

Consultations and Re-evaluations

1. Purpose

This Procedures Manual chapter provides guidance regarding consultations and re-evaluations. The information in this chapter should help the NCDOT Project Manager determine when a consultation or re-evaluation is necessary and how it should be conducted.

The following sections provide background information, a description of roles and responsibilities, an explanation of the process and timing for consultations and re-evaluations, a milestone checklist, and standardized email and letter templates. Additionally, instructions for ensuring this guidance is current are also provided.

2. Background

A **consultation** is a written document that evaluates whether an approved Environmental Document or Supporting Environmental Documentation remains valid or if additional analysis is required. NCDOT documents consultations through the NCDOT NEPA/SEPA Consultation Form. The NEPA/SEPA Consultation Form is for use on both federally and state funded projects – this will help NCDOT with consistency in environmental review during the right-of-way and construction approval process.

Approved Environmental Documents prepared pursuant to SEPA and NEPA include:

- Environmental Assessments (EAs)
- Findings of No Significant Impact (FONSIs)
- Environmental Assessments/Findings of No Significant Impact (EA/FONSIs).

Approved Supporting Environmental Documentation includes:

- Categorical Exclusions (CEs)
- Minimum Criteria Determination Checklists (MCDCs).

In limited situations, the NCDOT Project Manager may need to assess the validity of a Draft or Final EIS. As indicated in 23 Code of Federal Regulations (CFR) § 771.129, a **re-evaluation** is a written review of the adequacy of a Draft or Final EIS, and its purpose is to assess whether a supplemental Draft or Final EIS is required. The content of a re-evaluation is similar to that of a consultation. A re-evaluation is required if more than three years have passed between approval of a Draft EIS and Final EIS, or Final EIS and ROD. Because re-evaluations are uncommon, the guidance in this chapter focuses on the development of consultations. For additional information regarding re-evaluations, contact the NCDOT Environmental Policy Unit.

A consultation is required when substantial changes to the proposed design, evaluation of impacts, or environmental commitments have occurred after approval of the Environmental Document or Supporting Environmental Documentation, but prior to right-of-way acquisition or construction – even if more than one year has not passed.

Design changes or time limits can trigger the need for a consultation. If the project has changed or more than a year has passed, assess the need to complete the NCDOT NEPA/SEPA consultation form.

Substantial changes to the proposed design could include modifications to intersection or interchange designs, bridge or culvert changes, right-of-way modifications, or a change in control of access.

The evaluation of impacts may need to be revisited due to circumstances such as changes in the study area, a change in detour, or newly listed threatened or endangered species.

Environmental Commitments include those found on the Green Sheet and any other additional agreements that have been negotiated since completion of the Environmental Document or Supporting Environmental Documentation (i.e., municipal agreements), and additional commitments that have resulted from project permitting or consultation under special purpose laws and requirements.

Design progression, or minor changes to the evaluation of impacts or environmental commitments, does not require a consultation. If consultation is not necessary, the NCDOT Project Manager should document the continued validity of the approved Environmental Document or Supporting Environmental Documentation by completing the NCDOT NEPA/SEPA Consultation Form.

Environmental Documents, Supporting Environmental Documentation, and consultations are only valid for one year. As such, a consultation is also required if more than one year has passed since approval of the original Environmental Document or Supporting Environmental Documentation or any subsequent consultation.

3. Roles and Responsibilities

Multiple parties are involved in the development of a consultation. Key parties and their associated responsibilities are summarized below.

NCDOT Project Managers and/or their Consultants have ultimate responsibility for successfully completing a consultation. The NCDOT Project Manager is responsible for determining if a consultation is necessary, soliciting input from various NCDOT technical units, documenting the consultation, coordinating with other agencies, as needed, and distributing the consultation.

The Federal Highway Administration may be a required signatory on an NCDOT consultation. Generally, if an FHWA signature was required on the original Environmental Document or Supporting Environmental Documentation, the NCDOT Project Manager should assume the same will be required for a consultation. For additional information about FHWA's role in the approval process for consultations, please refer to the 2017 Programmatic Agreement for Documentation Requirements and Approval Procedures for Federal-Aid Projects Classified as Categorical Exclusions.

The North Carolina Environmental Review Clearinghouse, which is maintained by the North Carolina Department of Administration, forwards Environmental Documents and Supporting Environmental Documentation for review and comment to state and local agencies with expertise in environmental matters and/or whose jurisdiction may be impacted by the project.

The NCDOT Environmental Policy Unit is available to provide clarification on requirements and guidance on a project-specific basis. The NCDOT Environmental Policy Unit should be copied on the internal distribution of all consultations, requests for FHWA signature, and submittals to the North Carolina Environmental Review Clearinghouse.

4. Process and Timing

Well in advance of executing an authorized action (right-of-way authorization or construction authorization), the NCDOT Project Manager should verify a consultation is not needed based on the criteria identified in Section 2. To facilitate readiness in the event a project is delayed or experiences substantial changes, it may be helpful for the NCDOT Project Manager to conduct a routine review of the

Because new information may be identified in the consultation process, it is important that consultations are completed within a timely manner. Consultations should be completed at least 3 months prior to authorized actions.

13-month LET list. Staying abreast of upcoming projects should allow the NCDOT Project Manager the opportunity to complete the consultation well in advance of the next authorized action.

Once it has been determined that a consultation is necessary, the NCDOT Project Manager or their Consultant should begin reviewing important documents in the project file, including the approved Environmental Document or Supporting Environmental Documentation, the most current project commitments, and design plans. During this review, the NCDOT Project Manager or their Consultant should confirm the presence or absence of discrepancies between, or substantial changes from, the approved Environmental Document or Supporting Environmental Documentation in contrast with the current circumstances. The NCDOT Project Manager or their Consultant should coordinate with NCDOT technical units as needed for updates or clarification.

After reviewing the project file, the NCDOT Project Manager or their Consultant should begin documenting the consultation. A consultation should include the following information:

Agency Coordination – the NCDOT Project Manager or their Consultant should include a summary of the coordination that has occurred with regulatory agencies and stakeholders since the completion of the Environmental Document or Supporting Environmental Documentation.

Updated Project Commitments – the NCDOT Project Manager or their Consultant should verify that each commitment has or will be incorporated into the project design. If any commitments have been added, modified, or excluded, the NCDOT Project Manager or their Consultant should briefly explain and justify the changes. If no changes have been made, the NCDOT Project Manager or their Consultant should note that the previously identified project commitments remain applicable. An updated “Green Sheet” should be produced by the NCDOT Project Manager or their Consultant.

Substantial Design Revisions – if substantial design revisions have occurred since approval of the Environmental Document or Supporting Environmental Documentation, the NCDOT Project Manager or their Consultant should identify and describe these changes. This information may be best presented through a narrative description and updated figures illustrating the revisions. If no substantial design revisions have occurred, the NCDOT Project Manager or their Consultant should note that there are no changes in the project’s design.

Environmental Consequences – The NCDOT Project Manager or their Consultant should identify and describe the environmental consequences of any substantial design revisions or changes in the environmental setting. Factors to consider include, but are not limited to:

- Changes related to Biological Conclusions for Threatened and Endangered Species and updated Section 7 concurrence letters – note: Section 7 coordination must be completed before the consultation can be signed.
- Revisions to Section 4(f), 6(f), or 106 consultation that require additional coordination.
- Changes in potential noise impacts due to design revisions or the addition of sensitive receptors in the study area.

Once the consultation documentation is complete, the NCDOT Project Manager should circulate it internally for review and approval. For projects led by the Divisions, this internal circulation can remain in the Division. For projects managed by the Central Office, the technical units/staff that should have the opportunity to review the consultation will vary on a project-specific basis, but will typically include:

- Division
- Roadway Design
- Hydraulics
- Environmental Analysis
- Environmental Policy
- Right of Way
- Utilities
- Construction
- Contract Standards and Development

After adjudication of input from the relevant technical units/staff, the NCDOT Project Manager should submit the consultation for review and approval. In the NCDOT Central Office, consultations should be reviewed and approved by the Project Management Unit. In Division Offices, consultations should be reviewed and approved by the original signatories (project engineer, DEO) of approved Environmental Documents or Supporting Environmental Documentation.

If federal funding is involved, the consultation may also require an FHWA signature (for example, if FHWA was a signatory on the original document).

For ground-disturbing Type I and Type II CEs where no FHWA approval was previously required but thresholds have been met or exceeded, the NCDOT Project Manager will prepare and certify the consultation form for FHWA approval.

For Type I and Type II CEs where FHWA approval was previously required, the NCDOT Project Manager will certify the determination that a CE is still appropriate. However, if an individual 4(f) determination is required, or an additional threshold(s) has been met or exceeded, the NCDOT Project Manager will prepare and certify the consultation form for FHWA approval.

Type III CEs always require FHWA approval.

Upon signature(s), the NCDOT Project Manager and their Consultant may distribute the consultation. For additional information about document distribution, please refer to the *Distributing Environmental Documents and Supporting Environmental Documentation* chapter of the Procedures Manual.

5. Checklist

The following checklist identifies the key steps that are described in Section 4 above.

| Project Phase | NCDOT Project Manager Action | Status |
|---|---|--------|
| Post Environmental Document / Supporting Environmental Documentation Approval | Check the 13-month LET list for upcoming projects. | |
| | | |
| Prior to Any Authorized Action | Determine if a consultation is necessary based on changes to the project and/or time limits. | |
| | If the original Supporting Environmental Documentation prepared was a CE, review the most recent version of the FHWA/NCDOT Programmatic Agreement for the Processing of CEs to confirm requirements. | |
| | Coordinate with applicable NCDOT Technical Units and/or staff for updates. | |
| Conduct Consultation | Verify that the original NEPA/SEPA document (EA/FONSI or EIS/ROD) or Supporting Environmental Documentation (CE or MCDC) is still relevant and can be relied upon as a basis for a consultation. | |
| | Gather and review historical information and compare it to current circumstances. For example, review the latest USFWS Threatened and Endangered species list for North Carolina to ensure the project is in compliance with Endangered Species Act Section 7 requirements. | |
| | Determine if any substantial regulatory requirements have changed since the original Environmental Document or Supporting Environmental Documentation was approved. | |
| | Review the list of environmental commitments (green sheet) and coordinate with the appropriate design and/or construction staff to ensure these commitments are being incorporated into the project. | |
| | Document changes (or lack thereof). | |

| | | |
|--|--|--|
| | Confirm the original Environmental Document or Supporting Environmental Documentation is available for review by interested parties. | |
| | Circulate consultation for NCDOT review. Coordinate with lead design staff and environmental staff and incorporate their technical input. | |
| | Submit consultation for internal approval. | |
| | If the original Supporting Environmental Documentation was a Type I or II CE, and the results of any of the questions in Appendix C of the FHWA/NCDOT Programmatic Agreement are answered with a "Yes" and they were previously a "No," coordinate with FHWA for approval. | |
| | Distribute signed consultation. | |

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6. NCDOT NEPA/SEPA Consultation Form

NCDOT NEPA/SEPA Consultation Form

NCDOT STIP Project No. **X-####**

WBS Element _____

Federal Aid Project No. _____

A. Project Description, Location and Purpose:
Description, location, purpose

B. Consultation Phase: (Check one)

- Right-of-Way
- Construction
- Other: **design change, etc.**

C. NEPA/SEPA Class of Action: (Check one)

- FHWA TYPE I A CE Date(s)
- FHWA TYPE I B CE Date(s)
- FHWA TYPE II A CE Date(s)
- FHWA TYPE II B CE Date(s)
- FHWA TYPE III CE Date(s)

**CLICK ON
WHAT
APPLIES
AND DELETE
THE ROWS
THAT DO
NOT APPLY**

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- | | | |
|--------------------------|---------------|---------|
| <input type="checkbox"/> | FHWA EA/FONSI | Date(s) |
| <input type="checkbox"/> | FHWA EIS/ROD | Date(s) |
| <input type="checkbox"/> | SEPA MCDC | Date(s) |
| <input type="checkbox"/> | SEPA EA/FONSI | Date(s) |
| <input type="checkbox"/> | SEPA EIS/ROD | Date(s) |
| <input type="checkbox"/> | Other: _____ | Date(s) |

Additional Notes: **Notes**

D. Changes in Proposed Action & Environmental Consequences:
Description, location, purpose

E. Conclusion:

The above NEPA/SEPA documentation has been reevaluated (as required by either 23 CFR 771 or by NC General Statute Chapter 113A Article 1). The current proposed action is essentially the same as the original proposed action. Proposed changes, if any, are noted below. It has been determined that anticipated social, economic, and environmental impacts were accurately described in the above referenced document(s) unless noted otherwise herein. Therefore, the original Administration Action remains valid.

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F. FHWA Appendix C Criteria:

| If any of questions 1-7 below are marked "yes" then please review NCDOT and/or FHWA procedures prior to approval. | | 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 (NHPA) or have an adverse effect on a National Historic Landmark (NHL)? | <input type="checkbox"/> | <input type="checkbox"/> |

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G. Coordination

NCDOT personnel have discussed the current project parameters with qualified NCDOT representatives. The Project Manager (Name of PM) hereby verifies the involvement of the following staff and the incorporation of their technical input:

| | | |
|---------------------------|-------|---------|
| Design Engineer: | _____ | Date(s) |
| FHWA Engineer: | _____ | Date(s) |
| Environmental Specialist: | _____ | Date(s) |
| Other: | _____ | Date(s) |

H. Consultation Approval for NCDOT Project TIP OR OTHER #

Prepared By:

| | |
|-------|--------------|
| _____ | _____ |
| Date | Name, Title |
| | Organization |

Prepared For:

NCDOT, Division or Unit name

Reviewed By:

| | |
|-------|--------------|
| _____ | _____ |
| Date | Name, Title |
| | Organization |

Approved

In adherence with 23 CFR 771 (NEPA) or NC General Statute Chapter 113A Article 1 (SEPA), NCDOT approves this Consultation.

or

Certified

If any of the threshold questions (1 through 7) of Section F are answered "yes," NCDOT certifies this Consultation.

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Date _____ Name, Division Engineer – or – Unit Head
North Carolina Department of Transportation

FHWA Approved: FHWA signature required for Projects where an additional threshold has been exceeded or for any Type III CE, FONSI or ROD.

Date _____ John F. Sullivan, III, PE, Division Administrator
Federal Highway Administration

I. Project Commitments

County
Project Name
Federal Project No.
WBS No.
TIP No.

**REVISE AS
NEEDED, RE-
ISSUE BASED ON
CONSULTATION
DATE**

7. Status of this Guidance

This guidance was prepared in November 2018. To confirm the information contained in this chapter is current, the NCDOT Project Manager should check the record of revisions on the NCDOT Connect site.