may involve unusual circumstances (23 CFR 771.117(b)), to determine the appropriate class of action for environmental analysis and documentation.

CDOT may decide, or FHWA may require, additional studies to be performed prior to making a CatEx approval, or the preparation of an EA or EIS.

c. Meeting applicable documentation requirements in Section VII for CatEx approvals on FHWA's behalf (programmatic CatExs) and CatEx certifications to FHWA (non-programmatic CatExs), applicable approval requirements in Section VIII, and applicable quality control/quality assurance, monitoring, and performance requirements in Section IX.

d. Rely solely on CDOT employees to approve or certify CatExs submitted to FHWA under this agreement. CDOT may not delegate its responsibility for CatEx approvals or certifications to third

parties (i.e. local government staff, consultants, contract employees, and other State agency staff).

#### **VI. FHWA Responsibilities**

- a. Providing timely advice and technical assistance on CatExs to CDOT, as requested.
- b. Providing timely input on and review of non-programmatic actions. FHWA will base its approval of CatEx actions on the project documentation and certifications prepared by CDOT under this Agreement.
- c. Overseeing the implementation of this Agreement in accordance with the provisions in Section IX, including applicable monitoring and performance provisions.
- d. Providing timely review of annual reports, including identification of any projects for which a programmatic CatEx was approved by CDOT that FHWA deems needs additional scrutiny and/or to be a non-programmatic CatEx.

#### **VII. Documentation of CDOT CatEx Approvals and Certifications**

- a. CDOT shall maintain a project record for CatEx approvals it makes on FHWA's behalf and each CatEx submitted to FHWA for approval. This record should include at a minimum:
  - i. The Form 128
  - ii. Documentation that demonstrates the consideration of project effects, including criteria checklists (see Appendix B) or equivalent documentation, and any reports, forms, emails or other documents or exhibits;
  - iii. If public involvement is conducted as part of NEPA, a summary of public involvement complying with the requirements of the FHWA-approved public involvement policy (*CDOT NEPA Manual, Chapter 7*);
  - iv. Any stakeholder communication, correspondence, consultation, or public meeting documentation.
- b. Upon request by FHWA, CDOT will provide any electronic or paper project records.
- c. CDOT shall retain those records for a period of no less than three (3) years after completion of project construction. This is record retention policy is listed in CDOT's Form 950.
- d. This 3-year retention provision does not relieve CDOT of its project or program recordkeeping responsibilities under 2 CFR 200.333 or any other applicable laws, regulations, or policies.

#### **VIII. NEPA Approval Authority**

- a. Generally, CDOT's approvals may only be made by Regional Planning and Environmental Managers or their designees, who must be environmental managers or equivalent. On occasion, Environmental Programs Branch (EPB) Branch or Environmental Section

Managers or others may approve a CatEx (usually for situations like emergency response, CDOT Property Management actions, etc).

- b. RPEMs are considered qualified. Signature designees need to have the following minimum qualifications:
  - i. Be knowledgeable with and follow the appropriate subsections 23 CFR 771 through 774, and FHWA and CDOT procedures for environmental analysis and NEPA compliance.
  - ii. Have adequate experience addressing NEPA compliance for transportation projects or until such time, have their work reviewed by staff having the necessary experience.
  - iii. Have completed CDOT's CatEx Management Training Class or equivalent.

#### **IX. Quality Control/Quality Assurance, Monitoring & Performance**

- a. CDOT Quality Control & Quality Assurance
  - i. CDOT shall carry out regular quality control and quality assurance activities to ensure that its CatEx approvals, and CatEx submissions to FHWA for approval, are made in accordance with applicable law and this Agreement.
- b. CDOT Performance Monitoring and Reporting
  - i. FHWA and CDOT agree to cooperate in monitoring performance under this Agreement and work to assure quality performance.
  - ii. CDOT agrees to annually submit to FHWA a report summarizing its performance under this Agreement no later than 45 calendar days following the end of each Calendar Year. The report will identify any areas where improvement is needed and the measures CDOT is taking to implement those improvements. The annual report will include:
    1. A list of all programmatic and non-programmatic CatExs completed during the year (see Appendix C);
    2. A list of all CDOT employees authorized to approve programmatic CatExs including a brief statement of their qualifications;
    3. Follow-up from prior years' reports recommendations;
    4. State-wide quality control and assurance activities that were undertaken in the past year;
    5. The results from implementing quality control and assurance activities;
    6. Identification of training needs and training provided;
    7. CatEx Program changes that have occurred due to the review(s); and
    8. CatEx Program changes that should be considered.
- c. FHWA Oversight and Monitoring
  - i. FHWA and CDOT will cooperate in monitoring performance under this Agreement and work to assure quality performance.
  - ii. FHWA will review CDOT's Annual CatEx Programmatic Agreement Report, identified in

Section IX.b.ii., summarizing CDOT's performance under this Agreement and provide comments or concerns within 20 working days.

- iii. Monitoring by FHWA may include consideration of the technical competency and organizational capacity of CDOT, as well as CDOT's performance of its programmatic CatEx processing functions. Performance considerations include, without limitation, the quality and consistency of CDOT's programmatic CatEx approvals, project environmental documentation, CatEx submissions to FHWA for approval, adequacy and capability of CDOT staff and consultants, and the effectiveness, quality and consistency of CDOT's administration of its programmatic CatEx approvals.
- iv. Nothing in this Agreement prevents FHWA from undertaking other monitoring or oversight actions, including audits, with respect to CDOT's performance under this Agreement. The FHWA may require CDOT to perform other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.

#### **X. Amendments**

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

#### **XI. Term, Renewal, and Termination**

- a. This Agreement shall have a term of five (5) years, effective on the date of the last signature. CDOT shall post and maintain an executed copy of this Agreement on its website, available to the public.
- b. This Agreement is renewable for additional five (5) year terms if CDOT requests renewal, and FHWA determines that CDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, FHWA will evaluate the effectiveness of the Agreement its overall impact on the environmental review process, and whether the Agreement requires an Amendment.
- c. Either party may terminate this Agreement at any time by giving at least 30 days written notice to the other party.
- d. Expiration or termination of this Agreement shall mean that CDOT is not allowed to make CatEx approvals on FHWA's behalf.
- e. Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation.

The COOT CatEx Agreement is effective upon the date of the last signature below.

**JOHN MARTIN CATER** Digitally signed by JOHN  
MARTIN CATER  
Date: 2022.04.18 16:02:57 -06'00'

John M. Cater, P.E.  
Colorado Division Administrator  
Federal Highway Administration

Date



04/18/2022

Date

Shoshana Lew  
Executive Director  
Colorado Department of Transportation

## Appendix A: CDOT Form 128



### Colorado Department of Transportation NEPA DETERMINATION / PROJECT CERTIFICATION

A. PROJECT INFORMATION				Form:
Environmental Scoping Date:	Project #:	Subaccount #:	Related Subaccount #:	
Project Name:				
Project Description (and Location):				
Region:	CDOT Program/Residency:	Environmental PM:	FHWA Area Engineer:	
FHWA NEXUS <input type="checkbox"/> Yes <input type="checkbox"/> No		Other Federal NEXUS: <input type="checkbox"/> Yes <input type="checkbox"/> No		Project Lead: <input type="checkbox"/> CDOT <input type="checkbox"/> Local Agency <input type="checkbox"/> Other
Class of Action: <input type="checkbox"/> EIS/ROD <input type="checkbox"/> EA/FONSI <input type="checkbox"/> CatEx		Construction/Contracting Method: <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Design Build		
If CatEx, the project fits the following CE number:		<input type="checkbox"/> GM/GC <input type="checkbox"/> Other:		
B. THE NEPA PROCESS				
<b>Resource Clearances</b>		<b>Revised Clearances</b>		
<i>Check Box Only if Impacted</i>		<b>Revised Clearance date</b>	<b>Revised Clearance date</b>	
Air Quality (hot spot analysis)	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Noise	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Hazmat - ISA/MESA	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
T&E and State Listed Species	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Wetland Delineation (Survey)	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Paleontology	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Archaeology	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
History	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Section4(f) - Historic	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Section4(f) - Non-Historic	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Section6(f)	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
Other:	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	
All required clearance actions indicated have been completed for the design plans referenced below. If Project is a Categorical Exclusion, no significant environmental impacts will result from this project. Construction is not authorized until approved in Part E below. Implementation of project shall include required mitigation commitments.		All required clearance actions indicated have been completed for the design plans referenced below. If Project is a Categorical Exclusion, no significant environmental impacts will result from this project. Construction is not authorized until approved in Part E below. Implementation of project shall include required mitigation commitments.		
<input type="checkbox"/> Action meets requirements to be a Programmatic CatEx per the FHWA/CDOT Programmatic Agreement for Categorical Exclusions (FHWA signature below not required).		<b>FHWA signature is not required because:</b>		
<input type="checkbox"/> This is an EA/FONSI or EIS/ROD. The Decision Document has already been signed by FHWA (FHWA signature below is not required).		<input type="checkbox"/> This is a Programmatic CatEx	<input type="checkbox"/> This is a Programmatic CatEx	
		<input type="checkbox"/> This is a Reevaluation of an EA/FONSI or EIS/ROD (1399 form has already been signed.)	<input type="checkbox"/> This is a Reevaluation of an EA/FONSI or EIS/ROD (1399 form has already been signed.)	
<b>Design Plan Set and Date:</b> _____ / _____ / _____				
<b>RPEM Signature and Date:</b> _____ / _____				
<b>FHWA Division Administrator Signature</b> (if required) I concur with the above category designation and the scope of environmental clearance/permits indicated above.		<b>FHWA Division Administrator Signature</b> (if required) I concur with the above category designation and the scope of environmental clearance/permits indicated above.		
<b>Signature and Date:</b> _____ / _____		_____ / _____ / _____		
<b>Comments:</b>				



## Colorado Department of Transportation NEPA DETERMINATION / PROJECT CERTIFICATION

C. PERMITS AND ADDITIONAL REQUIREMENTS				Form: 01
Resource Clearances		Revised Clearances		
<i>Check Box Only if Impacted</i>	Date Completed	Date Updated	Date updated	
404 Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
401 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
402 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Const. Stormwater Permit (CDPS)	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Const. Dewatering Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Noxious Weed Management	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
SB40 Certification	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Wetland Finding	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Structure Demolition Permit	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Hazardous Materials – Phase II	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Permanent WQ	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
SWMP	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____
Other:	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____	<input type="checkbox"/> _____

**D. Comments**

**E. ENVIRONMENTAL PROJECT CERTIFICATION**

All clearance and permit requirements for this project have been addressed and mitigation included. The appropriate documentation is on file in the Region office.

	Clearance	Revised Clearance	Revised Clearance
<b>Design Plan Set and Date:</b> _____ / _____		_____ / _____	_____ / _____
<b>Certification Type:</b>	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____	<input type="checkbox"/> Advertisement <input type="checkbox"/> Advertisement & Construction <input type="checkbox"/> Other: _____
<b>RPEM Signature &amp; Date:</b> _____ / _____		_____ / _____	_____ / _____

**Note to Project Manager:** Any changes to the plans and specifications after the date of the RPEM signature in Part B that affect environmental impacts or mitigation must be approved by the RPEM.

Distribution:  
RPEM (original): copies to Project Manager, Right of way (if ROW required)

CDOT Form #128b (07/21/2016)

## Appendix B: Example CatEx Criteria List

\*If the project is category C26, C27, or C28, exceeding any of the starred criteria would require that category D13 be used instead.

<b>Project Name:</b>		<b>Project Number:</b>	
<b>Environmental Project Manager:</b>		<b>Date Checklist Completed:</b>	
<b>Potential Resource and Impact</b>		<b>Impacts from Project</b>	
		<b>Yes</b>	<b>No</b>
<b>1</b>	<b>Through Lanes:</b> Results in capacity expansion of a roadway by addition of through lanes;	<input type="checkbox"/>	<input type="checkbox"/>
<b>2</b>	<b>Right of Way*:</b> Involves acquisitions (fee simple) of more than a minor amount of right-of-way. A minor amount of right-of-way is defined as not more than 10% of any adjacent parcels for transportation related facilities (e.g. rest areas, intersections, maintenance yards) (note, this requirement does not apply to "perfection of title for ROW" projects under 23 CFR 771.117(c)(5));	<input type="checkbox"/>	<input type="checkbox"/>
<b>3</b>	<b>Displacements:</b> Involves acquisitions that result any residential or non-residential displacements;	<input type="checkbox"/>	<input type="checkbox"/>
<b>4</b>	<b>Early Acquisition:</b> Includes acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. § 108(c));	<input type="checkbox"/>	<input type="checkbox"/>
<b>5</b>	<b>Section 404 Permit*:</b> Requires a U.S. Army Corps of Engineers Section 404 (33 U.S.C. § 1344) permit other than a Nationwide Permit or a Regional General Permit;	<input type="checkbox"/>	<input type="checkbox"/>
<b>6</b>	<b>Bridge Permit*:</b> Requires a U.S. Coast Guard bridge permit (33 U.S.C. § 401);	<input type="checkbox"/>	<input type="checkbox"/>
<b>7</b>	<b>Historic Properties*:</b> Results in a determination of adverse effect on historic properties pursuant to Section 106 the National Historic Preservation Act (54 U.S.C. § 306108);	<input type="checkbox"/>	<input type="checkbox"/>
<b>8</b>	<b>Section 4(f)*:</b> Requires the use of properties protected by Section 4(f) (49 U.S.C. § 303/23 U.S.C. § 138) that cannot be documented with an FHWA <i>de minimis</i> or exception;	<input type="checkbox"/>	<input type="checkbox"/>
<b>9</b>	<b>Section 6(f)*:</b> Converts lands under the protection of Section 6(f) of the Land and Water Conservation Act of 1965 (54 U.S.C. § 200305), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k, 64 Stat. 430), the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669- 669i; 50 Stat. 917), or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property;	<input type="checkbox"/>	<input type="checkbox"/>
<b>10</b>	<b>Endangered Species*:</b> Requires formal consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536);	<input type="checkbox"/>	<input type="checkbox"/>
<b>11</b>	<b>Temporary Access and Road Closures*:</b> Involves the construction of temporary access, or the temporary closure of existing road, bridge, or ramps, that would result in major traffic disruptions, unless the use of such facilities satisfy the following conditions: a. Provisions are made for access by local traffic and so posted; b. The temporary access or closure, to the extent possible, will not interfere with any local special event or festival; c. The closure does not substantially change the environmental consequences of the action; d. There is no substantial controversy associated with the closure;	<input type="checkbox"/>	<input type="checkbox"/>
<b>12</b>	<b>Permanent Road Closures*:</b> Involves the permanent closure of existing road, bridge, or ramps, unless the following conditions are met: a. No major traffic disruptions; b. No adverse effects to through-traffic dependent business; c. No closure that substantially changes the environmental consequences of the action; d. No substantial controversy associated with the closure;	<input type="checkbox"/>	<input type="checkbox"/>
<b>13</b>	<b>Involvement with Interstate:</b> Any project that involves the use (under, over or through) the Interstate ROW, whether by CDOT or a third party. This also includes Interstate frontage roads which are within the Interstate ROW.	<input type="checkbox"/>	<input type="checkbox"/>

<b>Project Name:</b>		<b>Project Number:</b>	
<b>Environmental Project Manager:</b>		<b>Date Checklist Completed:</b>	
<b>Potential Resource and Impact</b>		<b>Impacts from Project</b>	
		<b>Yes</b>	<b>No</b>
<b>14</b>	<b>Access Control*:</b> Involves changes in access control of an Interstate highway: or disposal of Interstate right-of-way (note: for C(26), (27), and (28), <i>any</i> change in access control of a highway, not just Interstates, will require the use of D(13) instead).	<input type="checkbox"/>	<input type="checkbox"/>
<b>15</b>	<b>Floodplains*:</b> Requires work encroaching on a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A.	<input type="checkbox"/>	<input type="checkbox"/>
<b>16</b>	<b>Wild and Scenic Rivers*:</b> Requires a Wild and Scenic River Section 7 determination from the river-administering agency. Please note that there is only one WSR river in Colorado: Cache La Poudre River in Region 4 near Ft. Collins.	<input type="checkbox"/>	<input type="checkbox"/>
<b>17</b>	<b>Noise:</b> Is defined as a "Type I project" per 23 CFR 772.5 and/or CDOT Noise Guidance and results in impacted receptors.	<input type="checkbox"/>	<input type="checkbox"/>
<b>18</b>	<b>Air Quality:</b> Does the project require a project level air quality conformity analysis.	<input type="checkbox"/>	<input type="checkbox"/>
<b>19</b>	<b>Statewide Planning:</b> Is not included in or is inconsistent with the statewide transportation improvement program, and in applicable urbanized areas, the transportation improvement program.	<input type="checkbox"/>	<input type="checkbox"/>
<b>20</b>	<b>Other Circumstances:</b> For situations that are atypical, (i.e. Superfund site, Emergency Relief) or any other issue not covered above please explain.	<input type="checkbox"/>	<input type="checkbox"/>
<b>For resources checked yes, please add description of project and assumed impacts with impact number:</b>			

**Appendix C: CDOT CatEx Yearly Summary XXXX**

This is an example of the summary table that will be submitted to FHWA. Please refer to Section IX.b.ii for instructions and content. Summary Date Heading will be filed out by EPB NEPA Specialist.

CDOT Code	Project Name	Project Description	CE number	Region	Signature Date	FHWA Signature	Environmental PM	Federal Nexus