

Merger Roles and Responsibilities

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Background & Purpose

In July 2004, the Interagency Leadership Team (ILT) was formed to increase and enhance communication, understanding, and collaboration among the many agencies involved in the delivery of North Carolina's transportation program. The ILT is comprised of executive leadership from the following organizations:

- North Carolina Department of Transportation;
- North Carolina Department of Environment and Natural Resources;
- North Carolina Department of Commerce;
- North Carolina Department of Cultural Resources;
- North Carolina Wildlife Resources Commission;
- North Carolina Department of Agriculture and Consumer Services;
- U.S. Army Corps of Engineers;
- Federal Highway Administration;
- U.S. Fish and Wildlife Service;
- U.S. Environmental Protection Agency; and
- NOAA-Fisheries.

The ILT has adopted the following as its mission and goals to pursue:

Mission:

To develop and implement an interagency leadership plan for North Carolina to successfully balance mobility, natural and cultural resource protection, community values, and economic vitality at the confluence of our missions.

Goals:

1. Develop a Comprehensive Shared GIS Database
2. Establish Early Involvement in Systems Planning
3. Continue to Improve the NEPA/Section 404 Merger Process

As part of Goal #3, Improve the Merger Process, the ILT recognizes that the Merger Process has great potential to improve project delivery and provide excellent stewardship of our state's environmental and human resources. Much progress has already been made, but the ILT believes there is room for continuous improvement. A specific area is the Roles & Responsibilities of Merger participants.

In order to achieve the greatest efficiency and effectiveness, the ILT believed that guidance was needed to provide participants of the Merger Process with an understanding of the roles, responsibilities, relationships, rules, and expectations needed to operate in Merger. To this end, the ILT chartered an interagency team to develop Roles & Responsibilities (R&R) for Merger participants.

R&R Team Mission Statement:

Improve the efficiency of Merger Meetings.

R&R Team Objective:

Develop a standard operating procedures or similar type document that defines and describes the roles and responsibilities of Merger Process participants. This document should establish the expectations or norms for operating the Merger Process. Specific topics to be addressed included:

- Roles and responsibilities of participants at different phases of the Merger Process;
- Work standards and expectations (rules) for each phase of the Merger Process;
- Conduct and relationships among participants (e.g. respecting an agency's expertise); and
- Detailed steps and time frames for elevating issues, disputes, or non-concurrence within a Merger Meeting.

R&R Team Members:

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The output of the R&R Team is this document. It has been reviewed and endorsed by the ILT for use in the Merger Process.

The Roles and Responsibilities were revised in 2014 by the Merger Management Team to reflect refinements and continued process improvements.

Roles

Agency Roles

Agency Roles define high-level responsibilities as follows:

Federal Lead Agency

The Federal Lead Agency is the agency preparing or having taken primary responsibility for preparing the environmental document. Where federal-aid funding is anticipated, the U.S. Department of Transportation - Federal Highway Administration (FHWA) shall be the Federal lead agency in the environmental review process for a project. Where no federal-aid funding is anticipated, the U.S. Army Corps of Engineers (USACE) will normally be the lead agency.

Joint Lead Agency

More than one agency can be a “Joint Lead Agency.” Any project sponsor that is a State or local governmental entity receiving funds under Title 23 US Code or Chapter 53 of Title 49 US Code for the project shall serve as a joint lead agency with the FHWA for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (NEPA). A Joint Lead Agency may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

Cooperating Agency

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment.

Federal Participating Agency

“Federal Participating Agency” means any Federal agency (other than a lead agency) which has jurisdiction or authority with respect to the project, has expertise or information relevant to the project, and intends to submit comments on the project.

Non-Federal Participating Agency

“Non-Federal Participating Agency” means any agency (other than a joint lead agency) which has jurisdiction or authority with respect to the project, has expertise or information relevant to the project, and intends to submit comments on the project.

Merger Roles

Primary MOU Signatory Agencies

The agencies identified as primary signatories are responsible for the successful implementation of the Merger Process. FHWA, USACE, NCDOT and NCDENR are the primary signatories for the Merger Process agreement and are also known as the Process Owners or Sponsors.

Partnering MOU Signatory Agencies

The agencies identified as partnering signatories participate in the Merger Process. The Partnering Agencies are as follows: US Environmental Protection Agency; US Fish and Wildlife Service; US Fish and Wildlife Service-Refuge; National Marine Fisheries Service; NC Wildlife Resources Commission; NC Department of Cultural Resources; NC Division of Marine Fisheries; US Coast Guard; US Forest Service; Tennessee Valley Authority; National Park Service; Metropolitan Planning Organizations (MPO's); Rural Planning Organizations (RPO's); and the Eastern Band of Cherokee Nation.

Project Team Roles

Each Project Team will consist of appropriate Primary Signatory Agencies and Partnering Signatory Agencies. The composition of Agencies on each Project Team will vary depending on the specific project's location and scope. Some of the partnering agencies will participate only when the project is in their respective geographic area of responsibility or statutory authority.

Project Team Leader Roles

- The USACE, NCDENR, NCDOT, and FHWA (when applicable) Project Team Members jointly lead the Project Team.
- The NCDOT Project Team Member is responsible for administering the elevation process.

Chair Roles

- The USACE Project Team Member serves as the Chair of the Merger Meeting.
- The Chair leads the Merger Meeting.

Project Team Member Roles

- Project Team Members work in a collaborative problem solving spirit.
- Project Team Members will assist NCDOT in satisfying all applicable federal and state regulations and laws.
- Project Team Members represent only their own agency.
- Project Team Members make decisions based on the mission and authority of their agency.
- Project Team Members may either concur or non-concur, or, in exceptional cases, they may abstain.

Facilitator (when utilized) Role

- The Facilitator is a neutral party who provides structure and process to interactions so the Project Team is able to function effectively and make decisions.

Recorder Role

- The Recorder takes minutes of the meeting. The NCDOT Project Team Member shall appoint a Recorder for the meeting. The recorder is preferably someone who is not a Project Team Member or actively involved in the meeting discussion.

Support Staff Roles

- Support Staff provide information to the team.
- Support Staff do not participate in written concurrence.

Decision-making Philosophy

Each agency should enter discussion of a concurrence point with a solution-oriented attitude. After sufficient discussion and an opportunity for NCDOT to provide requested information, each agency will either concur or non-concur, or, in exceptional cases, abstain.

If additional information is requested at a meeting, the Project Team will consider the need and reasonableness of obtaining such information. Factors to be considered in obtaining the information are cost, the benefit of the information to a project decision, and any associated project delay. If disagreements arise on additional information requests, the Project Team can elevate the decision to the Merger Management Team (MMT) for review.

Definitions of concurrence, non-concurrence, and abstention are provided below:

- **Concurrence**
 - “I do not object to the proposed action based on the laws and regulations of my program and agency.”
- **Non-concurrence**
 - “I do not concur as the information is not adequate for this stage and/or concurrence could violate the laws and regulations of my program and agency.”
 - Non-concurrence should not be utilized based on lack of information without affording NCDOT a reasonable opportunity to provide the requested information.
- **Abstention**
 - “I do not actively object, but I am not signing the concurrence form. The Merger Process may continue and I agree not to revisit the concurrence point subject to the guidance on revisiting concurrence points” (documented on page 2 of the Merger MOU).

If an organization decides to either non-concur or abstain, that organization is responsible for documenting its reasons in writing to all Project Team Members within five (5) business days of the Merger Meeting. Primary agencies are responsible for reviewing the reasons for abstaining to determine if the process should move forward.

Responsibilities

Pre-Meeting

Scheduling (Project Team Leaders)

- Project Team Leaders are responsible for screening projects for use of the Merger Process, as per existing Merger Screening Process.
 - For 4B & 4C meetings, non-Merger projects may be accommodated, but will be noted as “non-merger.”
 - If requests for additional information by Project Team Member(s) are made, the Project Team Leaders are responsible for determining if the information can/will be provided and whether the meeting needs to be postponed or can occur as scheduled. Factors to be considered in obtaining the information are cost, the benefit of the information to a project decision, and any associated project delay. If disagreements arise on additional information requests, the Project Team can elevate the decision to the Merger Management Team (MMT) for review.
 - If the information cannot or will not be provided for the next Merger Meeting, the Project Team Leaders are responsible for notifying the Project Team Member(s) of the reason(s) why the information will not be provided. Such notification will be in writing and all other Project Team Members will be copied.

Scheduling (NCDOT Team Member)

- The NCDOT Project Team Member is responsible for consulting with the USACE, NCDENR, and FHWA Project Team Members on whether sufficient information exists to warrant scheduling a team meeting.
 - If two (2) or more years have passed since the last Merger Meeting, the NCDOT Project Team Member is responsible for checking back with the Project Team Members to determine whether information should be updated before scheduling action on the next concurrence point.
 - The NCDOT Project Team Member is responsible for notifying the USACE, NCDENR and FHWA Project Team Members of any new information that supersedes the information packet that has already been distributed to Project Team Members.
 - For substantial information changes to packets, the NCDOT Project Team Member is responsible for notifying the Project Team as soon as information is known to determine whether to reschedule the meeting.
 - The NCDOT Project Team Member will consult with the USACE, FHWA, and NCDENR Project Team Members to determine if the meeting needs to be rescheduled based on new substantive information that is uncovered (between sending information packet and meeting date).
 - The NCDOT Project Team Member will notify the Concurrence Meeting Coordinator to reschedule the meeting if determined necessary.

Scheduling (Field Meeting)

- Project Team Field meetings will be held if deemed necessary by the Project

Team Leaders for decision-making and concurrence.

- The NCDOT Project Team Member is responsible for setting up Project Team Field Meetings.
- Nothing in these procedures precludes a Project Team Member (or any combination of Project Team Members) from going into the field prior to a Merger Meeting.
 - Should a Project Team Member request a Project Team Field Meeting and that request be denied by the Project Team Leaders, then appropriate Project Team Leaders will accompany the requesting Project Team Member into the field prior to a Merger Meeting.

Concurrence Daily Agenda

The Concurrence Daily Agenda is a list of projects to be discussed on a particular day (not to be confused with a Project-Specific Agenda which outlines what is expected to be accomplished during a particular Merger Meeting).

Concurrence Daily Agenda (NCDOT Team Member)

- For CP1 through CP 4A, PDEA is responsible for using Internal NCDOT guidelines for scheduling meetings.
 - The NCDOT Project Team Member is responsible for submitting a Merger Meeting request to the PDEA Concurrence Meeting Coordinator, who schedules the meeting.
 - The PDEA Concurrence Meeting Coordinator is responsible for distributing the Concurrence Daily Agenda three (3) weeks in advance of the meeting date. This will enable Project Team participants to have three (3) weeks' notice of when their Project Team will meet. The Concurrence Daily Agenda will also be posted on the NCDOT website.
- For CP 4B & 4C, the NCDOT Hydraulics Unit is responsible for scheduling the meeting and meeting place.

Information Packet (NCDOT Project Team Member)

- For CP 1 through CP 4A, the NCDOT Project Team Member is responsible for assembling the pre-meeting information packet.
 - The NCDOT Project Team Member is responsible for developing the Project-Specific Agenda (what is expected to be accomplished at the meeting) in consultation with the Project Team Leaders.
 - The NCDOT Project Team Member is responsible for including information in the packet pertaining to what should be accomplished at the stage of project to be discussed at the scheduled meeting.
 - The NCDOT Project Team Member is responsible for providing a brief history of the project (including results of any prior concurrence point results) as part of the packet.
 - The NCDOT Project Team Member is responsible for ensuring appropriate "Appendix A" material is included in the packet.
 - The NCDOT Project Team Member is responsible for consulting with the USACE, NCDENR, and FHWA Project Team Members if information requests from a previous meeting (if applicable) will not be included in the packet.
 - If disagreements arise, the Project Team can elevate the decision to the

Merger Management Team (MMT) for review.

- The NCDOT Project Team Member is responsible for providing the packet to the PDEA Concurrence Meeting Coordinator.
- The PDEA Concurrence Meeting Coordinator is responsible for sending out the meeting packets. Packets will be provided electronically.
- NCDOT is responsible for ensuring packets are received at least two (2) weeks in advance of the meeting.
- For CP 4B & 4C, the Hydraulics Unit Concurrence Meeting Coordinator is responsible for sending out the review materials (roadway plans for 4B, plans/permit drawings/stormwater management plans for 4C) two (2) weeks prior to the meeting.

Information Packet (Project Team Members)

- Project Team Members will receive information packets in electronic format. Project Team Members are responsible for ensuring that they have the capability to receive and print packets distributed to them electronically.

Receipt/Review (Project Team Members)

- Project Team Members are responsible for notifying the NCDOT Concurrence Meeting Coordinator (with a “cc” to the NCDOT Project Team Member) in a timely manner prior to a Merger Meeting if the packet is not received by two (2) weeks in advance of the meeting.
- Project Team Members are responsible for reviewing the packet prior to Merger Meetings.
- Project Team Members are responsible for being prepared for Merger Meetings.
- Project Team Members are responsible for forwarding any substantial concerns to the NCDOT Project Team Member via e-mail with a copy to other Project Team Members in advance of Merger Meetings.
 - If an Agency has concerns regarding predictive methodology (e.g. traffic projections), or other technical matters, appropriate support staff will be utilized to address concerns. Alternative methodologies may be proposed.
 - An agency objecting to or expressing reservations about the proposal on grounds of environmental impacts shall work collaboratively with the Project Team to determine the avoidance and minimization measures considered necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.
- Project Team Members may request additional information in advance of Merger Meetings. Such requests will be via email and sent to the NCDOT Project Team Member. Such requests will be via e-mail preferably at least one (1) week prior to the Merger Meeting. Additional information will be provided to all Project Team Members.
 - Requests for additional information shall be as specific as possible.
 - An agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the analysis of substantial, site-specific effects associated with the granting or

approving by that agency of necessary State or Federal permits, licenses, or other requirements.

Participation (Project Team Members)

- Project Team Members are strongly encouraged to attend Merger Meetings on-site. Video-conferencing is an option; however, attendance in person is preferred. Notification of attendance via video-conference should be submitted to the NCDOT Project Team Member at least one (1) week in advance of the meeting if possible.
- Should a Project Team Member not be able to attend a Merger Meeting in person or via video-conference and this is known in advance, the Project Team Member is responsible for notifying the Project Team Members and will do one of the following:
 - send a substitute with decision-making authority, providing the name of the substitute to NCDOT before the meeting; or
 - send a substitute without decision-making authority and submit any decisions related to the project to NCDOT via email within two (2) weeks of the meeting; or
 - contact the NCDOT Project Team Member to obtain updates on the project following the meeting. The Project Team Member shall submit any decisions related to the project to NCDOT via email within two (2) weeks of the meeting.

Participation (Project Team Leaders)

- If the NCDOT, NCDENR, FHWA (for Federally funded projects) and/or the USACE Project Team Members are not able to attend and do not have a prepared substitute, then the Merger Meeting shall be postponed.

Participation (NCDOT Project Team Member)

- The NCDOT Project Team Member is responsible for ensuring that he/she understands the details of what will be discussed at meetings in advance and will inform and involve appropriate staff members at the Merger Meetings to ensure that technical issues (e.g. safety, feasibility of construction, etc.) can be addressed.
- The NCDOT Project Team Member is responsible for inviting all applicable technical experts (e.g. Hydraulics engineers, Geotechnical staff, Bicycle & Pedestrian Division staff, Structures Management Unit staff, etc.) to field meetings and all concurrence meetings based on the nature of the project.
- The NCDOT Project Team Member up until CP 4A, will attend CP 4B & 4C meetings.
- The NCDOT (after consulting with the USACE Project Team Member) is responsible for making the decision to postpone the meeting.
- The NCDOT Project Team Member is responsible for notifying the Concurrence Meeting Coordinator of a meeting postponement.
- The Concurrence Meeting Coordinator is responsible for notifying Project Team Members of a meeting postponement through the normal e-mail process.

General (NCDOT Project Team Member)

- NCDOT is responsible for providing facilitators for large, complex, or

controversial projects.

- NCDOT will often use consultants who will assist in developing, delivering, and sharing various planning, design, environmental information, etc. The role of the consultants within the Merger meetings will be to present and to share the technical information with the Merger Team. The NCDOT Project Team Member will be responsible for coordinating with the consultant and explaining the consultant's role to the Merger Team for each project. The NCDOT Project Team Member will retain all other responsibilities as defined within this document.
- The NCDOT Project Team Member is responsible for reviewing information to be presented and ensuring that material can be easily viewed by all Project Team Members.
- The NCDOT Project Team Member is responsible for maintaining an up-to-date list of Project Team Members.
 - The NCDOT Project Team Member is responsible for notifying the PDEA Concurrence Meeting Coordinator when Project Team Member information changes.
 - PDEA is responsible for keeping mailing lists for Merger participants updated on a specified basis by project and ensuring this information is made available on the NCDOT website.

General (Project Team Members)

- Agencies are responsible for notifying the NCDOT Concurrence Meeting Coordinator (with a "cc" to the NCDOT Project Team Member) of any changes in their agency's Project Team membership.
- Project Team Members are responsible for notifying the Project Team Leaders via e-mail when participation is no longer desired and/or warranted.

During Merger Meeting

NCDOT Project Team Member

- The purpose and objective of the meeting will be clearly stated by the NCDOT Project Team Member on the agenda sheet. This information is provided, via the information packet, to the Concurrence Meeting Coordinator by the NCDOT Project Team Member prior to distribution of the meeting agendas. Informational meetings are acceptable and will be noted as such on the agenda.
- The NCDOT Project Team Member is responsible for appointing a timekeeper to ensure participants are aware of remaining time.
- The NCDOT Project Team Member is responsible for bringing copies of NEPA documents to Merger Meetings.
- The NCDOT Project Team Member is responsible for ensuring that technical information is presented in a clear manner.
 - Such information will be easy to understand and easy to view by all Project Team Members.
- At the conclusion of each Merger Meeting, the NCDOT Project Team Member is responsible for informing the Project Team of the tentative schedule for the next steps/concurrence point.
- If the "Agency's preferred alternative" is FHWA's or NCDOT's only choice, the FHWA Project Team Member or NCDOT Project Team Member is responsible

for explaining why.

- The NCDOT Hydraulics Engineer responsible for CP 4B & 4C is responsible for adding the NCDOT PDEA Project Team Member from CP1 through CP4A to the CP 4B & 4C meeting distribution lists, and providing the PDEA Project Team Member with hydraulic review (4B & 4C) information packets prior to the 4B & 4C meetings.
- The Record Keeper is responsible for taking notes, preparing meeting minutes. The NCDOT Project Team Member is responsible for finalizing the meeting minutes.

USACE Project Team Member

- The USACE Project Team Member is responsible for chairing the meeting.
 - The Chair is responsible for starting meetings on time.
 - The Chair is responsible for playing an active role to promote participation.
 - The Chair is responsible for managing the discussion to keep focus.
 - The Chair is responsible for leading the team through the agenda.
 - The Chair is responsible for ensuring that non-agenda discussions are kept to a minimum.
- At the conclusion of each Merger Meeting, the Chair is responsible for summarizing next steps (i.e., additional information needed for concurrence or next concurrence point).

Project Team Members

- Agencies are responsible for ensuring meeting attendance.
 - Project Team Members are responsible for arriving on time to Merger Meetings.
 - Project Team Members are responsible for bringing their information packets with them to the meeting.
- Merger participants will abide by the “Public Service Code of Conduct.” (See Appendix)
- Project Team Members will be responsible for ensuring they are empowered to represent their agencies and make decisions.
 - Project Team Members are responsible for making decisions based on their agency’s authorities.
- Project Team Members are responsible for not revisiting concurrence point decisions unless new, substantial information is brought to light. The Project Team Leaders will determine if new information warrants revisiting a concurrence point decision.
- Project Team Members are responsible for identifying concerns regarding predictive methodology (e.g. traffic projections) and, if known, describe the alternative methodology preferred and why. Support staff may be utilized to address concerns.
- Project Team Members who object to or express reservations about the proposal on grounds of environmental impacts work collaboratively with the Project Team to determine the avoidance and minimization measures considered necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.
- Project Team Members may request additional information in advance of Merger Meetings if the information being provided in accordance with Appendix A of the

Merger Guidance is insufficient. Such requests will be via e-mail preferably at least one (1) week prior to the Merger Meeting.

- Requests for additional information shall be as specific as possible and shall explain why the information provided in accordance with Appendix A is insufficient.
- An agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately associated with the granting or approving by that agency of necessary State or Federal permits, licenses, or other requirements.
- If an organization decides to either non-concur or abstain, that organization will indicate such by a statement on the concurrence form, and will sign the statement. The organization is responsible for documenting its reasons via email to all Project Team Members within five (5) business days of the Merger Meeting. Project Team Leaders are responsible for reviewing the reasons for abstaining to determine if the process should move forward.

Project Team Leaders

- The Project Team Leaders are responsible for determining how to address/resolve “parking lot” issues. “Parking lot” issues are those issues which arose during the Merger Meeting that could not easily be addressed during the course of the meeting without deterring from the Merger Meeting agenda.

Post-Merger Meeting

Concurrence

- Project Team Members who did not attend the Merger Meeting shall submit any decisions related to the project to NCDOT via email within two (2) weeks of the meeting.
- The NCDOT Project Team Member will pursue signing of the concurrence form from Project Team members who did not attend the Merger Meeting.
- Concurrence forms may be signed electronically using DocuSign. The form should be signed and passed along within three (3) business days from receipt.

Non-concurrence

- Issues of non-concurrence will be documented and the Conflict / Dispute Resolution Process will be initiated. Guidance for Conflict / Dispute Resolution is included in Appendix B.
- Initiation of the Conflict / Dispute Resolution Process is appropriate when the team cannot concur.
- The Conflict / Dispute Resolution Process will begin in a timely manner.
- Any Project Team Member can initiate the Conflict / Dispute Resolution Process.

Meeting Record

- The NCDOT Project Team Member is responsible for providing draft meeting minutes via email to the Project Team within two (2) weeks of the Merger Meeting. Project Team Members will provide comments on the draft minutes via

email within two (2) weeks of receipt. The NCDOT Project Team Member will prepare the final meeting minutes and submit via email to Project Team Members within one (1) week after receiving Project Team Members comments.

General

- NCDOT is responsible for providing a summary of public input comments as soon as possible to Project Team Members.
- Once comments at CP 4B are addressed, the Hydraulics Unit can move forward and work towards CP 4C.
- NCDOT and USFWS, NMFS and SHPO are responsible for keeping the USACE and FHWA informed of Section 7 and Section 106 issues (furnish copy of Section 7 and Section 106 correspondence to USACE, provide USACE opportunity to attend meetings to discuss Section 7 issues, etc.).
- Merger participants are responsible for ensuring that all experts are included in the appropriate step(s) in the process.
- The USACE is responsible for providing “leading meeting” training to its project team members (considering cost and availability).
- The Project Team Members are responsible for explaining and justifying requested project changes based on their requirements and agency permitting/reviewing authorities. NCDOT is responsible for quantifying the cost associated with requested project changes.
- The Project Team is responsible for focusing on limiting alternatives while ensuring a “reasonable” range of alternatives.