

Categorical Exclusions: Frequently Asked Questions

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Access Control versus Access Management

Question: Does adding a median count as a change in access control if it restricts left turns?

Answer: No, but it could have community implications addressed under other questions. This is different than the answer provided during training. To clarify: Access control would mean change from no control to partial or full control access. Medians are an access management strategy, not a change in access control.

Anadromous Fish

Question: How do I address a “yes” to the anadromous fish question?

Answer: Please note that the anadromous fish question for the Ground Disturbing and Type III CE checklists has been updated since the training. The question now reads: “Is the project located in anadromous fish spawning waters?” If the answer is “yes,” there should be a summary in Section G and a project commitment to observe any necessary construction moratoria.

Annual NCDOT/FHWA Reviews of Completed CEs

Question: What is the purpose of the annual CE reviews?

Answer: The goals of the CE reviews are for process improvement and to ensure documentation and NEPA compliance. However, FHWA is also using the review to ensure project is eligible for reimbursement. Lack of NEPA compliance could cause projects to be ineligible for federal funding.

CE Applicability

Question: Does the CE agreement apply to state funded projects?

Answer: This training applies to federally funded projects. State funded projects would fill out a Minimum Criteria Checklist, State Environmental Assessment, or State Environmental Impact Statement, as before. NCDOT is reviewing state funded projects to see if any changes are needed; future training will be available if there are any changes.

Question: What if federal funds are used for only part of the project (for example, CE development)?

Answer: If any federal funds are used, federal contracting, right of way, and NEPA processes must be followed. Divisions can switch a project from federal aid to state funded, but the only way to avoid FHWA requirements is to reimburse FHWA for any federal funds previously used.

Question: What is the threshold between a CE and an Environmental Assessment (EA)?

Answer: The difference is the potential for significant impacts. If there is a reasonable potential that the project may have significant impacts, an EA or Environmental Impact Statement (EIS) should be prepared. If, while preparing a CE, it is determined that, due to unusual circumstances, significant impacts are noted, an Environmental Impact Statement (EIS) should be prepared. If you are unsure of whether a project may have a significant impact, have a discussion with FHWA.

CE Project Forms – General Questions

Question: Must the project description completely match the STIP?

Answer: The CE needs to be consistent with the STIP. If there are updates to the scope of project, then the STIP should be reconciled to reflect those updates prior to signing the CE. For Type I and II projects, it should be possible to paste the STIP description to the required description in the CE Checklist, with some clarification, if necessary. For Type III projects, the description has more flexibility, but the description in the CE checklist should be consistent with that in the STIP.

Question: Is a project that adds a turn lane a Type III?

Answer: No, the addition of a turn lane, even if it required additional right of way, would not be a Type III project. It would be classified as a Type I activity No. 26: Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints listed in 23 CFR 771.117(e)(1-6).

Question: Where should alternatives be discussed?

Answer: Discussion of alternatives should be included in Section E, to the extent it informs project decisions. It may also be useful to show how the selected alternative meets the need and purpose of the project. You should scale discussions of alternatives based on the scope of the project; in some cases, no discussion would be required.

Question: Who signs a CE for Division?

Answer: The person responsible for approving the CE is the Division Engineer. He or she may delegate that authority to a NCDOT state employee (consultants may not approve a CE). It is suggested that the preparer and reviewer have completed this training, but this is a Division decision.

Question: Can MPOs approve CEs?

Answer: No. The agreement is a delegated authority between NCDOT and FHWA. The NCDOT Division is the approving entity. The MPO could prepare the CE and submit it to the appropriate NCDOT Division Office for approval.

Question: Do CEs require the seal of a professional engineer?

Answer: Previous NCDOT policy was that the PCE was not sealed. As Type I and Type II CEs are consistent with the PCE document, NCDOT has agreed that no seal is required for these documents. NCDOT is evaluating if a PE seal is required for a Type III CE; for now, seal all Type III CEs.

Question: If my project does not include any ground disturbing activity, but my project activity is not included in the Type I Non-Ground Disturbing list (for example, pavement marking), can the Non-Ground Disturbing form be used?

Answer: Yes. The form has been updated to allow the user to denote a type of non-ground disturbing activity not specifically mentioned in the list. However, the nature of the non-ground disturbing activity must be discussed in Section E.

Cultural Resources Programmatic Agreement

Question: Is the Cultural Resources Programmatic Agreement applicable for all ground disturbing projects?

Answer: No, the agreement applies to NCDOT ground disturbing CE projects, not to locally administered projects (LAPs).

Consultation

Question: Is Consultation a new procedure?

Answer: Consultation has always been part of the NEPA process. The current procedure provides guidance on how the process should be conducted. It should be included as a milestone as applicable.

Easements - Construction

Question: Does a construction easement count as ground disturbance?

Answer: Yes. If ground is disturbed, at least a screening of the site is required. Information about the area should be available from county-level parcel data.

Endangered Species

Question: What if T&E surveys have not been completed and you are unsure if Section 7 consultation is needed?

Answer: You must determine if a formal Section 7 consultation is anticipated prior to signing the CE Checklist. If a jeopardy opinion is not a possibility, add a project commitment to complete T&E surveys and coordinate with USFWS prior to permitting.

Federal Emergency Management Agency (FEMA) Buyout Properties

Question: How can we determine if there are FEMA buyout properties in a project study area?

Answer: The first step (start of study letter) is to contact the local jurisdiction for assistance with regards to parcel-specific issues. Check for municipal or county owned parcels in or adjacent to floodplains. You can also check with your local Floodplain Administrator or with the State Hazard Mitigation Officer.

Geo-Environmental Issues

Question: Who can help with phase one assessments?

Answer: NCDOT's Geo-Environmental Section or a prequalified firm can perform the necessary screenings. Locally administered projects should use a prequalified consulting firm.

Historic Districts

Question: For Type I, Non-Ground Disturbing projects, are local historic districts included?

Answer: Yes, they are included.

Question: For Type I, Non-Ground Disturbing projects, what if the activity takes place near a historic building?

Answer: If there are any questions about potential visual effects of a Type I, Non-Ground Disturbing project, consult with NCDOT HES.

Locally Administered Projects (LAPs)

Question: Is FHWA consultation required for LAPs?

Answer: Where applicable, based on the flowchart in the presentation, a consultation or a review may be required. NCDOT is responsible for conducting the review to determine if a consultation is necessary.

Question: How do LAPs deal with relocatees?

Answer: LAPs generally do not have relocatees; however, when they are necessary, they follow the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646), and/or the North Carolina Relocation Assistance Act (GS-133-5 through 133-18)

Natural Resources Technical Report (NRTR)

Question: Is an NRTR needed for every project?

Answer: A NRTR is required for all ground-disturbing projects, but they should be scaled to match the project. A guardrail project will generally require less documentation (as short as an e-mail or memo) than a project that crosses multiple floodplains and previously undisturbed lands.

Question: What if the NRTR does not specify stream impacts?

Answer: If the NRTR does not address stream impacts, they should be included in a memo to the project file. Stream impacts should be included in Section E if they factored in project decisions.

Noise Policy

Question: Where can we find the updated NCDOT Noise Policy?

Answer: The Noise Policy is on the Connect site under Procedures, and a link to the policy is included in the resources section of this webpage.

Parcel Information

Question: How do I find parcel-specific data for my project?

Answer: Information may be available from the local jurisdictions, NCOneMap website, and county parcel data websites.

Permitting

Question: Will this replace the Low-Impact Bridge form? The questioner noted how the previous form integrated with the PCN.

Answer: Yes, the form is being replaced with one of the three new forms. Please note that USACE is working on a streamlined permit application form, which will be provided to the Divisions once it is available. Until then, continue normal coordination with your USACE representative. Coordinate with Colin Mellor of NES (919) 707-6139 or cmellor@ncdot.gov if you have input on what you'd like in an updated PCN form.

Preconstruction Sites

Question: Where does the CE go on the Preconstruction Sites?

Answer: The CE goes under Project Development. There are sections for documents relating to NES, HES, etc. Put technical information in the relevant section.

Scoping

Question: How does the new process impact scoping? Is a new template available?

Answer: The scope of a CE has not changed. In most cases, scopes should be similar to those previously used for Programmatic CEs.

Question: Has the CE Agreement changed the scoping process in terms of what is required for documentation?

Answer: No. Information required to answer the questions on the appropriate CE checklist will be required and will be included in the project file.

Section 106

Question: What correspondence is necessary for Section 106 resources?

Answer: The CE should include the Section 106 concurrence letter. This could be the communication stating that no survey is required, a concurrence letter noting no adverse effect, or a Memorandum of Agreement (MOA) for projects that impact 106 sites.

Section 4(f) Milestones

Question: When do you use the new 4(f) milestone?

Answer: If you have a *de minimis* or individual 4(f), insert a new milestone.

Tribal Lands

Question: Who can help with tribal land issues?

Answer: The Division Resource Map flags applicable counties. Matt Wilkerson of HES (919-707-6089 or mtwilkerson@ncdot.gov) is available to assist with projects in areas claimed as territory by recognized tribes.