

**APPENDIX F:
FOLLOW-UP REGARDING USE OF A
CATEGORICAL EXCLUSION FOR THE PROJECT**

Introduction

This purpose of this Appendix is to provide a follow-up review of the Categorical Exclusion (CatEx) prepared and submitted by the Wyoming Department of Transportation (WYDOT) under provisions of the National Environmental Policy Act (NEPA) (1970, as amended) for the Pathway Project along WY22 (Path 22 East Phase), project number: WY11001 WY22/US89. A CatEx was issued by the Wyoming Department of Transportation on February 22, 2013 (WYDOT 2013). A review of the CatEx for the Path 22 Middle Phase 2 pathway project was part of the SETTLEMENT AGREEMENT (Hereafter, "Agreement") among the parties listed in the pre-recital section of the Agreement and effective on June 22, 2015. The specific reference for this follow-up is found in Section 1.b. of the Agreement.

It is important to note that the application of the NEPA for Path 22 Middle Phase 2 of the multi-use pathway segment would not be appropriate since there is no federal nexus or situation where the federal government would have discretionary authority regarding this segment. There is no federal funding for this project and as explained in the wetland section of the EA, the use of a Nationwide Wetland Permit (NWP) under that program is not discretionary as long as the conditions for a given NWP are met. Consequently, the review of the CatEx is provided as a good faith effort to comply with the terms of the Agreement.

Background

The NEPA process involves the procedures followed by a Federal Agency in order to analyze the environmental impacts of a proposal and alternatives to that proposal. It serves as the Administrative Record for implementing the proposed project under the rules and regulations for NEPA within the federal department contemplating a project with a federal nexus. The NEPA process can be found in Section 102(2) (C) [42 U.S.C. 4332 (2) (C)]. NEPA involvement is required when a proposed project involves a Federal action, including funding, that has the potential to affect the human environment and includes discretionary decision space regarding whether and under what circumstance such a project can be implemented. In this particular case, the proposed pathway project was partially funded by the federal government and is also located within a Right-of-Way controlled by a federal agency (Federal Highway Administration (FHWA)).

According to Section 40 CFR 1508.4, a categorical exclusion "means a category of actions which do not individually or cumulatively have a significant effect on the human environment...and...for which, therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required." Each federal agency and or department was directed by the Council on Environmental Quality as part of their responsibility to implement the NEPA to prepare and define a list of projects that could be considered for a CatEx action. A specific list of CatExs that normally do not require any NEPA documentation or FHWA approval is set forth in 23 CFR 771.117(c). Other projects, pursuant to 23 CFR 771.117(d), may also qualify as CATEXS if appropriately analyzed, documented, and approved by FHWA at the Division level. A CatEx involves the actions defined in 23 CFR 771,117 (c) above with the terms and conditions of a particular CatEx included and applied. In addition to those listed by an agency or department an agency can implement a project as a CatEx "based on past experience with similar actions

that do not involve significant environmental impacts". CatEx projects by definition do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other important resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts (23 CFR 771.117(a)). Significance in these cases must follow the definition as noted in the NEPA at 40 CFR 1508.27; viz. in order for an impact to have a potentially significant impact it must be analyzed in its current and proposed short-and long-term effects and found to adversely impact the whole of a given resource at a high intensity or severity. In the case of the proposed pathway the likely resources potentially affected include large mammals such as elk, deer, and moose; soil erosion and sedimentation concerns; and water resources including fisheries. It is important to note that in order for an effect to be recognized as "significant" or even potentially significant, it must impact population, habitats, or behavior on a large regional basis such as a herd unit or watershed. Actions which potentially impact an individual animal or a small group of animals such that a long-term affect or recurring short-term affect is unlikely are generally not considered significant on a larger scale. Similarly, in order for an impact to be considered significant under NEPA, it must surpass certain identified impact thresholds, for instance, degrading a known archeological site under provisions of the National Historic Preservation Act, filling a large acreage of aquatic resources such as wetlands beyond certain thresholds established under provisions of the Clean Water Act, or affecting a species listed by the U.S. Fish and Wildlife Service under provisions of the Endangered Species Act.

Impacts, or effects, as defined in Sec. 1508.8 and in NEPA case law include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(c) Cumulative effects analyze the proposed project viewed in conjunction with other ongoing projects, recently completed projects, and projects reasonably anticipated that affect or may affect the same natural resources or disciplines as the proposed project. Cumulative impacts are addressed separately for the pathway project in Appendix C of this Environmental Analysis.

As noted, the significance of any direct or indirect impact (short-term or long-term) listed above, is assessed by 1) context (analyzing impacts through the case-specific actions), and 2) level of intensity (severity of the impact).

There are three potential outcomes after assessing direct, indirect, and cumulative effects. These include:

- 1. Clearly No: The proposed action is excluded from any further NEPA documentation*
- 2. Clearly Yes: Proceeds to prepare an Environmental Impact Statement (EIS)*

3. Maybe: Proceeds to prepare an Environmental Assessment (EA) to determine whether the impacts could be significant, and possibly require an EIS.

If any of the above effects are determined significant, either “clearly yes” or “maybe”, a CatEx cannot usually be issued, and an EA and/or an EIS and will be necessary. However, if a potential impact can be reduced to a level of non-significance or totally eliminated then the project can be implemented as a CatEx so long as those mitigation measures are included and implemented as described for the proposed project. In most cases the most effective means of mitigation is either spatially or temporal avoidance. If full avoidance is not possible (which is often the case for linear projects such as roads, pathways, and other transportation projects) then adherence to using Best Management Practices, temporal avoidance (seasonal implementation), and spatial avoidance (site-specific measures relating to minimizing potential impacts that may occur within a given season).

The purpose of this proposed pathway project is to improve infrastructure for non-motorized travel (bicycle and pedestrian) in the Right-of-Way along the south side of WY22 from the Spring Gulch intersection to the existing pedestrian tunnel across from Teton Science Schools’ entrance.

Based on the 2013 CatEx issued by WYDOT (WYDOT 2013), the proposed Path 22 Middle Phase 2 pathway segment along WY22 qualifies to be implemented under provisions of the CatEx form of NEPA compliance for exclusion, and therefore no Environmental Assessment (EA) or Environmental Impact Statement (EIS) prepared by a Federal Agency is necessary. The WYDOT Environmental Impact Evaluation is included by reference to this appendix and can be found in the attached list of references. The following categories of disciplines or interests were analyzed in the 2013 CatEx and found to have no significant impact or were not present in the affected environment for the proposed project, and thus a CatEx was issued:

1. Social Impacts

- a. Land Use Changes
- b. Community Cohesion
- c. Relocation Potential
- d. Churches and Schools
- e. Controversy Potential
- f. Energy
- g. Utilities
- h. Designated Emergency Routes
- i. Environmental Justice
- j. Public Transportation
- k. Right-of-Way
- l. Construction Permits
- m. Pedestrian and Bicycle

2. Archaeological and Historical Impacts

- a. Recreational Areas
- b. Historic Properties

3. Natural Environment

- a. Waters of the U.S. and Wetlands
- b. Water Quality

- c. Wild and Scenic Rivers
- d. Floodplains
- e. Farmlands
- f. Wildlife and Habitat
- g. Threatened and Endangered Species
- h. Vegetation
- i. Ecosystem

4. Physical Impacts

- a. Noise
- b. Air
- c. Hazardous Water Sites/Contamination
- d. Visual

Pioneer agrees that:

1) The proposed Path 22 Middle Phase 2 pathway project along WY22 conforms and qualifies in regards to implementing the project under provisions of a CatEx as authorized by the Federal Highway Administration and the Wyoming Department of Transportation because there are no significant impacts or impacts that might require extraordinary mitigation.

2) The proposed project qualifies to be implemented under Section 404 of the Clean Water Act under the provisions and requirements of Nationwide Permit (NWP) #14 (linear transportation projects, http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/NWP2012/NWP14_3-23.pdf) based on a review of the Aquatic Resource Inventory (ARI) submitted by Alder Environmental, LLC and the letter of concurrence from the US Army Corps of Engineers regarding the ARI and potential flood plains or storm water impacts. Both the ARI and the concurrence letter from the USACE are included with this appendix by reference. A reference for these documents is provided with this appendix. In addition, Pioneer's own staff have visited the project site on several occasions and investigated the aquatic resources within the project area. Pioneer concludes that so long as the work is implemented using Best Management Practices – adherence to the mitigation measures identified in the project description including the storm water management plan – and following the provisions and terms of NWP #14, no significant or important impacts would occur to aquatic resources including wetlands.

3) There are no extraordinary circumstances such as archeological, historical, cultural concerns, or presence of Threatened or Endangered species based on a review of the appropriate files and records for the project area. This conclusion by Pioneer is based on the concurrence letter from the Wyoming State Historic Preservation Office (SHPO) and the U.S. Fish and Wildlife Service files.

Site-specific mitigation measures that are part of this project include:

Spatial Avoidance Measures:

- Moving the proposed pathway route farther away from the scrub-shrub wetland area across from the Spring Gulch intersection than originally proposed;
- Utilizing the existing culvert that crosses over Spring Creek for the proposed pathway instead of creating a new culvert or bridge, or placing fill into Spring Creek;

- Segmenting the proposed retaining walls and safety railings to avoid long or contiguous walls that would have a greater impact on wetlands, vegetation, and wildlife habitat/movement/migration routes in this area; and
- Reducing the need for additional ground disturbance or the number of tunnels by placing the pathway on the south side of WY22 which shortens the overall pathway length.

Temporal Avoidance Measures:

- Constructing the proposed pathway during the summer months in order to avoid impact on the spring and fall migration routes of big game in the area;
- Doing actual construction during the seasons when natural runoff is low in order to reduce potential runoff and thereby avoid erosion/sedimentation in Spring Creek; and
- Having a qualified wildlife biologist survey the project site for migratory birds and their active nests listed under provisions of the Migratory Bird Treaty Act (1918, as amended) prior to construction implemented during April 1-August 15 in order to remain in compliance with that Act.

Minimization Measures:

- Building the pathway using an existing culvert that traverses over Spring Creek thereby avoiding additional culverts, bridges, or fill into Spring Creek;
- Staggering the retaining walls used to stabilize the pathway along portions with exceptionally steep slopes in order to avoid a continuous long wall thereby affording large mammals to easily cross the project by going around and between wall segments;
- Using 'block' wall construction rather than extensive gabion construction to enable construction of shorter segments;
- Installing sections of safety railings on retaining walls only where absolutely necessary and at the minimum height necessary for the safety of users; and
- Crossing Spring Creek and areas adjacent to wetlands at locations which minimizes fill in wetlands and eliminates any new impacts to Spring Creek by using existing infrastructure.

In summary, Pioneer concurs that the CatEx issued in 2013 by WYDOT which grants the proposed pathway project an exclusion from any further NEPA processes is thorough, complete, and correct. Pioneer also concurs that the categories of potential effects/impacts submitted by TCJHCP were analyzed thoroughly by WYDOT and that no extraordinary conditions apply such that the project can be implemented as a CatEx under provisions of the NEPA. This concurrence is contingent on the project being constructed and operated using the Best Management Practices and that the noted mitigation found in the project descriptions, the general requirements of the CatEx provided by the WYDOT, and the general and regional terms and conditions for NWP #14 as provided by the U.S. Army Corps of Engineers are implemented.

Appendix F was prepared by Roy Hugie, Anna DiSanto, and Heidi Bellorado of Pioneer Environmental Services, Inc., Jackson, WY.

References Included by Reference

Alder Environmental, LLC. March 14, 2016. Aquatic Resources Inventory: Wetland Delineation and Surface Waters, WY State Highway 22 Right-of-Way, Teton County, WY.

U.S. Fish and Wildlife Service (USFS). February 23, 2012. Letter of Correspondence from Brian Schilling to Tyler Abbott. Re: WY22/US89 and Karns Meadow Pathway Projects.

U.S. Army Corps of Engineers. 2014. Letter of Concurrence for the Aquatic Resource Inventory Report (Alder 2016) from Cheyenne Office of the U.S. Army Corps of Engineers.

_____. March 5, 2013. Letter of Correspondence from Matthew Bilodeau to Brian Schilling. Re: Standard Spawning Recommendation.

Wyoming Department of Transportation. February 22, 2013. Categorical Exclusion for Project WY11001. US Army Corps of Engineers (USACE). Johnson, Thomas B. April 20, 2016.

Wyoming Game and Fish Department (WYGFD). March 21, 2012. Letter of Correspondence to Brian Schilling from John Emmerich. WER 12872. Jackson Hole Community Pathways Environmental Review WY22/US89 and Karns Meadow Pathway Project.

_____. Letter of Correspondence from Lara Gertsch to Brian Remlinger.

_____. March 23, 2012. Letter of Correspondence to Brian Schilling from John Emmerich. WER 12872. Jackson Hole Community Pathways Environmental Review WY22/US89 and Karns Meadow Pathway Project.

Wyoming State Parks and Cultural Resources. March 8, 2012. Letter of Correspondence to Brian Schilling from John P. Laughlin. Re: WY22/US9 and Karns Meadow Pathway Projects (SHPO File # 0312JP009).

Wyoming Department of Transportation

Form 100 - Environmental Impact Evaluation

WY22/ US89 Pathway Project
Teton County

WY22/ US89/Jackson

Project Number: WY11001 and see below

SEVERITY OF IMPACTS

	Significant	Minimal	No Impacts	None	<u>REMARKS</u>
<u>SOCIAL IMPACTS</u>					
Land Use Changes	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Community Cohesion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	improved access to ammenities and fewer automobiles
Relocation Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Churches and Schools	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Controversy Potential	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a few adjoining landowners who use ROW
Energy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Utilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	utility work may be done concurrently
Designated Emergency Routes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Environmental Justice	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Public Transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	improvement of multi-modal transportation system
Right-of-Way	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Construction Permits	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	temporary construction permits
Pedestrian & Bicycle	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	improved pathways system
<u>ARCHAEOLOGICAL AND HISTORICAL IMPACTS</u>					
Historic Sites / Districts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Archaeological Sites	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<u>SECTION 4(f)</u>					
Recreational Areas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Historic Properties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<u>NATURAL ENVIRONMENT IMPACTS</u>					
Waters of the U.S. and Wetlands	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Water Quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Wild and Scenic Rivers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Floodplains	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	existing bridge in FEMA Zone AE Floodplain
Farmlands	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Wildlife and Habitat	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	hillside grading may improve wildlife safety
Threatened and Endangered	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	not expected in project area
Vegetation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Ecosystem	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>PHYSICAL IMPACTS</u>					
Noise	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	increase non-motorized use
Air Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	increase non-motorized use
Temporary Impacts	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	temporary construction impacts
Contamination	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Hazardous Waste Sites	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Visual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	transportation corridor improvements

PERMITS REQUIRED

Temporary construction permits are required with adjacent private and state landowners.

WATERS OF THE U.S. FINDINGS

There are no impacts to Waters of the U.S.