

EMERGENCY RELIEF MANUAL



Procedures for Administering Federal Emergency Relief Funds North Dakota Department of Transportation

www.dot.nd.gov

Interim Director

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The Federal Highway Administration, North Dakota Division (FHWA), and the North Dakota Department of Transportation (NDDOT), agree to administer the FHWA Emergency Relief Program (ER) pursuant to the guidance herein. This manual is a living document that when needed can be modified with the agreement of both parties.

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1. Introduction

1.1 Purpose of Manual

This manual provides state specific guidance for determining eligibility and administering the Federal Highway Administration (FHWA) Emergency Relief (ER) program. It serves as a supplement to the FHWA ER Manual. The NDDOT is responsible for assessing and reporting to FHWA all damage to Federal-aid (FA) highways that are eligible for ER funds. This manual applies only to FA highways. This manual does not apply to roads or highways off the FA system. The responsibility for non-federal aid routes falls on the Federal Emergency Management Agency (FEMA) and is managed by the North Dakota Division of Emergency Services (NDDES).

1.2 Program Overview

The ER program is intended for the repair or restoration of FA highways which have suffered serious damage as a result of natural disasters.

The eligibility threshold is \$700,000 (Federal share) for an ER event and \$5,000 (total cost) for each ER site. ER funds are not intended to cover all damage costs, and as such, the NDDOT and Local Public Agencies (LPA) must expect additional expenditures to restore the route to pre-disaster conditions. FHWA can provide up to \$100 million in ER funding for each eligible event within a State.

The applicability of the ER program to a natural disaster is based on the extent and intensity of the disaster. Damage to highways must be severe, occur over a wide area, and result in unusually high expenses to the highway agency. Failures due to an inherent flaw in the facility itself do not qualify for ER assistance.

1.3 FHWA ER Manual

For more information on the FHWA ER program, please refer to the *Emergency Relief Manual (Federal Aid Highways)* found at:

<http://www.fhwa.dot.gov/reports/erm/index.cfm>

The FHWA ER Manual supersedes this manual in any areas of conflict.

2. Emergency Repair and Permanent Restoration

2.1 General

The ER program is intended to repair routes to pre-disaster conditions. ER funds are not intended to replace normal Federal, State, or local funds for new construction to increase capacity, correct non-disaster related deficiencies, or otherwise improve highway facilities. Added protective features commonly referred to as betterments are only eligible for ER funding when justified. The eligibility of betterments is discussed in Section 2.7 Betterments.

2.2 Emergency Repairs

Emergency Repairs occur during and immediately following a disaster to restore essential traffic, minimize the extent of damage, or to protect remaining facilities within 180 days of the disaster occurrence. Prior FHWA approval is not required to begin Emergency Repairs. Emergency Repair work completed with the 180 day window is eligible for 100% FHWA reimbursement. If a site or event is determined to be ineligible by FHWA, the owner (NDDOT or LPA) is responsible for all costs. Emergency Repair work completed after the 180 day window is eligible for reimbursement at the rate listed below:

- Interstate Highways: 90% federal 10 % local/state
- Indian Reservation Roads (IRR): 100% federal
- All other federal aid routes: 80.93% federal 19.07% local/state

Under MAP-21, the 180 day window for emergency repairs may be extended if a site cannot be physically accessed for inspection. In such cases, NDDOT will submit a site specific request to FHWA for an extension. FHWA will approve or deny extensions on a case-by-case basis. Extensions shall not be granted for sites that can be physically accessed but were not inspected in a timely manner for other reasons.

Emergency repair work shall comply with Chapter 6. Construction Contracts & Contract Requirements.

When it is economically feasible, Permanent Restoration work may be completed concurrently with emergency repairs. Permanent Restoration completed concurrently with Emergency Repairs shall comply with the requirements of Section 2.4 Permanent

Restoration Done Concurrently with Emergency Repairs and comply with the Emergency Relief Programmatic Agreement found in Appendix B.

Eligible Emergency Repairs accomplished within the first 180 days following the start date of the event may be reimbursed at 100 percent Federal share. The start date for the event is listed in the letter of intent from the NDDOT to FHWA. The start date can be:

1. Date of disaster occurrence
2. Date of Presidential or Gubernatorial Disaster Declaration
3. Other date specified in letter of intent with NDDOT justification and FHWA approval

Typical examples of emergency repairs are:

- Re-grading of roadway surfaces, roadway fills, and embankments damaged by sheet flow or wave action that threatens roadway integrity. Additional information can be found in Section 3.3 and Appendix J
 - Damage that threatens roadway integrity is defined as damage within ten feet of the edge of the traveled lane. Damage outside of ten feet shall be corrected as Permanent Restoration
- Emergency grade raises of inundated roadways. Emergency grade raises are discussed in Section 3.5
- Temporary Paving on high volume roads where the permanent restoration will not be completed until the following year, under the following conditions:
 - Prior FHWA approval for paving is not required on NHS
 - Prior FHWA approval for paving is required on all other State Highways and LPA roads
- Debris removal within the limits of the shoulders of roadway or to prevent future damage
 - Prevailing wage rate requirements do not apply to contracts where the scope of work is solely for the removal of debris and related clean up; however, if the debris removal is performed in conjunction with other repair or reconstruction work, prevailing wage rate requirements apply
 - MAP-21 placed limits on the ER eligibility for debris removal. In most cases, debris removal previously eligible for ER funding will be eligible for FEMA funding. In the following cases debris removal would be eligible under the ER program:

1. The event is declared an emergency by the Governor, but the President has not issued an emergency declaration
 2. The event is declared to be an emergency by the President, but FEMA has determined that debris removal is not eligible for its assistance
 3. In cases where the Governor's emergency declaration includes counties that the President's emergency declaration did not include
- Emergency Traffic Control, including law enforcement assistance, erection and removal of barricades and detour signs, flagging and pilot cars during the emergency period
 - Placement of riprap on the downstream slopes of approach fills to prevent scour during overtopping of the fill
 - Initial correction of slides if affecting traffic, and associated bypasses
 - Construction of temporary or emergency bypasses and detours
 - Erection of temporary detour bridges
 - Pumping flood waters and Temporary drains
 - NDDOT or LPA shall obtain applicable permits from USACE, Local Water Board, State Water Commission etc.
 - Relaying washed out culverts
 - Undamaged culverts may be relayed as emergency repairs
 - If the washed out culvert is damaged and cannot be relayed, a hydraulic analysis must be performed to determine the size of the replacement culvert. This work can be completed as emergency repairs if the new culvert is of similar size. If the new culvert is significantly larger in size, the work should be performed as permanent restoration
 - Placement of riprap around piers and bridge abutments to relieve severe on-going scour action that may affect the structural integrity of the structure
 - Removal of ice flow and associated debris at structures
 - Eligible as Emergency Repair if ice/debris is damaging the structure or impeding the flow of water through the structure

2.3 Permanent Restoration

Permanent Restoration work typically occurs after emergency repairs have been completed and is intended to restore the roadway to pre-disaster conditions.

Permanent Restoration work performed prior to FHWA authorization is not eligible for federal ER funding. FHWA approval of the DDIR does not constitute authorization.

FHWA authorization occurs once funding for the Permanent Restoration work has been identified and assigned to the project by NDDOT Programming Division.

Permanent restoration work shall comply with Chapter 6. Construction Contracts & Contract Requirements.

In certain specific cases, Permanent Restoration work may be completed concurrently with emergency repairs. Permanent Restoration completed concurrently with Emergency Repairs shall comply with the requirements of Section 2.4 Permanent Restoration Done Concurrently with Emergency Repairs and comply with the Emergency Relief Programmatic Agreement found in Appendix B.

Permanent restoration shall be administered using normal federal-aid contracting procedures. With prior FHWA approval, NDDOT or LPAs may use streamlined bidding procedures (e.g., A + B bidding, reduced advertising period, etc.) as allowed under ND Century Code § 24-03-04.

The reimbursement rate for Permanent Restoration work is:

- Interstate Highways: 90% federal 10% state
- Indian Reservation Roads (IRR): 100% federal
- All other federal aid routes: 80.93% federal 19.07% local/state

Permanent Restoration may involve one or more of the following categories of work:

- Restoration-in-Kind – repair any damage within roadway right of way to pre-disaster conditions
- Replacement-in-Kind – replace damaged roadway section, structure, or culvert with new section that functions at pre-disaster level
 - A larger structure or culvert may be eligible if warranted by the hydraulic analysis
 - Relocating a roadway may be eligible to avoid high water or slide areas
- Permanent Grade Raises

2.4 Permanent Restoration done Concurrently with Emergency Repairs

The intent of allowing permanent restoration work to be completed concurrently with emergency repair work is to restore the site to pre-disaster conditions in a cost effective and timely manner. If minor permanent work is required (e.g. seeding) that would not be cost effective to bid as a separate project, it is allowed if it meets the following requirements:

- There must be Emergency Repair work at the site

- The full value of the Permanent Restoration construction work is less than \$150,000. This does not include engineering.
- The economic feasibility of doing the work concurrently is documented in the DDIR
- The Permanent Restoration is performed only by competitive bidding unless the NDDOT (or LPA with NDDOT concurrence) adequately demonstrates that some other method is more cost effective. Exceptions to competitive bidding for permanent repairs shall be approved by the FHWA Division Administrator on a project-by-project basis
- Permanent Restoration work done concurrently shall include the most current version of the all required federal provisions/documents in the proposal or contract documents Appendix I.

If substantial permanent work is required at a site (e.g. permanent grade raise) it must be bid as a separate project and follow the requirements of Sections 2.3 and 6.4. It is not the intent of this section to allow \$150,000 of permanent restoration work to be completed concurrently, and then followed by a separate permanent project.

Permanent restoration work done concurrently with emergency repairs shall comply with Chapter 6. Construction Contracts & Contract Requirements.

The reimbursement rate for Permanent Restoration Done concurrently with Emergency Repairs is:

- Interstate Highways: 90% federal 10% state
- Indian Reservation Roads (IRR): 100% federal
- All other federal aid routes: 80.93% federal 19.07% local/state

2.5 Eligible Items

All elements of the highway within the highway right of way damaged as a direct result of a disaster are eligible for repair under the ER program.

Preliminary engineering, construction engineering, right of way necessary for permanent restoration, project features resulting from the NEPA process such as wetland mitigation sites, equipment lease or rental rates, and equipment operating costs are eligible for reimbursement under the ER program. Engineering services must be acquired in accordance with Section 6.6 of this manual.

Traffic Damage is only eligible when caused by:

1. Vehicles making repairs to FA highways
2. Traffic on an officially designated detour route
3. Vehicles responding to a disaster

Damage outside of the highway Right of Way is eligible if:

1. The work is directly related to protecting the highway facility
2. No other agency has responsibility for funding or completing such work
3. The applicant agrees to accept the future maintenance of all work performed

2.6 Ineligible Items

ER funds are only intended to cover work that exceeds heavy maintenance, is extraordinary, and will restore pre-disaster service. Activities that are not eligible for ER funding include:

- Heavy or regular maintenance activities
- Damage to sites estimated to be under \$5,000 in total cost
- Traffic Damage – except as noted in Section 2.5
- Frost heaving
- Damage caused by weak or insufficient sub-grade, base or pavement
- Applicant-Owned material – i.e. destroyed or damaged stockpiles or equipment
- Erosion damage from rainfall
- Prior Scheduled Work – Deficient bridges scheduled for replacement with other funds damaged during a disaster is not eligible for ER funds. A bridge is considered scheduled when the construction phase is in the FHWA approved Statewide Transportation Improvement Program (STIP)
- Snow and/or ice removal
- Emergency transportation services/first responders
- Mitigation/Preventive Work/Evacuation Prior to a Disaster
- Emergency transit operations and maintenance costs

2.7 Betterments

Betterments can only be incorporated into ER projects if they can be justified to show an economical savings in costs to the ER program should future ER-eligible disasters occur. Betterments typically associated with ER work include the following:

- Adding riprap, where none previously existed, to protect against wave action damage
 - Scour protection at bridges
 - Stabilization of embankments, slopes and landslide areas that had no history of instability
 - Relocating facility to a higher elevation or raising roadway grades in a traditional damage situation
 - Providing additional hydraulic capacity by lengthening or raising bridges, adding additional culverts, replacing culverts with bridges, and/or deepening channels in traditional damage situations
-

3. Damage Types

3.1 Traditional Damage

Traditional damage typically occurs in North Dakota as a result of fast flowing water from excessive spring runoff or heavy rainfall. Traditional damage impacts are those that result in erosion and displacement of surfacing material from sheet water flows. These damages include the scouring and washing out of bridges, pipes, approaches, embankments, riprap. Haul roads or other infrastructure damage resulting from levee construction or other efforts to protect transportation facilities from traditional damage are also eligible.

3.2 Basin Damage

A basin is a large depression in the land with no natural drainage outlet such that the water level decreases only due to infiltration or evaporation. The four defined closed basins in the state are listed below and shown in Appendix A and include:

- Devils Lake Basin
- Sheyenne/James River Basin
- Southern Mouse River Basin
- West James River Basin

ER funding is available to raise the grades of critical Federal-aid highways faced with long-term loss of use due to an extraordinary rise in basin water level when basin flooding is considered a natural disaster for the purpose of the ER program. Loss of use is defined as the flood water elevation above the edge line of the traveled lane.

Basin flooding is considered an eligible disaster under the ER program if it can be shown that:

1. The work is restorative rather than preventive. A restorative situation exists if damage was not anticipated, and the flooding is long-term.
2. There has been an extraordinary rise in the basin water level, both in terms of the magnitude of the increase and the time frame in which this increase occurred.
3. There is severe damage that results in long-term loss of use of critical Federal-aid routes.

Basin flooding is handled as a separate disaster under the ER program. Each basin will be evaluated individually based on the water level rise that has occurred within that basin, and the above criteria must be satisfied for that basin before ER funding will be considered.

If basin damage occurs outside one of the states four defined closed basins, sites affected by the same basin, or within close proximity may be grouped with proper justification. The \$700,000 federal share threshold applies for basin sites to be eligible for Permanent Restoration.

3.3 Local Conditions

Fore-slope damage is typically caused by flowing waters in a traditional damage scenario or wave action in a basin damage scenario. Wave action damage will vary significantly based on prevailing winds and length of fetch.

Fore-slope damage that occurs within ten feet of the roadway surface (edge of pavement or edge of gravel) is eligible as emergency repairs. Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment as permanent restoration. Please see Appendix J for additional details.

A thin layer of surfacing to restore the roadway to full use may be considered eligible if shallow water is expected to remain within the driving lanes for an extended period of time. The layer would consist of 2-3" of asphalt or 4-6" of aggregate surfacing. This is not intended to address soft sub grade situations, which are not eligible for ER funding.

Temporary dirt or water filled tube levees are eligible to prevent imminent inundation.

3.4 Grade Raises - General

To be eligible for a grade raise using ER funds, the following criteria must be met:

1. The route affected must be critical.
2. There is no acceptable alternate or detour route.
3. The route must have long term loss of use. Loss of use is defined as the flood water encroaching upon the edge line of the traveled lane (24' road top or edge of gravel lane). The anticipated length (number of days/weeks) must also be taken into account. The acceptable length is dependent on the functional classification of the roadway.
4. No reasonable alternative routes exist
5. The determination of the lost facility as critical will be mutually agreed upon by NDDOT and the FHWA Division Office
6. The basin flood-related damage within each defined basin must exceed \$700,000 federal share during each disaster event
7. The basin flood-related damage outside a defined basin must exceed \$700,000 federal share for each individual site, or group of sites
8. The damage at each site must exceed \$5,000. Sites within the defined basin can be combined to meet the minimum \$700,000 federal share in ER funds for the entire basin

If the damage at a traditional damage site within a defined Basin also exceeds the minimum of \$5,000, then it is eligible for ER funding if the disaster damage exceeds \$700,000 federal share during each disaster event

When loss of use is imminent, grade raises are allowed on the NHS (including Interstate) with prior FHWA approval. Documentation must be provided demonstrating that the water would have inundated the road or otherwise led to closure of the road. This documentation shall be thorough and include calculations, pictures, and reasoning for ER eligibility. Eligibility for ER funds cannot be based on an anticipated rain or a similar future event.

If water elevation in a basin rises due to equalization of surrounding basins a case could conceivably be made for ER eligibility in advance of the inundation.

Where shallow water is only expected to remain on the traveled portion of the roadway for a few days, the eligibility for ER funds, subject to minimum site threshold criteria, would be limited to the special signing necessary to warn motorists of the hazard or to temporarily reroute traffic

Standing water in the clear zone is not a criterion for ER eligibility

3.5 Emergency Grade Raises

Emergency grade raises occur as soon as possible after an event and are intended to restore essential traffic. Emergency grade raises are not intended to restore the original cross section. Rather, they are constructed to temporarily open essential routes, typically at a lower speed, until a disaster event concludes or a permanent grade raise is constructed.

Emergency grade raises are limited to a height of two feet from the water elevation to the centerline subgrade elevation, unless otherwise approved by FHWA. The fore-slope shall be constructed to the minimum slope required to establish a stable roadbed. Riprap is eligible to prevent fore-slope erosion.

3.6 Permanent Grade Raises

Permanent grade raises typically occur after the event has concluded. Permanent grade raises are intended to restore the roadway to its pre-disaster condition, at a grade that will prevent future inundation.

Acceptable permanent grade raise practices for Devils Lake waters:

- A five foot grade raise is eligible if the existing centerline pavement elevation is within three feet of the 50 Percent Long-Range Probabilistic Outlook Elevation (rounded up to the nearest foot) as determined by the National Weather Advanced Hydrologic Prediction Service to a maximum finished grade elevation of 1465.0 feet about mean sea level
- For paved roads a hydraulic analysis is required to determine the applicable grade raise height. For gravel roads, the LPA can choose a grade raise with finished subgrade centerline elevation 2' above the water elevation or perform a hydraulic analysis and raise the grade accordingly. The NDDOT Grade Raise Policy can be found in Appendix D

Acceptable permanent grade raise practices for all other defined basins, and eligible sites outside of a defined basin:

- For paved roads a hydraulic analysis is required to determine the applicable grade raise height. For gravel roads, the LPA can choose a grade raise with finished subgrade centerline elevation 2' above the water elevation or perform a hydraulic analysis and raise the grade accordingly. The NDDOT Grade Raise Policy can be found in Appendix D

3.7 Erosion and Sediment Control Guidelines for Emergency Grade Raises

Erosion and Sediment Control Guidelines for Emergency Grade Raise projects have been separated into three scenarios defined by the scope of work of the project. Erosion Controls for these projects may consist of any acceptable best management practice including, but not limited to: Riprap, Erosion Control Blanket, Turf Reinforcement Mat, Articulated Concrete Block Mat, etc. Sediment Controls for these projects may consist of any acceptable best management practice including, but not limited to: Flotation Silt Curtain, Fiber Rolls, Silt Fence, etc.

Erosion and Sediment Control implementation shall be conducted as follows:

Scenario 1: Aggregate fill placed within the shoulders on top of the roadway:

- Sediment Controls are not required to be installed before or during fill placement. However, Erosion and Sediment Controls shall be placed where appropriate after the fill has been placed to maintain the structural integrity of the fill material and minimize impacts due to erosion and sediment movement.

Scenario 2: Fill placed outside the top of the roadway, but within the existing roadway footprint:

- Sediment Controls shall be installed before the fill is placed if said installation will not delay the fill placement operation. Fill shall be placed rapidly, and Erosion Controls shall be placed immediately as the fill work progresses. If a situation arises that prevents the rapid placement and protection of the fill, Sediment Controls shall be installed with all deliberate speed to minimize impacts due to erosion and sediment movement.

Scenario 3: Fill placed outside the top of the roadway, and outside of the existing roadway footprint:

- Sediment Controls shall be installed before fill placement or with all deliberate speed immediately after the beginning of the fill placement operation. Fill shall be placed rapidly, and Erosion Controls shall be placed immediately as the fill work progresses.
-

4. Detailed Damage Inspection Report

4.1 Site Inspection

Site Inspections Objectives

- Gather information for determining eligibility
- Assign site number
- Description of damage
- Discuss options for corrective measures to be completed as Emergency Repairs and Permanent Restoration
- Map site location
- Photograph site
- Complete site inspection checklist, found in Appendix K

Site inspection personnel:

- State Highway – NDDOT Maintenance Division and NDDOT District personnel
- Local Federal Aid Route (CMC or Urban) – NDDOT Local Government, NDDOT District, LPA Representative, Consultant (if applicable)
- FHWA staff will be invited and will attend at their discretion

Site inspections should occur as soon as practical after the disaster

4.2 DDIR

DDIR must include:

- The specific location, type of Federal-aid highway, cause, nature and extent of damage, including mileposts where available
- The most feasible and practical method of repair
- DDIR must clearly show what work was or will be accomplished as:
 1. Emergency Repairs (Completed and Remaining)
 2. Permanent Restoration completed concurrently with Emergency repairs
 3. Permanent Repairs
- The estimated repair cost
- Potential environmental/historical impacts
- Photographs supporting the above
- A location map and field site sketch

- All supporting documentation uploaded to the DDIR software

DDIR Completion:

- State Highway – NDDOT staff completes the DDIR. Once complete, the NDDOT Maintenance and NDDOT Environmental and Transportation Services (ETS) divisions review the DDIR and Local Government division submits it to FHWA for approval
 - Local Federal Aid Route – The LPA staff or consultant completes the DDIR. Once complete, the NDDOT Local Government division reviews the DDIR and submits it to FHWA for approval
-

5. Sequence of Events and Application Process

5.1 Sequence of Events

1. Disaster occurs
 - a. Emergency repairs can begin
2. Begin site documentation
 - a. Including photos, timesheets, expenses, contracts, etc.
3. Emergency Declaration by President or Governor
 - a. If an Emergency Declaration does not occur, no costs will be reimbursable through the ER program
4. NDDOT sends Letter of Intent to FHWA ND Division Office
5. FHWA ND Division Office sends Letter of Acknowledgement
6. Site Inspection
7. Complete DDIR
8. State submits DDIRs to FHWA for approval
9. FHWA division reviews and approves DDIRs
10. NDDOT requests ER funds once thresholds have been met
11. FHWA Division Administrator Approves NDDOT request
12. FHWA Division Administrator submits request to FHWA HQ for fund allocation
13. FHWA Headquarters allocates funds
14. ER permanent restoration projects are programmed
15. FHWA approves projects as programmed
16. Permanent restoration can begin (if NDDOT chooses to Advance Construct a project, this step can move forward prior to ER fund allocation)
 - a. LPAs must be Title VI compliant to AC project

6. Construction Contracts & Contract Requirements

6.1 NDDOT Emergency Repairs bid at District

Approval

Prior approval from the Federal Highway Administration (FHWA) is not required to complete Emergency Repairs

Authorization

Prior authorization in Fiscal Management Information System (FMIS) from FHWA is not required to complete Emergency Repairs

Contracting Methods

1. Solicited Contract
2. Negotiated Contract
3. Force account

The NDDOT shall make a good faith effort to contact a minimum of three (3) contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file.

Pursuant to North Dakota Century Code 24-03-04, a site specific emergency declaration may be made by the NDDOT director. Under the emergency procurement rules of ND Century Code § 24-03-04 the NDDOT may contact a single contractor to complete the necessary work.

Contract Documents Required

The following documents are required to be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- Davis Bacon Wage Rates
- FHWA-1273
- Equal Employment Opportunity (EEO) Affirmative Action Requirements
- Race-neutral Disadvantage Business Enterprise (DBE) Special Provision (SP)
- Prompt Payment
- Buy America
- Convict Labor
- NDDOT ADA Requirements
- Material Source Approval [add link]

6.2 LPA Emergency Repairs

Approval

Prior approval from the Federal Highway Administration (FHWA) is not required to complete Emergency Repairs

Authorization

Prior authorization in Fiscal Management Information System (FMIS) from FHWA is not required to complete Emergency Repairs

Contracting Methods

1. Solicited Contract
2. Negotiated Contract
3. Force account

The NDDOT and Local Agencies are encouraged to call a minimum of three (3) contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file. Under a declared emergency, pursuant to North Dakota Century Code 24-03-04, the NDDOT or Local Agency may contact a single contractor to complete the necessary work.

Advertising period

There is no minimum advertising period required.

Contract Documents Required

The following documents are required to be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- Davis Bacon Wage Rates
- FHWA-1273
- Equal Employment Opportunity (EEO) Affirmative Action Requirements
- Race-neutral Disadvantage Business Enterprise (DBE) Special Provision (SP)
- Prompt Payment
- Buy America
- Convict Labor
- NDDOT ADA Requirements
- Material Source Approval [add link]

6.3 NDDOT & LPA Permanent Restoration done Concurrently with Emergency Repairs

In certain specific cases, Permanent Restoration work may be completed concurrently with emergency repairs. Permanent Restoration completed concurrently with Emergency Repairs shall comply with the requirements of Section 2.4 Permanent Restoration Done Concurrently with Emergency Repairs and comply with the Emergency Relief Programmatic Agreement found in Appendix B.

Approval

Prior approval from FHWA is not required to complete these repairs.

Authorization

Prior authorization in FMIS from FHWA is not required to complete these repairs.

Contracting Methods

1. For permanent restoration completed concurrently with emergency repairs totaling \leq \$150,000 (full value of estimated permanent work only, not including engineering) the contract shall be awarded by one of the following methods:
 1. Solicited Contract
 2. Negotiated Contract
 3. Force account (NDDOT or Local Agency)

The NDDOT and Local Agencies are required to call a minimum of three (3) contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file. If the full value of the contract is near \$150,000, FHWA shall be contacted for approval.

2. For permanent repairs totaling \geq \$150,001 (full value of estimated permanent work only, not including engineering) the contract shall be awarded by competitive bidding. Exceptions may be approved on project-by-project by FHWA.

Advertising period

1. For permanent restoration completed concurrently with emergency repairs totaling \leq \$150,000 (full value of estimated permanent work only, not including engineering) there is no minimum advertising period required.
2. Permanent repairs totaling \geq \$150,001 (full value of estimated permanent work only, not including engineering) there is no minimum advertising period required.

Contract Documents Required

The following documents are required to be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- Davis Bacon Wage Rates
- FHWA-1273
- Equal Employment Opportunity (EEO) Affirmative Action Requirements
- Race-neutral Disadvantage Business Enterprise (DBE) Special Provision (SP) and Revision
- Prompt Payment
- Buy America
- Convict Labor
- NDDOT ADA Requirements
- Material Source Approval [add link]

6.4 NDDOT & LPA Permanent Restoration

Permanent restoration work is typically bid like a regular NDDOT federal aid project.

Approval

FHWA approval of the Detailed Damage Inspection Report (DDIR) is required to complete these repairs. If eligibility of the damaged roadway/facility is immediately unknown, proceed as if all federal requirements need to be met until approval or denial is known.

Authorization

Prior authorization in FMIS from FHWA is required to complete these repairs.

Authorization will need to identify a funding source. Funding options include:

1. Advanced Construction (AC) and apply ER funds when available
2. Regular federal funds if available and convert to ER funds when available
3. Use ER funds if available

Contracting Methods

Competitive bidding through the NDDOT normal bid process

Advertising period

A minimum of three (3) weeks is required. If the NDDOT or Local Agency desires to advertise a project for less than three (3) weeks, a shortened period may be approved by FHWA on a project-by-project basis.

6.5 NDDOT Permanent Restoration bid at District

When a bid opening for a project takes place at the District and the proposal is assembled by the District include the following items in the proposal:

- Cover
- Non-Collusion and Debarment Certification
- Receipt of Addenda Acknowledgement
- Bid Items
- Time for Completion
- Utilization of Disadvantaged Business Enterprise (M/WBE)
- Contract Execution
- Permits – if required
- Index of Provisions
- Notice (Road and Vehicle Restrictions)
- Notice (U.S. Department of Transportation “Hot Line”)
- Current Supplemental Specifications
- PS-1
- S.P. DBE (Race – neutral)-revised to fit the project or with addendum to the S. P. regarding not publishing the supportive services newsletter and eliminating it as an option to advertise.
- EEO Affirmative Action Requirements
- Memorandum (Discontinuance of FHWA-45, FHWA-47 & FHWA-810)
- Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273)
- Labor Rates from U. S. Department of Labor
- SP – SW (G) -- if required
- Any additional Special Provisions necessary
- Pit List -- if necessary

A Bid Bond is not required.

The District shall send out to all local Prequalified Contractors that are prequalified in the work. The Prequalified Contractor list is on the website at

<http://www.dot.nd.gov/pacer/qualified.htm>

At the date and time specified for the bid opening, the District shall open the bids and check them for completeness. If the low bid is acceptable, the District shall send a contract to the low bidder. Note that a Certificate of Insurance is required before the Department executes the contract. After the Contractor has signed the contract, provided everything on the contract is correct and the Certificate of Insurance has been provided the Department shall execute the contract.

The NDDOT Central Office is available to hold bid openings for permanent restoration projects at the request of the district, in addition to those on the bid opening schedule.

Contact Construction Services Division to get the project set up in CARS. Projects are administered like any other federal aid construction project. This includes subcontracts, pre-job meeting, Materials Source Approvals, payrolls, inspection reports, materials testing, deducts, and liquidated damages, etc.

If the project is not administered in CARS the following procedure should be followed when submitting invoices/vouchers for payment to contractors performing ER work in districts.

- Create a progressive estimate cover sheet (SFN 2251). Available on the Departments web page under Forms.
- If it's a single payment mark the estimate as a #1 Final.
- Sign progressive estimate cover sheet.
- Attach invoice/voucher to progressive estimate cover sheet.
- Send to Construction Services for processing.

6.6 Engineering Services for Emergency Repairs and Permanent Restoration

Engineering Services must be acquired in accordance with the NDDOT Consultant Administration Procedures Manual [1] and FHWA consultant services procedures [2].

[1] <http://www.dot.nd.gov/manuals/environmental/Proceduremanual.pdf>

[2] <http://www.fhwa.dot.gov/programadmin/consultant.cfm>

7. Regulatory Compliance and Environmental Guidelines

7.1 USACE Regulatory Compliance

Work shall be completed in accordance with the USACE Nationwide Permit (NWP) 3 for maintenance activities. Paragraph (a) of the permit provides for the repair, rehabilitation, or replacement of structures or fills; preconstruction notification is not required. Paragraph (c) of the permit also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. The NWP 3 applies provided impacts are minimal. The following general conditions, as appropriate, must be complied with, in addition to any regional or case-specific conditions imposed by the USACE Division Engineer or District Engineer, to be authorized to conduct the work:

- Work in spawning areas during the spawning season must be avoided to the maximum extent practicable. Turbidity control measures must be placed to minimize effects. (Spawning restrictions may be waived by the USACE or other resource agencies as may be applicable; contact the Environmental and Transportation Services Division Environmental Services to obtain requirements.)
- Fills within 100-year floodplain do not require authorization since the original footprint would be reestablished.
- Erosion and sediment control measures must be used and maintained in effective operating conditions during construction, and all exposed soil and other fills must be permanently stabilized to prevent erosion and sedimentation.
- Temporary structures must be removed in their entirety and the affected areas returned to preconstruction elevations, and re-vegetated as necessary.
- Material Sources (fill, gravel, riprap, etc.) must be from a pre-approved or previously established source. New material sources must be cleared pursuant to the material source clearance process
- Compliance with the Endangered Species Act is addressed by limiting the work to preexisting conditions and by coordination with the USFWS during the material source clearance process.
- Compliance with the National Historical Preservation Act is addressed by limiting the work to pre-existing conditions and by coordination with the State Historical Preservation Office (SHPO) through the material source clearance process

Additional Information can be found in the **Emergency Relief Programmatic Agreement between the USACE, the USFWS, the FHWA, and the NDDOT** that can be found in appendix B.

7.2 Environmental Categories

- Category One

Category One is a Categorical Exclusion (CATEX) in accordance to 23 CFR 771.117(c)(9). Emergency Repairs that are expected to have little or no environmental impacts and, due to the emergency corrective type of work, do not require any additional submittal of data to FHWA to obtain the Class of Action of a Categorical Exclusion other than an approved DDIR.

The emergency repair work is limited to the work necessary to immediately restore the roadway to pre-existing conditions and work completed in accordance to the regulatory and environmental guidelines as detailed in the Emergency Repair Guidelines, as amended.

As these projects repair or restore to pre-existing conditions and have little or minor effects, no additional review is required. These projects are processed as a CATEX by "definition" using an approved DDIR.

- Category Two

Category Two is a CATEX that requires no further NEPA review but may require permits. These projects include permanent repairs or restorations where impacts are expected to be minor in nature. The projects are considered in accordance to 23 CFR 771.117(c)(9). These are permanent repairs or restoration that occur by FHWA program approval and include minor alterations or betterments that require coordination and/or permits and approval from state or federal agencies.

These projects may have impacts and/or mitigation that require public and/or state and federal agency coordination, this coordination should be documented by a spreadsheet listing the projects and coordination or activities completed, e.g., 404 Permit Floodplain, Section 106, Hydraulic Review, etc. These projects are processed as CATEXs using an approved DDIR. NDDOT shall certify to FHWA in the authorization request that all required permits have been obtained. Local project owners certify to NDDOT that all required permits have been obtained.

- Category Three

Category Three is a CATEX that requires a documented NEPA evaluation. These projects include permanent repairs or restorations that occur by FHWA program approval and include major alterations or betterments that require coordination and/or permits and approval from state or federal agencies. Examples include box culvert and bridge replacements, projects that impact 4(f) properties, permanent grade raises, major typical section changes, major footprint changes, etc. that have the potential for adverse effects. These projects may require public involvement and/or have engineering analysis or environmental impacts that require state and/or federal agency coordination, permits, etc.

The class of action and level of documentation required in the NEPA process should be coordinated with FHWA on a project-by-project basis. FHWA NEPA approval must be obtained prior to FHWA authorization.

7.3 Wetland Impacts

The **Programmatic Agreement for Wetland Mitigation on Emergency Relief Projects** can be found in Appendix E. This Programmatic Agreement establishes the wetland mitigation requirements for ER projects.

Compensatory mitigation is not required for unavoidable non-jurisdictional wetland impacts. NDDOT will continue to document and track non-jurisdictional wetland impacts associated with future Emergency Relief projects by the NDDOT in a separate ledger. This agreement is limited to an additional 325 credits for non-jurisdictional wetland impacts or up to 10 years of the date of the Agreement, whichever comes first. If impacts associated with future Emergency Relief projects exceed 325 debits within the next 10 years, NDDOT and FHWA will resume compensatory mitigation.

The programmatic agreement does not apply to jurisdictional wetland impacts or USFWS wetland easement impacts. Compensatory mitigation is required for unavoidable jurisdictional wetland impacts and for unavoidable USFWS wetland easement impacts.

8. Roles and Responsibilities

FHWA

- Review and determine eligibility of ER Event base on Letter of Intent
- Issue Letter of Acknowledgement
- Review and determine eligibility of DDIRs
- Request and distribute ER to NDDOT once projects are approved

NDDOT – State Sites

- Inspect damage sites
- Prepare and submit DDIR to FHWA
- Bid and award emergency and permanent projects
- Select contractors and Consultants

LPA

- Notify NDDOT of damage
- Inspect damage sites
- Prepare DDIR and submit to NDDOT
- Bid and award emergency repairs
- Select consultants

NDDOT – LPA Sites

- Assist in site inspection
- Review DDIRs and submit to FHWA
- Bid and award permanent repairs

9. Acronyms and Definitions

- Closed Basin – An areas where topography prevents the outflow of water, no natural outlet exists, and water can escape only by evaporation or percolation
- DDIR – Detailed Damage Inspection Report
- EPA – Environmental Protection Agency
- ER – Emergency Relief
- Federal Aid System – State and local roads that are eligible for federal aid administered through the FHWA
- FHWA – Federal Highway Administration
- FHWA Approval – for ER purposes, FHWA Approval happens when FHWA signs the DDIR approving the project as eligible for ER funds
- FHWA Authorization– for ER purposes, FHWA authorization occurs once funding for the Permanent Restoration work has been identified and assigned to the project
- Heavy Maintenance –work typically performed by highway agencies to repair damage normally expected from seasonal and occasionally unusual natural conditions or occurrences
- Loss of Use – for ER purposes, Loss of use is defined as the flood water elevation above the edge line of the traveled lane
- NDDOT – North Dakota Department of Transportation
- NEPA – National Environmental Policy Act of 1969
- NHS – National Highway System
- ROW – Right of Way
- USACE – United States Corps of Engineers
- USFWS – United States Fish and Wildlife Service

10. Frequently Asked Questions

What Is the Emergency Relief Program?

The Emergency Relief (ER) program - administered by the Federal Highway Administration (FHWA) - is intended to supplement the commitment of resources by states, counties, and cities (or other Federal agencies when appropriate) to help pay for unusually heavy expenses resulting from extraordinary conditions.

Congress has authorized ER funding as part of the FHWA's Federal-aid highway program. ER funds are available for the repair of Federal-aid highways or roads on Federal lands that have

been seriously damaged by natural disasters over a wide area or by catastrophic failures from an external cause. Examples of natural disasters include floods, hurricanes, earthquakes, tornadoes, tidal waves, severe storms, or landslides. A bridge suddenly collapsing after being struck by a barge is an example of a catastrophic failure.

What Is Serious Damage?

Serious damage is major or unusual damage to a highway which severely impairs the safety or usefulness of the highway or results in road closures. Serious damage must be beyond the scope of work usually done by highway agencies in repairing damage normally expected from seasonal or occasionally different natural conditions.

As a general rule, the estimated cost for repairs from a disaster or catastrophic failure in a State must require at least \$700,000 in ER funding before the FHWA will consider approving the disaster or catastrophic failure as eligible for funding under the ER program.

What is the Federal Share of Costs?

The ER program is a cost-sharing program between the Federal Government and the State and/or local highway authorities. The Federal share for the repair of Federal-aid highways is established by law and somewhat complex. In addition, it varies depending on the nature of repairs, when the work is accomplished, and the Federal-aid route being repaired, as follows:

- For the costs associated with emergency repairs to restore essential highway traffic, minimize the extent of damage, or protect the remaining facility, which are incurred in the first 180 days after the occurrence of the disaster, the Federal share is 100 percent.
- For the costs of permanent restoration work, and the cost of all repairs incurred after the first 180 days, the Federal share is based on the type of Federal-aid highway that is being repaired. For Interstate highways, the Federal share is 90 percent. For all other Federal-aid highways the Federal share is 80.93 percent.

What Types of Repairs Are Eligible for Funding?

ER funds can be used for "Emergency Repairs" and "Permanent Restoration."

Emergency Repairs are those repairs during and immediately following a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Typical examples are:

- Establishing emergency detours

- Removing slides and debris
- Providing temporary bridges or ferry service
- Re-grading of roadway embankments and surfaces
- Placing rip-rap to prevent further scour.

Permanent Restoration work is undertaken, normally after emergency repairs have been completed, to restore the highway to its pre-disaster condition. Typical examples are:

- Restoring pavement surfaces
- Reconstructing damaged bridges and culverts
- Replacing signs, guardrail, fences, and other highway appurtenances.

What About Funding for Repairs on non-Federal-aid Highways?

The FHWA's ER program is limited to the repair of Federal-aid highways or roads on Federal lands. However, Federal assistance for the repair of public roads not covered by the FHWA's ER program is available through the disaster relief program administered by the Federal Emergency Management Agency under the Stafford Act.

How Does the Emergency Relief Program Work?

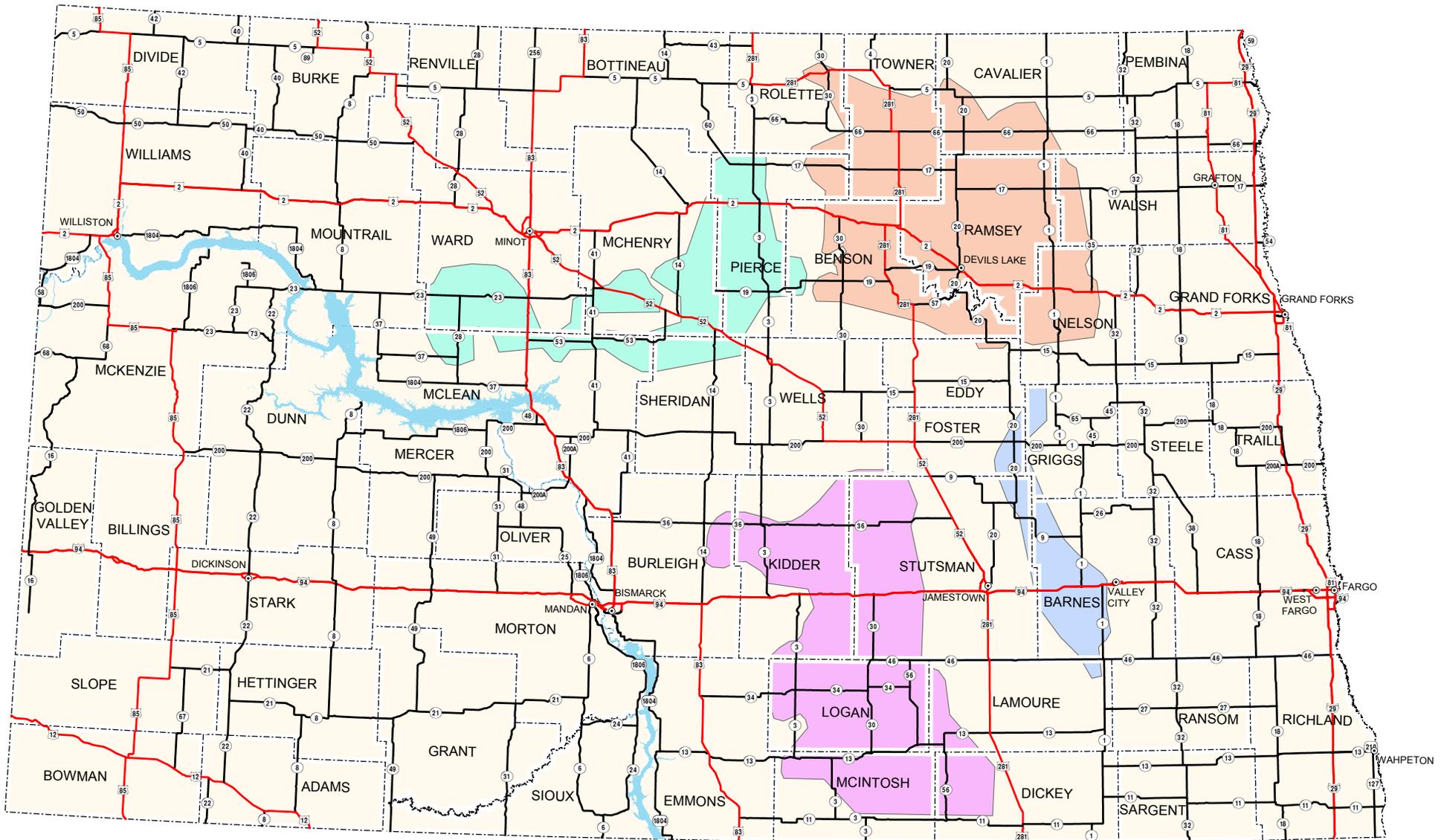
The decision to seek financial assistance under the FHWA's ER program rests with the State highway agencies. Local highway authorities do not deal with the FHWA directly. Instead, they must make their application for possible funding through their State highway agency. It is the State highway agency's option to determine whether it will seek ER funding for the repair of federal-aid highways, regardless of which jurisdiction - State or local - they are under.

Appendix A

NORTH DAKOTA BASIN SYSTEM

BASINS

- SHEYENNE/JAMES RIVER
- SOUTHERN MOUSE RIVER
- WEST JAMES RIVER
- DEVILS LAKE
- STATEWIDE



Notice of Disclaimer
 The North Dakota Department of Transportation (NDDOT) makes this map available on an "as is" basis as a public service. Under no circumstances does NDDOT warrant or certify the information to be free of errors or deficiencies of any kind. NDDOT specifically disclaims all warranties, express or implied, including but not limited to the warranties of merchantability and fitness for a particular purpose.

STATE OF
 NORTH DAKOTA
 PREPARED BY THE
 NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
 PLANNING / ASSET MANAGEMENT DIVISION
 IN COOPERATION WITH THE
 U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 JANUARY 17, 2012

NOTE: THESE BOUNDARIES ARE GENERIC AND ARE TO BE USED AS A GUIDELINE ONLY.

Appendix B

**EMERGENCY RELIEF PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS,
THE UNITED STATES FISH AND WILDLIFE SERVICE,
THE FEDERAL HIGHWAY ADMINISTRATION, NORTH DAKOTA DIVISION,
AND THE NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

WHEREAS, the United States Army Corps of Engineers (USACE) is the federal agency with statutory responsibilities for issuing permits for the discharge of dredged or fill material into the navigable waters under 33 U.S.C. 403,

WHEREAS, the USACE Nationwide Permit (NWP) 3 authorizes the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events,

WHEREAS, the United States Fish & Wildlife Service (USFWS) is the federal agency with statutory responsibilities for trust fish and wildlife resources including migratory birds, bald and golden eagles, threatened and endangered species, certain marine mammals, international resources within the continental United States, interjurisdictional fish, and all fish and wildlife on lands under Service control, and the Ecological Services Division consults with and advises other federal, state, and local agencies on their responsibilities to protect and conserve these trust resources,

WHEREAS, 50 CFR 402.05 allows informal consultation on possible effects to threatened and endangered species through alternate procedures where emergency circumstances mandate the need to consult in an expedited manner with formal consultation initiated, as needed, as soon as practical after the emergency is under control,

WHEREAS, the Federal Highway Administration (FHWA), North Dakota Division, is the federal agency with statutory responsibilities for administering the Emergency Relief (ER) program under Title 23 U.S.C. - Highways,

WHEREAS, 23 CFR 668.105(c) requires the expenditure of ER funds for emergency repairs to be promptly constructed in a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work,

WHEREAS, the FHWA ER Manual permits permanent repairs to be performed concurrently with emergency repairs in situations where immediate completion of the permanent work is determined to be more economical or practical,

WHEREAS, the signatories to this agreement desire to reduce additional work and expedite the project delivery of permanent repairs so as to perform such work concurrently with emergency repairs,

NOW, THEREFORE, the USACE, the USFWS, the FHWA North Dakota Division, and the North Dakota Department of Transportation (NDDOT), pursuant to 23 CFR 668, agree that the ER program for federal-aid highways, these being public highways other than those functionally classified as local roads or rural minor collectors, shall be implemented in accordance with the following stipulations.

STIPULATIONS

The FHWA shall ensure that the following stipulations are carried out:

I. Emergency Repairs

a. Eligibility

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects (23 CFR 668.109(a)). A detailed explanation of emergency repairs is found in Section D(1) of Chapter II of the FHWA ER Manual. The Detailed Damage Inspection Report (DDIR) is the document the FHWA uses to determine eligibility. DDIRs for emergency repair projects are normally prepared after the work is completed. DDIRs for emergency repair projects must be promptly completed and submitted to the FHWA, not to exceed six weeks after the work is completed.

b. Contracting Method

Emergency repair work may be accomplished by contract, negotiated contract, or NDDOT or local public agency (LPA) force account methods as determined by the NDDOT or LPA as best suited to protect the public health and safety (23 CFR 668.105(i)). Emergency repairs must include the most current version of the all required federal provisions/documents in the proposal or governing specifications including Davis Bacon wage rates, FHWA-1273, Equal Employment Opportunity (EEO) Affirmative Action Requirements, ER Race-Neutral Disadvantaged Business Enterprise (DBE) Special Provision, Prompt Payment, Buy America, and Convict Labor. Davis Bacon requirements do not apply to state or local government agency employees who perform emergency repairs or construction work on a force account basis, or emergency contract work that is only for the removal of debris and related clean up.

c. Federal Share

The federal share payable for emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the initial day of the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof (23 CFR 668.107(a)). The initial day of the actual occurrence of the natural disaster or catastrophic failure serves as the beginning date of ER eligibility unless a different date is approved by FHWA. The NDDOT's letter of intent serves as the beginning date of ER eligibility for a basin flooding disaster unless a different date is approved by FHWA.

For costs of all repairs incurred after the first 180 days, the federal share is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For Interstate highways, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share using the sliding scale is 80.93 percent.

d. Prior FHWA Approval

Prior FHWA DDIR approval and Fiscal Management Information System (FMIS) authorization is not required for emergency repairs and preliminary engineering (23 CFR 668.109(a)(1)).

II. Repairs Performed Concurrently with Emergency Repairs

a. Eligibility

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects (23 CFR 668.109(a)). A detailed explanation of permanent repairs can be found in Section D(2) of Chapter II of the FHWA ER Manual. The DDIR is the document the FHWA uses to determine eligibility. DDIRs with permanent repairs performed concurrently with emergency repairs are normally prepared after the work is completed. The DDIR must clearly note which permanent repairs were performed concurrently with emergency repairs. DDIRs must be promptly completed and submitted to the FHWA, not to exceed six weeks after the work is completed.

The FHWA permits all permanent repairs to be performed concurrently with emergency repairs within 180 days after the actual occurrence of the natural disaster or catastrophic failure. The initial day of the actual occurrence of the natural disaster or catastrophic failure serves as the beginning date of ER eligibility unless a different date is approved by FHWA. The NDDOT's letter of intent serves as the beginning date of ER eligibility for a basin flooding disaster unless a different date is approved by FHWA. All permanent work performed after the first 180 days shall be considered as permanent repairs **not** performed concurrently with emergency repairs.

b. Contracting Method

The FHWA permits permanent repairs performed concurrently with emergency repairs to be administered according to emergency contracting procedures as contained in the NDDOT ER Manual. All permanent repairs must include the most current version of all required federal provisions/documents in the proposal or governing specifications including Davis Bacon wage rates, FHWA-1273, EEO Affirmative Action Requirements, ER Race-Neutral DBE Special Provision, Prompt Payment, Buy America, and Convict Labor. Davis Bacon requirements do not apply to state or local government agency employees who perform emergency repairs or construction work on a force account basis, or emergency contract work that is only for the removal of debris and related clean up.

Permanent repairs performed concurrently with emergency repairs may be completed by solicited contract, negotiated contract, or force account at a cost of less than \$150,000*. By this Programmatic Agreement, either method best suited to protect the public health or safety is deemed cost effective. If completed by solicited contract, a minimum of three quotes may be obtained for permanent repairs performed concurrently with emergency repairs at a cost of less than \$150,000 (full value of permanent work). Permanent repairs valued at \$150,000 and greater are accomplished by competitive bidding. Any expenditure exceeding the \$150,000 limit will be the responsibility of the contracting agency. Exceptions to the contract awarded by competitive bidding for permanent repairs performed concurrently with emergency repairs over \$150,000 shall be approved in advance by the FHWA Division Administrator on a project-by-project basis.

c. Federal Share

The permanent repair work continues to be reimbursed at the normal pro rata share for that facility even if the permanent repair is performed concurrently with emergency repair work. The federal share is based on the type of federal-aid highway that is being repaired. For Indian

Reservations Roads, the federal share is 100 percent. For projects on the Interstate System, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share using the sliding scale is 80.93 percent.

d. **Prior FHWA Approval**

Prior FHWA DDIR approval and FMIS authorization is not required for permanent repairs performed concurrently with emergency repairs (23 CFR 668.109(a)(2)).

III. Permanent Repairs

a. **Eligibility**

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects (23 CFR 668.109(a)). A detailed explanation of permanent repairs can be found in Section D(2) of Chapter II of the FHWA ER Manual. The DDIR is the document the FHWA uses to determine eligibility. DDIRs for permanent repair projects must be approved by FHWA before the projects have been authorized. FHWA authorization is required prior to project advertisement. DDIRs must be promptly completed and submitted to the FHWA.

b. **Contracting Method**

Permanent repairs shall be performed only by competitive bidding unless the NDDOT (or LPA with NDDOT concurrence) adequately demonstrates that some other method is more cost effective (23 CFR 668.105(i)). Exceptions to competitive bidding for permanent repairs shall be approved by the FHWA Division Administrator on a project-by-project basis. All permanent repairs must include the most current version of the all required federal provisions/documents in the proposal or governing specifications including Davis Bacon wage rates, FHWA-1273, EEO Affirmative Action Requirements, Standard Race Conscious/Race Neutral DBE Special Provision, Prompt Payment, Buy America, and Convict Labor.

c. **Federal Share**

The federal share is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For projects on the Interstate System, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share using the sliding scale is 80.93 percent.

d. **Prior FHWA Approval**

Prior FHWA DDIR approval and FMIS authorization is required for permanent repairs not performed concurrently with emergency repairs (23 CFR 668.109(a)(2)).

IV. Criteria for Environmental Classification of Emergency Work

Emergency work procedures are described in 23 CFR 668 Emergency Relief Program and eligibility is defined in part 668.109. Additional guidance is also included in FHWA's Emergency Relief Manual (<http://www.fhwa.dot.gov/reports/erm/erm.pdf>). FHWA's environmental classification as described below does not relieve the NDDOT from obtaining other permits or agency approvals. The environmental classification for the emergency work is categorized and processed as follows with one exception: all material (borrow, aggregate, riprap, etc.) incorporated into the emergency repair

requires a material source clearance. All environmental classifications for emergency work require a Governor's proclamation and/or request for Presidential declaration or an actual Presidential declaration.

a. Category One

Category One is a Categorical Exclusion (CATEX) in accordance to 23 CFR 771.117(c)(9). Emergency Repairs that are expected to have little or no environmental impacts and, due to the emergency corrective type of work, do not require any additional submittal of data to FHWA to obtain the Class of Action of a Categorical Exclusion other than an approved DDIR.

The emergency repair work is limited to the work necessary to immediately restore the roadway to pre-existing conditions and work completed in accordance to the regulatory and environmental guidelines as detailed in the Emergency Repair Guidelines, as amended.

Examples:

- i. *Temporary traffic control operations, including detours*
- ii. *Roadway and structural embankments and fill*
 1. *Reestablish the original footprint (cross section and profile).*
 2. *Repair or replace the roadway surface, roadbed, inslopes, scour holes, and/or riprap.*
- iii. *Pipes and culverts*
 1. *Reinstall or replace at pre-existing size(s) and invert(s).*
 2. *Modestly increase the pipe size to accommodate the use of readily available pipe in a supply yard. This is not intended to delay repairs to perform hydraulic analysis. The pipe invert should be maintained at pre-existing elevations.*
 3. *Repair or replace previously existing riprap.*
 4. *The Pipe Material Selection Guidelines do not apply.*
- iv. *Temporary structures or bypasses*
 1. *Construct temporary crossings, bridge supports, cofferdams, earthen berms, or other structures that are necessary to conduct the repairs as necessary in accordance with NWP 3.*
 2. *Work outside department right-of-way may require temporary easements or a right to enter agreement prior to the initiated activity.*
 3. *Remove temporary measures immediately after construction.*
 4. *Raise Minimal Emergency grades to restore essential traffic.*
- v. *Debris or slide removal*

As these projects repair or restore to pre-existing conditions and have little or minor effects, no additional review is required. These projects are processed as a CATEX by "definition" using an approved DDIR.

b. Category Two

Category Two is a CATEX that requires no further NEPA review but may require permits. These projects include permanent repairs or restorations where impacts are expected to be minor in nature. The projects are considered in accordance to 23 CFR 771.117(c)(9). These are permanent repairs or restoration that occur by FHWA program approval and include minor alterations or betterments that require coordination and/or permits and approval from state or federal agencies. Examples are projects that include, but are not limited to: additional riprap (more than

pre-existing); projects that impact wetlands beyond pre-existing conditions; projects that require Endangered Species Act clearance or Section 106 review of location or material sources (non pre-approved); projects that include other than minor upgrades in pipe, which as a result of a hydraulic analysis, require a modest increase in pipe size (e.g., 2 standard diameter increases or 30" to 42" diameter) or length (approximately 10 percent increase) to bring the typical section up to current standard.

These projects may have impacts and/or mitigation that require public and/or state and federal agency coordination, this coordination should be documented by a spreadsheet listing the projects and coordination or activities completed, e.g., 404 Permit, Floodplain, Section 106, Hydraulic Review, etc.

These projects are processed as CATEXs using an approved DDIR. NDDOT shall certify to FHWA in the authorization request that all required permits have been obtained. Local project owners certify to NDDOT that all required permits have been obtained.

c. Category Three

Category Three is a CATEX that requires a documented NEPA evaluation. These projects include permanent repairs or restorations that occur by FHWA program approval and include major alterations or betterments that require coordination and/or permits and approval from state or federal agencies. Examples include box culvert and bridge replacements, projects that impact 4(f) properties, permanent grade raises, major typical section changes, major footprint changes, etc. that have the potential for adverse effects. These projects may require public involvement and/or have engineering analysis or environmental impacts that require state and/or federal agency coordination, permits, etc.

The class of action and level of documentation required in the NEPA process should be coordinated with FHWA on a project-by-project basis. FHWA NEPA approval must be obtained prior to FMIS authorization.

d. Documentation

The Local Government Division develops and maintains the master Emergency Relief spreadsheet. The spreadsheet is located to provide accessibility to local government, Environmental and Transportation Services, Maintenance Division, and programming divisions. The respective divisions populate the spreadsheet as necessary.

The Local Government Division processes the local government (urban and county) projects. Environmental and Transportation Services processes the state projects.

Category classification is identified with the DDIR for approval by the FHWA.

The DDIR is placed into FileNet after the Project Control Number (PCN) and Project Number have been assigned.

The Programming Division uses the DDIR and includes the category classification when requesting project authorization from FHWA.

V. Regulatory Compliance and Environmental Guidelines

Work shall be completed in accordance with the NWP 3 for maintenance activities. Paragraph (a) of the permit provides for the repair, rehabilitation, or replacement of structures or fills; preconstruction notification is not required. Paragraph (c) of the permit also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. The NWP 3 applies provided impacts are minimal.

*The NWP 3 Factsheet, General Conditions, Regional Conditions and 401 Water Quality Certifications are at <http://www.nwo.usace.army.mil/html/od-rnd/factsheet.htm> and click on *Maintenance, NDDH 401 Cert and EPA 401 Cert* for each respective document.*

The Department or other agency must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the USACE Division Engineer or District Engineer, to be authorized to conduct the work:

- a. Work in spawning areas during the spawning season must be avoided to the maximum extent practicable. Turbidity control measures must be placed to minimize effects. (Spawning restrictions may be waived by the USACE or other resource agencies as may be applicable; contact the Environmental and Transportation Services Division – Environmental Services to obtain requirements.)
- b. Fills within 100-year floodplain do not require authorization since the original footprint would be reestablished.
- c. Erosion and sediment control measures must be used and maintained in effective operating conditions during construction, and all exposed soil and other fills must be permanently stabilized to prevent erosion and sedimentation.
- d. Temporary structures must be removed in their entirety and the affected areas returned to preconstruction elevations, and revegetated as necessary.
- e. Material Sources (fill, gravel, riprap, etc.) must be from a pre-approved or previously established source. New material sources must be cleared pursuant to the Material Source Clearance process (Section 107.04 of the current edition of the *NDDOT Standard Specifications for Road and Bridge Construction*) prior to initiating activity.
 - i. Compliance with the Endangered Species Act is addressed by limiting the work to pre-existing conditions and by coordination with the USFWS during the Material Source Clearance process.
 - ii. Compliance with the National Historical Preservation Act is addressed by limiting the work to pre-existing conditions and by coordination with the State Historical Preservation Office (SHPO) and through the Material Source Clearance process.

EXECUTION of this Programmatic Agreement shall constitute conclusive evidence that the USACE, USFWS, FHWA, and NDDOT agree to be bound by the foregoing conditions and to perform the obligations herein set forth.

Any agency to this Programmatic Agreement may terminate their participation by providing thirty (30) days written notice to the other agencies, provided that the agencies will consult during the period before termination to seek agreement on amendments or other action that would avoid termination.

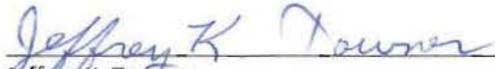
Signed by:

UNITED STATES ARMY CORPS OF ENGINEERS


Daniel E. Cimarosti
State Program Manager, Bismarck Regulatory Office

31 Mar 11
Date

UNITED STATES FISH AND WILDLIFE SERVICE


Jeffrey K. Towner
Field Supervisor, North Dakota Field Office

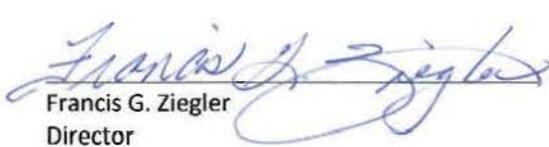
3/31/11
Date

FEDERAL HIGHWAY ADMINISTRATION


Wendall L. Meyer
North Dakota Division Administrator

3/31/11
Date

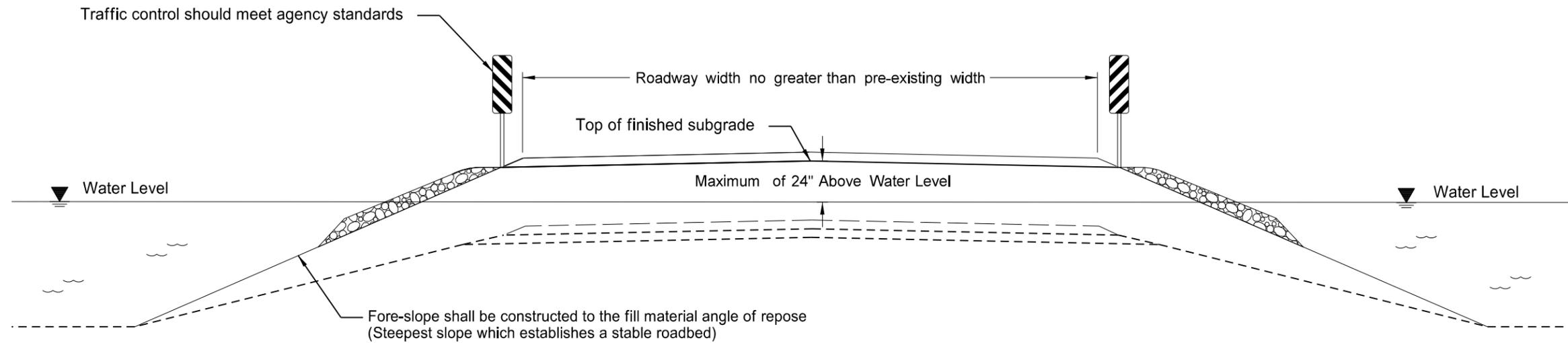
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION


Francis G. Ziegler
Director

3/31/11
Date

Appendix C

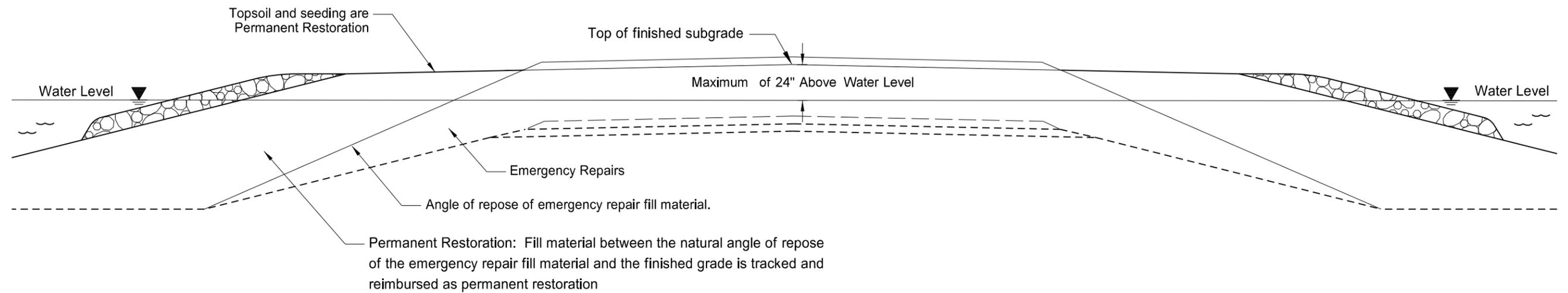
	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND			



- Refer to Section 3.7 for erosion and sediment control best practices
- Embankment material may be aggregate or borrow from an approved source
- Grade may be raised a maximum of 24" above the water level
- Emergency grade raises more than 24" above existing water elevation must be approved by FHWA. Documentation and justification for going above 24" must be provided to FHWA and the additional height must be approved by FHWA prior to any of the additional work occurring
- Riprap may be placed on the inslope when wave action damage is a concern, any other type of erosion protection must be approved by FHWA
- Work to install, extend, or repair a centerline pipe to accommodate the Emergency Grade Raise and equalize the closed basin may be eligible as Emergency Repairs
- Temporary paving of existing asphalt roads may be eligible emergency repairs if the permanent restoration will not be completed until the following year. Prior FHWA approval is not required for NHS highways. Prior FHWA approval is required for all other state highways and LPA roads.
- Emergency grade raises should be followed by a permanent restoration project to build the roadway to the current safety design standards

Emergency grade raise to be followed by permanent grade raise

	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND			



- Refer to Section 3.7 for erosion and sediment control best practices
- Embankment material may be aggregate or borrow from an approved source
- Grade may be raised a maximum of 24" above the water level
- Emergency grade raises more than 24" above existing water elevation must be approved by FHWA. Documentation and justification for going above 24" must be provided to FHWA and the additional height must be approved by FHWA prior to any of the additional work occurring
- Riprap may be placed on the inslope when wave action damage is a concern, any other type of erosion protection must be approved by FHWA
- Work to install, extend, or repair a centerline pipe to accommodate the Emergency Grade Raise and equalize the closed basin may be eligible as Emergency Repairs
- Temporary paving of existing asphalt roads may be eligible emergency repairs if the permanent restoration will not be completed until the following year. Prior FHWA approval is not required for NHS highways. Prior FHWA approval is required for all other state highways and LPA roads.
- Up to \$150,000 of eligible Permanent Restoration may be completed concurrently with Emergency Repairs if at least three quotes were obtained to perform the Permanent Restoration

Emergency grade raise which will not be followed by a permanent grade raise

Appendix D

Report: Grade Raise Policy

- I. Our goal in this report is to formulate a policy concerning grade raises in closed basins that would be used in:
 - a. The Federal ER program; and
 - b. The regular Federal Aid program
 - c. FHWA prefers that the same design process for grade raises be used in both the ER program and the Federal Aid program.
 - d. The existing design guidance is Section III-04.12 of the Design Manual:

III-04.12 Grade Raises

Generally, this occurs when it becomes evident the roadway is too low and is creating a snow problem or that the roadway is in danger of being flooded. If the problem is snow then it is desirable to get the roadway up where the wind has an opportunity to blow the roadway clear. Generally, this is most effective when the roadway surface is higher than the adjacent ground.

If the problem is flooding it would be desirable to raise the grade past the outlet elevation for the respective basin. However, the Designer should work with FHWA in determining the amount of raise which FHWA will participate. If the roadway is not designed to ultimate, the designer should consider providing enough width for an ultimate raise.

When considering a grade raise the drainage should be analyzed to determine if the waterway opening is adequate.

- II. Findings:
 - a. The AASHTO Highway Drainage Manual does not address closed basins. FHWA has no technical guidance on closed basins. Our NDDOT present guidance is Design Manual Section III-04.12 as shown above.
 - b. Adjacent states were also checked the only procedure for closed basins was found in Minnesota counties. The counties use a procedure that is called the Simplified Hydrologic Yield Method (SHYM). Either the elevation predicted by the SHYM or the elevation predicted by 2 successive 100 year rainfall events is used to regulate land development.

APPENDIX D – Grade Raise Policy

- c. Predicting water elevation of closed basins accurately requires extensive data that is presently not available to NDDOT. There are many factors which cause runoff estimates to be unreliable:
 - A. Variations in evaporation from year to year,
 - B. Variations in snow melt in the spring,
 - C. Timing of fall rains, late rains lessen evaporation,
 - D. Effect of “perched” basins exaggerating the effects of wet or dry cycles,

- III. Interim procedures for estimating water elevations in closed basin are described as follows:

Grade Raises for closed basins: Generally, this occurs when it becomes evident the roadway is too low and in danger of being flooded. **Option 1:** Raise the grade above the final outlet elevation for the respective basin. **Option 2 A:** Raise the grade to be higher than the elevation indicated by the Three Year Storage elevation shown in the hydraulics analysis, providing enough sub grade width to allow an ultimate grade raise above the outlet elevation for the basin, or **Option 2 B:** Raise the grade to be higher than the elevation indicated by the Three Year Storage elevation shown in the hydraulics analysis. **Option 3:** Options 1 and 2 may not be economically feasible. A lesser grade elevation may be allowable. A grade raise up to 5’ in elevation with an additional 2’ of freeboard will be recommended. An additional hydraulic analysis will be required to estimate the time of storage the selected grade raise will accommodate (i.e. up to 3 years.) It is preferable for the time of storage to equal at least one year.

When considering a grade raise the drainage should be analyzed to determine if the waterway opening is adequate.

Hydraulic Analyses for grade raise projects: Determine watershed area. Determine outlet/overflow elevation. When the final outlet/overflow elevation is **less than 15 feet:** Raise grade to outlet elevation plus 2 feet for freeboard-measured from the graded shoulder.

If the final outlet/overflow elevation is **greater than 15 feet:** The last three years of rainfall are averaged. The averaged precipitation and a runoff of either 50% or 70% are calculated for the watershed. For watersheds greater than 3 square miles in size a 50% runoff is used, for watersheds less than 3 square miles a 70% Runoff

APPENDIX D – Grade Raise Policy

is used. This calculation is then multiplied by three to determine the total amount of runoff produced over a three year period. The three year runoff is then converted to a volume and applied to the slough to predict how high the water will rise in three years.

- IV. Long term recommendation is to obtain data to allow NDDOT to make more accurate predictions of water elevations in closed basins.
- a. Identify potential problem closed basins, these would be closed basins that are intersected or bordered by state highways and have an outlet elevation higher than the lowest elevation of the highway within the basin.
 - b. Have District install marker posts at the edge of the existing water in the basin, recording the elevation and date of installation.
 - c. Have District use marker posts to record water elevation after melt in spring and prior to freeze in the fall. Hydraulics section will be able to compare recorded elevations to precipitation and temperature recorded at nearest weather station.
 - d. The long term goal is to have sufficient data to enable an accurate design process for grades in closed basins, in the potential problem closed basins

Appendix E

PROGRAMMATIC AGREEMENT
FOR WETLAND MITIGATION ON EMERGENCY RELIEF PROJECTS
BETWEEN

FEDERAL HIGHWAY ADMINISTRATION, NORTH DAKOTA DIVISION, (FHWA-ND),
FEDERAL HIGHWAY ADMINISTRATION, CENTRAL FEDERAL LANDS HIGHWAY
DIVISION (FHWA-CFLHD),
US FISH AND WILDLIFE SERVICE (USFWS), NORTH DAKOTA FIELD OFFICE,
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT),
AND NORTH DAKOTA GAME AND FISH DEPARTMENT (NDGFD)

WHEREAS, the unique regional weather conditions of recent years have caused water levels, including wetlands, to expand at an unprecedented rate in the state of North Dakota. The result of these conditions is inundation of other valuable resources, including but not limited to agricultural lands and road infrastructure.

WHEREAS, Executive Order (EO) 11990 requires federal agencies to "...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..."

WHEREAS, compensatory mitigation for unavoidable impacts to wetlands is not required under EO 11990. It is Federal Highway Administration (FHWA) policy (23 CFR 777.11(g)) that wetland mitigation should result in a net gain in the function and value of wetlands.

WHEREAS, the Devils Lake Collaborative Working Group (DLCWG), and Devils Lake Executive Committee (DLEC) consisting of members from NDGFD, FHWA-ND, USFWS, and US Army Corps of Engineers (USACE) was established to streamline the determination of need and mechanisms for providing compensatory mitigation for emergency grade raise projects and other emergency relief projects in the Devils Lake basin.

WHEREAS, the North Dakota Interagency Review Team (NDIRT), including agency members of the DLCWG/DLEC, similarly have been meeting during 2009-2011 and discussing the issue of compensatory mitigation for the large volume of emergency relief projects statewide to develop alternatives for mitigation.

WHEREAS, NDIRT recognizes that some roads have required multiple grade raises at the same location, and mitigation for wetland impacts have occurred for each emergency grade raise.

WHEREAS, NDIRT field review in 2011 focused on emergency grade raise projects and proposed that additional compensatory mitigation would not be required for wetland impacts to *non-jurisdictional* wetlands associated with emergency relief projects statewide.

WHEREAS, NDDOT has advanced and received federal approval for 741 emergency relief sites statewide during the 2009-2011 time period (285 in 2009, 123 in 2010, and 333 in 2011) under the Emergency Relief program under Title 23 U.S.C.

WHEREAS, NDDOT has restored, enhanced, created, and preserved approximately 2160 acres of wetlands for the Federal-Aid highway program since the late 1970s. NDDOT has received approximately 1279 acres of wetland mitigation credit from the 2160 acres of wetland restoration, enhancement, creation, and preservation. To date NDDOT's Federal-Aid highway program has resulted in a net gain of over 880 acres of wetland habitat during the period of 1971 through 2011.

WHEREAS, in implementing Emergency Relief projects statewide during the 2009 – 2011 time period, NDDOT has deducted approximately 325 credits for nonjurisdictional impacts from the mitigation site ledgers. This constitutes more than 25% of the total credits used in NDDOT's 40 year mitigation history.

THEREFORE, NDDOT will credit the mitigation site ledgers for a total of approximately 325 credits for the debits taken for the non-jurisdictional impacts associated with all Emergency Relief projects that occurred statewide in 2009-2011.

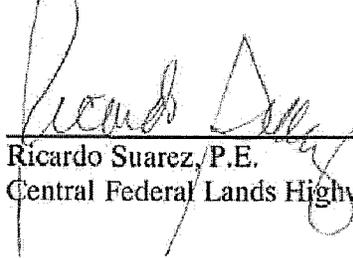
THEREFORE, NDDOT will continue to document and track wetland impacts associated with future Emergency Relief projects by the NDDOT in a separate ledger. This agreement is limited to an additional 325 credits for non-jurisdictional wetland impacts or up to 10 years of the date of the Agreement, whichever comes first. If impacts associated with future Emergency Relief projects exceed 325 debits within the next 10 years, NDDOT and FHWA-CFLHD will resume compensatory mitigation.¹ Upon approval of an in-lieu fee wetland mitigation program, NDDOT and FHWA may use an in-lieu fee strategy as a means to meet any compensatory mitigation requirements for non-jurisdictional wetland impacts during the term of this agreement.

EXECUTION of this Programmatic Agreement shall constitute conclusive evidence that the NDGFD, NDDOT, USFWS, FHWA-CFLHD, and FHWA-ND agree to the foregoing conclusions and to perform the obligations herein set forth on projects eligible for Emergency Relief funding and administered by the NDDOT or the FHWA. This agreement does not supersede any other legal responsibilities, administrated at either the Federal or State levels of government.

¹ The 325 credits will be used by NDDOT and FHWA – CFLHD as follows: NDDOT will utilize up to 320 credits and FHWA – CFLHD up to 5 credits. If either party exceeds their threshold in debit or time, then that party will resume compensatory mitigation. Neither party(s) exceeding the acreage threshold will dictate when the other party will resume compensatory mitigation.

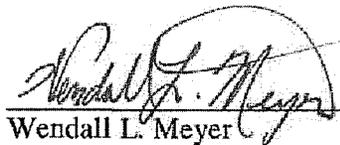
Signed by:

FEDERAL HIGHWAY ADMINISTRATION


Ricardo Suarez, P.E.
Central Federal Lands Highway Division Engineer

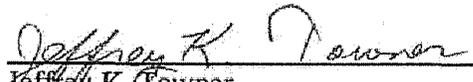
2/24/2012
Date

FEDERAL HIGHWAY ADMINISTRATION


Wendall L. Meyer
North Dakota Division Administrator

2/27/2012
Date

US FISH AND WILDLIFE SERVICE


Jeffrey K. Fowner
Field Supervisor, North Dakota Field Office

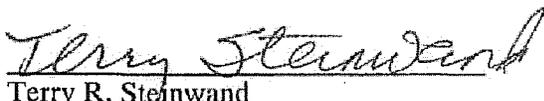
2/27/2012
Date

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION


Francis G. Ziegler, P.E.
Director

3/5/2012
Date

NORTH DAKOTA GAME AND FISH DEPARTMENT


Terry R. Steinwand
Director

2/28/2012
Date

Appendix F

Division Administrator
Federal Highway Administration
1471 Interstate Loop
Bismarck, ND 58503-0567

REQUEST FOR EMERGENCY RELIEF FOR 2011 FLOODING STATEWIDE

Under provisions of Title 23, U.S.C. Section 125, this is notice of intent by the North Dakota Department of Transportation (NDDOT) to request Emergency Relief (ER) funds to assist in the cost of repairing damages to facilities on the Federal-Aid Highway System statewide in North Dakota.

A copy of the EXECUTIVE ORDER 2011-03 declaring a state of emergency signed by Governor Jack Dalrymple is enclosed. Please request concurrence by the Secretary of Transportation in this Declaration.

The Executive Order was a result of the continued statewide wet cycle combined with excessive precipitation in 2010 and early 2011 that has saturated soils and exceeded surface water storage capacity in sloughs, ponds, and drainage areas. As the spring melt occurs, high waters, fast flows, and high winds are anticipated to impact roads and structures. Additional precipitation will compound the high water problems.

Potential agricultural and recreation industry losses, expenditures for damage repair, as well as private and other business losses, will constitute a serious economic hardship throughout North Dakota. Actions are necessary to reduce the economic hardships, to address threats to public health and safety, and to assist recovery and mitigation efforts.

Preliminary estimates to repair anticipated roadway damages on the Federal-Aid Highway system are listed below for the facilities of concern up to this point:

State Highway System	\$19 Million
County and Urban System	\$10.3 Million

We will take all necessary steps to provide safe travel ways through the affected areas. We are also proceeding with measures to protect existing highway facilities from future damage.

FRANCIS G. ZIEGLER, P.E., DIRECTOR

38/kl/sas
Enclosure
C:

Appendix G

Division Administrator
Federal Highway Administration
1471 Interstate Loop
Bismarck, ND 58501

EMERGENCY RELIEF (ER) FUNDING REQUEST FOR STATEWIDE TRADITIONAL DAMAGES UNDER INCIDENT ND10-2

This request is a follow-up to our April 28, 2010 notice of intent to apply for ER funds which relates to EXECUTIVE ORDER 2010-05, issued by Governor Hoeven's office on February 26, 2010. The area and type of disaster being requested is Statewide Traditional Damage.

As noted in our letter of intent, the damages in North Dakota are the result of severe winter storms on top of the area already having saturated soils causing spring runoff flooding. High water, fast flows, and high winds have impacted roads statewide. Additional precipitation may contribute to the existing high water problems.

Based on completed DDIR's, damages have exceeded \$6,250,000 (fed. portion), refer to enclosed document. Although not all inspections and DDIR's are completed, the total damage amount statewide for ND10-2 is expected to exceed \$7,750,000 (fed. portion) based preliminary estimates. Based on the foregoing, we are requesting formal approval for ER funding to cover the cost incurred, or to be incurred, on those projects that have been approved by FHWA.

PAUL BENNING – INTERIM LOCAL GOVERNMENT ENGINEER

38:blf
Enclosure

Appendix H



US Department
of Transportation
**Federal Highway
Administration**

1471 Interstate Loop
Bismarck, North Dakota 58503-0567

March 25, 2011

Mr. Francis G. Ziegler
Director
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, North Dakota 58505-0700

Dear Mr. Ziegler:

Subject: Request for Emergency Relief (ER) Funds for Damages Sustained from
Spring 2011 Runoff – Statewide; ND11-2

This is to acknowledge receipt of your letter of intent, dated March 23, 2011, to request Emergency Relief (ER), authorized under Sections 120 and 125 of Title 23, U.S.C., for the repair of damage to Federal-aid highways resulting from flood conditions due to snowmelt and additional precipitation. The resulting continued statewide wet cycle combined with excessive precipitation in 2010 and early 2011 has saturated the soils and exceeded surface water storage capacity at sloughs, ponds, and drainage areas. We note the February 10, 2011 Executive Order 2011-03 and Emergency Proclamation signed by Governor Dalrymple attached to your letter which covers that statewide event. A copy of this response will be sent to FHWA's Central Federal Lands Highway Division for information and possible further coordination in the event there are any potential reservation sites not on State highways. If this event is approved for Emergency Relief funding, we will recognize qualifying sites statewide without further proclamation supplement.

The North Dakota Department of Transportation (NDDOT) and local agencies should proceed with performance of emergency operations, including emergency repairs necessary on the Federal-aid highways to restore essential travel; to protect the remaining facilities; and to reduce the extent of damage. Also, you may begin preliminary engineering comprising of surveys, design, and preparation of construction plans; to perform the permanent restoration work required as an associated part of the emergency operations; and to use State forces and/or negotiated equipment rental contracts as necessary to perform the work.

Your letter indicates the NDDOT's intent to accomplish repairs on state highways and on various County Major Collector routes statewide with total preliminary estimated costs of about \$29.3 million. Since your letter refers to a statewide runoff event, we assume the majority of this will be traditional damage as opposed to basin related damage. Per FHWA's Emergency Relief Manual, to qualify as a basin disaster, each basin is evaluated individually based on the water level rise that has occurred within that basin, and the criteria in the Emergency Relief Manual must be satisfied for that



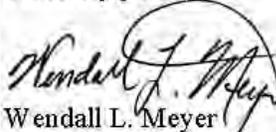
basin before ER funding will be considered for grade raises. However, special cases may arise where several basins in close proximity, all of which are affecting the same critical Federal-aid routes, may be treated as one event for the purposes of an ER finding that a disaster has occurred. Where essential Federal-aid routes are closed due to high standing water and the above criteria cannot be met, we will look for means to reestablish service using traditional damage repair methods. It is recognized that the ER program does not provide restoration for all problems that arise from high water situations.

A decision as to whether the event meets criteria established in 23 CFR 668 will be made following our review and approval of the Damage Survey Summary Report. This event will be referred to as Disaster Number ND11-2. The Damage Survey Summary Report should include estimates of cost to repair and reconstruct the damaged Federal-aid highways. We expect that the estimate of costs will be documented with Detailed Damage Inspection Reports. An example of this form is included in the Emergency Relief Manual. NDDOT will be expected to provide support for its request for ER funding following the most recent guidance of FHWA's Emergency Relief Manual, which can be found at: <http://www.fhwa.dot.gov/reports/erm/index.cfm>. It is important to reemphasize that the minimum per site amount is \$5,000.

The Damage Survey Summary Report should be submitted within six week, if possible. If additional time will be required for NDDOT to prepare support for your ER request, please request an extension of time. Permanent restoration work, other than that performed concurrently with the emergency repairs, shall not be performed prior to approval and authorization by this office.

Record keeping should be sufficient to permit audit of costs on a site-by-site basis.

Sincerely yours,



Wendall L. Meyer
Division Administrator

cc: Mr. Bob Fode, Director, Office of Transportation Programs, NDDOT
Mr. Ronald J. Henke, Director, Office of Project Development, NDDOT
Mr. Brad Darr, Maintenance Engineer, NDDOT
Mr. Paul Benning, Local Government Engineer, NDDOT
W.O. (Mr. Greg Wolf, HIPA-10)
Mr. Ricardo Suarez, Division Engineer, CFLHD

Appendix I

Emergency Relief Contract Requirements

Project Number:

ER Site:

Location:

Year:

The Contractor shall perform all work in accordance with the *North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction* and the most current *Supplemental Specifications*. The Contractor's signature and initials below indicated he has received or will obtain via the provided links and will abide by the policies and regulations of each of the following:

_____ FHWA 1273 – Required Contract Provisions

_____ NDDOT ADA Requirements

_____ NDDOT Revision to Race-Neutral DBE Special Provision

_____ NDDOT Special Provision – DBE Race-Neutral (with revision)
www.dot.nd.gov/divisions/civilrights/dbeprogram.htm.

_____ EEO Affirmative Action Requirements
www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf

_____ Prompt Payment – 46 CFR 26.29
www.dot.nd.gov/divisions/civilrights/docs/dbepromptpay20080118.pdf

_____ Davis-Bacon Wage and Payroll Requirements
www.dot.nd.gov/divisions/civilrights/laborcompliance.htm

_____ Buy America Provision
<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

_____ Convict Produced Material/ Convict Labor Provision
<http://www.fhwa.dot.gov/construction/cqit/convict.cfm>

_____ All materials shall come from an approved location. Pre-approved locations can be found on the NDDOT website at:

www.dot.nd.gov/dotnet2/materialsource/certificatesofapproval.aspx

For new locations the contractor shall complete and submit SFN 58466 -
MATERIAL SOURCE APPROVAL REQUEST

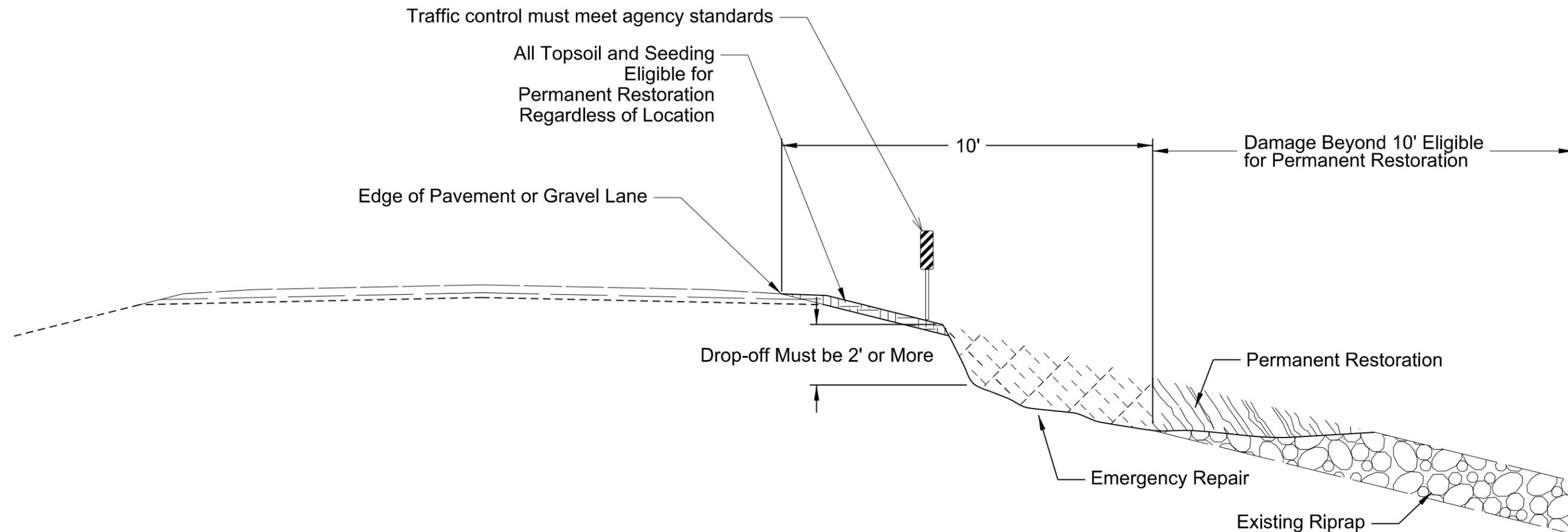
NDDOT or LPA witness

Date

Contractor Representative

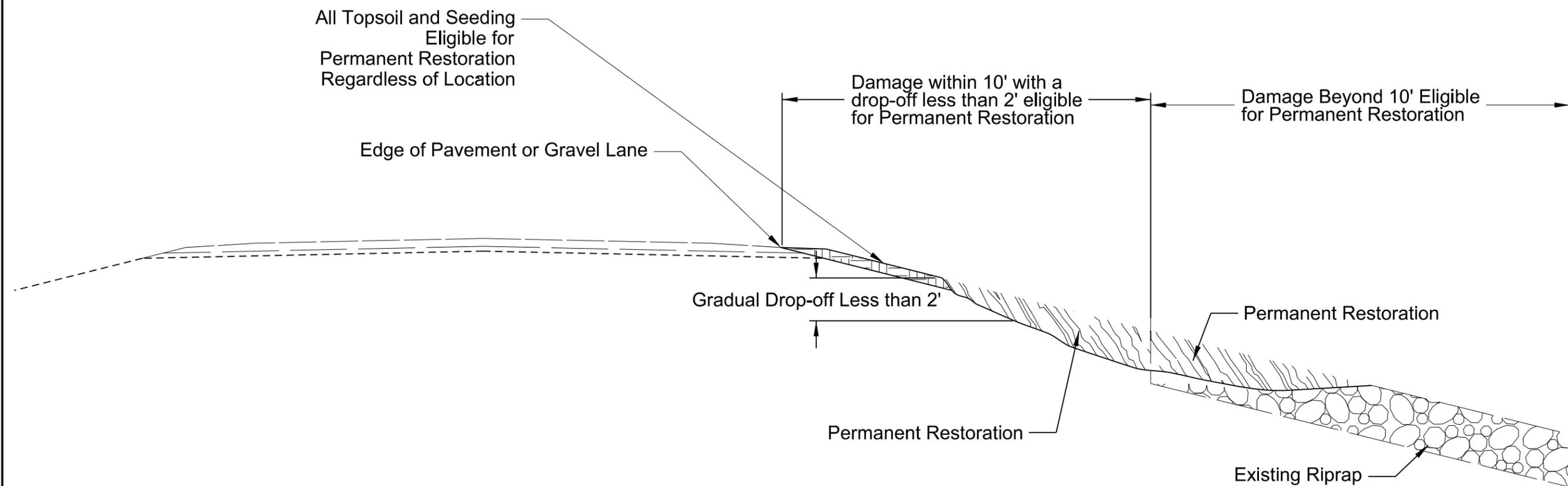
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Appendix J



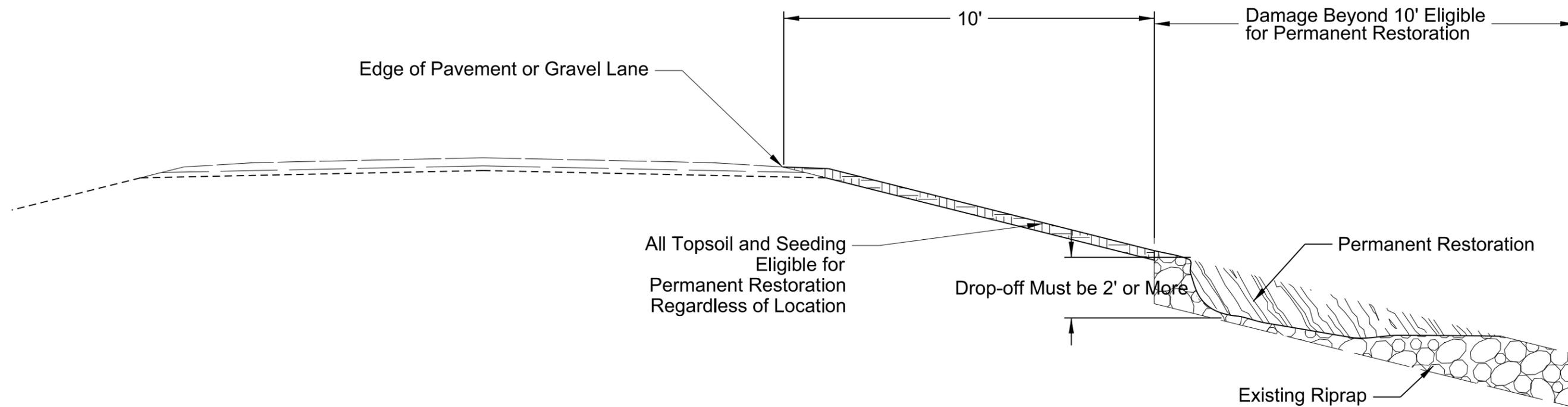
- Wave action damage within 10' of the edge of the pavement, or edge of the gravel lane, with a drop of of 2' or more is eligible for Emergency Repair
- Wave action damage beyond 10' is eligible for Permanent Restoration
- Topsoil and seeding are Permanent Restorations, regardless of the location
- If water levels have risen above the elevation of the pre- existing riprap or slope protection, placement of riprap or slope protection to the new water level will be eligible as emergency repairs if within 10' of the pavement or gravel lane
- Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment and is considered permanent restoration
- Up to \$150,000 of eligible Permanent Restoration may be done concurrently with eligible Emergency Repair
- Photographs and documentation of the damage should be provided in the DDIR to justify eligibility

WAVE ACTION DAMAGE WITHIN
10' OF PAVEMENT OR GRAVEL LANE



- Wave action damage within 10' of the edge of the pavement, or edge of the gravel lane, with a gradual drop of of less than 2' is eligible for Permanent Restoration
- Wave action beyond 10' is eligible for Permanent Restoration
- Topsoil and seeding are Permanent Restorations, regardless of the location
- If water levels have risen above the elevation of the pre- existing riprap or slope protection, placement of riprap or slope protection to the new water level will be eligible as Permanent Restoration
- Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment and is considered permanent restoration

WAVE ACTION DAMAGE WITHIN 10'
OF PAVEMENT OR GRAVEL LANE
BUT LESS THAN 2' DROP-OFF



- Wave action damage outside of 10' from the edge of the pavement, or edge of the gravel lane, with a drop of of 2' or more is eligible for Permanent Restoration
- Topsoil and seeding are Permanent Restorations, regardless of the location
- If water levels have risen above the elevation of the pre- existing riprap or slope protection, placement of riprap or slope protection to the new water level will be eligible as Permanent Restoration
- Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment and is considered permanent restoration

WAVE ACTION DAMAGE OUTSIDE
OF 10' FROM PAVEMENT
OR GRAVEL LANE

Appendix K

ER Site Inspection Checklist

Site Information		
Site No.		Location:
Hwy		
Sec/Twp/Rge		
Latitude		Damage Description:
Longitude		

Damage Detail	Dimensions	Repairs Needed (Emergency and/or Permanent)
Foreslope		
Washout		
Debris		
Inundation		
Slide Area		
Other		

Site Inspection Personnel:
