

CHAPTER 5 TYPE 2 CATEGORICAL EXCLUSIONS

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5. TYPE 2 CATEGORICAL EXCLUSIONS

5-1 OVERVIEW

A Type 2 Categorical Exclusion (Type 2 CE) is described as a project or a category of actions which do not individually or cumulatively have a significant environmental effect, and are excluded from the requirement to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Type 2 CE is one of the three classes of actions defined in **23 CFR 771.115** which prescribe the level of documentation required to comply with the **National Environmental Policy Act (NEPA)** of 1969 as amended. CE determinations apply only to Federally funded projects. See Part 1, Chapter 10 of this manual for environmental considerations on non-Federally funded projects.

All major transportation projects should be evaluated through the Efficient Transportation Decision Making (ETDM) process using the Environmental Screening Tool (EST). At the completion of the Programming Screen evaluation the Class of Action for the project should be determined. If a project has not been part of the ETDM process and an environmental Class of Action determination is required for an action not included in or qualifying as a Type 1, Programmatic CE, or Non Major State Action in accordance with Part 1, Chapter 2 of this manual, it must be added to the EST and submitted for a Programming Screen evaluation to complete the Advance Notification process and obtain the environmental Class of Action determination.

The Type 2 CE applies to major transportation projects where it can be documented that there are no significant effects resulting from the proposed action. For all Type 2 CE project actions, the level of detail required to reach these conclusions, and **categorically exclude** a project, is dependent upon the magnitude of involvement and the significance of environmental/community impacts of the proposed action. This chapter outlines the required documentation and processing for Type 2 CE projects.

5-2 PROCEDURE

Type 2 CEs involve project actions which may be categorically excluded from **NEPA**, if certain conditions are present (**23 CFR 771.117(a) and (b)**) and if the documentation demonstrates that there is no significant impact resulting from the proposed action. The types of project actions in this category are those that are not included in the Type 1 and Programmatic CE lists (described in Part 1, Chapter 2) where it is anticipated there will be no significant impacts.

For Type 2 CE projects, the recommendations contained in the Final **Programming Summary Report (PSR)** (as discussed in Chapter 5 of the FDOT's **ETDM Planning and Programming Manual**) and supported by the **Project Development Summary Report (PDSR)** (discussed in Part 1, Chapter 4 of this manual) must fully demonstrate that the project meets the criteria of **23 CFR 771.117(a) and (b)**.

Major transportation projects will typically have gone through the Programming screen as described in Chapter 5 of the FDOT's **ETDM Planning and Programming Manual**. Upon completion of the programming screen, a Class of Action determination is made by the FDOT and the lead Federal agency. The Class of Action determination along with the degree of effect for various environmental issues and an initial scope of work for the Project Development and Environmental phase is included in the **Final Programming Summary Report**. During the PD&E phase all necessary engineering and environmental work is performed and impacts are evaluated to verify that the initial Class of Action determination as a Type 2 CE remains valid. If, during this effort, significant impacts are identified, it will be necessary to coordinate with the Lead Federal agency on a revised Class of Action determination.

5-2.1 Impact Evaluation

For Type 2 CEs, documentation must be prepared to address the topical categories contained in A, B, C & D below which will satisfy all Federal and State environmental laws, including **NEPA**, and demonstrate the proposed project has no significant impacts. Each topic must address project impacts and mitigation as required by the appropriate PD&E Manual Chapters in Part 2. These topical areas match those identified in the ETDM Final **PSR**, and include all issues or areas required to be addressed and described in the Part 2 chapters of the PD&E Manual. If a specific issue does not require any additional evaluation then there is no need to include a discussion of this issue in the summary of Environmental Impacts section of the **PDSR**. If an issue was not evaluated in the ETDM Final **PSR**, it must be evaluated as part of the Type 2 CE documentation.

The Engineering and Environmental studies identified during the ETDM Programming Screen must be completed to demonstrate there are no significant impacts likely to occur as a result of the proposed project. The **PDSR** must also document interagency coordination on respective issues and public involvement efforts, to adequately support the conclusions reached in the Class of Action. In addition, all commitments and recommendations made during project development must be summarized in the **PDSR**. Only when this is accomplished to FHWA's (or other Lead Federal Agency's) full satisfaction can the **PDSR** be approved as a Type 2 CE, and the project Location and Design Concept Acceptance (LDCA) be granted by FHWA. Whenever FHWA is referenced hereinafter it may be exchanged with the Lead Federal Agency.

The following issues contained in paragraphs A, B, C & D below must be addressed and documented in the **PDSR**. The Final **PSR** should be used as the basis for determining the impact level on each issue. There may be cases where an issue was not fully evaluated or the need for additional information or studies was identified.

There are four levels of impact that can be assigned to each issue or category, significant, not significant, none or no involvement. For clarity, the following definitions are provided to assist in determining the magnitude of the impact of the project:

1. Significant means the perceived impact is significant in the sense of the use of the term by CEQ regulations.

2. Not significant means that the project involves an environmental issue and has a perceived impact, which may range in level of magnitude varying from minor to substantial. Impacts of this magnitude typically have some minimization or mitigation efforts included as part of the project.
3. None means the project has been evaluated for an environmental issue; the issue exists but there is little or no impact.
4. No involvement means that the environmental issue in question is not a part of or in anyway involved with the project.

A. Natural Environment:

1. Air Quality: Consider if implementation of the project will cause an impact on air quality based on a screening evaluation and if applicable computer analysis, in accordance with procedures in Part 2, Chapter 16. State if the project is in an air quality Maintenance Area as identified in Part 2, Chapter 16 and the date the area was re-designated. State that the project has "Passed Screening Test" (if applicable), and provide a consistency statement along with the **State Implementation Plan (SIP)** determination statement and the construction impact standard statement.
2. Coastal and Marine:
 - a. Coastal Zone Consistency: Note that the project is consistent with the Coastal Zone Management Program based on the response from the Department of Environmental Protection (DEP) during the Intergovernmental Coordination and Federal Consistency Review process. Reference the date of the consistency letter from DEP on the Summary of Environmental Impacts Checklist. Reference Part 2, Chapter 25.
 - b. Coastal Barrier Islands: Consider access impact to Coastal Barrier Islands protected under the **Governor's Executive Order 81-105** and **Coastal Barrier Resources Act (CBRA)**. Reference Part 2, Chapter 26.
3. Contaminated Sites: Determine the likelihood of contamination impacting the project. Incorporate standard statement, if appropriate. Reference Part 2, Chapter 22.
4. Farmlands: Consider any involvement with Farmlands. Reference Part 2, Chapter 28.
5. Floodplains: Determine if the 100-year floodplain is involved with this project, the type of encroachment (i.e., longitudinal), potential for backwater impacts, and project influence on floodplain development. Include the appropriate standard statement. Identify if a regulatory floodway is involved and project's consistency. Provide a floodplain finding. Part 2, Chapter 24.

6. Infrastructure: Utilities and Railroads: Discuss any involvement with utilities and/or rail systems. Reference Part 2, Chapter 10.
7. Navigation: Determine if a U.S. Coast Guard (USCG) navigation permit is required in accordance with **23 CFR 650, Subpart H**. The USCG will typically make this determination during the Programming Screening event. **Under 23 CFR 650, Subpart H**, a project is exempt from a USCG permit whenever the proposed construction, reconstruction, rehabilitation, or replacement of the Federally-aided or assisted bridge is over waters:
 - a. Which are not used or are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce; and
 - b. Which are not tidal; or
 - c. If tidal, are used only by recreational boating, fishing, and other small vessels less than 21 feet in length.
8. Special Designations:
 - a. Aquatic Preserves: Consider potential right-of-way needs for the roadway and any water retention areas, and potential water quality impacts. Identify, by name, the Aquatic Preserves. Reference Part 2, Chapter 19.
 - b. Outstanding Florida Waters: Identify any Outstanding Florida Waters, by name, and potential involvement (i.e., water quality impacts, right-of-way needs). Consider potential right-of-way needs for roadway and retention. Reference Part 2, Chapter 21.
 - c. Wild and Scenic Rivers: Determine if the project is involved with a Wild and Scenic River or is a river identified on the **Southeastern Rivers Inventory**. Reference Part 2, Chapter 23.
 - d. Florida Scenic Highways: Determine if the project is involved with a designated (or candidate) Scenic Highway. Reference Part 2, Chapter 29.
9. Water Quality and Quantity: What is the potential for surface water and ground water quality impacts? Conduct a qualitative evaluation of potential project involvement using the **Water Quality Impact Evaluation Checklist**. Reference Part 2, Chapter 20
10. Wetlands: Identify wetlands by name (if known) and the approximate amount of acreage in the taking. What type of wetlands are involved and what is their overall productive significance based on the **Uniform Mitigation Assessment Method (UMAM)**, the **Wetland Rapid Assessment Procedure (WRAP)**, WET II or hydrogeomorphic (HGM) functional analysis, as required by reviewing agencies. Reference Part 2, Chapter 18.

11. Wildlife and Habitat:

- a. Consider any habitat affected by or living in the project study limits. State if any Federal endangered or threatened species have been observed, and if there are any recorded sightings. Summarize the results of the **Endangered Species Biological Assessment** in accordance with procedures in Part 2, Chapter 27.
- b. Essential Fish Habitat: Consider any impacts to Essential Fish Habitat and summarize findings in accordance with procedures in Part 2, Chapter 11.

B. Cultural Impacts:

1. Historic and Archaeological Sites:

- a. Historic Sites and/or Districts: Consider potential involvement with properties listed or eligible for listing on the **National Register of Historic Places**. Include "SHPO letter (date)" and comments indicating the **Cultural Resource Assessment Survey** has been previously accomplished and accepted by the State Historic Preservation Office (SHPO). Reference Part 2, Chapter 12.
 - b. Archaeological Sites: Consider potential involvement with properties eligible or listed on the **National Register of Historic Places**. Include "SHPO letter (date)" and comments indicating the archaeological survey has been previously accomplished and accepted by the SHPO. Reference Part 2, Chapter 12.
2. Recreation Areas: Identify, by formal name, all such sites within the project study area and consider any impact or involvement resulting from the project. Consider involvement with public property. Reference Part 2, Chapters 9 and 13.
 3. **Section 4(f)** Potential: Identify, by formal name, any such existing or proposed properties within the project's study area and evaluate in accordance with procedures in Part 2, Chapter 13.

C. Community Impacts:

Consider potential changes to the lifestyle for the community. The following impacts should be addressed as described in the **Sociocultural Effect Evaluation Handbook**:

1. Aesthetics: Consider impacts in accordance with procedures in Part 2, Chapter 15
2. Economic: Consider impacts in accordance with procedures in Part 2, Chapter 9
3. Land Use: Consider any potential for the project to induce secondary

development or change existing area land use. Reference Part 2, Chapter 9.

4. Mobility: Does the project address all mobility needs for vehicular traffic as well as pedestrian, bicyclist, and transit needs? Reference Part 2, Chapter 14.
5. Relocation: What is the relocation potential? Estimate the number and type of relocatees, and consider the impact to sensitive groups, etc. Reference Part 2, Chapter 9.
6. Social: Consider the social impacts for the project. Particular attention should be paid to community cohesion, community services, **Title VI** considerations, and potential for controversy. This analysis is to be consistent with Part 2, Chapter 9 of this manual.

D. Other Impacts:

1. Noise: Consider if implementation of the project will cause an increase in noise as a result of a qualitative review consistent with Part 2, Chapter 17.
2. Construction: Consider potential construction impacts relative to all impact categories and document as explained in Part 2, Chapter 30.

5-2.2 Documentation for Type 2 Categorical Exclusions

For project activities which are determined to be Type 2 CEs, all impact evaluation material should be briefly summarized and included in the “Summary of Environmental Impacts” Section of the **Project Development Summary Report (PDSR)**. The checklist that is provided in Figure 5.3 may be used for the summary and be included in the **PDSR**. Letters from agencies are not required to be appended to the **PDSR** to show compliance (e.g., Coastal Zone Consistency). Instead, a statement of coordination or consistency, whichever is applicable, and a referenced date of the letter, which verifies the finding, is sufficient documentation. Procedures for completing the **PDSR** are contained in Part 1, Chapter 4 of this manual.

The District must insure that proper documentation can be produced from the Project File upon request by FHWA. As appropriate for each topic, the evaluation and support documentation will have to include the necessary standard statements required by FHWA to show compliance according to FHWA policy. In addition, where the proposed action requires the generation of additional reports, such as Noise Reports, Air Quality Reports, Wetland Evaluation Reports, Conceptual Stage Relocation Plans, Contamination Screening Evaluation Reports, etc.; these reports should not accompany the **PDSR** submittal to FHWA, unless FHWA requests specific report(s) on a project. The only exception to this is the Public Hearing Transcript including the summary and certification. For all technical reports, the discussion in the **PDSR** should briefly summarize the results of these reports consistent with the appropriate Chapters in Part 2 of this manual. Any project commitments resulting from the technical reports or studies should be included in the summary of commitments section. Only the results of coordination, environmental evaluations, or findings should be summarized and included

in the **PDSR**; however, the project files should support any statements made in the **PDSR** (i.e., technical reports or memoranda).

5-2.3 Processing Type 2 Categorical Exclusions

After completion of the **PDSR** and the Public Hearing (if required) the Department may then request Location and Design Concept Acceptance from the FHWA Division Administrator.

The District submits the **PDSR** and the Public Hearing transcript to the FHWA Division Administrator. The transmittal letter (Figure 5.2) submitted with the **PDSR** and the Public Hearing transcript must contain:

1. SUBJECT with the Financial Project Number, Federal-Aid project number, common project name, State Road number, and termini.
2. Wording to the effect that: "Enclosed are the **Project Development Summary Report** and the **Public Hearing Transcript** for the subject project. Upon review and acceptance of the Class of Action determination that the project is a categorical exclusion, we request this project be granted Location and Design Concept Acceptance in accordance with **23 CFR 771.**"
3. Include at the bottom of the letter a date and concurrence block for the FHWA Division Administrator or designee.

Once the Division Administrator or designee has concurred in the Class of Action by signing the transmittal letter, the project Location and Design Concept Acceptance is given by FHWA, unless otherwise specified. FHWA sends one (1) copy of the approved transmittal letter to the District. At this point, the project may proceed to the next phase of development.

5-2.4 Interim Guidance on Limitation of Claims Notice

Section 6002(a) of SAFETEA-LU (codified at **23 USC 139(1)**) includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by Federal agencies for a highway or public transportation capital project. The provision creates a statute of limitations period of 180 days for filing a challenge following publication of notice in the **Federal Register (FR)** of the agency action(s)

There could be occasions when a Type 2 CE is controversial and expected to be litigated. In these situations, there should be a discussion with the District legal office and the FHWA Division Office (FHWA) on the need for publication of a 180-day limitation notice under **23 USC 139 (1)**. The determining factors in this decision will be the degree of controversy surrounding the project and the likelihood of litigation; and the anticipated time frames for advancing the project to maintain project schedules.

If the decision is made to publish a limitation of claims notice, the District will still publish a notice in a local newspaper stating that Location Design Concept Acceptance has been approved by FHWA. At the same time, the District will submit to FHWA the project information needed to publish the notice in the **FR**. FHWA will then submit the notice to the **FR**. The 180 day limitations period begins upon date of publication of the notice.

There may be occasions when associated Federal agency approvals (**Clean Water Act** permit, Coast Guard permit, etc.) will be received at or around the same time as final **NEPA** approval. On those occasions, as part of the notice publication discussion, FHWA and FDOT will confer as to whether one combined notice should be published for the **NEPA** document and any associated Federal agency actions. If other Federal agency permits, licenses or approvals will be obtained at a later phase of the project, notice would be published at that time for the subsequent approval if the need is agreed to between FHWA and the FDOT.

5-2.5 Actions after Location and Design Concept Acceptance

When the district receives the signed transmittal letter indicating FHWA's concurrence with the Type 2 Categorical Exclusion and the general Location and Design Concept Acceptance, the letter should become part of the project record. The **PDSR** and the FHWA concurrence letter are submitted to the District ETDM Coordinator to be included as an attachment to the project record in the Environmental Screening Tool and for notification to the ETAT members. The Project Manager will also provide copies to the District Design Engineer for the subsequent design phase.

5-3 REFERENCES

1. Council on Environmental Quality, Executive Office of the President, 1978. Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. Reprint 43 FR 55978-56007, 40 CFR Parts 1500-1508.
2. Federal Register, August 28, 1987, Volume 52, No. 167. "Part 771-Environmental Impact and Related Procedures", 23 CFR 771.
4. Federal Register, 1987, Volume 52, No. 144. "Subpart H Navigational Clearances for Bridges", 23 CFR 650.
5. Memorandum, titled, "Florida-Meeting with U.S. Coast Guard", from FHWA Highway Safety and Environmental Coordinator to FHWA Assistant Division Administrator (Copy to C. L. Irwin), September 2, 1988.
6. Memorandum, titled, "Preventive Maintenance", from Bill Deyo, Director, Office of Design to District Directors of Production and Operations, and to Design Engineers, August 27, 1992.

7. U.S. Department of Transportation, Federal Highway Administration, October 30, 1987. Guidance for Preparing and processing Environmental and Section 4(f) Documents, FHWA Technical Advisory T6640.8A.
8. FHWA and FTA “Agency Operating Agreement” signed by Thomas F. Barry, FDOT Secretary, James St. John, FHWA Division Administrator, and Jerry Franklin, FTA Regional Administrator, and executed on February 12, 2003.

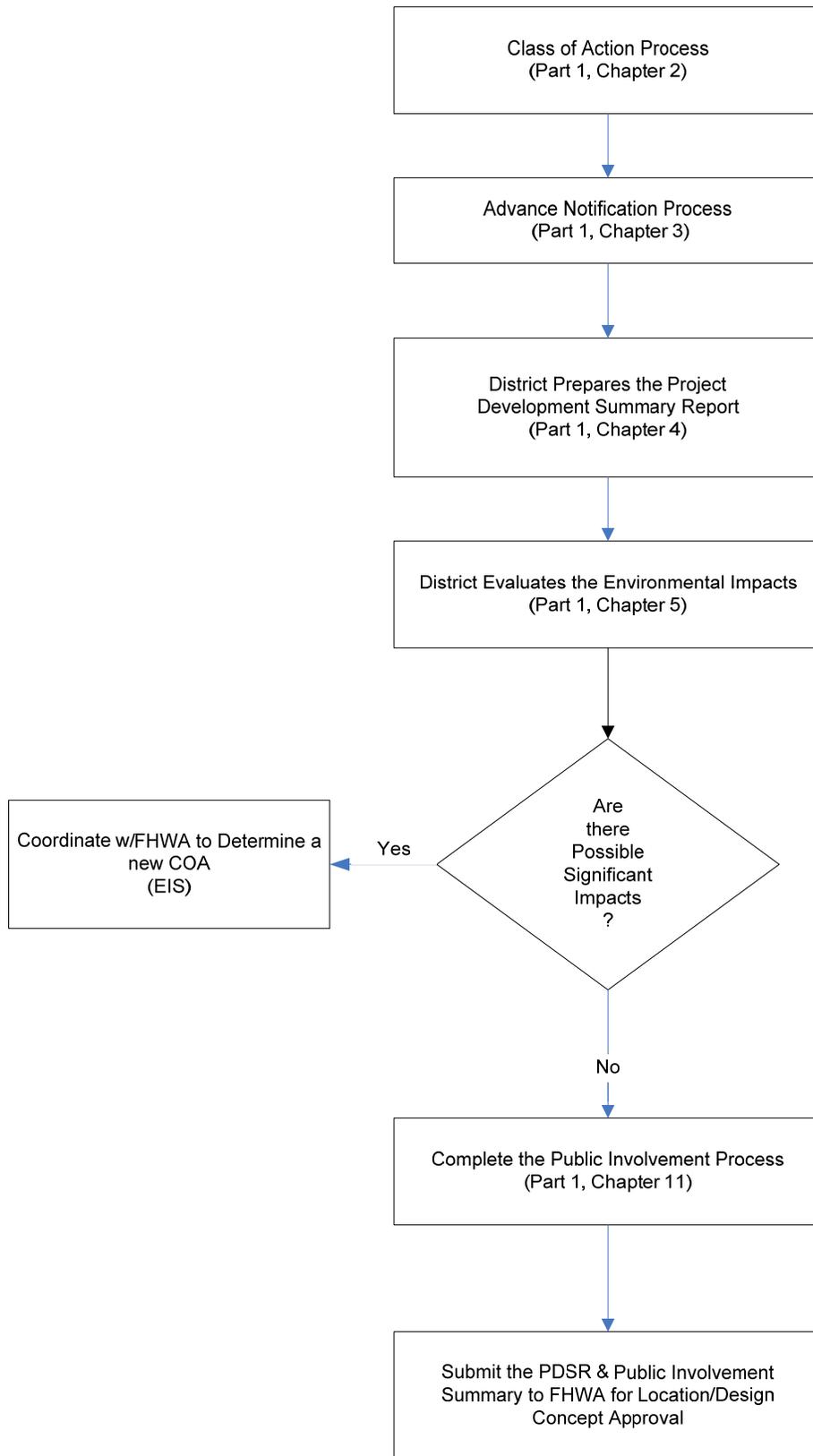


FIGURE 5.1 Type 2 Categorical Exclusion Process

(DATE)

Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Attention: District/Area Transportation Engineer

Dear Mr./Ms.

Subject: NAME OF PROJECT
**Type 2 Categorical Exclusion with Project Location
and Design Concepts**
Financial Project No. XXXXX-XXXX
Federal-Aid Project No. X-XXX-(X)-X
SR-XXX, From A to B
Any County, Florida Zip Code

Enclosed are copies of the Project Development Summary Report, which includes the Summary of Environmental Impacts Checklist for Type 2 Categorical Exclusions, and a transcript of the public hearing held for this project. Upon your review and acceptance of these documents, we request your concurrence that this project is properly classified as a categorical exclusion as described in 23 CFR 771.115 and 771.117, and that the general project location and design concepts described in these documents are acceptable as allowable in 23 CFR 771.113. Please acknowledge your concurrence with these finding by signing and dating this request in the space provided below, and then returning a signed copy for the project files.

Sincerely,

District Environmental Management Office

Concurrence by FHWA:

_____ / ____ / ____
FHWA Division Administrator Date

FIGURE 5.2 Project Transmittal Letter From the District to FHWA for a Type 2 Categorical Exclusion

**Summary of Environmental Impacts Checklist
For Type 2 Categorical Exclusions**

Topical Categories	S	NS	N	NI	Basis for Decision *
A. NATURAL ENVIRONMENT					
1. Air Quality	[]	[]	[]	[]	_____
2. Coastal and Marine	[]	[]	[]	[]	_____
3. Contaminated Sites	[]	[]	[]	[]	_____
4. Farmlands	[]	[]	[]	[]	_____
5. Floodplains	[]	[]	[]	[]	_____
6. Infrastructure	[]	[]	[]	[]	_____
7. Navigation	[]	[]	[]	[]	_____
8. Special Designations	[]	[]	[]	[]	_____
9. Water Quality/Quantity	[]	[]	[]	[]	_____
10. Wetlands	[]	[]	[]	[]	_____
11. Wildlife and Habitat	[]	[]	[]	[]	_____
B. CULTURAL IMPACTS					
1. Historic /Archaeological	[]	[]	[]	[]	_____
2. Recreation Areas	[]	[]	[]	[]	_____
3. Section 4(f) Potential	[]	[]	[]	[]	_____
C. COMMUNITY IMPACTS					
1. Aesthetics	[]	[]	[]	[]	_____
2. Economic	[]	[]	[]	[]	_____
3. Land Use	[]	[]	[]	[]	_____
4. Mobility	[]	[]	[]	[]	_____
5. Relocation	[]	[]	[]	[]	_____
6. Social	[]	[]	[]	[]	_____
D. OTHER IMPACTS					
1. Noise	[]	[]	[]	[]	_____
2. Construction	[]	[]	[]	[]	_____

* S = Significant; NS = Not Significant; N = None; NI = No Involvement. Basis of decision will be a reference to the Programming Summary Report, or summary following this checklist that is included in the Project Development Summary Report.

Prepared By: _____ Date: _____

Reviewed By:

Signature: _____ Date: _____

District Environmental Administrator

FIGURE 5.3 Summary of Environmental Impacts Checklist for Type 2 Categorical Exclusions