

Federal aid highway projects are required to comply with the National Environmental Policy Act of 1969 (NEPA). NEPA identifies three classes of actions, (Class I - Environmental Impact Statement (EIS), Class II - Categorical Exclusion (CE), and Class III - Environmental Assessment (EA)), which in turn require varying levels of documentation in the NEPA process. A brief review of each class follows. More discussion is found in the Code of Federal Regulation, 23 CFR 771. A summary of how to prepare these documents is found in FHWA Technical Advisory T 6640.8A. For all federal aid projects, the Environmental Document author should coordinate the need for Environmental Documentation with the Environmental Section in the Environmental and Transportation Services Division. The three classes are as follows:

Class I Actions - These are actions that may significantly affect the environment and will require an Environmental Impact Statement (EIS). (40 CFR 1508.27).

Examples of these actions include:

- Any new controlled access freeway.
- A highway project of four or more lanes on a new location.
- New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guide way transit).
- New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

Class II Actions - These are actions which meet the definition contained in 40 CFR 1508.4, and based on past experience with similar actions, 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 resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts. These actions are referred to as Categorical Exclusions (CATEX). Categorical Exclusions are the most common type of environmental clearances used by the NDDOT.

Projects that are processed as Categorical Exclusions are listed in the Code of Federal Regulations, Title 23, Part 771, Section 117. This list is divided into two groups. The first groups (paragraph c “c-list”) are those actions which normally do not require any further National Environmental Policy Act approvals by the Federal Highway Administration (FHWA). The second groups (paragraph d “d-list”) are those actions that can be designated as Categorical Exclusions only after submitting **documentation** to FHWA that the specific project meets the conditions or criteria for a Categorical Exclusion. Normally, this **documentation** will consist of

the *Documented CatEx (DCE)*. *DCE*'s are discussed in further detail in Section II-05.02. A *Programmatic Categorical Exclusion* has been developed to be used in place of the *Documented CatEx (DCE)* when applicable. The *Programmatic Categorical Exclusion* process is discussed in further detail in Section II-05.02.

Class III Actions - These are actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or Class II are Class III and require the preparation of an Environmental Assessment (EA) to determine the appropriate environmental document required.

Multiple projects are often discussed in one environmental document and approved together. The environmental document writer should note all related projects. Writers need to be conscious of the full scope of these projects when determining if the multiple projects can be documented together. If it is determined that multiple projects can be documented together, all relevant project numbers should be included with all the documentation (DCE, Categorical Exclusions, etc). Examples:

- Grading and surfacing of a project may be done in two different years with two different project numbers.
- Divided highways or interstates with separate project numbers for each roadway.
- Tied projects.

II-02.01 Class I Actions - Environmental Impact Statements (EIS)

II-02.01.01 Notice of Intent (NOI)

For those federal actions that are categorized as Class I projects, a Draft Environmental Impact Statement (DEIS) will be prepared and processed in accordance with the FHWA Technical Advisory Guidance Material and Section 6002 of SAFETEA-LU.

As soon as practical, after it has been determined to prepare a DEIS, the Department should submit to FHWA the information necessary to publish a Notice of Intent in the Federal Register. The NOI initiates the EIS process and summarizes the proposed project and scoping process.

The format, content, and processing of the NOIs are specific and must be strictly adhered to as provided in the FHWA Technical Advisory Guidance Material and Section 6002 of SAFETEA-LU. The NEPA practitioner in conjunction with the Environmental Section in the Environmental and Transportation Services Division will prepare a NOI in accordance with FHWA Technical Advisory Guidance Material. A press release, prepared at the same time, will be sent to the Communications Division to make available to the local news media.

II-02.01.02 Draft Environmental Impact Statement (DEIS)

The DEIS contains a discussion of:

- Purpose and Need for Project
- Alternatives
- Study findings, reviews, consultation, and coordination
- Possible impacts which may have a significant effect on the quality of the human environment.

The DEIS will include input from:

- Cooperating agencies
- The MPO in urbanized areas
- NDDOT District Engineers and Central Office Divisions
- FHWA
- Local officials
- Other agencies, groups or individuals

When the DEIS has been completed, FHWA sends it in for a Legal Sufficiency Finding.

When the DEIS has been reviewed and adopted by FHWA, a press release should be issued to notify the public that it is available for public inspection. The press release concerning a Public Hearing or opportunity will be utilized to inform the public of the availability of the DEIS. The DEIS, along with any applicable supplemental reports, must be made available for viewing at the NDDOT Central Office and District Office appropriate to the project location on the day the ad appears in the newspaper. Additional viewing locations may include local libraries and city/county offices. FHWA will ensure that the required Federal Register public availability notice is printed which establishes a 45-day review period.

The DEIS is mailed to concerned local, state, or federal agencies as well as local interest groups or individuals who have expressed an interest in the project with a response requested in 45 days or less. The distribution list is on the web at:

<http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under “Design Distribution List.”

II-02.01.03 Final Environmental Impact Statement (FEIS)

Comments received after circulation of the DEIS and from Public Hearings, when held, are considered in the preparation of a Final Environmental Impact Statement (FEIS) for adoption by FHWA.

The FEIS should identify the preferred alternative and basis of decisions, discuss substantive comments received on the DEIS and all reasonable alternatives considered, summarize citizen involvement, discuss selection of mitigation and enhancement measures, environmental findings, results of coordination, final Section 4(f) and 6(f) findings, and include, when appropriate, a description of the procedures to be followed to assure that all environmental mitigation measures are implemented.

If any additional studies are done or if any information is developed which would affect the project after circulation of the DEIS, such study, or information should be made a part of the FEIS.

The FEIS is circulated for comment within the department to the divisions affected by the improvement and to the divisions with expertise in a particular field which is of importance to the improvements.

FHWA will send the FEIS in for a Legal Sufficiency Finding.

When the FEIS is distributed (Distribution list found on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under “Design Distribution List”) and filed with EPA, the FEIS is made available to the public through:

- Publication of a notice of availability in local newspapers and press release made available to the local news media.
- The FEIS, along with any applicable supplemental reports, must be made available for viewing at the NDDOT Central Office and District Office appropriate to the project location on the day the ad appears in the newspaper. Additional viewing locations may include local libraries and city/county offices.
- Furnishing the document to any person(s), organizations, or agencies that made substantive comments on the DEIS or requested a copy.
- An electronic copy at the State Library

II-02.01.04 Record of Decision (ROD)

After the FEIS has been approved, the lead NEPA practitioner will prepare a draft ROD in accordance to FHWA Technical Advisory Guidance Material and Section 6002 of SAFETEA-LU and will submit it to FHWA for comment and finalization. The ROD will state what the decision is, alternatives considered, and practical means to minimize harm. The ROD may not be signed sooner than 30 days after publication of the FEIS notice in the Federal Register or 90 days after publication of the DEIS notice, whichever is later. However, MAP-21 does allow for the streamlining of the process by combining the FEIS/ROD if possible.

Signing of the ROD will constitute FHWA concurrence in the project concepts as described in the FEIS.

The ROD is distributed to those on the distribution list found on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under “Design Distribution List.”

After the ROD is signed, an informational press release will be prepared and sent to the Communications Division to make available to the local news media. A Legal Display Ad is also required. The ROD, along with any applicable supplemental reports, must be made available for viewing at the NDDOT Central Office and District Office appropriate to the project location on the day the ad appears in the newspaper. Additional viewing locations may include local libraries and city/county offices.

Environmental and other commitments contained in the ROD must be implemented. District Engineers and representative Divisions will be sent a copy of the ROD. The Lead Designer will be responsible for implementing commitments relating to preparation of construction plans. The District Engineer is responsible for implementing construction and post construction environmental commitments. The county will be responsible for implementing ROD commitments on county secondary or off-system projects.

The Lead Designer should assure, before requesting PS&E approval from FHWA that the final plans have not significantly changed from the original proposed action. Any substantial changes in the proposed action should be reviewed for any changes in environmental impacts.

The ROD normally consists of a cover sheet, summary of selected alternatives and basis of decision, summary of alternatives considered and basis of decision, summary of Section 4(f) and 6(f) basis of decision, summary of measures to minimize harm and environmental commitments, summary of monitoring and enforcement program, summary of agency and public comments received on FEIS and department responses, and a signature block. Refer to the FHWA Technical Advisory, SAFETEA-LU, and MAP-21 for detailed information and processing requirements.

II-02.02 Class II Actions - Categorical Exclusions (CatEx)

Class II actions are Categorical Exclusions. Projects processed as Class II actions at the NDDOT are either a Programmatic CatEx (ECL) or a Documented CatEx (DCE). In the CEQ regulation (40 CFR 1508.4) and 23CFR 771.117(a), the Programmatic CatEx is a list of actions that meet the criteria for CE’s (“c-list”) and normally do not require any further NEPA approvals by FHWA. The Documented CatEx is a list of actions that meet the criteria for CE’s (“d-list”) only after NDDOT demonstrates that specific conditions or criteria are satisfied and that significant environmental effects will not result, and FHWA approves it.

II-02.02.01 Programmatic Categorical Exclusion – Environmental Checklist (ECL)

The *Programmatic Categorical Exclusion* is contained within the *ECL* document and applies only to the types of projects listed in the *ECL*, which can be found on the department's website at <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> in the Reference and Forms tab under the section labeled "*NEPA Documentation.*" The *ECL* document consists of four pages:

- Page 1 of *ECL*: Programmatic Categorical Exclusion
- Page 2 of *ECL*: Worksheet A
- Page 3 of *ECL*: Worksheet B
- Page 4 of *ECL*: Worksheet C (if needed)

Generally, most work items found in the *ECL* are Preventive Maintenance; however, some work items are above Preventive Maintenance. Work items selected on the *ECL* that are designated as (MiR), (SI), (MaR), (N/R), or (-*Dec.Doc.*) will require a *Decision Document for ECL*. Any projects on state highways that are within the 12 major cities will also require the *Decision Document for ECL*. The *ECL* will be attached to the *Decision Document for ECL*.

The *Decision Document for ECL* can be found on the department's website at <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> in the Design Manual Reference and Forms tab under the section labeled "Programmatic." The *Decision Document for ECL* will follow the same draft distribution process criteria as a Documented CatEx (DCE) so comments can be reviewed by the Deputy Director for Engineering before signature approval.

The distribution list for the draft and final DCEs is found on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under "Design Distribution List."

The *ECL* shall be completed as follows:

- Page 1 - Programmatic Categorical Exclusion
Type of project is selected. Select every type of work to be completed with the project. Work items selected designated as (MiR), (SI), (MaR), (N/R), or (-*Dec.Doc.*) will also require the *Decision Document for ECL*. Work items selected designated with (+) will also require Worksheet C to be included with the *ECL*.
- Page 2 - Worksheet A
Answer all environmental questions. If any of the questions are answered "YES", attach Worksheet C – Supporting Documentation and coordinate with the ETS Division for environmental and cultural clearance or permits.

Send SOV Letter #6 to the North Dakota State Water Commission for a floodplain/floodway determination on all HBP overlay, HBP patching, cold in place recycling, and white topping projects as per section II-04.01.01 of the Design Manual. If the project is located within a floodplain/floodway, a floodplain permit or floodway authorization may be necessary. Coordinate with ETS Division (with the exception of Local Entity projects).

- Page 3 - Worksheet B

A cost effective analysis is only required for Preventive Maintenance projects. If a Design Exception is required, the Design Exception will be completed as a separate document. Design Exceptions shall be written and presented in the format shown in Section I-06.04, and as shown in the Design Exception Form found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under Design Manual Reference and Forms in the "Design Exception Form" table.

- Page 4 - Worksheet C (if needed)

Worksheet C will only be included with the ECL if any work item selected on Page 1 that is designated as (+) or if any questions were answered as "YES" on Page 2. Worksheet C shall include additional information to assist with the approval of environmental and cultural clearance through coordination with the ETS Division. The additional information may include, but is not limited to:

- project location map with township, section, and range
- cross sections and plan and profile sheets from the old grading plans showing the locations of work, any widened areas, limits of construction and disturbance, any devices, location of the power and route to get to it, required trenching, controllers, and soil disturbance areas.
- any available pictures of the proposed work areas

The *ECL* will be filled out by the designer and certified by a Registered Professional Engineer. The submission of the *ECL* will follow the procedure listed below:

- NDDOT Central Office Projects: The electronic version of the ECL shall be placed in FileNet by the designer. The original paper hard copy of the ECL and a FileNet link shall be submitted to the Administrative Assistant of their respective Division.
- NDDOT District Projects: The electronic version of the ECL shall be placed in FileNet by the designer. The original paper hard copy of the ECL and a FileNet link shall be submitted to the Technical Support Contact.

- NDDOT Consultant Projects: The original paper hard copy of the ECL and electronic version of the ECL shall be submitted to the Technical Support Contact.
- Local Entity Developed Projects: The original paper hard copy of the ECL shall be filed by the local entity and an electronic version of the ECL shall be submitted to the Technical Support Contact.
- If a Design Exception is required, the original paper hard copy will be completed and mailed with a hard copy of ECL. NDDOT Central Office employees deliver hard copy to the Administrative Assistant of their respective Division. Consultants and Districts will send the hard and electronic copy to the contact person in the Technical Support Section of Design Division. The Administrative Assistant will deliver them to the Deputy Director for Engineering (DDE).
- If a Design Exception is required on a local entity developed project, the original paper hard copy will be completed and filed by the local entity. An electronic copy will be submitted at the same time as the ECL.
- Upon approval of the Design Exception, an electronic copy of the Programmatic Categorical Exclusion will be forwarded to FHWA if applicable. When the signed documents are returned, the Administrative Assistant will scan and forward FileNet links to the designer or Technical Support Contact.
- If the Design Exception is not approved, the Administrative Assistant will notify the designer or Technical Support Contact.

II-02.02.02 Documented Categorical Exclusion (DCE)

The Documented CatEx (DCE) contains an Executive Summary and a detailed list of environmental questions contained in the Environmental Impact Checklist; it also identifies additional supporting documentation to be included either in the appendix or by reference. The detailed checklist leads the environmental document author to know when additional information is required, if mitigation is necessary, or if the impact category is not an issue; eliminating the need to draft a technical write-up for each impact category. Any projects previously processed under a PCR, will be processed under a Documented CatEx document.

The executive summary should be included in both the draft and final Documented CatEx. Comments received from the draft DCE circulation are incorporated into the summary.

The executive summary will vary in length depending on the project; however, the six subsections listed below should total a maximum of three pages in length for all projects as follows:

- **Project Description** – List the highway, district, project number, project roadway(s), location *From* and *To* logical description plus reference points, current and forecasted ADT (Total and Trucks)
- **Project Schedule** – List the project schedule concerning the plans complete date and bid opening date for all projects covered in DCE.
- **Purpose of Project** – Provide a brief synopsis of the purpose of the project. This statement should be directed at the corrections needed, and not at the solutions. Highlight the investment strategy and the outcomes achieved by the project.
- **Need for Project** – List applicable existing conditions and deficiencies such as pedestrian facilities, drainage, safety (crashes and guardrail), maintenance concerns, geometry, cracking and rutting, broken pipes, etc.
- **Scope of Work** – The original scope of the work, as well as the proposed scope in the DCE. This would include the original investment strategy and cost estimate for the STIP, Scoping Report, and the DCE, as well as any investment strategy changes.
- **Alternatives** – A brief description of the alternatives including the estimated costs for each. If needed, a brief description should be included for any optional work items, engineering issues or concerns, environmental issues or concerns including permits, right of way issues or concerns, funding notices, etc. If multiple build alternatives are being studied, the environmental author should complete a checklist for each alternative and/or option unless a Decision Document is prepared that identifies alternatives and/or options to be studied. The Decision Document must be appended by reference to the DCE.

The remaining subsections of the executive summary will not be limited to three pages, and will vary in length depending on the project as follows:

- **Comments from the Draft DCE** – List only the comments from the draft DCE circulation that specifically concern the alternatives or important issues of the project with responses that should be considered for the Executive Decisions.

The remaining draft DCE comments that do not specifically concern the decision items or important issues of the project will be responded to and shall be included as an Appendix to the DCE. DCE authors should document when a division engineer or agency representative has reviewed a DCE, even if no comments were made and include it in the Appendix of the DCE.

Example: FHWA: No Comments

- **Recommendations Table** – A recommendations table shall be included which will outline comments received on the project from the draft DCE circulation relating specifically to the Executive Decisions. An example of the recommendations table is shown within the DCE Cover/Template on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm> under Design Manual Reference and Forms.
- **Public Concerns** – Provide a summary of key concerns conveyed by the public and dates and locations of any meetings held. List all avenues of public out-reach.
- **Executive Decisions** – A section requesting executive decisions from the Deputy Director for Engineering (DDE) or Local Entity on whether the project should proceed as indicated, concurrence in the project concepts as proposed, and which alternatives should be proposed with the project with their respective estimated costs.
- **Environmental Impact Checklist** – A detailed Environmental Impact Checklist follows the Executive Summary. It contains questions for each impact category and conveys when additional information/documentation is required. Both the environmental document author signs upon preparation, and NDDOT environmental liaison after review, signs to ensure NEPA compliance review occurred. For Local Entity projects, those individuals in the Local Government Division that sign the Environmental Impact Checklist should also be the same individual who signs the CATEX request to FHWA.

II-02.02.02.01 Draft Documented Categorical Exclusion (DCE) Process

After the draft DCE is prepared, it is distributed to the appropriate distribution list for comments. A two week comment/circulation period is desirable for most projects. The distribution list for the draft and final DCE is found on the web at:

<http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm>

- **Consultant Projects – Bridge and Design Division:** Submit an electronic copy to the NDDOT Technical Support Contact for distribution and request for comment. The comments are to be returned to the Technical Support Contact for distribution to the Consultant, who will prepare responses to the comments, as necessary, and/or incorporate revisions into the final DCE.
- **Local Government (ND & US Highways, ie. Urban Regional) Developed Projects:** Submit an electronic copy to the Local Government Technical Support Contact for distribution and request for comment. The comments are to be returned to the Local Government Technical Support Contact for distribution to the Consultant, who will

prepare responses to the comments, as necessary, and/or incorporate revisions into the final DCE.

- Local Entity (Federal Aid Routes, Transportation Alternatives Program (TAP)) Developed Projects: Submit an electronic copy to the Local Government Technical Support Contact for distribution and request for comment. The comments are to be returned to the Local Government Technical Support Contact for distribution to the Consultant or Local Entity, who will prepare responses to the comments, as necessary, and/or incorporate revisions into the final DCE.
- Bridge Division, Design Division, and District Projects: The environmental document author shall distribute an electronic copy and request for comments. The comments are to be returned to the environmental document author, who will prepare responses to comments, as necessary, and/or incorporate revisions into the final DCE.

II-02.02.02.02 Completed Documented Categorical Exclusion (DCE) Process

The final original DCE shall be completed as shown in the DCE Template found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under Design Manual Reference and Forms.

The DCE shall contain an original signed and stamped certification page completed by a Registered Professional Engineer of Record (principal author or their direct supervisor). The Environmental Impact Checklist contained within the DCE shall also contain an original signature by the Environmental Document Author and NDDOT environmental liaison after completion of the review of NEPA compliance. Any Design Exceptions shall be submitted for approval and signature along with the original DCE. The following is the process for submitting the DCE to the Deputy Director of Engineering for signature:

- Consultant Projects – Bridge and Design Division: Submit an electronic copy, one original, and one copy to the NDDOT Technical Support Contact. The Technical Support Contact will ensure the signatures are in place and provide the original and one copy to the Administrative Assistant in OPD. Once approved, the Administrative Assistant in OPD transmits the final approved copy to Environmental Transportation Services Division (ETS). The Administrative Assistant in the Environmental Transportation Services Division has the responsibility to obtain environmental clearance and manage the distribution of the DCE.
- Local Government (ND & US Highways, i.e Urban Regional) Developed Projects: Submit an electronic copy, one original, and one copy to the Local Government Technical Support Contact. The Local Government Technical Support Contact will ensure the signatures are in place and provide the original and one copy to the Administrative

Assistant in the Local Government Division. The Administrative Assistant in the Local Government Division has the responsibility to obtain environmental clearance and manage the distribution of the DCE.

- Local Entity (Federal Aid Routes, Transportation Alternatives Program) Developed Projects: Submit an electronic copy to the Local Government Technical Support Contact. The Local Government Technical Support Contact will ensure the signatures are in place and provide the original and one copy to the Administrative Assistant in the Local Government Division. The Administrative Assistant in the Local Government Division has the responsibility to obtain environmental clearance and manage the distribution of the DCE. The Local Entity shall retain the original for their records.
- Bridge Division, Design Division, and District Projects: The environmental document author shall submit one original and one copy to the Administrative Assistant in OPD. The respective Administrative Assistant in OPD coordinates the obtaining of the signatures from the DDE, and where appropriate, from FHWA on design exceptions. Once approved, the Administrative Assistant in OPD transmits the final approved copy to Environmental Transportation Services Division (ETS). The Administrative Assistant in the Environmental Transportation Services Division has the responsibility to obtain environmental clearance and manage the distribution of the DCE.

II-02.03 Class III Actions - Environmental Assessment (EA)

An EA should be prepared for each project processed as a Class III action. For state projects, the NEPA Practitioner in conjunction with the Environmental Section, will prepare the EA in accordance with FHWA Technical Advisory Guidance Material and SAFETEA-LU and present it to FHWA Division Administrator for review and adoption. The Local Government Technical Support Contact will coordinate with the Environmental Section on any local entity developed EA. Field inspections may be conducted in the same manner as described for Class I actions. The EA should include most of the same information provided by a DEIS, following the FHWA Technical Advisory and SAFETEA-LU.

The EA normally consists of a cover sheet, table of contents, purpose and need for action, alternatives, impacts, comments and coordination, appendices, and Section 4(f) and 6(f) evaluations.

When the EA has been reviewed and adopted by FHWA (by signature), a press release will be utilized to notify the public of its availability. The EA, along with any applicable supplemental reports, must be made available for viewing at the NDDOT Central Office and District Office appropriate to the project location on the day the ad appears in the newspaper. Additional viewing locations may include local libraries and city/county offices. A 30-day review period

should be established. The press release, concerning a Public Hearing or opportunity, should be utilized to inform the public of the availability of the EA.

Copies of the EA should be mailed to cooperating agencies for their review and comment. The distribution list is found on the web at:
<http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under "Distribution Lists."

II-02.03.01 Finding of No Significant Impact (FONSI)

The final environmental document normally consists of a cover sheet, summary of agency and public comments received on the EA and department responses, errata to the EA, and request that a Finding of No Significant Impact be made. The document should then be submitted to FHWA Division Administrator for evaluation, or determination of no significant impact. After the FONSI is signed, an informational press release will be prepared and sent to the Communications Division to make available to the local news media. A legal display is also required. The FONSI, along with any applicable supplemental reports, must be made available for viewing at the NDDOT Central Office and District Office appropriate to the project location on the day the ad appears in the newspaper. Additional viewing locations may include local libraries and city/county offices.

The FONSI is distributed to those on the distribution list found on the web at:
<http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under "Distribution Lists."

II-02.04 Recommended Content of Higher Level NEPA Documents (EA/EIS)

General Guidance for content of NEPA Documents.

II-02.04.01 Purpose and Need

The purpose and need of a project is essential in establishing a basis for the development of the range of reasonable alternatives required in an environmental document and assists with the identification and eventual selection of a preferred alternative.

Purpose of Proposed Action – It is important to clearly state the purpose for the project. The first part of the purpose and need should explain where the proposed project is located. The limits of a project should be clearly described. For a highway improvement project, normally street names, stations, logical descriptions, and reference points are used. An area map is included at the beginning of the report to show project location. Project limits should be based on logical termini. See FHWA "Guidance for Preparing and Processing Environmental and Section 4(f) Documents." Major roadways intersecting the proposed project should be noted.

This statement should be directed at the corrections needed, and not how it will accomplished. Highlight the investment strategy and the outcomes and goals achieved by the project. Examples restoring ride quality, pavement preservation, service life, safety, department goals, etc.

Need for the Proposed Action – The need for the project must be explained. Highlight what problems or potential problems the proposed project intends to correct. Examples; correct failing pavement, reduce traffic congestion, eliminate hazard, etc. List applicable existing conditions and deficiencies such as pedestrian facilities, drainage, safety (crash history and guardrail), maintenance concerns, geometry, cracking and rutting, broken pipes, etc...

The following items may be listed and described in the purpose and need statements for a proposed action. These are by no means all-inclusive or applicable in every situation. They are intended as a guide.

- *Project Status* - Briefly describe the action's history, including measures taken to date, other agencies and governmental units involved, action spending, schedules, etc.
- *Capacity* - Discuss the capacity of the present facility and its ability to meet present and projected traffic demands. Discuss what capacity and levels of service for existing and proposed facilities are needed.
- *System Linkage* - Discuss if the proposed action is a "connecting link" and how it fits into the transportation system.
- *Transportation Demand* - Discuss the action's relationship to any statewide plan or adopted urban transportation plan. In addition, explain any related traffic forecasts that are substantially different from those estimates of the 23 U.S.C. 134 (Section 134) planning process.
- *Legislation* - Explain if there is a Federal, state, or local governmental mandate for the action.
- *Social Demands or Economic Development* - Describe how the action will foster new employment and benefit schools, land use plans, recreation facilities, etc. In addition, describe projected economic development/land use changes that indicate the need to improve or add to the highway capacity.
- *Modal Interrelationships* - Explain how the proposed action will interface with and serve to complement airports, rail and port facilities, mass transit services, etc.
- *Safety* - Explain if the proposed action is necessary to correct an existing or potential

safety hazard. In addition, explain if the existing accident rate is excessively high and why, and how the proposed action will improve safety.

- *Roadway Deficiencies* - Explain if and how the proposed action is necessary to correct existing roadway deficiencies (e.g., substandard geometrics, load limits on structures, inadequate cross-section, high maintenance costs, etc.)

The following items may be described in the purpose and need section of the document only as it pertains to the purpose and/or need for the project. These are by no means all-inclusive, or applicable for every project. If items below are not applicable for the project, they shall be omitted from the document. They are intended as a guide in the development of the purpose and need for the project.

Existing Project Conditions (as applicable)

- **Project Construction History** - Discuss previous roadway construction within the proposed project limits. Explain when the existing roadway was constructed and repaired.
- **Function and Funding Classification** - Note roadway functional classification; interstate, arterial highway, arterial road, collector road, etc. Note roadway funding classification; interstate, primary regional system, secondary regional system, urban roads, county major collectors, etc.
- **Geometry** - Discuss the existing horizontal and vertical alignments. Note deficiencies and state whether the alignment satisfies minimum or desirable standards. Are sight distances adequate? What kind of superelevation is used in the curves?
- **Typical section** - Graphic typical section of the existing corridor showing all pavement layers, roadway width, various lane widths, ditches, right of way limits, and other pertinent features such as parking and sidewalks.
- **Pavement conditions** - Type and severity of the main pavement distress, ride scores, and rutting values are discussed as part of the major maintenance history.
- **Traffic Operations and Data** - Summarize traffic data and reference the traffic operations report. Discuss current and forecasted average annual daily traffic and equivalent single axle loads (ESALs). A table of current and future vehicle volume and ESALs should be provided. The average annual daily traffic (AADT) figure used in the table should be for the highest-volume intersection along the project. Generally a twenty-year projection of traffic through the corridor is presented, but will depend on the design life for the project.

Discuss posted speed limits. Does the speed limit change within the proposed project? Discuss traffic control systems - which intersections are stop sign controlled and which intersections are controlled by signals. Discuss pedestrian usage on the existing and future project. Discuss the crash history/analysis of the project and any contributing factors, as well as the potential for crashes. Note any areas of concern.

- **Safety Review and 90-1 Survey** - If conducted for the proposed project, summarize safety improvements noted in the safety review or 90-1 survey.
- **Drainage** - Discuss existing drainage system and any drainage deficiencies.
- **Structures** - An evaluation should be conducted of existing structures, including their condition and latest National Bridge Inventory (NBI) record, geometric capacity, load capacity, hydraulic capacity, scour analysis, and pedestrian access.
- **Right of Way** - Note right of way constraints.
- **Access Control** - Summarize the existing number and/or type of accesses (driveways) control.
- **Lighting** - The presence, ownership, and type of any lighting system should be noted.
- **Utilities** - All information about existing utilities, including but not limited to: sanitary sewer, water, electrical, petroleum and gas lines, cable TV, and telephone lines.
- **Parking** - Discuss existing parking areas within the proposed project.
- **Railroad Crossings** - Note type and condition of the crossing surface material in place (wood plank-uses shims, full depth timber-sits on ties, timber-asphalt combination, asphalt only, rubber, or concrete). Note the number of tracks. Railroad Crossings should be reviewed at the field review using the Railroad Crossing Review worksheet located on the Reference and Forms page of the Design Manual on the web at:
<http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm>
- **Sidewalks, Multi-Use Trails, and Shared-Use Paths (ADA)** - Discuss existing facilities as it pertains to ADA and movements of pedestrians, bicycles, etc.
- **Transit Facilities** - Discuss existing transit facilities such as bus stops.

II-02.04.02 Alternatives

The alternatives section of the document discusses the methods to satisfy the purpose and need of the project. This section should include a discussion of alternate routes and improvement types, the feasibility and prudence of the proposed alternates, the estimated cost differences between the alternates, and the advantages and disadvantages of each of the alternates, and a no-build alternative.

Description of the No-Build Alternative - Describe the effects of the no-build alternative if one of the build alternatives is not selected such as: Roadway or bridge would continue to deteriorate, continued maintenance, milling and microsurfacing at the driving lanes every 3 to 5 years to restore the pavement strength and provide a smooth and dense traveling surface, etc.

Description of the Proposed Build Alternatives - Describe the proposed build alternative improvements as well as the proposed improvements common to all build alternatives. The following items should only be addressed if actually improved with the alternatives proposed:

- **Geometry** - Discuss improvements to the horizontal and vertical alignments, sight distances, superelevations, turning movements, etc. Note, maintaining the existing roadway and changing lane assignments often creates a geometrical concern that should be documented.
- **Typical section** - Include graphic typical section of the proposed corridor showing all pavement layers, roadway width, various lane widths, right of way limits, and other pertinent features such as parking and sidewalks. A summary and findings of the soils, subgrade, and pavement thickness recommendation should be referenced.
- **Traffic Operations** - Summarize Traffic Operations Study recommendations. Discuss intersection layout changes (added driving and/or turn lanes, changed intersection traffic control and/or signals, etc). Discuss speed limit changes.
- **Drainage** - Discuss drainage improvements. Don't forget to note roadway crowns and drainage paths.
- **Structures** - Recommendations for widening, strengthening, scour protection, etc. to address deficiencies or on National Bridge Inspection (NBI) records. For projects to be funded with federal Bridge Replacement funds, include selection, list eligibility, structure sufficiency rating, consideration of lower-rated structure in same jurisdiction, and rehabilitation vs. replacement. Structures replaced with federal Bridge Replacement funds must show cost comparison with rehabilitation, or demonstrate non-feasibility of rehabilitation.

- **Right of Way** - Discuss the need to acquire any permanent right of way or construction easements for the project including the need to acquire borrow, participation in right of way costs, exceptions to right of way policy, and any encroachments.
- **Access Control** - Discuss any recommendations concerning the feasibility and extent of access control or revised access, based on crash history, potential for crashes, functional class, and access demand. Note the proposed removal and or replacement of driveways within the existing right of way along the project limits, as well as any concerns from the public about driveway widths.
- **Lighting** - If a lighting study has been done, the recommendations should be incorporated here. For most NDDOT developed projects, the Programming Division completes the lighting study.
- **Utilities** - Note any utility work necessary in this project, including all underground work, such as storm sewer, water, electrical and gas lines, cable TV and telephone lines. If relocation is necessary, coordinate with the utility companies and the Utility Engineer in the Design Division.
- **Parking** - Discuss all parking issues, including the type of parking proposed, the number of parking spaces lost because of turn lanes, the width of any parking lanes, etc. Federal funding is available for parking replacement on a case-by-case basis. Federal regulations must be followed when federal funds are used for parking replacement. The Americans with Disabilities Act (ADA) should be followed in providing parking.
- **Railroad Crossings** - Discuss proposed railroad crossing improvements which should include the type of material used for the crossing, the type of warning devices and whether signal gates should be installed, and the funding participation. NDDOT, Cities, and Counties should coordinate railroad crossings with the respective railroad.
- **Sidewalks, Multi-Use Trails, and Shared-Use Paths (ADA)** - Discuss proposed improvements for pedestrians, bicycles, etc. Reference provisions to the American with Disabilities Act (ADA) when applicable.
- **Landscaping** - Note landscaping improvements such as trees and bushes.
- **Transit Facilities** - Discuss proposed accommodations for transit facilities such as bus stops.

Traffic Control Work Zone Safety and Mobility (when applicable) - Measures for work zone safety and mobility assurance should be discussed in this section.

Work Zone Traffic Control - A summary of work zone traffic control for the proposed alternative should be discussed here. An outline of the project phasing for work zone traffic control should be discussed and which traffic control devices to be used.

Summary of Estimated Costs - A detailed preliminary estimate of the cost of the proposed improvements should be included. The detailed estimates are included in an appendix or appended by reference, and a summary is given within the body of the report. Pay items should match the NDDOT specifications and code listing (Historical Fact Sheet), obtainable from NDDOT.

General programming details should be included in this subsection. Note the proposed bid opening and when the proposed construction is planned to begin and end. Also note TERO requirements if applicable (project located within or near an Indian Reservation). Note the number of independent contracts proposed to build the project. For example, the construction of part of a divided highway where one contract is used for the northbound lanes and another is used for the southbound lanes.

Maintenance Responsibility Discussion - This subsection should discuss the entities responsible for roadway maintenance after the project is completed. The degree of detail included here is dependent on how significant maintenance is to the selection of alternatives.

Projects with ITS - The following process has been developed and should be followed to ensure Intelligent Transportation Systems (ITS) applications are communicated early in the development stages, and implemented efficiently and effectively.

- Step 1 - Review ITS statewide plan (performed by Maintenance & Engineering Services).
- Step 2 - Each project scoping report should include a decision item to determine if there should be a study done. _____ YES _____ NO
(If yes, continue to step 3; if no, STOP).
- Step 3 - Maintenance and Engineering Services should attend the field review and conduct a check list of ITS possible components (2 weeks to perform this step).
- Step 4 - ITS Committee will make recommendations (2 weeks to perform this step).
- Step 5 - Maintenance and Engineering Services submits proposal and its options with costs and impacts for inclusion into the Decision Document (1 week to perform this step).
- Step 6 - Send out for comments.
- Step 7 - Send to management for decisions.
- Step 8 - Decisions should be incorporated into design.

ITS components should typically be considered for the following:

- Interstate surfacing or reconstruction projects

- Urban region system reconstruction projects
- Urban regional signal projects
- Inter-regional surfacing or reconstruction projects
- Major bridge replacement or repair

All ITS items will be included in the Decision Document. Please include the ITS items in the Proposed Action in the Executive Summary if preparing a DCE. For higher level NEPA documents, append the ITS Decision Document by reference.

II-02.04.03 Environmental Impacts

This section describes in detail any impacts the project may have. The level of involvement will be dictated by the degree of impact. The impacts that should be discussed are contained in various FHWA Technical Advisory Guidance Material (see FHWA Technical Advisory T 6640.8A). The following impacts should be considered:

- **Land Use Impacts**
- **Farmland Impacts**
- **Social Impacts**
- **Relocation Impacts**
- **Economic Impacts**
- **Joint Development**
- **Considerations Relating to Pedestrians and Bicyclists**
- **Air Quality Impacts**
- **Noise Impacts**
- **Water Quality Impacts**
- **Wetlands**
- **Water Body Modification and Wildlife Impacts**
- **Floodplain Impacts**
- **State Scenic Rivers**
- **Threatened and Endangered Species**
- **Cultural Resources**
- **Hazardous Waste Sites**
- **Visual Impacts**
- **Energy**
- **Trees Impacts**
- **Temporary Construction Impacts** - The following items should be discussed:
 - Work Zone Traffic Control
 - Project Phasing
 - Detours and Alternate Routes
 - Air, Noise, and/or Water Quality Impacts
 - Adjacent Construction Projects

- **Low Income and Minority Living Areas**
- **Section 4(f), 6(f) involvement** - Note actual evaluation must be included in separate section or document.

II-02.04.04 Environmental Commitments and Permitting

This section should include a discussion and review of environmental commitments and required permits for the project. These commitments shall later be included in the environmental commitments page of the project plans.

II-02.04.05 Comments and Coordination

This section should include a discussion of solicitation of views, and a summary of any meetings with the public or representatives of environmental or public agencies. Any concerns or issues from any public meeting held should be summarized and any comment cards filled out by the public should be included in the appendix for reference. The Solicitation of Views letters and project mailing list shall be included in the appendix.

II-02.04.05.01 Responding to Comments on Higher Level NEPA Documents

A number of ways comments may be received on a project could include letters mailed to the project team, hand written comment cards submitted at public meetings, comments submitted electronically via emails received thru the project website, or thru the NDDOT information email. Regardless of format, comments need to be compiled and organized into a database system capable of sorting by topic, commenter, and keyword or issue. It is important to maintain the original version of each letter for the project record. A copy can be used to “code” the comments by bracketing each substantive comment; each comment then becomes the focus of the process for responding to comments.

A standard response shall be provided for comments that raise similar issues, provided that the response adequately addresses each similar comment. It is very important to provide review of each comment/response to ensure the standard response adequately addresses each similar comment. All responses should be respectful and courteous in tone.

It is important to note that there is a tendency to fully address issues. In addition, it is sometimes difficult to fully comprehend the intent of the comment. For these reasons, it is recommended that there is a cross section of team members involved in reviewing the process to ensure accuracy and consistency that responses are substantive to the issues raised and all comments addressed. Further, the responses need to be consistent with the environmental document. Refer to AASHTO Practitioners Handbook 02, July 2006 responding to comments on an EIS.

II-02.05 Supporting Documentation for Environmental Documents

II-02.05.01 Wetlands

There are five milestone activities which aid in the determination of impacts and subsequent mitigation of wetland impacts on NDDOT projects. These activities are conducted during the development of the environmental document, refined during the design of the project, and are used in the determination of information necessary for environmental clearance and the subsequent mitigation of the impacts. The five milestone activities are:

- 1) Wetland Delineation - Office (off-site)
- 2) Wetland Delineation - Field (on-site)
- 3) Wetland Jurisdictional Request
- 4) Wetland Jurisdictional Determination
- 5) Wetland Information to Environmental

In some cases, the type of wetland delineation required will be apparent when the project is initially programmed into milestone. If the type of wetland review necessary is not readily apparent at the time the project is initially programmed into milestone, the review will be programmed as an office delineation. If at any time during project development it becomes apparent that a field delineation will be necessary the office delineation activity shall be re-milestoned as a field delineation and coordinated with Environmental Services or the appropriate Technical Support Contact.

Generally, projects that have a scope of work which occurs on the roadway surface, or does not extend beyond the roadway toe of inslope, will not require office or field delineations. However, if the scope of work involves ground disturbing activities (placement of fill materials, or removal of materials) beyond the toe of inslope a wetland determination is needed and a wetland delineation may be required. The determination of the presence of wetlands and subsequent wetland delineation are necessary to evaluate potential affects to wetlands or aquatic environments. A wetland delineation may be completed by using either office or field delineation procedures, or both as deemed necessary.

Office delineations are typically used on projects that have minimal permanent and/or temporary impacts (less than 0.10 acres per basin) to wetland or aquatic environments. An office delineation may also be used to facilitate project development due to seasonal limitations or scheduling constraints that prevent a field delineation from being completed.

An office delineation may be considered appropriate for a project if the following criteria are met:

- The project and impact area is confined to the replacement and/or maintenance of a single structure (bridge, box culvert, pipe culvert).
- The project and impact area is confined to a single tributary or wetland / aquatic area.
- The footprint of the wetland or aquatic permanent and/or temporary impact is 0.10 acres per basin or less.
- The wetland or tributary boundary must be clearly evident in the office delineation and defined by abrupt elevation changes, plant community changes, or ordinary high water marks.
- Existing drainage facilities and patterns will not be altered.

For both office and field delineations, the wetlands shall be identified by location using latitude and longitude coordinates and the Cowardin Classification System. Based on the delineation, wetlands may need to be added or may need to be reclassified as compared to the National Wetlands Inventory maps.

Executive Order (EO) 11990, "Protection of Wetlands", requires that federal agencies avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative and to take action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities.

EO 11990 defines wetlands as:

Those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.

Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

The interpretation of EO 11990 is that the wetlands requiring protection are "natural" wetlands. Many of the wetlands impacted by highway projects are contained within existing right of way, and are the result of the ditches not draining properly as they were intended to do. These wetlands that are the result of highway construction are wetlands that could be considered "artificially created." Because these wetlands may not be considered natural, the NDDOT may not be required to mitigate for impacts to artificially created wetlands unless the USACE claims jurisdiction. However, impacts to wetlands created for mitigation purposes will need to be mitigated.

The following criteria will be used by the NDDOT to identify artificially created wetlands within existing right of way:

1. Backslope – If there is a backslope and a portion of wetland basin does not extend outside of the highway right of way there is a very high probability that the entire ditch has been manipulated and any wetland found in the ditch at such a location may be identified as an artificially created wetland. Wetland basins in the road right of way where the ditch does not have a backslope are likely naturally occurring prairie pothole wetlands. If these basins are affected by highway construction activities mitigation is required.
2. Original Plans – The original highway construction plans typically identified the larger natural wetlands and contain flow arrows that indicate the direction a ditch was intended to drain. Current wetlands located entirely in the ditches that are not identified on the original plans and were indicated to drain by the original plans may be identified as artificially created wetlands.
3. Landscape – If a wetland is entirely in the right of way, appears to be constructed and is not part of an adjacent natural wetland outside of the right of way, it may be identified as artificially created.
4. National Wetlands Inventory Maps – If the wetland type listed on the NWI maps ends with an “x”, the wetland is excavated. If the wetland is excavated and inside the existing right of way, the wetland may be identified as artificially created. Artificially created or excavated wetlands in the highway right of way are typically linear wetlands. Created wetlands in the highway right of way may be designated as temporary (PEMAx) or seasonal (PEMCx) wetlands on the NWI maps.

II.02.05.01.01 Wetland Delineation - Office¹ (off-site)

A Wetland Delineation – Office (office delineation) is a wetland delineation conducted off-site using readily available information to determine where wetlands lie within the project area. The following is a list of sources of information to be used when conducting an office delineation:

- National Wetland Inventory (NWI) maps are produced by the United States Fish and Wildlife Service (USFWS) and can be found on the internet at <http://www.fws.gov/wetlands/data/index.html> or by contacting the local USFWS office.

¹The USACE, USFWS, and/or FHWA may require the completion of a field delineation when an office delineation is submitted and considered inadequate.

- USFWS Easement Wetland maps may be used to ensure that USFWS easement wetlands will be avoided. **If there is potential for impact to USFWS easement wetlands, an office delineation will not be appropriate.**
- County and Natural Resources Conservation Service (NRCS) Soil Surveys.
- Aerial photographs.

The Office Delineation Report shall include the following:

Cover page
Table of Contents
Section I. Introduction
Section II. Methods
Section III. Results
Section IV. References
Section V. Delineators Credentials
List of Tables (i.e. NDDOT Wetland Table)
List of Exhibits (i.e. Aerial photos with NWI data)
List of Appendices (i.e. USACE Data Forms and NDDOT form titled “Additional Information for Wetland Jurisdictional Requests”²)

An example of the Office Delineation Report and NDDOT Wetland Table can be found on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>

II.02.05.01.02 Wetland Delineation – Field (on-site)

A Wetland Delineation – Field (field delineation) is a wetland delineation conducted on-site in accordance with the United States Army Corps of Engineers (USACE) publication “Corps of Engineers Wetlands Delineation Manual” January 1987 – Final Report (87 Manual)³ and the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2)” (Regional Supplement).

The following is a list of sources of information to be used when conducting a field delineation:

² Local Entity developed projects conducted by consultants may choose not to provide the form. Although the form is not required by the USACE, the information provided on the form facilitates the jurisdictional determination process completed by the USACE.

³ Pursuant to NDCC 43-36, “Professional Soil Classifiers”, when applicable, determination of hydric soils must be performed by a registered soil classifier in the State of North Dakota.

- National Wetland Inventory (NWI) maps are produced by the United States Fish and Wildlife Service (USFWS) and can be found on the internet at <http://www.fws.gov/wetlands/data/index.html> or by contacting the local USFWS office.
- USFWS Easement Wetland maps may be used to ensure that USFWS easement wetlands will be avoided.
- County and NRCS Soil Surveys.
- Aerial photographs.
- Any other applicable field or office records as required for documentation by the 87 Manual and Regional Supplement.

The Wetland Field Delineation Report shall include the following:

Cover page
Table of Contents
Section I. Introduction
Section II. Methods
Section III. Results
Section IV. References
Section V. Delineators Credentials
List of Appendices (i.e. USACE Data Forms and NDDOT form titled “Additional Information for Wetland Jurisdictional Requests”)
List of Tables (i.e. NDDOT Wetland Table)
List of Exhibits (i.e. Aerial photos with NWI data)

An example of the Field Delineation Report and Wetland Table can be found on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>

Aerial maps shall identify wetland boundaries and test hole locations which coincide with the USACE Data Forms. In addition, all wetlands and test hole locations shall be labeled on the aerial maps which coincide with the NDDOT Wetland Table.

II-02.05.01.03 Wetland Jurisdictional Request

Office and/or Field delineations for State highway projects conducted by Environmental and Transportation Services Division - Environmental Services will be coordinated through the project manager. A pdf of the Office and/or Field Delineation Report and SOV letter #2 will be placed into FileNet by Environmental Services with a FileNet link provided to the project manager, and a hard copy will be submitted to the USACE requesting a wetland jurisdictional determination.

Office and/or Field delineations for State highway projects conducted by consultants will be

coordinated through the Technical Support Contact. Upon review and approval by Environmental Services, the consultant will provide one hard copy with SOV letter #2 and a pdf of the Office and/or Field Delineation Report to the Technical Support Contact for FileNet entry. Environmental Services will submit the Office and/or Field Delineation Report and SOV letter #2 to the USACE and request a wetland jurisdictional determination.

Office and/or Field delineations for local entity developed projects conducted by consultants will be coordinated through the Local Government Division Technical Support Contact. Upon review and approval by Local Government Division Technical Support Contact, the consultant will provide a pdf of the Office and/or Field Delineation Report to the Local Government Division Technical Support Contact for FileNet entry. Local Government Division will submit one hard copy with SOV letter #2 to the USACE requesting a wetland jurisdictional determination.

II-02.05.01.04 Wetland Jurisdictional Determination

Upon receipt of a wetland jurisdictional determination from the USACE, the following shall occur:

Delineations conducted by Environmental Services for State highway projects – Environmental Services will update the wetland table, and place into FileNet the USACE jurisdictional determination letter, USACE approved jurisdictional determination form, and any other supplemental information for inclusion in the environmental document. A FileNet link will be provided to the project manager.

Delineations conducted by consultants for State highway projects - the consultant will provide the USACE jurisdictional determination letter, USACE approved jurisdictional determination form, updated wetland table based on the jurisdictional determination, and any other supplemental information to the Technical Support Contact. This packet of information serves as the Wetland Jurisdictional Determination and shall be placed into FileNet by the Technical Support Contact. The consultant shall include this information in the environmental document.

Delineations conducted by consultants for local entity developed projects – the consultant will provide the USACE jurisdictional determination letter, USACE approved jurisdictional determination form, updated wetland table based on the jurisdictional determination, and any other supplemental information to the Local Government Division Technical Support Contact. This packet of information serves as the Wetland Jurisdictional Determination and shall be placed into FileNet by the Technical Support Contact. The consultant shall include this information in the environmental document.

II-02.05.01.05 Mitigation Tracking

Wetland impacts are defined as the total project area, in acres, which is affected by the project footprint. Any wetland area which is within the footprint of the work required to construct the project will be defined as an impact. Both permanent and temporary impacts must be included in the impact calculation and segregated as such. Permanent impacts (i.e. areas where fill is permanently placed in a wetland) will be mitigated. Temporary impacts (i.e. the construction of a temporary bypass through a delineated wetland which will be removed and the area restored to its pre-existing condition) will be recorded but not mitigated.

All environmental documents (DCE, EA or EIS) shall have a wetland impact statement as follows:

Unavoidable impacts to wetlands will be mitigated on site, or at a NDDOT approved mitigation site or bank. Approximately X.XX natural/jurisdictional, X.XX natural/non-jurisdictional, X.XX artificial/jurisdictional, and X.XX artificial/non-jurisdictional acres of wetlands will be impacted permanently, and X.XX acres will be impacted temporarily. X.XX acres of deep water (remove if not present) and X.XX acres of potential other waters (remove if not present) will also be permanently impacted.

An example Wetland Impact Table for Environmental Documentation & Permitting Purposes is available on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm> under the Design Manual Reference and Forms.

Environmental Services maintains the NDDOT mitigation bank/site ledgers, is responsible for monitoring and maintaining the banks/sites, and provides annual reports to the North Dakota Interagency Team (NDIRT). Environmental Services will track wetland impacts and mitigation for State highway projects and local entity developed projects that use a NDDOT mitigation bank/site. Projects which require the use of a NDDOT mitigation bank/site, including local entity developed projects, shall be coordinated with Environmental Services for environmental review (environmental documentation, permits, PS&E, etc.) and allocation of mitigation through the Local Government Division Technical Support Contact.

Local Government Division maintains the Urban and County mitigation bank/site ledgers and provides annual reports to the NDIRT. Local Government Division will track wetland impacts and mitigation for Urban and County highway projects that use an Urban or County mitigation bank/site. Projects which require the use of an Urban or County mitigation bank/site shall be coordinated with the Local Government Division Technical Support Contact for environmental review and allocation of mitigation.

Both Divisions will track the data using the same format for reporting purposes to NDIRT. Estimated impacts will be noted during the environmental review process, actual impacts as

determined by the designer will be used for mitigation and permanent records. Wetland impacts and the associated information may be necessary to fulfill other obligations such as the Section 404 Permit information, application, and obtaining the Section 404 Permit as well as the impacts to wetlands protected under the EO 11990. State highway projects or projects that require Environmental Service review, should provide wetland information to Environmental Services during environmental documentation review (Project Development Phase).

Local Government will allocate urban or county project mitigation to the applicable urban or county bank/site. Urban and County highway projects that require use of State bank/site will be coordinated with Environmental Services for environmental review and identification of mitigation. Coordination should occur during the Project Development Phase.

II-02.05.02 Tree Impacts

The Tree Count activity is to ensure that projects along riparian corridors and in urban areas are reviewed for potential tree impacts. Tree counts will only be conducted for these project types.

For projects completed in house, Environmental Services will conduct a tree count and determine whether or not the project will result in the loss of trees. For projects completed by a consultant, the work will be coordinated through the NDDOT Technical Support Contact. This information will be collected at the time of wetland delineation. If trees will be impacted, a statement should be included in the environmental document stating such. Mitigation will be incorporated into the project only along riparian corridors and as directed by the resource agencies, and in urban areas if requested by the municipality.

Trees will be counted, and the loss of those trees along riparian corridors will be mitigated as directed by the resource agencies. In urban areas, the trees will be mitigated at a 1:1 ratio in a location identified by the municipality, in conjunction with the NDDOT. The trees shall meet the following criteria:

- Deciduous trees – if the diameter breast height (dbh) of the tree is 3 inches or more and the tree is 15 feet or more in height.
- Evergreen trees – if the tree is 5 feet or more in height.

If it is impractical or impossible to count each individual tree, the following methodology may be used:

- Choose a representative area(s).
- Measure the area(s) in whatever unit is most practical (square footage, acreage, etc.).
- Count the number of trees in the area.

- Use this as a representative number of trees for all other areas which are similar in characteristics to the area(s). Use the appropriate ratio of number of trees to the size of the area.

II-02.05.03 Noise

NDDOT has developed a noise policy for highway traffic and construction noise. The Policy describes the Department's implementation of the requirements of FHWA's Noise Standard contained in 23 CFR 772, including: traffic noise prediction requirements; noise analysis; noise abatement criteria; and requirements for informing local officials.

The environmental document author must first determine if the project is a Type 1 project by completing the noise questions in the environmental impact checklist contained in the DCE or by completing the Type 1 Project Determination for higher level NEPA documents available on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm> under Design Manual Reference and Forms in the "Noise Information".

If the project meets the definition of a Type I Project per 23 CFR 772.5, a noise analysis is required for all build alternatives under detailed study.

At the conclusion of analysis, if it is determined that: traffic generated noise levels are within 1 dBA of the FHWA Noise Abatement Criteria; or when an increase of 15 dBA is projected to occur, regardless of the absolute noise level, either upon project completion or projected twenty year hence, NDDOT will consider traffic noise abatement. A decision on the likelihood of the implementation of abatement will be made during the NEPA process. Please consult the NDDOT Noise Policy and Guidelines available on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm> under Design Manual Reference and Forms in the "Noise Information".

II-02.05.04 Section 7 Consultation (Endangered Species Act)

Section 7 of the Endangered Species Act requires consultation with the US Fish and Wildlife Service. A NDDOT Threatened, Endangered, Candidate Species, and Critical Habitat Affect Determination Table (Affect Determination Table) has been developed in consultation with FHWA. The Affect Determination Table should be completed by the environmental document author and included in the appendix of the DCE, and inserted into the Environmental Impacts section of the higher level NEPA documents after the T & E discussion. The following Affect Determination Table is available on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm> under Design Manual Reference and Forms in the "Environmental Information".

If it is determined that USFWS Review is required, a Biological Assessment will need to be prepared. Please consult with the project ETS Environmental Liaison (through Technical Support for consultant projects) for direction on how to proceed.

II-02.05.05 Section 106 Compliance (Cultural Resources)

The National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) require consideration of impacts to significant cultural resources and historic properties, respectively. There are a number of other laws and executive orders which need to be considered. However, the primary compliance issues are with NEPA and NHPA.

The National Historic Preservation Act (NHPA) of 1966 requires Federal Agencies (FHWA) to consider the effects of their projects on Historic Properties. Historic Properties are typically historic and prehistoric sites, buildings, structures, or objects 50 years old or older, which are fairly unaltered, are representative of a type or the work of a master, have important information potential, or are associated with historically significant persons or events. Implementing regulations (36 CFR 800) define a process (typically referred to as the 106 process) for complying with the law. The process includes identification of cultural resources, evaluation of their eligibility to the National Register of Historic Places, determination of project effects on Historic Properties, and, if affected, resolution of adverse effects. This process requires input from the State Historic Preservation Office, involved government entities, Native American tribes that may attach religious or cultural value to Historic Properties in the project area, and other interested parties. This process can be quite involved and, if historic properties are identified and effects cannot be avoided, the process can take 2 or more years to complete. The time needed to complete the Section 106 process varies dependent upon the complexity of the project, the type of historic properties located on the project, and the concerns of consulting parties and/or the public.

NEPA requires consideration of effects to cultural resources and is broader than NHPA. It is possible to have significant cultural resources under NEPA that are not Historic Properties under NHPA. However, the NDDOT typically uses the results of the Section 106 process to address cultural resources in terms of NEPA compliance. Further, FHWA cannot fund an undertaking with potential to affect Historic Properties if Section 106 has not been completed. If consulting parties under NHPA, or the public under NHPA and/or NEPA, were to express concerns regarding a cultural resource which was not identified during the Section 106 process or did not qualify as a Historic Property, the resource may need to be considered significant in terms of NEPA and discussed in NEPA documentation.

Archaeological sites have the potential to be impacted by any kind of earth work, including disturbance to existing backslopes and sometimes existing roadbeds (city and rural), foreslopes, or ditch bottoms. Many bridges are historic properties. Other types of cultural resources (e.g., buildings, traditional cultural properties) have potential to be impacted when a highway is being widened and additional right of way is being taken, and when a new highway, new lane, or city bypass are being proposed. Buildings adjacent to a highway through towns need to be considered if there will be any work (including sidewalk) outside the existing curb. Section 106 compliance

is also required for NDDOT option and contractor option borrow site locations and gravel pit locations.

Section 106 approval documentation, which should be included in the environmental document as an appendix, includes the CRS determination (e.g., No Historic Properties Affected) with SHPO/THPO concurrence, a No Adverse Effect (NAE) document which specifies how effects to Historic Properties will be avoided, or a Memorandum of Agreement (MOA) regarding resolution of adverse effects to Historic Properties. All of these documents conclude the Section 106 process, dependent upon resources encountered and effects of the project. The actual survey report can be appended by reference.

Types of NDDOT Projects with Cultural Resource Concerns

As stated previously, any project conducted by the NDDOT that involves Federal funds must take cultural resources into consideration to comply with NHPA and NEPA. Further, the CRS conducts all consultation with SHPO or THPO as needed (dependent upon project location) and the Native American Community. There are various types of projects that are of primary concern.

These include: 1) new roadways (e.g. city bypass projects, adding new lanes); 2) reconstruction; 3) resurfacing with safety aspects; 4) material source locations; 5) urban projects; 6) transportation alternatives projects; and 7) bridge replacement.

New Roadways: City bypass projects, 4-laning a 2-lane highway, new county road routes, for example, can involve not only disturbance of new land adjacent to an existing highway, but intrusion into an area which may have been relatively undisturbed or not serviced to the proposed level. This may require consideration of effects beyond those which are directly related to building a road. When looking at a bypass project, for example, we may need to consider the visual effects to historic buildings, archaeological sites, and landscapes in placing a highway in an area where one didn't previously exist, or consider the effects of commercial and residential development along the bypass which wouldn't take place but for the new roadway.

There will always be the need for a Class III cultural resource inventory (See Appendix II-05 B) with this type of project. These surveys are usually contracted out to cultural resource firms. It is important for the CRS to understand project parameters, as much as possible given the early stage of project development, so that they know how to identify the area of potential effect and types of effects they may need to consider before contracting for the survey.

Consultation with Native American Tribes which may value cultural resources in the project area is a necessary part of the Section 106 process. If concern is expressed for a particular project area, the tribe(s) is included in various aspects of the cultural resource decision-making process.

The product of the survey is a report explaining the cultural resource work completed. The report typically includes the following: 1) the results of the file and records search; 2) a

description of survey methods and goals, 3) a description of any sites located as well as their legal location; 4) an evaluation of site eligibility (to the extent possible at the inventory stage), 5) recommendations regarding potential effects, 6) maps delineating the survey area, 7) site forms with information essential in determining significance; and 8) photographs for future reference. The most important aspect of the report to the DOT is the location of the cultural resource site(s) in comparison to the project and assessment of potential effects.

These reports are sent to the SHPO/THPO if the project is on a reservation which has an established office, with NDDOT's determination of the effects of the project. A copy of the report is also sent to interested Native American tribes and any other consulting party. The determination at this juncture is, No Historic Properties Affected or Historic Properties Affect. The SHPO/THPO returns NDDOT's cover letter which states what our determination is, with their concurrence, a request for additional information, or information on why they do not concur.

If there will be an adverse effect to a historic property then NDDOT needs to consider how NDDOT can avoid, minimize, or mitigate these effects. If NDDOT can avoid the effect by changing the project, NDDOT can document this action with a No Adverse Effect (NAE) document signed by the NDDOT, the SHPO/THPO, and the FHWA. Native American Tribes may be asked to be signatory to the document. A copy of the NAE with supporting documentation is then forwarded, by FHWA, to the Advisory Council in Washington, D.C.

If the NDDOT cannot avoid the effect, then NDDOT needs to work through consultation with the SHPO, concerned Native American tribes, and any other consulting parties, to resolve the adverse effect. Resolution of adverse effects is documented with a Memorandum of Agreement (MOA) which is signed by NDDOT, SHPO/THPO, and FHWA. Native American Tribes may be asked to be signatory to the document. FHWA needs to notify the Advisory Council when the NDDOT begins working to resolve adverse effects so they can participate and be a signatory if they wish. If the Council does not choose to be a participant, the MOA, with documentation, is simply sent to them after it has been signed.

Reconstruction: Reconstruction usually involves the realignment and widening of the existing roadway or the construction of a slightly new route. Most often the existing roadway over hills is flattened to increase sight distance and the angle of the slopes is decreased. With reconstruction comes the disturbance of many areas of virgin prairie or relatively undisturbed farmland; with some portions considered as having high potential for the presence of archaeological cultural remains.

There will always be the need for a Class III cultural resource inventory (See Appendix II-05 B) with this type of project. As with new roadways, these surveys are usually contracted out. The information needs, survey reporting, and Section 106 process documentation will be the same as discussed above for new roadways.

Resurfacing and Safety Features: By the very nature of the term, resurfacing does not affect much ground that has not already been disturbed by previous construction. However, safety work is frequently done in association with resurfacing and can require the modification of drive slopes, hills, drainage areas, and inslopes. Borrow for the modification is often taken from the backslope. Because the original construction of a highway may have bisected cultural resources, particularly prehistoric archaeological sites, there is a concern for protection of these sites, if they are important, from further disturbance. Consequently, all resurfacing projects which will have safety improvements associated with them, require CRS consideration.

In some cases, NDDOT contracts Class III cultural resource inventory (See Appendix II-05 B) of these projects to private cultural resource firms. In other cases the Cultural Resource Section chooses to complete a Class II cultural resource inventory (See Appendix II-05 B) in-house. A decision regarding the type of survey is typically related to availability of CRS employees and cultural resource site potential.

Reporting on contracted Class III inventories and completion of the Section 106 process is the same as described above. Reporting on in-house Class II inventories is more varied. There are times we have done a similar individual survey report for a Class II inventory and received concurrence from SHPO with the appropriate effect determination. At other times we have used the solicitation of views letter to SHPO to document the inventory, depending upon timing of these letters and the cultural resource work. At other times we have documented these inventories in a single year-end report to SHPO, but only when the determination of effect is, No Historic Properties Affected.

Aggregate, Riprap and Borrow Pits: Considering cultural resources, the aggregate pit is of most concern as it is often situated on pleistocene terraces next to water. This type of location has been proven to have a high probability for the presence of prehistoric habitation sites. Borrow areas, on the other hand, can be located anywhere, but usually as close as possible to the project, and may or may not have high site potential. Aggregate and borrow pits can be state owned, state optioned, or privately owned. The contractor can use those pits designated in the plans and offered by the state, or they can obtain their own source of borrow or aggregate.

It is our policy to require Class III cultural resource inventory of all material source locations which haven't been included in a previous inventory effort. For state owned or optioned locations, the CRS typically completes the Class III cultural resource inventory and reports to SHPO as described above. For contractor located borrow the contractor is responsible for hiring a cultural resource firm to complete the inventory and reporting process. *All areas of potential disturbance (e.g., the pit, the haul road, and any staging areas or spoil piles) need to be included in the inventory.*

Because of time constraints on contractor located borrow, inventory results are called in from the cultural resource firm to the CRS and a map of the surveyed area is sent to Design. If no cultural resources were identified during the inventory the dirt contractor is notified by telephone that they may proceed. A letter documenting this action, which includes the map of the survey area, is sent to the dirt contractor and copied to the District and Construction Services or Local Government. When the inventory report is received and we have received SHPO concurrence, a cover letter, a copy of SHPO concurrence and the report are sent to the dirt contractor and a copy of SHPO concurrence is sent to Construction Services or Local Government.

Contractor located borrow sites and aggregate sources will be cleared by following the process spelled out in section 107.04 of the NDDOT Standard Specifications for Road and Bridge Construction which can be found here:

<http://www.dot.nd.gov/dotnet/supplspecs/StandardSpecs.aspx>.

If cultural resources are located within the bounds of the proposed area of disturbance the dirt contractor is encouraged to find another source.

An extensive data base file is maintained on borrow and aggregate pits. This information provides the CRS with a method of retrieving pertinent data so as to alleviate duplication of effort when locations are listed for more than one project.

Urban: Similar in procedure to those projects previously discussed but dissimilar in the usual type of cultural resource, urban projects have greater potential to affect standing historic structures. Where an urban project calls for street reconstruction, historic buildings and their setting can be adversely affected. A historic or prehistoric site can be adversely affected if its integrity is modified in a way which affects or changes the reason it was evaluated as eligible to the National Register of Historic Places. An urban reconstruction project requiring widening outside the existing curb (including sidewalk work) can adversely affect the properties' integrity. Avoidance, minimization, or mitigation of adverse effects can vary widely, but may include extensive recording of a single property or a historic district through photography and researching of the history of the property.

Fortunately, most towns and cities in North Dakota of 5,000 residents or more have had some cultural resource inventory conducted. Some have residential or commercial historic districts designated. Cultural resource inventory of these projects can vary from an extensive architectural survey to a Class III inventory which takes into account the potential for buried historic and prehistoric remains. The type of inventory needed varies dependent upon previous work in the area, known building dates and types, potential for significant buried archaeological remains, and project parameters.

Urban cultural resource inventories are frequently contracted out to private cultural resource firms. Reports of these inventories are handled similarly to those described for other types of

projects above. In other cases, an assessment of minimal potential to affect Historic Properties is made by CRS and no further cultural resource work is undertaken. This assessment may be documented through solicitation of views letters to SHPO. It is generally agreed (between the NDDOT, FHWA, and SHPO) that if there is no widening beyond the existing curbs or the project is through a newer area of town with low archaeological site potential, we can consider that there is no potential for the project to affect Historic Properties and no further Section 106 compliance activity is needed.

Transportation Alternatives Projects: These projects are reviewed by the CRS and appropriate recommendations are given. The CRS has completed inventories, advised on contracted inventories, communicated with SHPO, written determinations, reviewed and written interpretive display information, and consulted with Native American communities about interpretive efforts.

Bridge Replacement: The existing bridge inventory was completed in 1992. A new bridge inventory has been completed and is available. The bridge inventory lists bridges surveyed during the inventory, their eligibility for inclusion on the National Register of Historic Places, and a context that can be used to evaluate bridges not included in the inventory. CRS is currently working on a Bridge Management Plan which will simplify our process of addressing bridge issues.

There are a number of ways of resolving adverse effects when it is infeasible to rehabilitate the existing structure. Smaller truss bridges are documented and an attempt is made to adopt them out for other functions such as use on a golf course or a small private road or a pedestrian walkway. Larger bridges are documented before demolition. This involves photography using large format cameras with prints on special archival quality paper. The written narrative includes a biography of those involved in building the bridge, fabricating the structural members, and those manufacturing the steel. Further documentation of the bridge puts it into historical context. The documentation is reviewed by SHPO and the National Park Service. The final product is printed on archival quality paper and ultimately goes on file at the Library of Congress in Washington, D.C.

II-02.05.05.01 Bridge Adoption Program for Historic Bridges

When a project involves the destruction or replacement of a historic bridge, the Bridge Adoption Program must be considered (23 USC 144). A bridge is considered historic when it is listed on or eligible for the National Register of Historic Places. Consult with the Cultural Resources Section (CRS) to determine a bridge's eligibility.

A historic bridge is adoptable if it can stay in place (e.g. if a roadway is being realigned) or if it can be moved and retain its historic aspects (integrity). If a bridge must be moved, a high potential cost of moving a historic bridge is not grounds for not offering the bridge for adoption. However, if a bridge cannot remain in place and moving the bridge will result in the destruction

of its historic integrity, then it need not be offered for adoption. To determine whether a historic bridge can be moved and retain its historic aspects, consult with the CRS.

Historic Bridge Adoption Categories:

Every National Register listed/eligible bridge scheduled for replacement can be described by one of the following categories:

1. The historic bridge will not remain in place and it cannot be moved and retain historical aspects. This category includes bridges that physically cannot be moved. Bridges in this category need not be offered for adoption.
2. The historic bridge may remain in place (e.g., the road is being realigned) and it cannot be moved and retain historical aspects. In this case the potential adopter must be willing to maintain the bridge at its current location.
3. The historic bridge may remain in place, and it can be moved and retain historical aspects.
4. The historic bridge will not remain in place, and it can be moved and retain its historic aspects.
5. Well known bridges (e.g. Four Bears).

The following table may help to conceptualize the above categories:

	If moved, cannot retain integrity	If moved, can retain integrity
Will not remain in place	Category 1	Category 4
May remain in place	Category 2	Category 3

Methods of Soliciting Adoption:

Method:

- Build into SOV
- Call county & offer them bridge (when the bridge is on system)
- Discussion with other local contacts
- Post bridges available for adoption on our web site
- Contact from list of people wanting to adopt bridges
- Advertise in local newspapers
- Advertise state-wide
- Advertise regionally/nationally

Categories to which methods are applied:

- 2, 3, 4, 5
- 2, 3, 4, 5
- 2, 3, 4, 5
- 2, 3, 4, 5
- 3, 4
- 2, 3, 4, 5
- 5
- 5

Bridges will be advertised for two weeks.

Local Government Division maintains a list of contacts interested in adopting bridges. They will continue to be the main resource for such information.

Determining Who Gets the Bridge:

If more than one entity would like to adopt a bridge, the determination of who gets the bridge is based on the following factors, in decreasing order of importance.

- Leave in place (when it is feasible that the bridge stay in place)
 - County/City
 - Other public entity
 - Private individual/organization
 - Ability to pay & assume liability
 - Interest in maintaining historic aspects
 - Willingness to maintain public access
- Move to new location
 - County/City
 - Other public entity
 - Private individual/organization
 - Distance to new location
 - Ability to pay & assume liability
 - Interest in maintaining historic aspects
 - Willingness to maintain public access

Miscellaneous:

- The environmental document author will inform the Cultural Resources Section (CRS) when a bridge has been adopted and its new location. The CRS will be responsible for informing SHPO of changes in bridge status and location.
- When a county replaces a bridge without involving NDDOT, Bridge Division ultimately finds out through the normal bridge inspection process. When Bridge Division finds out a historic county bridge has been replaced, they should inform the CRS about the bridge. The CRS will be responsible for informing SHPO when a bridge has been destroyed.
- When a bridge is adopted, the CRS will conduct a records search at the State Historical Society of the proposed new location and consult with SHPO on the need for additional work.

II-02.05.06 Section 4(f) Evaluation

Section 4(f) refers to part of the 1966 U.S. Department of Transportation Act, which gave specific protection to certain classes of public properties. These lands include public parks; recreation areas; wildlife and waterfowl refuges; historic sites on or eligible for the National Register unless the Administration (FHWA) determines that the application of Section 4(f) is otherwise appropriate; and all archaeological sites on or eligible for the National Register, including those discovered during construction, except as set forth in 23 CFR 774.13(b) i.e. minimal value for preservation in place. The legislation directed that these types of lands not be used by or for a project, unless:

- There is no feasible and prudent alternative to use of land from the property; AND
- The action includes all possible planning to minimize harm to the property resulting from the proposed use.

Whenever a project involves such properties, a Section 4(f) document must be prepared for each location before the land use is approved. This document can be included in the environmental document as an appendix and referenced in the body of the environmental document.

The Section 4(f) document is the vehicle that demonstrates that the provisions of the law are met. A Section 4(f) document is completed by the environmental document author, along with the Environmental Section, with the author being responsible for providing the specific information, measurements, etc.

II-02.05.07 Nationwide Programmatic Section 4(f) Evaluation

The Nationwide Programmatic Section 4(f) Evaluations are a time saving procedural alternative to preparing individual Section 4(f) evaluations for certain minor uses of Section 4(f) property. Programmatic Section 4(f) evaluations were developed by FHWA based on experience with a specific set of conditions that include project type, degree of use and impact, and evaluation of avoidance alternatives.

"Programmatic" Documents which have been processed to date include:

- Projects with Net Benefit to a Section 4(f) Property.
- Projects with minor involvement in the Public Parks, Recreation Areas, and Wildlife and Waterfowl Refuges.
- Projects with minor involvement with Historic Sites.
- Projects with minor involvement with Historic Bridges.

An approved programmatic section 4(f) evaluation may be relied upon to cover a particular project only if the specific conditions in the programmatic evaluation are met per 23 CFR 774.3. The templates for National Programmatic documents are available on the web at: <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm> under Design Manual Reference and Forms.

II-02.05.08 Section 6(f)

Section 6(f) refers to a portion of the 1965 Land and Water Conservation Fund Act (L&WCF). This act provides grants to communities to be used for acquiring or improving lands for recreation uses.

Transportation projects that acquire land that has received a Section 6(f) grant are considered to be converting the use of the land. When this occurs, the city or state (whichever developed the project) must acquire replacement lands. Section 6(f) applies to the entire parcel of land identified in the application for L&WCF funds. Even if a very narrow, unused, unimproved strip is taken from one edge of a large park or recreation area, it may have to be replaced elsewhere.

Whenever a project involves such properties, a Section 6(f) document must be prepared for each location before the land use is approved. The Section 6(f) document shows that the provisions of the law are met. The environmental document author should coordinate the need and preparation of Section 6(f) documentation with the Environmental Section.

Each state has a State Liaison Officer (SLO) who coordinates Section 6(f) projects. In North Dakota, the SLO is the Director of the State Parks and Recreation Department. When the state, county, or a city solicits views from Parks and Recreation, they will be told whether there are any Section 6(f) lands in the project's vicinity. If there are, they must work with the SLO to replace the land they are taking. The SLO will decide if temporary easements result in conversion of use. If they do not, no replacement is necessary.

II-02.06 Reevaluations

After approval of the ROD, FONSI, or CE designation, the NDDOT shall consult with FHWA to determine whether or not the approved environmental document or CE designation remains valid per 23 CFR 771.129(c). A reevaluation typically contains a cover sheet, signature page, table of contents, a discussion of the previous environmental approval, changes since approval, resource categories affected, additional consultation, and any impact tables showing previous impacts, proposed impacts, and difference of impacts (\pm). Regarding EIS projects, written reevaluations are specific to the process if delays occur beyond 3 years during the development of the document between DEIS and FEIS, as well as FEIS and implementation of the action. Refer to 23 CFR 771.129.

II-02.07 Addendums

After the approval of the DCE, if new information or circumstances relevant to environmental concerns and bearing on the proposed action or changes to the proposed action would result in impacts that were not evaluated in the DCE, an Addendum shall be prepared. An addendum typically consists of a cover sheet, signature page (for supplementals), table of contents, a discussion of the previous environmental approval, changes since approval, resource categories affected, additional consultation, and any impact tables showing previous impacts, proposed impacts, and difference of impacts (\pm). Regarding an EIS, a supplemental EIS is specific to the circumstance, per 23 CFR 771.130. The NDDOT would follow the same process for EAs.

II-02.08 Permitting

II-02.08.01 404 Permits

Section 404 of the Clean Water Act prohibits the discharge of dredged or fill material into waters of the United States, including wetlands, without a permit from the U.S. Army Corps of Engineers.

Under Section 404, wetlands are defined as those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. If a wetland or other waters of the U.S. will be affected, the agency, in consultation with the Corps of Engineers, must decide what type of 404 permit would apply, after first delineating the wetlands and determining the extent of the impacts to the wetlands. The agency must contact the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, or the Army Corps of Engineers if there is any doubt whether wetlands exist in the project area.

If the Corps of Engineers responds to the solicitation of views letter by stating that no jurisdictional waters lie within the project area, no further action is necessary by NDDOT. If the Corps responds by stating there are jurisdictional waters within the project area, then further action is necessary by NDDOT.

If the designer determines there are no impacts within Corps' jurisdictional waters, then no 404 permit will be required for the project. A copy of the determination is to be forwarded by NDDOT designer or technical support to the Environmental Section immediately upon completion, with the exception of local entity projects who are solely responsible.

If the designer determines there are any project impacts within Corps' jurisdictional waters, then a 404 permit is required. All necessary data, information, and, if applicable, the permit application will then be forwarded by NDDOT designer or technical support to the Environmental Section immediately for the necessary action to obtain the permit.

Information required to process a 404 Permit

The Environmental Section (ES) is responsible for submitting 404 permit applications. The information listed below should be forwarded to ES. The information should reflect the final design of the project as much as possible. The Local Government Division handles local entity developed projects.

- Project location map. The map should show the project number, the beginning and end of the project, and should be of sufficient size to be readable. In addition the location of the project by county, and township-range-section should be provided.
- Plan and profile sheets showing impacted areas (if available).
- Cross sections at impacted area(s) (if available).
- Typical section(s).
- Wetland impacts: Impacts should be based on the final project design. The wetland impacts will be calculated by the designer with assistance from the ES section, if necessary. If a wetland delineation has not been completed, an estimate of wetland impacts should be included in the environmental document. If future delineation shows a change in impacts, these changes will be incorporated into the final plans along with the 404 Permit application. Provide a list of individual impacts, normally in acres. The listed impacts should be keyed into either the plan and profile sheets or the location map.
- Design changes. Notify ES immediately of any design changes affecting wetland impact quantities so that the 404 permit application can be revised to implement these changes.
- A copy of the final environmental clearance for the project (CATEX, FONSI, ROD). This will provide project details to be included in the 404 permit request.
- On projects with a significant amount of right of way acquisition, where an individual 404 permit may be required, provide a list of adjacent landowners.
- Information should be received in ES a minimum of 5 months before the bid opening date, in order to include the permit in the project plans and specifications.

II-02.08.02 Floodplain Development Permits

If a project is located in a regulated floodplain, a floodplain development permit must be received from the local floodplain coordinator before construction can take place. Contact the North Dakota State Water Commission to find out if the project is in a regulated flood plain. The Water Commission can also provide contact information for the local floodplain coordinator. If the Water Commission was sent a Solicitation of Views letter, they normally provide this information in their response. In some cases, the Federal Emergency Management Agency (FEMA) may need to be contacted.

If the designer determines there are any project impacts within a floodplain, then a floodplain permit is required. All necessary data, information, and, if applicable, the permit application will then be forwarded by NDDOT designer or technical support to the Environmental Section immediately for the necessary action to obtain the permit, with the exception of local entity projects, who are solely responsible.

Additional information may be required from the designer before ES can complete the permit application. If the project scope of work changes from that originally proposed in the environmental document, the author should advise and discuss the proposed changes with ES.

Local Entities are normally responsible for regulating floodplains within their boundaries. When a local entity project involves a floodplain, the local entity documents compliance by sending proof of compliance to Local Government Technical Support Contact, , prior to the bid opening.

II-02.08.03 Sovereign Lands Permit

Definition

A Sovereign Lands Permit is needed when a portion of a transportation project lies partially or wholly below the ordinary high water mark of a navigable stream or water.

Sovereign Lands consist of islands and beds of navigable streams and waters areas where vegetation is restricted by the action of water or where vegetation consists primarily of wetland species. Navigable streams and waters include waters that were navigable at the time of statehood including the Missouri River, Yellowstone River, Red River north of Wahpeton to the Canadian border, James River, Upper Des Lacs Lake, and Devils Lake.

Permit Application

The Environmental Section (ES) is responsible for obtaining the Sovereign Land Permit, with the exception of local entity projects, who are solely responsible.

If the designer determines there are any project impacts within a Sovereign Lands, then a Sovereign Lands permit is required. All necessary data, information, and, if applicable, the permit application will then be forwarded by NDDOT designer or technical support to the Environmental Section immediately for the necessary action to obtain the permit.

Information Required

Upon confirmation of sovereign lands within a project a detailed set of plans should be given to the ES to be included in the permit application including the project location map and plan sheets.

II-02.08.04 Coast Guard Permit

Definition

A Coast Guard Permit is needed when any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States. Navigable streams and waters include waters that were navigable at the time of statehood including the Missouri River, Yellowstone River, Red River north of Wahpeton to the Canadian border, James River, Upper Des Lacs Lake, and Devils Lake.

Permit Application

The Environmental Section (ES) is responsible for obtaining the Coast Guard Permit, with the exception of local entity projects, who are solely responsible.

If the designer determines there are any project impacts within any navigable streams or waters of the United States, then a Coast Guard Permit is required. All necessary data, information, and, if applicable, the permit application will then be forwarded by NDDOT designer or technical support to the Environmental Section immediately for the necessary action to obtain the permit.

Information Required

Upon confirmation for the need of a Coast Guard Permit, project details should be given to ES to be included in the permit application including the project location map and plan sheets.