

Attachment O

**Federal Highway Administration's
National Environmental Policy Act Requirements
for the
North Carolina Department of Transportation's
Division-Managed Low-Impact Bridge Replacement Program**

1/8/2010

Date



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Purpose

The purpose of this document is to define documentation requirements and approval procedures for Division-Managed Low-Impact Bridge Replacements funded by the Federal Highway Administration (FHWA) in North Carolina that are classified as Categorical Exclusions (CE). For a federal-aid project involving the acquisition of right-of-way (ROW) and/or construction, an environmental document pursuant to the National Environmental Policy Act (NEPA) is required before FHWA can authorize NCDOT to incur ROW or construction costs and seek reimbursement from FHWA.

This document only covers the determination on Class of Action for NEPA purposes. It does not obviate the need to comply with other federal environmental laws.

Program Description

Recognizing the looming problem in the growth of deficient bridges, NCDOT established an internal work group to make recommendations on how to improve the condition of the state's bridges. Two key recommendations that can impact the condition of the state's bridges are:

- **Modify the design standards so that bridge replacements are economical and safe:**
Over time the department expanded the scope of bridge replacement projects to address other highway needs such as bridge approach highway alignment and roadway width. This expansion of scope resulted in bigger and longer projects with bigger footprints, larger price tags, and more environmental impacts.
- **Plan, design and construct bridges as quickly as possible:** It had become standard practice for a simple bridge replacement project to take three to five years to deliver, which resulted in higher projects costs due to inflation and planning cost.

NCDOT solicited the help of federal and state partners through the Interagency Leadership Team (ILT)¹ to address the rapid replacement issue. The ILT has identified the investigation of program efficiencies and streamlining processes as a major goal and objective, so it became clear that this group could provide the appropriate resources to tackle this problem. In January 2009, the ILT agreed to support this effort and provided commitments to devote their staff resources to help develop a streamlining process for "Low-Impact Bridge Replacement Projects". A multi-agency work team was assembled and charged with streamlining the environmental review process to help deliver low impact bridge replacement projects within one year from start to letting. This team's efforts would compliment the other bridge initiatives that NCDOT had on-going.

Characteristics of Low-Impact Bridge Replacements

- On existing horizontal alignment;
- No additional travel lanes – except one lane going to two lanes;
- No on-site traffic (off-site detours) – unless staged construction;
- Uses nationwide permit 3 or CAMA general permit; includes situations with trout streams and non-trout streams in trout counties;
- Qualifies as PCE or State minimum criteria;
- Hydraulic opening: as large or larger;
- Bridge-to-bridge replacements;
- Could involve Outstanding Resource Waters (ORW's);
- No FEMA CLOMR required;
- No on-site detour required;
- No major utilities to relocate;
- No water supply intake;
- No FERC permit required; and
- No Coast Guard authorization required.

¹ ILT consists of members from the following agencies: NCDOT, NCDENR, NCDCCR, NC Commerce, NC WRC, NOAA Fisheries, NC Agriculture and Consumer Services, USACE, EPA, FHWA & USFWS

Environmental Documentation

National Environmental Policy Act:

The Council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of NEPA (40 CFR 1500-1508) defined "Categorical Exclusion" as a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment (EA) nor environmental impact statement (EIS) is required (40 CFR 1508.4). Federal agencies were directed to develop procedures for evaluating such actions.

The FHWA issued regulations governing the preparation of environmental impact statements and related documents. The most recent regulation was promulgated August 28, 1987 (23 CFR 771). The FHWA regulations address three classes of actions: Class I (Environmental Impact Statement (EIS)); Class II (Environmental Assessment (EA)); and Class III (Categorical Exclusions (CE)).

The CEQ regulations (40 CFR 1508.4) and the FHWA regulations (23 CFR 771.117(c) & (d)) identify actions that meet the criteria for classification as a Categorical Exclusion and normally² do not require any further NEPA approvals by FHWA.

For the Federal-Aid Highway Program in North Carolina, a bridge replacement project must undergo some level of environmental investigation before it can be confirmed as Categorical Exclusion. For purposes of the Division-Managed Low-Impact Bridge Replacement program, FHWA has determined that the issues identified in the "Thresholds" section below are the only issues that could potentially result in significant issues for these types of bridge replacement projects.

If one or more of the thresholds are met, then NCDOT must involve FHWA in confirming the Class of Action. If none of the following thresholds are met, then the Division-Managed Low-Impact Bridge Replacements can be confirmed as Categorical Exclusions without further analysis and documentation to support this confirmation.

NCDOT must evaluate each Division-Managed Low-Impact Bridge Replacement project to verify that it is consistent with the assumptions and finding of this document. If it is determined that the proposed project is beyond the intent of this document, then the finding in this document is not appropriate for use and NCDOT must prepare a separate environmental document for that project.

Thresholds

- Any unusual circumstances² occur;
- Under Section 7 of the Endangered Species Act:
 - a "jeopardy" (for listed species) determination is received from either the USFWS and/or NOAA-Fisheries; and/or
 - an "adverse modification" (for designated critical habitat) determination is received from either the USFWS and/or NOAA-Fisheries.

² By including the phrase "normally do not require any further NEPA approvals", CEQ and FHWA recognized the possibility that there could be an action that has unusual circumstances that warrant verification that a CE classification is appropriate. 23 CFR 771.117(b) states:

"Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;*
- (2) Substantial controversy on environmental grounds;*
- (3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or*
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action."*

- Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, a determination that adequate relocation opportunities do not exist.
- Under Executive Order 13007 (Indian Sacred Sites), the Eastern Band of Cherokee Indians has indicated that the project, as proposed, will likely have significant, negative impacts on sacred sites; **and either**:
 - avoidance alternatives may have other significant impacts; or
 - there are no avoidance alternatives.
- Under the American Indian Religious Freedom Act, the project, as proposed, would preclude Native Americans from one or more religious practices; **and either**
 - avoidance alternatives may have other significant impacts; or
 - there are no avoidance alternatives.
- Under Executive Order 12898 (Environmental Justice), the project, as proposed, will result in disproportionate, adverse impacts on low-income and/or minority communities.

FHWA Findings

The FHWA North Carolina Division office hereby finds that all Division-Managed Low-Impact Bridge Replacements that do not reach any of thresholds identified in this document are pre-approved by the FHWA as Categorical Exclusions because they are minor and, based on past experience with similar actions, do not involve significant impacts, in accordance with 23 CFR 771.117(a). They do not require any further NEPA approval by the FHWA. No further documentation is required to substantiate the CE classification.

Pre-Approval v. Delegation of Authority

In this document, FHWA-NC is pre-approving projects as Categorical Exclusions. This document is not a delegation of FHWA's authority to perform the CE decision-making role.