**Merger Guidance Packet Comments and Reponses**

Agency Participation:

* NC Department of Transportation (NCDOT)
* US Fish and Wildlife Service (USFWS)
* NC Department of Water Resources (NC DWR)
* US Environmental Protection Agency (US EPA)
* NC Wildlife Resources Commission (NC WRC)
* NC Division of Coastal Management (NC DCM)

\*Note: Page numbers refer to the number at the bottom of the page on the pdf document\*

**Merger MOU and Guidance Comments – Paul Atkinson, NCDOT**

1. **Page #:** 58

**Section:** Merger Basics, “What items should be considered at CP 2A?” (second paragraph).

**Commen**t: Major hydraulic structure is greater than 72 inches/30 sf in diameter, not equal to or greater than.

**Response:** Equal to or greater is accepted standard practice and is included in NCDOT’s August 8, 2022 *Guidelines for Drainage Studies and Hydraulics Design*. NCDOT’s EPU will coordinate with NCDOT Hydraulics Unit to ensure consistency.

1. **Page #:** 65

**Section:** CP 4C, “What happens before the meeting?” (last bullet).

**Comment:** NCDOT hydraulics guidelines have been revised, so it's now "Ch. 14 Permit Drawings" instead of "Appendix P, Permit Drawing Guidelines (July 2016)". We are also having periodic updates to our Guidelines in general, so I would suggest not putting the date anymore since it is now a "living document".

**Response:** NCDOT will develop an approach to linking to any internal guidance document and will implement throughout the guidance and training.

1. **Page #:** General Comment.

**Section:** CP 2A

**Comment:** Should it be mentioned that the CP2A field mtg. would occur prior to the office mtg.? I didn't see that stated anywhere in this guidance, although we mention it in our own.

**Response:** The MMT proposes leaving flexibility to address individual project needs, this includes packet concurrence, having a virtual or in-person meeting, and having field meetings in place of office meetings if that is deemed appropriate by the Merger MOU Signatories.

1. **Page #:** General Comment.

**Section:** CP 4C

**Comment:** I notice there is mention of utility impacts in a few places, including CP 4C. This is not something that's been available at this stage up to now, so is this intended as a change in process, or just mentioned in case we have it?

**Response:** As per NCDOT’s Project Delivery Network (PDN), utility information will now be obtained earlier in the project development process. Utility information for all projects will be integrated as information is available.

**Merger MOU and Guidance Comments – Mason Herndon, NCDOT**

1. **Page #:** 5

**Section:** MOU, “Merger Team” (last paragraph).

**Comment:** "…team members who are not Merger MOU Signatories may conclude their participation if resources under their jurisdiction will not factor into the LEDPA selection and/or permit decision." How should this be documented and/or should there be a process for this action?

**Response:** The Merger Team Member will notify the Merger Team. The conclusion of participation can be detailed in an email to the Merger Team, in a Merger meeting summary, or in an update to the Merger Plan, whichever is most applicable for the project.

**Action:** This will be specified in the guidance.

1. **Page #:** 16

**Section:** Merger Basics, “How does NCDOT coordinate concurrence?” (Third paragraph).

**Comment:** "…each agency will communicate their anticipated concurrence, abstention, or concerns that require additional information to arrive to a decision." Who do they communicate this to USACE Lead, NCDOT Project Manager or both?

**Response:** At a minimum, best practice would be to email the NCDOT Project Manager and the USACE Merger Team Lead of the agency’s concurrence decision.

**Action:** This will be specified in the guidance.

1. **Page #:** 17

**Section:** Merger Basics, “When do Merger packets need to be provided to the Merger Team?” (First paragraph)

**Comment:** "Professional courtesy dictates that this information does not change during the two-week period. Failure to meet this deadline will result in the meeting being cancelled." Does this mean if an agency requests additional information to reach concurrence after reviewing the packet, that a new packet cannot be distributed prior to the meeting? Is the intent here that additional information should be distributed at the meeting or that additional information should be provided at the time that it is requested, and the meeting needs to be postponed? Please clarify.

**Response:** The purpose of this statement is to ensure that agencies have sufficient information to achieve concurrence based on the meeting packet. If an agency requests additional information, that information should be developed as quickly as possible and circulated to the Merger Team. What this guidance seeks to avoid is NCDOT presenting new information at a Merger Meeting that was developed outside of Merger Team requests and is not reflected in the Merger Packet.

**Action:** NCDOT will add this clarifying language in Merger Basics Training.

1. **Page #:** 18

**Section:** Merger Basics, “What is a “Merger Pre-Meeting” and when is it necessary?” (last paragraph)

**Comment:** "…will provide a QC-reviewed draft Merger packet…" Does this have to be provided two weeks in advance of the pre-meeting?

**Response:** All Merger MOU Signatories understand that in some instances, a draft Merger packet circulated prior to a Pre-Meeting may have incomplete information. To allow review, the packet should be provided at least one week before the Pre-Meeting. The Merger MOU Signatories should have the expectation that any information included in a draft packet is correct and has been thoroughly reviewed prior to circulation.

**Action:** NCDOT will add this clarifying language to the guidance.

1. **Page #:** 22

**Section:** Merger Basics, “Can a concurrence point be revisited?” (first bullet).

**Comment:** "Change in the assumptions on which the project and purpose or need was based…" Please elaborate on this revisit point or provide an example for this scenario.”

**Response:** It is possible for new information to become available that changes the foundation on which a concurrence point is achieved. This could include changes to the study area, changes to traffic forecasts, or changes to the status of resources in the project study area.

**Action:** Examples of specific scenarios that illustrate potential changes that may require revisiting a concurrence point will be included in the Merger Basics Training.

**Merger MOU and Guidance Comments – Lauren Wilson, USFWS**

1. **Page #:** General Comment.

**Section:** Entire Document.

**Comment:** There are only two mentions of the Endangered Species Act (ESA) Section 7 consultation process:

**1)** page 63, inclusion of Avoidance and Minimization Measures (AMMs) from section 7 in CP4A packet, and

**2)** the definition of ESA provided in the Glossary.

I understand that this is primarily a NEPA/CWA-led process. However, the US Fish and Wildlife Service is a member of the Merger Team/Partnering Agencies. So, I would recommend that these Merger Process Guidelines more explicitly identify section 7’s role/position within the Merger Process even if it’s to state that it’s a separate process. Why is this important? One thing I keep wondering about is whether there would ever be a situation in which the US Fish and Wildlife Service could “non-concur” as our laws/regs are being met through the section 7 process primarily.

**Response:** We agree on the importance of all required NEPA and CWA components, including Section 106 and Section 7 consultations. The Merger Process does not diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved. In the event of any conflict between this process and other statutes or regulations, the statutes or regulations are the final authority. With this in mind, it was intentional to focus the Merger Process primarily on the blending of NEPA and the CWA. However, we understand the need to keep the Merger Team informed on all relevant issues that could impact permitting. Will add text to Merger Basics, CP 4B, and CP 4C.

**Action:** The Statement **“**Resource/Regulatory History and Considerations (to include context for the current concurrence point)” will be added to Merger Basics as a necessary item for all CP agendas. It will be highlighted as a necessary item to share with the Merger Team at CP 4B and CP 4C.

1. **Page #:** Page 1 of the Glossary

**Section:** Avoidance and Minimization Measures (AMMs)

**Comment:** Recommended including Section 7 of the ESA in the definition of AMMs.

**Response:** NCDOT will add Section 7 of the ESA in the definition of AMMs.

**Action:** NCDOT will make the change described above.

1. **Page #:** Guidance- page 5, Attachment A- page 2.

**Section:** MOU; Roles and Responsibilities

**Comment:** The Glossary refers to “Partnering / Participating Agencies” and the Roles and Responsibilities refers to “Merger Team Members” and I think they are referring to the same list of agencies, mainly that on page 5 of the Guidance document (includes USFWS). Is this right? Recommend making all these terms consistent. I'm getting confused about how to refer to my agency in this process.

**Response:** To remain consistent with existing SAFETEA-LU language, NCDOT will change “Partnering / Participating Agencies” to the operative term “Participating Agencies”. This term will be used synonymously with “Merger Team Member.”

**Action:** NCDOT will make the change described above.

1. **Page #:** Guidance- page 15, Attachment A- page 2

**Section:** Merger Basics, “What is concurrence?” (third bullet).

**Comment:** “At least five working days before a concurrence date, each agency will communicate their anticipated concurrence, abstention, or concerns that require additional information to arrive at a decision.”  
**a**. Page 16 says 5 working days but the Roles and Responsibilities, Merger Team Member document says, “three working days minimum” (the separated document; not the one in the Guidance document on pg. 11).   
**b**. I recommend that whatever the expectation is, that this information be in the email when merger packets are emailed out. Perhaps that can be added to these Guidelines.

**Response:** NCDOT recognizes this discrepancy and will change the language to make it consistent that agencies will communicate their anticipated concurrence decision at least 5 working days prior to the concurrence date. Additionally, NCDOT will include this information when merger packets are sent out via email.

**Action:** NCDOT will make the change described above.

1. **Page #:** 17

**Section:** Merger Basics, “When do merger packets need to be provided to the Merger Team?” (first sentence).

**Comment:** Page 17 states “Merger packets must be sent to the Merger Team at least two weeks prior to a scheduled concurrence date. This two-week period allows the agencies to review the packet and, if necessary, notify the NCDOT Project Manager and copy the Merger MOU Signatories of any missing information or questions.” If comments are due back to NCDOT 5 working days prior to the merger meeting, then agencies could have as little as 6 days to review and provide comment to NCDOT. Recommend this be extended to 3 weeks to give the agencies at least 2 weeks to review.

**Response:** The MMT understands that a minimum two-week timeframe requires a very prompt review of the Merger Packet by the Merger Team. However, for the vast majority of Merger Projects, it is not anticipated that greater than a one-week review would be required to identify any substantive issues in the Merger Packet that could impact concurrence. If the complexity of the project warrants a longer review time by the Merger Team, this should be discussed as part of the Merger Plan.

1. **Page #:** 21

**Section:** Merger Basics, “Who is responsible for preparing Merger meeting summaries?” (first sentence).

**Comment:** Page 21 states “The NCDOT Project Manager, or their designee, is responsible for preparing the draft meeting summary using the templates included in this guidance. Summaries should emphasize decision points (including pertinent deliberations), action items, and next steps.”  
**a)** For most CPs this is fine. For CP 4B/4C, hydraulic designs provided in design plans prior to meetings and the discussion about those design plans during the Merger Meetings, I believe, differ quite a bit (drawings vs discussion), and I think it would be very useful to have the verbal presentation at the meeting written down/summarized in the Merger Meeting Summaries. I haven’t seen this done consistently and I don’t believe this Guidance, as written, allows/encourages/requires this.

**Response:** NCDOT is currently working to update the CP 4B and 4C meeting summary templates in coordination with the NCDOT Hydraulics Unit. The meeting summary templates recommend that the summary addresses each substantive question raised. The summary templates will be supplied to the MMT for their input when drafts are available.

1. **Page #:** General Comment.

**Section:** CP 1

**Comment:** If the USFWS is to concur at each of the CPs that require it, we need information in each of the Merger CP packets that provides information relevant to the “laws and regulations of my program and agency.” I think the same might be true for SHPO, EPA, WRC, etc. I think the Guide document could be updated to better encourage this.

Some examples:

1. At CP1, study area equates somewhat with a section 7 action area (albeit bigger to encompass all alternatives). We recommend that the guidelines explicitly identify this similarity so Project Managers can ensure the study area encompasses a section 7 action area.

**Response:** The study area at CP1 represents a specific area to determine the appropriate range of alternatives (per NEPA regulations). A number of “study areas” are used to represent APEs, Action Areas, etc. While these relate to the Study Area agreed upon at CP 1, they may be larger or smaller, depending on the project and resource.

1. Per the definition of “concurrence”, the only reason we’d need to be involved with Purpose and Need is to ensure its “comprehensive enough to generate a reasonable range of alternatives.” But this is already part of the definition of Purpose and Need so I’m not sure the Service has a role in that decision. If we don’t, I think it’s appropriate that the Guidelines state this for the Service and any other agency it might apply to.

**Response:** Agency participation at CP 1 is critical to ensure the alternatives proposed to be carried forward at CP 2 are informed by their input. For example, the Merger Process does not remove the USFWS’s ability to formally request elevation of a CWA permit decision. However, it does bring agencies together at benchmark points (such as Purpose and Need) to reduce the risk of a permitting issue later in the process. The USFWS involvement throughout the Merger Process is an important component of risk reduction and project evaluation, as they may have information on their resources that would be useful for the Merger Team to understand. It should be noted that CP 1 is generally anticipated to include a meeting (in person meeting or virtual), so participation of all agencies with jurisdiction is expected.

1. At CP2, detailed alternatives carried forward, we’d need to know where listed species suitable habitat is and any info on species survey information at this stage. This information is not part of “What items should be considered at CP2?” (Page 56).

**Response:** USFWS is in the best position to know the critical habitat areas for the species under their jurisdiction. For projects such as new location projects, it is not always possible to survey or screen for suitable habitat prior to CP 2. In fact, environmental features can be assessed by GIS at this stage of evaluation. Of most importance at CP2 is the determination of an alternative’s ability to meet Purpose and Need and any obvious red-flag environmental factors that may preclude future permitting or construction viability based on the purview of each agency. Merger guidance is not intended to preclude any necessary coordination among NCDOT, the lead federal agency, and any applicable resource agency.

1. **Page #:** 31

**Section:** Public Involvement in Merger, “What are the requirements for public involvement in the Merger Process?” (bulleted list).

**Comment:** Page 31, “….The public must be provided the following information: ….Impact tables showing impacts of each alternative, including at a minimum:”

1. I would recommend adding additional information on impacts to federally listed species – either amount/acreage of habitat (e.g., acres of tree removal for tree-roosting bats; river miles of impact to mussels), or other similar impact indicator.

**Response:** The status and/or number of species listed for the county/study area will be included. The presence of suitable habitat will be noted in the discussion of endangered species, based on information provided in the NRTR as will any completed effects determinations and consultation status.

1. **Page #:** 43

**Section:** Screening, “What should be discussed at Merger Screening?” (links).

**Comment:** Link associated with “sample agenda” and “meeting summary template” under “What should be discussed at Merger Screening?” took me to the 2022 Draft Glossary which appears to be the wrong place. I was expecting it to take me to templates of these items. I clicked on several other linked text in the document that also just took me to the Glossary when I think it should take me somewhere else.

**Response:** The links were provided to give a “look and feel” of the final document, with the understanding that this was a work in progress. We apologize for any errors. All links will be fully verified prior to publication of the final document.

**Action:** NCDOT will make the change described above.

1. **Page #:** 53 & 54

**Section:** CP 1

**Comment:** Page 53 & 54 – I wonder if it is appropriate to expand/add to the definition/discussion of the study area and specifically include reference to including downstream portions of streams/rivers to capture potential downstream effects.

**Response:** NCDOT experts (generally the EAU BSG) will provide information on how downstream effects will be quantified on a case-by-case basis. As noted above, the study area agreed upon at CP 1 may not be exactly congruent with all defined areas of potential effect for any potential resource.

1. **Page #:** 58

**Section:** CP 2A, “What items should be considered at CP 2A?” (second paragraph).

**Comment:** Page 58 states “Cost estimates and impact analysis using slope stake limits plus a 40-foot buffer should be used for evaluating new or replacement structures.”  
**a**. At one recent CP2A meeting, NCWRC asked if mitigation costs were included in the cost estimates produced for major hydraulic structures and it turns out they were not. Dave helped calculate them on the fly and the inclusion of those costs really changed the cost forecast for some of those structures (because the impacts to the streams were so extensive. Recommend including that estimated stream/wetland mitigation costs should be included in the cost estimates at this stage.

**Response:** NCDOT recommends adding mitigable impacts to the CP 2A packet. the NCDOT Project Team will determine the likely mitigation ratios and associated impact costs for inclusion in the CP 2A packet (generally with a 2:1 ratio assumed).

**Action:** Response rewritten to avoid introducing the term “Environmental Lead”.

1. **Page #:** 63

**Section:** CP 4A, “What happens at the conclusion of and subsequent to the CP 4A meeting?” (second paragraph).

**Comment:** “Frequently, CP 4A will occur prior to finishing the environmental document; however, CP 4A can occur after the environmental document has been finalized. If CP 4A occurs before the environmental document and been finalized and there are changes to the avoidance and minimization measures (from what was discussed at CP 4A), NCDOT will coordinate with the Merger MOU Signatories to determine how to best notify the other team members (e.g., meeting, teleconference, email, etc.). “  
**a**. I would also specifically call out section 7 consultation here. “If Section 7 consultation has not been completed prior to CP4A, then AMMs from the completed consultation will be….”

* **Response:** In this new process, AMMs will be summarized in each concurrence point packet and meeting summary. As with the current process AMM’s do not end at CP 4A. To ensure that Section 7 and other permitting considerations are fully discussed with the Merger Team, the following has been added as a standard item for inclusion in Merger agendas as part of Merger Basics: “Resource/Regulatory History and Considerations (to include context for the current concurrence point).”

**Action:** This will be revised in the guidance.

1. **Page #:** 64

**Section:** CP 4B

**Comment:** Concurrence Point CP 4B  
**a.** This section is missing the section titled “What should be discussed during this meeting” that is included in the CP 4C meeting. Should this section have one?

**Response:** No title is needed because themeeting at CP 4B is a review of plan sheets and plan sets, as per the guidance document, so that is generally the main topic of discussion.

1. **Page #:** 66

**Section:** CP 4C

**Comment:** Page 66: CP 4C “What should be discussed during the meeting?”  
a. I think that much of what this paragraph says regarding what should be discussed at the meeting, should also be written down in narrative form and provided to Merger Team Members prior to the CP4C meeting.

**Response:** In most instances, the CP 4B Summary will address any outstanding concerns. For more complex projects, a packet or presentation could be provided by the NCDOT Team to address any outstanding issues. CP 4C meetings are meant to be interactive. It is not possible to anticipate how much time each map sheet or stream crossing will need to be discussed. Any substantive discussions will be included in the meeting summary. Example CP 4A and CP 4B meeting summaries will be included in the guidance and training examples.

**Action:** This will be specified in the guidance.

1. **Page #:** 3, 66

**Section:** MOU, CP 4C

**Comment:** Page 3 states: “4B. Hydraulic Design Review: A review of the development of the stormwater best management practices and hydraulic design. 4C. Permit Drawings Review: A review of the completed permit drawings after the hydraulic design is complete and prior to permit application.”:  
**a.** As discussed before with J. Jamison, seems like there should be a step between these if the hydraulic design review in 4B is minimal/30% design if you do not want substantive comments on the completed drawings at 4C.  
Page 66 CP4C – “Is a pre-meeting required?”:  
**b.** In a conversation with John Jamison several months ago, he mentioned that NCDOT does not like to have many comments at CP4C but that often the information provided at CP4B isn’t sufficient enough to lead to a CP4C meeting without agency comment. It seems then that this section of the Guidelines could discuss when a pre-meeting is beneficial. This might be when the plans submitted at CP4B were pretty preliminary and/or when NCDOT is unable to meet previous comments/requests of agencies at CP4B.

**Response:** Thank you for your suggestion.In response to this issue, NCDOT Hydraulics Unit has developed internal procedures during and after CP 4B that are intended to reduce comments/issues at the CP 4C meeting. Merger is designed to allow for simple 4C meetings.

**Merger MOU and Guidance Comments – Dave Wanucha, NC DWR**

1. **Page #:** 54

**Section:** CP 1, “What items should be considered at CP 1?” (second paragraph).

**Comment:** I would add to that sentence the following (relative to a slightly wider study area to avoid potential impacts): ...surface waters, the human environment and threatened/endangered spp. (terrestrials).

**Response:** NCDOT will revise the sentence to incorporate the language provided.

**Action:** NCDOT will make the change described above.

**Merger MOU and Guidance Comments – Amanetta Somerville, USEPA**

1. **Page #:** General Comment.

**Section:** Glossary

**Comment:** Recommended updating the glossary with the following seven (7) terms:

1. Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”) --- The historic Infrastructure Investment and Jobs Act is the largest long-term investment in our infrastructure and economy in our Nation’s history. It provides $550 billion over fiscal years 2022 through 2026 in new Federal investment in infrastructure, including in roads, bridges, and mass transit, water infrastructure, resilience, and broadband. The IIJA includes $110 billion of new funds for roads, bridges, and major projects, and reauthorizes the surface transportation program for the next five years. (Sources: https://www.fhwa.dot.gov/bipartisan-infrastructure-law/; <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-historic-bipartisan-infrastructure-deal/>)
2. Environmental Justice --- Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. (Source: <https://www.epa.gov/environmentaljustice>)
3. Equity --- The term “equity” means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. (Source: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>)
4. Underserved Communities --- The term “underserved communities” refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “equity.” (Source: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>)
5. Climate Change
6. Adaptation
7. Resilience

**Response:** NCDOT will ensure that these terms are included in one of two glossaries. If the term is used in the Merger MOU and/or Guidance, it will be added to the Merger Glossary. Otherwise, the term will be included in a stand-alone EPU glossary currently under development.

**Action:** NCDOT will make the change described above.

1. **Page #:** General Comment.

**Section:** Glossary

**Comment:** Recommend the term “Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)” be deleted from the glossary. SAFETEA-LU, which was signed in 2005, has been superseded by subsequent statutes, such as the Infrastructure Investment and Jobs Act (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”).

**Response:** The Merger Process was created according to SAFETEA-LU Act, and FHWA continues to cite its provisions on their website (<https://www.fhwa.dot.gov/safetealu/factsheets/statewide.htm>). For these reasons, we will keep the term and its definition in the glossary. It will be specified that BIL is the most recent piece of legislation.

**Action:** Include language that the BIL is the most recent piece of legislation om the glossary.

1. **Page #:** 2

**Section:** Roles and Responsibilities

**Comment:** Recommend that the NCDOT Project Manager’s role in Attachment A: “Merger Roles and Responsibilities” be modified by adding the bullet, “coordinate with NCDOT EPU to retain a neutral facilitator, if it is determined that the project may benefit from having a formal facilitator.”

**Response:** A neutral facilitator will be retained if the Merger MOU Signatories conclude that such participation will be helpful.

**Action:** Add bullet to NCDOT PM’s role in Appendix A, Roles and Responsibilities “coordinate with NCDOT EPU to retain a neutral facilitator, if it is determined by the Merger MOU Signatories that the project may benefit from having a formal facilitator.”

1. **Page #:** 31, 36, 40, 46

**Section:** Public Involvement in Merger

**Comment:** Recommend that Page 31 of the Draft 2022 Merger Guidance be modified by adding “Communities with Environmental Justice Concerns” as a sub-bullet under “Impact tables showing impacts of each alternative”. It should be noted that the U.S. Environmental Protection Agency no longer uses the term “Environmental Justice (EJ) Communities” to refer to communities with EJ concerns. The two standard ways that the EPA now commonly refers to communities with EJ concerns are as follows: People of color, low-income, and indigenous communities; Communities with EJ concerns. (More information about some of the basic terms and the ways the EPA refers to communities in the environmental justice program is available in the EPA-produced YouTube video, which features Matthew Tejada, Director of the EPA’s Office of Environmental Justice.)

**Response:** Comment noted. NCDOT will review current Departmental practices and examine how to address in trainings.

1. **Page #:** 36, 40, 46

**Section:** Public Involvement in Merger

**Comment:** On Pages 36, 40, and 46 of the Draft 2022 Merger Guidance, I recommend that the term “EJ Community(ies) be replaced by “Communities with EJ Concerns. [NOTE: The U.S. Environmental Protection Agency no longer uses the term “Environmental Justice (EJ) Communities” to refer to communities with EJ concerns. The two standard ways that the EPA now commonly refers to communities with EJ concerns are as follows: People of color, low-income, and indigenous communities; Communities with EJ concerns. (More information about some of the basic terms and the ways the EPA refers to communities in the environmental justice program is available in the EPA-produced YouTube video, which features Matthew Tejada, Director of the EPA’s Office of Environmental Justice.)]

**Response:** Comment noted. NCDOT will review current Departmental practices and examine how to address in trainings.

**Merger MOU and Guidance Comments – Holland Youngman, USFWS**

1. **Page #:** 17

**Section:** Merger Basics, “How is a project added to the Merger meeting agenda?”

**Comment:** Advance Notice: It would be hugely helpful to know in advance when certain projects will be on the upcoming months’ Merger calendar. At times there has been only the two week notice when a Merger packet is received. Having early notice of when certain projects are scheduled for Merger dates would be helpful for scheduling (i.e. not having to keep days blocked if no Merger projects to which I’m assigned are scheduled for that day). “How is a project added to the Merger meeting agenda?” indicates that specific projects should be on the calendar anywhere from four weeks to three months prior to the Merger dates. Ideally, at that time, notice can be provided to the various Merger Team members.

**Response:** NCDOT’s standard practice is to send out meeting invitations as soon as a meeting is requested. The updated Merger Process introduces a new document called the Merger Plan, which should help provide agencies with more information on when Merger Meetings will be anticipated during project development. However, the schedule in the Merger Plan is subject to change, and therefore other ways to address this issue will be considered outside of the Merger Guidance.

1. **Page #:** General Comment

**Section:** Merger Basics

**Comment:** Appropriate POC: It often remains unclear to me who I should contact in terms of my agency-specific concerns or comments with a project. If the NCDOT Project Manager isn’t the person who can answer questions and/or incorporate conservation recommendations regarding listed species concerns, who instead should I be speaking with? The DEO/Someone at Central/Variable? This has been an issue before so some clarification on appropriate contacts for resource-specific project concerns would be helpful.

**Response:** For inquiries involving NCDOT, the NCDOT Project Manager is the best person to contact. If the NCDOT PM is unable to answer your specific question, they can direct you to the staff member who is best equipped to answer it. Best practice would be to include the Merger Team Lead and lead federal agency contact with any correspondence.

**Action:** Update Roles and Responsibilities to include this.

1. **Page #:** General Comment

**Section:** CP section

**Comment:** Timing of agency-specific comments: At what point in the Merger process should ESA section 7 correspondence be carried out? Meaning generalized, “technical assistance/scoping” level comments early on, then informal/formal consultation started and/or completed? Should these stages be aligned with certain CPs (i.e. informal/formal between CP4B and CP4C?). Perhaps this varies from project to project, but it is generally unclear at what point in a project these should be occurring. It would be helpful if this information could be added to the Guidelines.

* **Response:** The Section 7 needs of a specific project depend on the type of project and the species involved and may not line up with specific CPs in all cases. To ensure that Section 7 and other permitting considerations are fully discussed with the Merger Team, the following has been added as a standard item for Merger agendas as part of Merger Basics: “Resource/Regulatory History and Considerations (to include context for the current concurrence point).” Section 7 consultations must be concluded prior to permitting.

**Action:** This will be specified in the guidance.

**Merger MOU and Guidance Comments – David McHenry, WRC**

1. **Page #:** 62

**Section:** CP 4A, “What items should be considered at 4A?”

**Comment:** Articulate somewhere that at 4A an explicit determination needs to be made by agencies what the treatment goals of the project need to be to meet WQ needs to the MEP. The Post Construction Stormwater Manual notes this requirement (Chap. 2 P. 27 -and maybe elsewhere), so for consistency it should be reflected here. It is key to hydraulic design that is undertaken, so the guidance should be clear on this expectation.

**Response:** NCDOT will add mention of a need for determination regarding treatment goals in Merger Basics under the Avoidance and Minimization Measures section.

**Action:** Add language to Guidance in Basics and CP 4A.

**Merger MOU and Guidance Comments – Cathy Brittingham, NCDCM**

1. **Page #:** General Comment

**Section:** Screening

**Comment:** Will the process and participants be the same for Division-led merger projects versus central-led merger projects? For example, is merger pre-screening for Division-led merger projects conducted by the Division, or is the decision for a Division to lead the merger process an outcome of merger pre-screening? Recommend that DCM be included as a member of the merger team on all projects in the 20 coastal counties.

**Response:** Merger Pre-screenings will be done for all projects and approved by EPU.DCM will be included for projects with a specific CAMA AEC nexus.

1. **Page #:** General Comment

**Section:** Entire Document

**Comment:** Has the NCDOT Transportation Planning Division (ex. Alena Cook) reviewed the revised merger process to confirm that it incorporates the goals and outcomes of Integration/Comprehensive Transportation Planning?

**Response:** We have not received specific comments from TPD. However, Alena Cook has participated in the DEEP team (NCDOT/FHWA/USACE/NCDWR) and is aware of the overall Merger Process update. The internal NCDOT Pre-screening guidance will be shared with TPD.

1. **Page #:** General Comment

**Section:** N/A

**Comment:** Is use of the External Collaboration SharePoint Site and/or ATLAS Workbench required for all merger projects?

**Response:** Yes, NCDOT standard practice states that all projects are required to use the External Collaboration SharePoint Site and/or ATLAS Workbench as appropriate.

1. **Page #:** General Comment

**Section:** N/A

**Comment:** Do all projects need to have signed concurrence forms to be considered as following the Merger Process?

**Response:** Yes, comment noted.

1. **Page #:** General Comment

**Section:** All CPs

**Comment:** Whenever there are Coastal Wetlands as defined by 15A NCAC 07H .0205 in the project area, they should be clearly labelled and depicted separately from other 404 Wetlands, and impacts to Coastal Wetlands should be calculated and presented separately in the impact tables. (ex. Page 28 and 29).

**Response:** Comment noted. Impacts to Coastal Wetlands will be included in impacts tables separate from other jurisdictional wetland impacts as appropriate.

1. **Page #:** General Comment

**Section:** N/A

**Comment:** The old merger process extends past CP 4C to permit applications, permit decisions, permit modifications, letting, preconstruction meeting, compliance monitoring, project completion, and phased projects. This is beneficial because it maintains emphasis on the desired long-term goal of a project that proceeds successfully through these steps to completion.

**Response:** The formal Merger Process is complete after CP 4C comments have been addressed. For all projects, NCDOT is responsible for ensuring that project commitments to resource agencies and other stakeholders are complied with. NCDOT’s PDN addresses steps to permitting, letting, and post-construction monitoring requirements for all projects, including those in Merger.

1. **Page #:** General Comment

**Section:** N/A

**Comment:** Recommend creating an index to the list of questions, or more detailed table of contents.

**Response:** Where provided in the guidance, lists of questions are intended to supply examples. A long question index would not be able to include all possible questions that would need to be addressed by an NCDOT Project Manager or a Merger Team. NCDOT and the Merger Team are responsible for ensuring appropriate project-specific questions are asked and answered.

1. **Page #:** 23

**Section:** Merger Basics, “What are AMMs and how should they be applied throughout the Merger?”

**Comment:** Recommend adding a sentence that acknowledges that there may be other local, state and federal rules and regulations that require avoidance and minimization and compensatory mitigation, such as CAMA, National Wildlife Refuge Act, USFS and NPS Special Use Permit Requirements Section 106, etc.

**Response:** The Merger training will stress that EPU has information on applicable regulations that must be adhered to. The Merger Guidance states that nothing in the Merger Process alleviates NCDOT’s responsibility to follow all appropriate environmental regulations. As an action item, NCDOT will ensure that the training places adequate emphasis on this topic.

**Action:** Place emphasis on this topic in the training.

1. **Page #:** 24

**Section:** Merger Basics, “What kind of permits may be required?”

**Comments:** Recommend adding a Coastal Zone Management Act (CZMA) federal consistency decision, and permit requirements for work on federal lands, to the list.

**Response:** The intent of the language on page 24 is to provide examples of some of the permits that are common to most projects. It is not meant to provide an exhaustive list of any possible permit or certification that a project may require.The Merger training will stress that EPU has information on applicable regulations that must be adhered to. The Merger Guidance states that nothing in the Merger Process alleviates NCDOT’s responsibility to follow all appropriate environmental regulations. As an action item, NCDOT will ensure that the training places adequate emphasis on this topic.

**Action:** Place emphasis on this topic in the training.

1. **Page #:** 24

**Section:** Merger Basics, “What kind of permits may be required?” (second paragraph).

**Comment:** Regarding the statement “…(1) must have undergone interagency review and completed the interagency merger process..”. I have a question. Are all projects required to have a Merger Plan and signed Concurrence Forms to be eligible for a GP 31? If so, I recommend this be explicitly stated to avoid future misunderstandings.

**Response:** Yes, once this guidance is in effect, all projects are required to have a Merger Plan and signed concurrence forms to be eligible for a GP 31. This is specified in the guidance for the Merger Plan and in Merger Basics.

1. **Page #:** 26

**Section:** Combining Concurrence Meetings, “What items should the merger team consider?” (first sentence).

**Comment:** “If the project has only one logical, best-fit alternative…”. This seems to contradict the concept that a project that has only one logical, best-fit alternative would not meet the screening criteria to follow the Merger Process. I recommend that the MMT provide examples on when a project that has only one logical, best-fit alternative would be in the merger process.

**Response:** Guidance language has changed to note one “Build” alternative. One “Build” alternative may be used when a best-fit widening has competing resources and/or NCDOT and the USACE would like the option of using GP 31. Examples for reasoning behind combining CPs is in the training.

1. **Page #:** 27

**Section:** Combining Concurrence Meetings, “Stand-alone CP 3 meeting”.

**Comment:** I am not aware of any projects where the LEDPA has been selected based on aerial photography. If this is occurring, then I recommend providing some guidance and examples of when the MMT would consider that to be appropriate.

**Response:** Clarifying language will be provided.

**Action:** NCDOT will make the change described above.

1. **Page #:** 28-29

**Section:** Combining Concurrence Meetings, “What is required to combine Concurrence Meetings?”

**Comment:** I recommend adding submerged aquatic vegetation (SAV’s) to the list of resources that must be delineated and verified (or the equivalent process for SAV’s).

**Response:** Comment noted, will include as applicable.

1. **Page #:** 24

**Section:** Merger Basics, “What kind of permits may be required?”

**Comment:** I recommend adding a statement that other local, state and federal agencies may have additional requirements for public involvement at the time of permit application and permit decision.

**Response:** NCDOT is responsible for following all applicable laws for all projects, including those associated with public involvement.

1. **Page #:** 38

**Section:** Pre-screening

**Comment:** I recommend that when a determination is made that merger is not recommended, this information should be provided to the MMT for verification and identification of any unforeseen issues.

**Response:** Under the updated process, the internal NCDOT Merger pre-screening process addresses this issue as NCDOT EPU will review and sign all pre-screenings. If NCDOT EPU disagrees with the pre-screening outcome, such as merger is not recommended, they will coordinate with the NCDOT Project Manager to resolve and determine a path to move forward And if additional information becomes available during project development that would affect the project’s Merger status, the project can be placed in the Merger Process at that time.

1. **Page #:** 39-40

**Section:** Pre-screening, “Merger Pre-Screening Form”

**Comment:** I recommend adding a section to provide background with any development that occurred through the Comprehensive Transportation Plan/Integration.

**Response:** Under the PDN relevant information from long range planning will be carried forward into project delivery for all projects.

1. **Page #:** 39-40

**Section:** Pre-screening, “Merger Pre-Screening Form”

**Comment:** I recommend adding a section to identify the data sources that were utilized during merger pre-screening.

**Response:** All data layers used in ATLAS for Merger pre-screening are available. Language will be added to the guidance in Merger Basics to clarify the source of screening data.

**Action:** Add language to Merger Basics 1 clarifying that NCDOT worked with ATLAS team to select the required prescreening guidance data layers.

1. **Page #:** 40

**Section:** Pre-screening, “Merger Pre-Screening Checklist” (top of page and bottom of page)

**Comment:** I recommend these wording changes:   
“Yes, Section 404 Approval is likely to be required”  
“No, Section 404 Approval is not likely to be required”  
“Yes, NCDOT recommends that the project will proceed through merger”  
“No, NCDOT recommends that the project will not use merger”

**Response:** Language will be altered to reflect the “Section 404 Approval” edits suggested. Regarding the merger determination, language will be changed to "NCDOT determines the project will proceed to Merger Pre-Screening or Merger" or "NCDOT determines that the project will not use Merger."

**Action:** Alter language in guidance to read:

“Yes, Section 404 Approval is likely to be required”  
“No, Section 404 Approval is not likely to be required” **and**,

"NCDOT determines the project will proceed to Merger Pre-Screening or Merger"

"NCDOT determines that the project will not use Merger."

1. **Page #:** 41, “Who decides if a project should go through merger screening?”

**Section:** Screening

**Comment:** I recommend that when a determination is made that merger is not recommended, this information should be provided to the MMT for verification and identification of any unforeseen issues.

**Response:** Merger pre-screening is a process internal to NCDOT. For those projects that do not use Merger, it is the Department's responsibility/risk to ensure the project can be permitted. See comment 9.

1. **Page #:** 41

**Section:** Screening, “Who decides if a project should go through merger screening?”

**Comment**: I recommend changing NCDWR to NCDEQ.

**Response:** NCDOT will defer this comment to NCDWR and adhere to its recommendation to address this comment.

**Action:** NCDWR will recommend whether to revise or not.

1. **Page #:** 47

**Section:** Merger Plan, “What is the Merger Plan?”

**Comment:** I recommend adding data sources, methodology and level of design to the list of items that should be outlined in the merger plan. I also recommend adding a section for Alternatives Evaluation Criteria.

**Response:** The NCDOT Project Manager develops the Merger Plan with input from the Merger MOU Signatory Agencies. Requirements will vary on a case-by-case basis. Additionally, the Merger Plan guidance contains language that mentions the inclusion of alternatives evaluation criteria: "Proposed methodologies, including whether or not alternatives evaluation criteria will be used and when they will be introduced, and level of design to be used at various stages of the project."

1. **Page #:** 47

**Section:** Merger Plan, “When is the merger plan developed?” (last sentence of second paragraph).

**Comment:** I recommend adding data sources, methodology and level of design to the list of factors that should be considered when developing the merger plan.

**Response:** The NCDOT Project Manager with input from the Merger MOU Signatory Agencies determines which items should be included in the Merger Plan. Requirements will vary based on the needs of the project. Additionally, the Merger Plan guidance contains language that mentions the inclusion of alternatives evaluation criteria: "Proposed methodologies, including whether or not alternatives evaluation criteria will be used and when they will be introduced, and level of design to be used at various stages of the project."

1. **Page #:** 48

**Section:** Merger Plan, “Who should be on the Merger Team?”

**Comment:** I recommend adding a sentence that “The DCM transportation staff should be invited to participate on the merger team for all projects in the 20 coastal counties.” This could be inserted just prior to the example about coastal wetlands.

**Response:** Will add to Merger Basics Guidance

1. **Page #:** 49

**Section:** Merger Plan, “Permitting considerations”.

**Comment:** I recommend adding a Coastal Zone Management Act (CZMA) federal consistency decision, and permit requirements for work on federal lands to the list in the first paragraph.

**Response:** The risk of providing an extensive list of regulations is that they may be interpreted by readers as being the only ones that may be encountered. However, the regulations that may apply to a specific project vary; which is why NCDOT decided to provide a few *example* regulations for the purposes of discussion. Ultimately, it is the responsibility of the NCDOT Project Team, with the help of the Merger MOU Signatories, to ensure compliance to all relevant regulations for a specific project.

1. **Page #:** 49

**Section:** Merger Plan, “Schedule and meeting format” (first paragraph).

**Comment:** I suggest this wording change in the second sentence: “For instance, the NCDOT Project Manager will consider providing should provide an update to the Merger Team every six months….”

**Response:** The need for communication with the Merger Team will be done on a project-by-project basis.

1. **Page #:** 51-52

**Section:** Merger Plan, (Merger Plan Form)

**Comment:** I recommend adding sections for data sources, methodology, level of design and Alternatives Evaluation Criteria.

**Response:** Items to be included in the Merger Plan should be determined by the NCDOT Project Manager with input from the Merger MOU Signatory Agencies. Requirements will depend on the needs of the project.

1. **Page #:** 53

**Section:** CP 1, “What items should be considered at CP 1?” (first paragraph).

**Comment:** I recommend the following change in wording: “The NCDOT Project Team is encouraged to coordinate the draft purpose statement with the USACE/NCDWR Merger MOU signatories to discuss how the statement may affect the future LEDPA decision.”

**Response:** NCDOT will add “Merger MOU Signatories” language to the sentence, delete USACE and NCDWR.

**Action:** NCDOT will make the change described above.

1. **Page #:** 60

**Section:** CP 3, “What is CP 3?” (first paragraph, last sentence).

**Comment:** I recommend the following wording changes: “CP 3 is the culmination of the merger decision-making process from a NEPA perspective, and it is a foundational element for the future permit decisions and a successful project.”

**Response:** While the suggested change is appropriate, the current statement is the result of extensive coordination between the Merger MOU Signatories, and it is therefore recommended to be kept. However, NCDOT will consider using this verbiage in the training module.

**Action:** NCDOT will consider using this verbiage in the training module.

1. **Page #:** 60

**Section:** CP 3, “What items should be considered at CP 3?”

**Comment:** I recommend adding the following question that comes from text in the old merger process: “Are all of the project team members reasonably certain that the LEDPA/Preferred Alternative will comply with all relevant regulations and permit requirements, and that it is safe and can be authorized?”

**Response:** While the suggested change is appropriate, the current statement is the result of extensive coordination between the Merger MOU Signatories, and it is therefore recommended to be kept. It is the responsibility of all Merger Team to ensure that agency concurrence on an alternative carried forward at CP 2 means that they believe that alternative could be developed in a way that complies with their specific agency requirements. The MMT notes that agencies have the option of abstaining, allowing the project to move forward until such time as additional information is available.

1. **Page #:** 62

**Section:** CP 4A. “What items should be considered at CP 4A?” (first paragraph, last sentence).

**Comment:** AMMs provided as a summary at each concurrence point are NOT part of the concurrence point for signature.” I recommend deleting this sentence. Often the decision by project team members to provide concurrence is predicated upon NCDOT’s AMM commitments. Therefore, I think the AMMs are an important part of the concurrence point. This is especially important for large, controversial projects that may undergo many years of project development and environmental analysis. If NCDOT is not able to uphold an AMM commitment, then that should be a reason for the Merger MOU signatories to consider revisiting CP 4A. This is critical for defensibility of future permit decisions and permit conditions.

**Response:** By including an AMM in the Merger Meeting summary, NCDOT is agreeing to its use. Under rare circumstances, an AMM may be essential for a particular concurrence point. In that case, that AMM can be included in the Merger Concurrence Form. However, as a rule, AMMs should not be included on a concurrence form. This avoids having a concurrence point be re-examined if additional AMM activities take place that alter a previously noted AMM.

1. **Page #:** 63

**Section:** CP 4A, “What items should be considered at CP 4A?”

**Comment:** I recommend adding the following sentence after the last sentence of this section, “CAMA Wetlands and SAV impacts shall be summarized to the hundredth of an acre and/or square feet.”

**Response:** NCDOT will add “CAMA Wetlands and SAV impacts shall be summarized to the hundredth of an acre and/or square feet.” to the “What items should be considered at CP 4A?” section.

**Action:** NCDOT will make the change described above.

1. **Page #:** 64

**Section:** CP 4B, “What is CP 4B” and “What items should be considered at CP 4B?”

**Comment:** I recommend specifically adding the stormwater management plan.

**Response:** NCDOT will add Draft Stormwater Management Plan.

**Action:** NCDOT will make the change described above.

1. **Page #:** 65

**Section:** CP 4C, “What happens before the meeting?”

**Comment:** I recommend adding construction methods to the list of items that shall be included in the packet.

**Response:** Construction methods for bridges and culverts, as well as additional AMMs are discussed.

1. **Page #:** 66

**Section:** CP 4C, “What happens before the meeting?” (fourth sentence).

**Comment:** I recommend this wording change to the 4th sentence: “Discussions should also include final construction methods and …”

**Response:** Comment noted. It is anticipated that a review of the CP 4B Meeting summary and plan set materials should be sufficient to prepare for the CP 4C meeting. No change anticipated.

1. **Page #:** 66

**Section:** CP 4C, “What should be discussed in the meeting?” (Second paragraph, second sentence).

**Comment:** I recommend this wording change to the 2nd paragraph, 2nd sentence: “If applicable, any on-site mitigation designs should be discussed by NCDOT EAU and depicted on the permit drawing sheets.”

**Response**: NCDOT will edit the sentence to read “If applicable, any on-site mitigation designs should be discussed by NCDOT’s EAU and depicted on the permit drawing sheets.”

**Action:** NCDOT will make the change described above.

**Merger MOU and Guidance Comments – Stephen Lane, NCDCM**

1. **Page #:** General Comment

**Section:** Beginning of Guidance Document.

**Comment:** I would suggest that early on in the document, it is clarified that the NC DCM is a signatory agency and merger team member (under NC DEQ the same as the NC DWR) if the project is located within one of the twenty coastal counties under the NC DCM's jurisdiction.

**Response:** Comment noted.

**Merger MOU and Guidance Comments – Stephen Morgan, NCDOT**

1. **Page #:** General Comment

**Section:** Merger Plan

**Comment:** Great document, continue to emphasize the importance of A&M measures through the life of a project. Should a process and form be developed for projects that will partially be in merger?

**Response:** The Merger Plan will spell out when concurrence meetings can be combined. Projects will either follow the Merger Process or not.

1. **Page #:** General Comment

**Section:** Merger Plan

**Comment:** Should a plan get developed for partial merger projects? For example, 4B and 4C only, or keep in until 3?

**Response:** Partial Merger Projects are not a part of the past guidance and are not included in the current guidance.

1. **Page #:** 58-59

**Section:** CP 2A

**Comment:** Note in the text body that bridge lengths and culvert sizes are preliminary and may not reflect final design sizes. More detailed hydraulic analysis and plan development, including avoidance and minimization measures, may affect the final dimensions of hydraulic structures. The primary goal of 2A is to determine if fill impacts to waters of the US can be avoided by the hydraulic structure recommendation and the roadway alignment. Further A&M measures such as slope, length, size and burial requirements will be implemented with the final design and discussed starting at 4A.

**Response:** NCDOT will note that all designs are preliminary and subject to change. It is the responsibility of the NCDOT Project Manager to alert the Merger Team if any design change has the potential to substantively increase impacts to protected resources.

**Action:** NCDOT will add this language on page 23 under “What level of design is required for each concurrence point.”

1. **Page #:** 62-63

**Section:** CP 4A

**Comment:** Discussion of appropriate on-site mitigation measures should occur at this stage, even earlier at 2A perhaps. Slope takes plus 25 feet or even plus 40 feet do not always capture impacts to a meandering stream for example. On-site mitigation to relocate a stream further from the roadway (particularly for widening projects) and develop an appropriate floodplain may be much better than typical A&M measures such as retaining walls that would limit the available floodplain. Doing such a measure may incur more 404 impacts however, but not increase permanent net stream loss.

**Response:** Comment noted.