



NORTH CAROLINA
Department of Transportation



Documentation for State-Funded Projects

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- Thank you for joining us on the Documentation for State-Funded Projects webinar. The presenters are Colin Mellor with NCDOT Environmental Coordination and Permitting, Jamie Shern who is the NCDOT Environmental Program Advisor, Karen Taylor with AECOM, and Derrick Weaver with NCDOT Project Management Unit
- This webinar will hopefully clarify some confusion on the document requirements for State-funded projects, explain how to determine the type of documentation required for State-funded projects and hopefully create consistency across NCDOT and its consultant partners for this process.
- We will take questions at the end of the presentation

NEPA/SEPA Documentation Requirements

The majority of B, I, R, & U projects...

- are currently programmed in NCDOT STIP as state-funded
- in recent years, that were not categorically excluded, were processed as State or Federal EA's completed with a FONSI
- are likely in class of actions that can be excluded from NEPA or SEPA (CE's or Minimum Criteria)

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- The majority of projects currently programmed in the NCDOT STIP are state funded – which is a shift from most being federally-funded just 5-10 years ago
- Up to very recently, the majority of projects that were not Categorically Excluded, were processed as State or Federal Environmental Assessments, or EAs, and were completed with a Finding of No Significant Impact, or FONSI
- Meaning that our Projects have not had significant impacts. For that reason, we know it is appropriate to excluded most projects from NEPA or SEPA, meaning they do not need to be processed as an EA's, but can be processed as Categorical Exclusions or Minimum Criteria.
- The Federal Highway Administration (FHWA) has also concurred with this.

NEPA/SEPA Documentation Requirements

Need to change project planning
mind-set



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So...it is time for NCDOT to adapt and change our mind-set.

Most of our current and former NCDOT staff, and consultants, are used to “the old way of doing things”, with the majority of projects processed as federal EAs and completed with a FONSI, and relatively few federal CEs were processed, except for bridge replacement or small projects like intersection improvements.

And, since there were so few State-funded projects, very few people are familiar with State documents and how to determine what document type is appropriate.

This presentation will delve into State, as well as Federal laws, that gives the underlining premise for how state funded projects can or should be processed. Don't automatically assume an EA or EIS is required just because a project does not meet the minimum threshold of criteria outlined in the North Carolina Environmental Policy Act, also referred to as NCEPA or SEPA.

With this shift to State Funding, we also need to determine the Lead Federal Agency and not assume that its Federal Highway

Environmental Document (EA FONSI, EIS, ROD)

vs.

Environmental Documentation (MCDC, CE, technical reports)

Documenting NEPA/SEPA decision making process - supports interagency coordination and public involvement and provides appropriate information to make informed decisions

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It is important to understand the difference between an environmental document and environmental documentation.

An **“Environmental Document”** is the type of document prepared depending on the classes of action, an EA or EIS, etc. An **Environmental Impact Statement , or EIS**, is prepared for projects where it is known that the action will have a significant effect on the environment. An **Environmental Assessment, or EA**, is prepared for actions in which the significance of the environmental impact is not clearly established. A Finding of No Significant Impact, or FONSI, is issued if the environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment. **Categorical Exclusions, or CEs, and Minimum Criteria Determination Checklists, or MCDCs** are technically not a NEPA or SEPA document, but environmental documentation, and are issued for actions that do not individually or cumulatively have significant effects on the environment,

“Environmental Documentation” is an essential component of the NEPA/SEPA project development process which supports interagency coordination and public involvement. The purpose of documenting the NEPA/SEPA process is to

- provide complete disclosure to the public
- allow others an opportunity to provide input and comment on proposals, alternatives, and environmental impacts

- provide appropriate information for the decision makers to make a reasoned/informed choice among alternatives.

NEPA Documentation Requirements

- [23 CFR 771.115](#) established the level of documentation required under NEPA for FHWA
- [23 CFR 771.117](#) defined CE's
- Several federal bills have since passed updating the (c) and (d) lists

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Let's first take a look at the federal laws for NEPA documentation since the NC/SEPA law references NEPA document requirements.

Title 23 in the Code of Federal Regulations deals with Highways; Parts 771 defines Environmental Impact and Related Procedures and sub-part 115 defines Classes of Actions. Sub-part .117 defines Categorical Exclusions for the Federal Highway Administration (FHWA).

Paragraph (c) under Sub-part 117 gives a list of actions that meet the criteria for CEs in the Council of Environmental Quality (CEQ) regulations, *(40 CFR 1508.4) and §771.117(a)*, and normally do not require any further NEPA approvals by the FHWA;

Paragraph (d) under Sub-part 117 lists additional actions which meet the criteria for a CE in the CEQ regulations.... *(40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.*

However; several bills (SAFETY-LU, MAP Act, FAST Act) have since been passed updating the (c) and (d) lists.

There is always Projects that are exceptions due to unusual (extraordinary) circumstances.

SEPA Documentation Requirements

If project qualifies as a CE, but State funds are being used, then according to [01 NCAC 25 .0402](#) - SEPA is satisfied

01 NCAC 25 .0402 DOCUMENT UNDER NEPA DEEMED ADEQUATE

If an environmental document is prepared under the provisions of the National Environmental Policy Act (NEPA) for a specific activity, and if that document is reviewed through the Clearinghouse process, then this review shall constitute compliance with the requirements of this Chapter for that activity. **If a specific activity has been designated as categorically excluded from the provisions of the National Environmental Policy Act, then the requirements of this Chapter shall have been met for that activity.**

History Note: Authority G.S. 113A-11;
Eff. February 1, 1986;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

Now let's look at the state law requirements as defined by our State Environmental Policy Act (SEPA). BTW, we are one of only 18 states that have a SEPA law separate from the National Environmental Policy Act (NEPA)

The North Carolina Administrative Code, Title 01 which deals with Administration and the State Clearinghouse, Chapter 25 – which deals with the State's Environmental Act Policy, Section .0402 – which defines "*Document Under NEPA Deemed Adequate*", states that "*if an environmental document is prepared under the provisions of NEPA for a specific activity, and it that document is reviewed through the Clearinghouse process, then this review shall constitute compliance with the requirements of this Chapter for that activity.*"

What does this mean? This means that if a federal document (EA or EIS) has been prepared under the provisions of NEPA by another federal agency for a project, and has gone through the review process, then a state document is not required.

The last sentence states that "*if a specific activity has been designated as categorically excluded from the provisions of NEPA, then the requirements of this Chapter shall have been met for that activity.*"

What does that mean? It means, if a project has been categorically excluded from

the provisions of NEPA, then a state document (State EA or State EIS) is not required.

01 NCAC 25 .0402 gives the overarching “SEPA is satisfied” if a project qualifies as a federal CE

SEPA Documentation Requirements

Project qualifies as a State Minimum Criteria under [19A NCAC 02F .0102](#) if it meets any of the 29 types and classes of threshold of activities listed.

- (26) Implementation of any project which qualifies as a "categorical exclusion" under the National Environmental Policy Act by one of the Agencies of the U.S. Department of Transportation;

Furthermore, Title 19A for the North Carolina Administrative Code, which deals with Transportation, Chapter 2, which deals specifically with the Division of Highways, Sub Chapter F, which defines the Department of Transportation's Minimum Criteria, and Section 0.1002 which gives a list of 29 Minimum Criteria that are exempt from SEPA.

Minimum Criteria Number 26 under [19A NCAC 02F .0102](#) states that the "implementation of any project which qualifies as a 'categorical exclusion' under NEPA by of the of the Agencies of the US Department of Transportation" which basically restates what is defined in [01 NCAC 25 .0402](#) and means you can process it as an Minimum Criteria.

SEPA Documentation Requirements

Example of similarity of NEPA vs. SEPA

(c) The following actions meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Sec. 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal aid system revisions which establish classes of highways on the Federal aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

The following are established as an indicator of the types and classes of thresholds of activities at and below which environmental documentation under the NCEPA is not required:

(1) Approval of:

(a) installation of utilities along or across a transportation facility;

(b) grade-separated crossings of highways by railroads or highway; or

(c) grading, commercial driveways, and other encroachments on the highway right-of-way;

(2) Construction of bicycle and pedestrian lanes, paths, and facilities;

(3) Construction of safety projects such as guardrails, grooving, glare screen, safety barriers, and energy attenuators;

(4) installation of noise barriers or alterations to existing public buildings to provide for noise reduction;

SEPA Documentation Requirements

Is project State-funded and clearly qualifies under any of the 29 defined minimum criteria as defined by [19A NCAC 02F .0102](#)?

If **YES**, then proceed with a Minimum Criteria Determination Checklist (MCDC)

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So, let's recap – how do you determine your project is exempt from SEPA requirements, i.e. that it does not require an environmental document and can be processed with a Minimum Criteria Determination Checklist (MCDC)?

- First, Check to see if your project meets any of the 29 threshold of activities for minimum criteria listed under [19A NCAC 02F -0102](#)

If your project clearly meets any of the requirements listed, then you can proceed with an MCDC

SEPA Documentation Requirements

If it does not clearly qualify under any of the 29 defined minimum criteria, then look to see if qualifies as a Categorical Exclusion as defined by [23 CFR 771.117 \(c\) and \(d\)](#)?

If YES, then proceed with a Minimum Criteria Determination Checklist (MCDC), but it may require some additional work.

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So what if it does not clearly qualify under any of the 29 defined minimum criteria, except for #26, which states any project which qualifies as a categorical exclusion under NEPA?

- check [23 CFR 771.117](#) paragraphs (c) and (d) to see if project may qualify as a federal Categorical Exclusion, as if it were federally funded.

If your project meets any of the requirements listed, then you can proceed with an MCDC, but it may require some additional analysis, which we will discuss later.

SEPA Documentation Requirements

Is project State-funded and clearly qualifies under any of the 29 defined minimum criteria as defined by [19A NCAC 02F .0102](#), or by [23 CFR 771.117 \(c\) and \(d\)](#)?

If **NO**, or still not sure,
then start with no assumptions for level of environmental documentation and document type needed

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So, what if your project does not meet any of the requirements listed in either of the respective laws, then you may still be able to proceed with an MCDC, but it will require some further investigation and additional analysis, which we will discuss later.

ncdot.gov Documentation for State-Funded Projects

When Does SEPA Apply? (<https://deq.nc.gov/permits-regulations/sepa>)

For any project that meets all three of the following criteria, an environmental document must be prepared:

- An expenditure of \$10 million in funds provided by the state of North Carolina for a single project or action or related group of projects or action

Or

land-disturbing activity of equal to or greater than 10 acres of public lands resulting in substantial, permanent changes in the natural cover or topography of those lands (or waters)

- An action by a state agency, and
- Has a potential detrimental environmental effect upon natural resources, public health and safety, natural beauty, or historical or cultural elements, of the state's common inheritance.

Need help in determining the level of environmental impact or detrimental environmental effect? DEQ has developed [minimum criteria](#) to identify those projects requiring an environmental document (scroll to page 7).

If federal funds are involved, the National Environmental Policy Act (NEPA) may apply.

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This slide is a snapshot from NC DEQ's website that states that *"for any project that meets all three of the following criteria, an environmental document must be prepared"*. Note it is not a tool to determine if it meets the Minimum Criteria .

The first bullet may ring a bell with some folks. As mentioned, a slightly revised, but un-approved version, of the NCDOT's Minimum Criteria Determination Checklist, MCDC, listed the ten million dollar threshold and the land-disturbing activity of equal or greater than 10 acres of public lands resulting in permanent changes to natural cover of lands or water threshold as two of the threshold questions in Part A of the MCDC, and if either was checked yes, then the project supposedly could not be processed as an MCDC, i.e. it triggered SEPA requirements. These two questions are not on the approved MCDC template and there is a reason, which I will get to later.

The second bullet states "an action by a state agency" which for us means that it is a State-funded project.

The last bullet is key and it reads that if the project *"has a potential detrimental environmental effect upon natural resources, public health and safety, natural beauty, or historical or cultural elements, of the state's common inheritance"*. Please note the word detrimental should be interpreted as significant for transportation projects, since that's the word most laws reference.

Keep in mind, ALL THREE of the criteria must be met to trigger the need for an

environmental document, or that SEPA applies. This means, even if a project exceeds the ten million dollar cost threshold, or even if it disturbs more than 10 acres of land, then it does not automatically trigger SEPA requirements of completing an environmental document. The third bullet affords you the opportunity to take a closer look at your project, assess the impacts, and then decide if there may be a detrimental effect on the environment. The key is that you will need to do your due diligence to make this determination and will need to show documentation of how you came to that conclusion. Completing the required studies/investigations and coordination with the appropriate state and federal agencies is very important before making this decision.

While the DEQ website provides some guidance, it is not the best tool to determine if a Minimum Criteria can be used.

SEPA Documentation Requirements

Approved Minimum Criteria Determination Checklist (MCDC) is located on Connect NCDOT website

<https://connect.ncdot.gov/resources/Environmental/Pages/Environmental-Compliance-Guides.aspx>

Unapproved form, which references DEQ's website to determine if an environmental document is required.

Threshold criteria is defined in NC Environmental Policy Act in [Chapter 113A-12 Definitions](#)

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The Minimum Criteria Determination Checklist (MCDC) is located on Connect NCDOT website <https://connect.ncdot.gov/resources/Environmental/Pages/Environmental-Compliance-Guides.aspx> This is the Approved Form.

There is an Unapproved MCDC Form that has been circulated and is in use. We have tried to remove all references to it, but if you have a copy, please don't use it any longer. The unapproved form references some questions that are from the DEQ website for Determining if an Environmental Document is required.

The threshold criteria listed on DEQ's website is defined in the North Carolina Environmental Policy Act in Chapter 113A-12

SEPA Documentation Requirements

Determination of Lead Federal Agency

- Usually determined based on funding or permitting
- FHWA is generally the lead for Federally-funded projects
- USACE is generally the lead for State-funded projects requiring a Section 404 permit
- Lead Federal Agency could be another federal agency such as the US Coast Guard

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Before we get into the documentation requirements, I want to point out that it is very important that you determine early in the process who the Lead Federal Agency will be on your project.

The Lead federal agency is usually based on funding. FHWA has traditionally been the Lead Federal Agency on most of our projects when the majority of our projects were Federally-funded; however, with many more project State Funded that is changing.

The US Army Corps of Engineers generally takes the lead for State-funded projects requiring a Section 404 permit, which is on the majority of our projects,

But the Lead Federal Agency can also be another federal agency depending on permitting, such as the US Coast Guard, but this rarely happens.

SEPA Documentation Requirements

Coordinate with Lead Federal Agency on level of environmental documentation required

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Another thing to remember, even if your project is state funded, if you need a federal permit or authorization, then the Lead Federal Agency on your project is required to meet NEPA, so we have to coordinate with them to ensure we are giving them the information they need to comply with NEPA, so it is important that you coordinate with the Lead Federal Agency on the level of environmental documentation required.

For example: we may be able to do an MCDC for our project, but an EA may need to be completed by the USACE for the permit.

SEPA Documentation Requirements

Use CE Type III Checklist as an environmental checklist tool to determine coordination and documentation requirements

Both NEPA and SEPA require taking a hard look at every project to ensure it does not have **significant effects** on the environment

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The slides up to this point in the presentation focused on the laws, determination of Lead Federal Agency, and documentation requirements. The next few slides will focus on the more on the process we are recommending for further investigation and additional analysis.

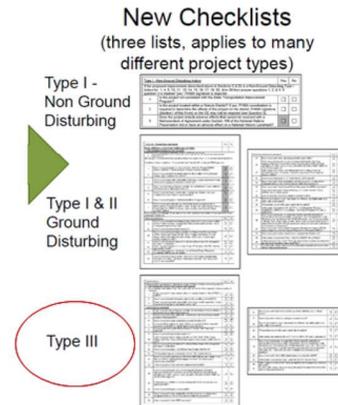
So let's recap again. You've checked the laws that define if your project is exempt from SEPA and/or NEPA. If you have found that your project clearly qualifies as a Minimum Criteria, then that is the documentation you should move forward with. However, if you have determined that your projects meets # 26 on the MCDC list, meaning it would qualify as Categorically Excluded, or you're still not sure, then what?

We are recommending that you use the CE Type III Checklist as an environmental checklist tool to determine who you need to coordinate with and what document or documentation requirements are needed. Remember that both NEPA and SEPA require taking a hard look at every project to ensure it does not have any significant effects on the environment – both human and natural.

SEPA Documentation Requirements

Use [CE Type III Checklist](#) developed by NCDOT in coordination with FHWA to determine the following:

- Coordination requirements
- Level of impact
- Lead Federal Agency
- Documentation requirements



Refer to [CE Checklist Training Presentation](#) for guidance

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Use the CE Type III Checklist as a environmental checklist tool to determine the following:

- Coordination requirements – Who do I need to engage? Do I need any additional information?
- Level of impact – Does the project have a significant impact?
- Lead Federal Agency – Likely the Corp of Engineers, since it's State Funded, but needs to be established.
- Documentation requirements – Can I

use an MCDC or do I need an Environmental Document?

Refer to the CE Checklist Training Presentation for guidance.

Using this tool maybe more than is required for some project, but it provides for a robust look at the project and ensures that we are complying with SEPA.

SEPA Documentation Requirements

Ground Disturbing Projects: FHWA Threshold Criteria Questions

Use checklist questions to determine if project needs additional coordination with other federal and/or state agencies

If any are marked "yes", coordinate with applicable federal/state agencies



FHWA APPROVAL ACTIVITIES THRESHOLD CRITERIA (FHWA Signature Required If "Yes" Selected)		Yes	No
1	Does the project require formal consultation with U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS)?	<input type="checkbox"/>	<input type="checkbox"/>
2	Does the project result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act (BGPA)?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the project generate substantial controversy or public opposition, for any reason, following appropriate public involvement?	<input type="checkbox"/>	<input type="checkbox"/>
4	Does the project cause disproportionately high and adverse impacts relative to low-income and/or minority populations?	<input type="checkbox"/>	<input type="checkbox"/>
5	Does the project involve a residential or commercial displacement, or a substantial amount of right of way acquisition?	<input type="checkbox"/>	<input type="checkbox"/>
6	Does the project require an Individual Section 4(f) approval?	<input type="checkbox"/>	<input type="checkbox"/>
7	Does the project include adverse effects that cannot be resolved with a Memorandum of Agreement (MOA) under Section 106 of the National Historic Preservation Act (NHFA) or have an adverse effect on a National Historic Landmark (NHL)?	<input type="checkbox"/>	<input type="checkbox"/>

Ground Disturbing Projects: FHWA Threshold Criteria Questions

Use checklist questions to determine if project needs additional coordination with other federal and/or state agencies

SEPA Documentation Requirements

Type III Actions		Yes	No
If the proposed improvement is identified as a Type III Class of Action answer all questions.			
<ul style="list-style-type: none"> The Categorical Exclusion will require FHWA approval. If any questions are marked "yes" then additional information will be required for those question in Section G. 			
1	Does the project involve potential effects on species listed with the US Fish and Wildlife Service (USFWS) or National Marine Fisheries (NMFS)?	<input type="checkbox"/>	<input type="checkbox"/>
2	Does the project result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act (BGPA)?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the project generate substantial controversy or public opposition, for any reason, following appropriate public involvement?	<input type="checkbox"/>	<input type="checkbox"/>
4	Does the project cause disproportionately high and adverse impacts relative to low-income and/or minority populations?	<input type="checkbox"/>	<input type="checkbox"/>
5	Does the project involve substantial residential or commercial displacements or right of way acquisition?	<input type="checkbox"/>	<input type="checkbox"/>
6	Does the project include a determination under Section 4(f)?	<input type="checkbox"/>	NA
7	Is a project-level analysis for direct, indirect, or cumulative effects required based on the NCDOT community studies screening tool?	<input type="checkbox"/>	<input type="checkbox"/>
8	Is a project level air quality Mobile Source Air Toxics (MSAT) analysis required?	<input type="checkbox"/>	NA
9	Is the project located in anadromous fish spawning waters?	<input type="checkbox"/>	<input type="checkbox"/>
10	Does the project impact waters classified as Outstanding Resource Water (ORW), High Quality Water (HQW), Water Supply Watershed Critical Areas, 303(d) listed impaired water bodies, buffer rules, or Submerged Aquatic Vegetation (SAV)?	<input type="checkbox"/>	<input type="checkbox"/>

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So let's take a look at how to use the CE Type III Checklist as a environmental checklist tool for a State-funded project to determine impacts, and the severity of the impacts.

Use the CE Checklist Type III training for guidance to answer questions 1 through 10 and to address questions that are checked YES. I'm not going to talk about every question, but as you can see, question 1, ask if the project will involve potential effects on species list with USFWS or NMFS? This is one question that will help to determine coordination requirements. Let's take a closer look at Questions 6 and 8.

Question 6 reads *"Does the project include a determination under Section 4(f)?"* If a State-funded project does not receive funding from a USDOT agency, such as FHWA, or does not need approval from a USDOT agency (ex. a new interchange on an interstate), then Section 4(f) does not apply.

Question 8 reads *"Is a project level air quality Mobile Toxics (MSAT) analysis required"* – this does not apply to State-funded projects.

SEPA Documentation Requirements

11	Does the project impact waters of the United States in any of the designated mountain trout streams?	<input type="checkbox"/>	<input type="checkbox"/>
12	Does the project require a U.S. Army Corps of Engineers (USACE) Individual Section 404 Permit?	<input type="checkbox"/>	<input type="checkbox"/>
13	Will the project require an easement from a Federal Energy Regulatory Commission (FERC) licensed facility?	<input type="checkbox"/>	<input type="checkbox"/>
14	Does the project include Section 106 of the National Historic Preservation Act (NHPA) effects determination other than a no effect, including archaeological remains? Are there project commitments identified?	<input type="checkbox"/>	<input type="checkbox"/>
15	Does the project involve hazardous materials and/or landfills?	<input type="checkbox"/>	<input type="checkbox"/>
16	Does the project require work encroaching and adversely effecting a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A?	<input type="checkbox"/>	<input type="checkbox"/>
17	Is the project in a Coastal Area Management Act (CAMA) county and substantially affects the coastal zone and/or any Area of Environmental Concern (AEC)?	<input type="checkbox"/>	<input type="checkbox"/>
18	Does the project require a U.S. Coast Guard (USCG) permit?	<input type="checkbox"/>	<input type="checkbox"/>
19	Does the project involve construction activities in, across, or adjacent to a designated Wild and Scenic River present within the project area?	<input type="checkbox"/>	<input type="checkbox"/>
20	Does the project involve Coastal Barrier Resources Act (CBRA) resources?	<input type="checkbox"/>	<input type="checkbox"/>

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Again, for Questions 11-20, use the CE Checklist Type III guidance to answer and address questions that are checked YES. I'm not going to talk about every question, but as you can see, questions 12 and 13, ask if the project will require permits from USACE or FECR? These are question that will help to determine coordination requirements.

SEPA Documentation Requirements

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Does the project include Section 106 of the National Historic Preservation Act (NHPA) effects determination other than a no effect, including archaeological remains? Are there project commitments identified?

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Does project require a federal permit or federal approval?

- If Section 10 approval or 404 permit , then 33 CFR 325 Appendix C applies
- If USCG or FHWA then Section 106 applies
- If NO, then Section 106 does not apply, BUT state law GS 121.12A still applies for properties listed on the National Register for Historic Places.

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Let's take a closer look at Questions 14 which asks *“does the project include Section 106 of the National Historic Preservation Act (NHPA) effects determination other than a no effect, including archaeological remains? Are there project commitments defined?”*

This question involves State-funded projects that will require a federal permit, such as a Section 404 permit from the USACE for impacts to wetlands and streams.

It also applies to State-funded projects that require approval from a federal agency – such as a new or modified interchange on an Interstate....but usually these projects are federally funded.

Section 106 usually applies only in permitted areas, but coordination is needed with the permitting agency.

State Law GS 121.12A does apply for properties listed on the National Register for Historic Places.

SEPA Documentation Requirements

21	Does the project impact federal lands (e.g. USFS, USFWS, etc.) or Tribal Lands?	<input type="checkbox"/>	<input type="checkbox"/>
22	Does the project involve any changes in access control?	<input type="checkbox"/>	<input type="checkbox"/>
23	Does the project have a permanent adverse effect on local traffic patterns or community cohesiveness?	<input type="checkbox"/>	<input type="checkbox"/>
24	Will maintenance of traffic cause substantial disruption?	<input type="checkbox"/>	<input type="checkbox"/>
25	Is the project inconsistent with the STIP or the Metropolitan Planning Organization's (MPO's) Transportation Improvement Program (TIP) (where applicable)?	<input type="checkbox"/>	<input type="checkbox"/>
26	Does the project require the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, Tennessee Valley Authority (TVA), Tribal Lands, or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property?	<input type="checkbox"/>	<input type="checkbox"/>
27	Does the project involve Federal Emergency Management Agency (FEMA) buyout properties under the Hazard Mitigation Grant Program (HMGP)?	<input type="checkbox"/>	<input type="checkbox"/>
28	Is the project considered a Type I under the NCDOT's Noise Policy?	<input type="checkbox"/>	<input type="checkbox"/>
29	Is there prime or important farmland soil impacted by this project as defined by the Farmland Protection Policy Act (FPPA)?	<input type="checkbox"/>	<input type="checkbox"/>
30	Are there other issues that arose during the project development process that effected the project decision?	<input type="checkbox"/>	<input type="checkbox"/>

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Questions 21-30 – use CE Checklist Type III guidance to answer and address questions that are checked YES. Let's take a closer look at Questions 28 and 29.

SEPA Documentation Requirements

28	Is the project considered a Type I under the NCDOT's Noise Policy?	<input type="checkbox"/>	<input type="checkbox"/>
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- NCDOT's Noise Policy applies to State-funded projects located on a US or Interstate route that is full control of access and involves adding a through-traffic lane
- Noise barriers will be considered, where practicable, by the Division Engineer, when a State EA or a State EIS is prepared
- For all projects, regardless of the type of funding or document, contact NCDOT Noise & Air Unit for guidance

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Question 28 – *“Is the project considered a Type I under the NCDOT's Noise Policy?”*

The current NCDOT Noise Policy applies to State-funded projects located on a US or Interstate route that is full control of access where the project involves adding a through-traffic lane.

All other State-funded projects for which a State EA or State EIS is prepared will comply with SEPA and the NC Administrative Code. For these projects, noise barriers will be considered where practicable (by the Division Engineer).

For all projects, **ALWAYS include the NCDOT Noise & Air Unit during scoping to discuss the need for a preliminary Noise Impact Analysis, regardless of type of funding or document**

Even if an MCDC or CE is being prepared, the Division Engineer may consider having a preliminary noise analysis done if the project is located in noise sensitive areas where the public will want more information about noise impacts.

SEPA Documentation Requirements

29	Is there prime or important farmland soil impacted by this project as defined by the Farmland Protection Policy Act (FPPA)?	<input type="checkbox"/>	<input type="checkbox"/>	?
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- FPPA only applies to federally funded projects, BUT
- State Executive Order 96 exists for State-funded project if it meets the following:
 - farmland soils exists
 - project is located outside of municipal limits
 - project is not located within a Census Urbanized Area
 - project is not located in areas for which lands are already committed to urban development

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Question 29 reads “Is there prime or important farmland soil impacted by this project as defined by the Farmland Protection Policy Act (FPPA)?”

Neither FPPA or the State Executive Order apply inside municipal limits, within a Census Urbanized Area or outside of those areas for lands already committed to urban development. The latter means yes there are farmland soils – underneath the subdivision or shopping center or industry. Planned to be and already committed are two different things.

So, if a State-funded project gets you out of doing farmland soils as per FPPA, the state Executive Order may still require some analysis.

Calculate the total acres of land to be permanently converted to non-farm use and state this in your document, as applicable. So if the project requires purchase of 2 acres of prime farmland soils plus a drainage easement on another .25 acres, then the project will convert 2.25 acres of prime farmland soil to non-farm use. If the project will use an additional acre for temporary construction easement but it will go back to being used, that easement does not count.

This information is usually included in the Community Impact Assessment report.

(Karen will check with Harrison on the actual State EO and list it in the slide)

SEPA Documentation Requirements

Many federal laws apply to State-funded projects

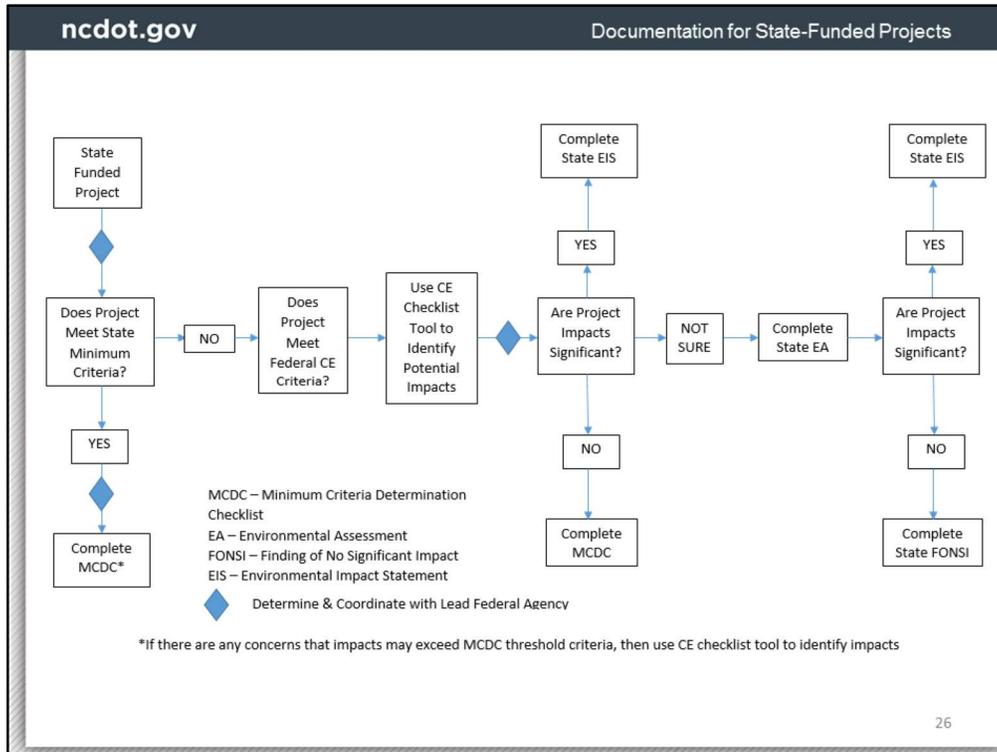
- Section 404 of Clean Water Act
- Section 408 Civil Works Program
- Section 106 of National Historic Preservation Act
- Section 6(f) of Land and Water Conservation Act
- Section 7 of Endangered Species Act
- Bald and Golden Eagle Protection Act
- Anadromous Fish Conservation Act
- Section 9 of Rivers and Harbors Appropriation Act
- TVA and FERC
- FEMA buy-out properties under HMGP
- **And many more.....**

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Using the environmental checklist as a screening tool will help in determining documentation requirements and help navigate the many federal laws that apply to State-funded projects.

However there are always exceptions, you can contact the Environmental Policy Unit, which is currently being established, or your DEO to determine what laws and regulations my apply to project.

You may also contact on of us.



This flowchart will recap how to determine the Documentation requirements for State-funded projects.

- For a State-funded project, always determine who the Lead Federal Agency is on your project and start coordination with them early
- Is the project listed under State Minimum Criteria
 - – if YES, then complete an MCDC but make sure to coordinate your determination with the Lead Federal Agency for your project (see Slide 9)
 - – if NO, then ask is the project listed under paragraphs (c) and (d) for the federal Categorical Exclusion, which means it meets # 26 of the State Minimum Criteria
- – Whether YES or NO, use the Environmental Checklist Tool to identify potential impacts and significance (see Slide 10)
- Are project impacts significant – if YES, then complete a State EIS
- Are project impacts significant – if NO, then complete a MCDC
- Are project impacts significant – if NOT SURE, then complete a State EA – if the project impacts are determined significant, then complete a State EIS, if they are not significant, then complete a State FONSI
- Two reminders...
- 1. It is important that you coordinate the environmental document requirements with the Lead Federal Agency to make sure you give them the needed

- information so they can complete their NEPA document for the permit
- 2. If you are every in doubt on what if required for your project, using the environmental checklist tool is the best way to determine if your impacts are significant and the documentation requirements.
 - This flowchart is intended to be a simplified tool to help establish the documentation required. There will be cases where you still may have questions and further coordination may be required. Again the EPU or DEO can assist, but you can also consult the FHWA Division office.

Example

U-3618 - Carey Road Extension, Kinston, Lenoir Co.

- Two mile extension on new location
- 4-lane, median divided, with bike lanes and sidewalks, 120-foot proposed right of way width
- Two main line alternatives
- 39 acres of ground disturbed
- \$23.6 Million
- 3 business relocations
- 1.48 acres of wetland impacts; 245 LF of stream impacts – requires IP from USACE
- Newsletter to public, project website, public meeting
- No competing resources, no significant impact

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The following project is an “outside the box” project which normally would have been done as a State EA, but because it was determined that the project qualifies as a CE, an MCDC was completed. The project is U-3618, the Carey Road Extension in Lenoir County. Most of the project is located within the county with a small section located within the Kinston City Limits. Here is some background on the project.

- Need for project - no direct local east-west link currently exists between US 258 and areas west and north of downtown Kinston
- Purpose of project – provide a direct local link between US 258 and northern portion of downtown Kinston
- Started as a Federally-funded project - first received funding in 2003 – placed on hold several times due to loss of funding
- Became State-funded in 2016, Division 2 took over Project Management
- Screened out of Merger Process in 2013 since there are no competing resources, no major impacts, and public/locals were in support of project
- FHWA agreed that project can be processed as a CE while project was still Federally-funded
- Two Detailed Study Alternatives (DSAs) were evaluated, with two options of realigning to avoid creating a 5-legged intersection at US 258 with the new extension
- Completed a Comprehensive Archaeological Survey as requested by the Office of State Archaeology – no archaeological resources found to be eligible or on the NRHP (Section 106 requirements)
- Completed a Traffic Forecast, Traffic Capacity Analysis, CCR, CIA, Traffic Noise Analysis,

- NRTR – used reports to develop alternatives and make informed decisions
- Sent newsletter to public, provided a project website, and held a public meeting to give public opportunity to review project and obtain comments on DSAs
 - Determined LEDPA/NCDOT Recommended Alternative – presented to Kinston City Council and Lenoir County Commissioner – both submitted resolutions in support of Recommended Alternative
 - Even though project requires a Section 404 Individual Permit for wetland impacts, project does not have any significant impacts - completed an MCDC
 - Prepared and submitted Merger Permit Application to USACE along with Public Notice information and mailing list of property owners with jurisdictional resources

SEPA Documentation Requirements

- Minimum Criteria Determination Checklist (MCDC) is located on Connect NCDOT website
<https://connect.ncdot.gov/resources/Environmental/Pages/Environmental-Compliance-Guides.aspx>
- Refer to Minimum Criteria list to answer Question 1 for Part A on MCDC
[19A NCAC 02F .0102](#)

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We have reached the end of this webinar presentation. Please note that the MCDC template is located on Connect NCDOT under Resources – Environmental – Guidance and Procedures – Document Prep/Distribution – State MCD Checklist template.

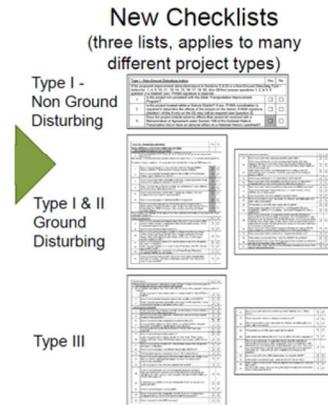
Refer to [19A NCAC .0102](#) – Minimum Criteria – for the list of 29 types of activities for which environmental documentation under NCEPA is not required and to answer Question 1 for Part A on the MCDC

NEPA Documentation Requirements

Use [CE Checklist](#) developed by NCDOT in coordination with FHWA to determine the following:

- FHWA approval required
- Coordination requirements
- Documentation requirements
- Level of impact

Refer to [CE Checklist Training Presentation](#) for guidance



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Also, just wanted to put a plug in that we still have some Federally-funded projects, so use the CE Checklist developed by NCDOT in coordination with FHWA on all Federally-funded projects to determine if

- FHWA approval will be required
- Coordination requirements with federal, state and local agencies
- Documentation requirements – what technical reports and studies are needed
- Determine the level of impact

Refer to the CE Checklist Training Presentation on the Connect NCDOT site for guidance.

Contacts for Questions

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Colin Mellor – Environmental Coordination and
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Jamie Shern – Environmental Program Advisor
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If you still have questions of determining the documentation requirements for your projects, then contact either Derrick Weaver, Colin Mellor, or Jamy Shern.

Questions?

We will now take questions.