

# EMERGENCY RELIEF MANUAL



## Procedures for Administering Federal Emergency Relief Funds North Dakota Department of Transportation

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Director

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The Federal Highway Administration, North Dakota Division (FHWA), and the North Dakota Department of Transportation (NDDOT), agree to administer the FHWA Emergency Relief Program (ER) pursuant to the guidance herein. This manual is a living document that when needed can be modified with the agreement of both parties.

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          8/06/2015            
Date

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# 1. Introduction

## 1.1 Purpose of Manual

This manual provides state specific guidance for determining eligibility and administering the Federal Highway Administration (FHWA) Emergency Relief (ER) program authorized by CFR 23 § 668. It serves as a supplement to the FHWA ER Manual. The NDDOT is responsible for assessing and reporting to FHWA all damage to Federal-aid (FA) highways that are eligible for ER funds. This manual applies only to FA highways. This manual does not apply to roads or highways off the FA system. The responsibility for non-federal aid routes falls on the Federal Emergency Management Agency (FEMA) and is managed by the North Dakota Division of Emergency Services (NDDES).

## 1.2 Program Overview

The ER program is intended for the repair or restoration of FA highways that have suffered serious damage as a result of natural disasters or catastrophic failure from an external cause.

The eligibility threshold is \$700,000 (Federal share) for an ER event and \$5,000 (total cost) for each ER site. ER funds are not intended to cover all damage costs, and as such, the NDDOT and Local Public Agencies (LPA) must expect additional expenditures to restore the route to pre-disaster conditions.

The applicability of the ER program to a natural disaster is based on the extent and intensity of the disaster. Damage to highways must be severe, occur over a wide area, and result in unusually high expenses to the highway agency. Failures due to an inherent flaw in the facility itself do not qualify for ER assistance.

## 1.3 FHWA ER Manual

For more information on the FHWA ER program, please refer to the *Emergency Relief Manual (Federal Aid Highways)* found at: <http://www.fhwa.dot.gov/reports/erm/er.pdf>

The FHWA ER Manual supersedes this manual in any areas of conflict.

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## 2. Emergency Repair and Permanent Restoration

### 2.1 General

The ER program is intended to repair routes to pre-disaster conditions. ER funds are not intended to replace normal Federal, State, or local funds for new construction to increase capacity, correct non-disaster related deficiencies, or otherwise improve highway facilities. Added protective features commonly referred to as betterments are only eligible for ER funding when justified. The eligibility of betterments is discussed in Section 2.7 Betterments.

### 2.2 Disaster Start Date

The start date for a traditional disaster event is the date of the disaster occurrence. In situations where site inspections are delayed due to disaster related accessibility concerns the 180 day time period for 100 percent eligibility of emergency repairs may be extended by the North Dakota Division of FHWA. The North Dakota Division of FHWA will evaluate and approve extensions on a case-by-case basis for specific locations that cannot be accessed. Such extensions will not be extended for all sites in the disaster area unless all sites are not accessible

The start date for basin flooding events is the date of the letter of intent. Approval from FHWA headquarters is required to use a date other than the letter of intent for basin events.

### 2.3 Emergency Repairs

Emergency Repairs occur during and immediately following a disaster to restore essential traffic, minimize the extent of damage, or to protect remaining facilities within 180 days of the disaster occurrence. Prior FHWA approval is not required to begin Emergency Repairs. Emergency Repair work completed within the 180-day window may be eligible for 100% FHWA reimbursement. If a site or event is determined to be ineligible by FHWA, the owner (NDDOT or LPA) is responsible for all costs. Emergency

Repair work completed after the 180 day window is eligible for reimbursement at the rate listed below:

- Interstate Highways: 90% federal 10 % local/state
- Indian Reservation Roads (IRR): 100% federal
- All other federal aid routes: 80.93% federal 19.07% local/state

Under MAP-21, the 180 day window for Emergency Repairs may be extended if a site cannot be physically accessed for inspection. In such cases, NDDOT will submit a site specific request to FHWA for an extension. FHWA will approve or deny extensions on a case-by-case basis. Extensions shall not be granted for sites that can be physically accessed but were not inspected in a timely manner for other reasons.

Emergency Repairs shall be awarded in accordance with section 6.1 NDDOT Emergency Repairs bid at District or section 6.2 LPA Emergency Repairs

When it is economically feasible, certain Permanent Restoration work may be completed concurrently with Emergency Repairs. Permanent Restoration completed concurrently with Emergency Repairs shall comply with the requirements of Section 2.4 Permanent Restoration Done Concurrently with Emergency Repairs and comply with the Emergency Relief Programmatic Agreement found in Appendix B.

Emergency Repairs at eligible sites accomplished within 180 days of the start date of the event are eligible for reimbursement at 100 percent Federal share.

Typical examples of Emergency Repairs are:

- Re-grading of roadway surfaces, roadway fills, and embankments damaged by sheet flow or wave action that threatens roadway integrity. Additional information can be found in Section 3.3 and Appendix J.
  - Damage that threatens roadway integrity is defined as significant damage within ten feet of the edge of the traveled lane. Damage outside of ten feet shall be corrected as Permanent Restoration.
- Emergency grade raises of inundated roadways. Emergency grade raises are discussed in Section 3.5.
- Temporary Paving on high volume roads where the Permanent Restoration will not be completed until the following year, under the following conditions:
  - Prior FHWA approval for paving is not required on NHS

- Prior FHWA approval for paving is required on all other State Highways and LPA roads. Emergency Traffic Control, including law enforcement assistance, erection and removal of barricades and detour signs, flagging and pilot cars during the emergency period
- Placement of riprap on the downstream slopes of approach fills to prevent scour during overtopping of the fill
- Initial correction of slides if affecting traffic, and associated bypasses
- Construction of temporary or emergency bypasses and detours
- Erection of temporary detour bridges
- Temporary drains and pumping
  - NDDOT or LPA shall obtain applicable permits from USACE, Local Water Board, State Water Commission etc.
- Relaying washed out culverts
  - Undamaged culverts may be relayed as Emergency Repairs
  - If the washed out culvert is damaged and cannot be relayed, a hydraulic analysis must be performed to determine the size of the replacement culvert. This work can be completed as Emergency Repairs if the new culvert is of similar size. If the new culvert is significantly larger in size, the work should be performed as Permanent Restoration
- Placement of riprap around piers and bridge abutments to relieve severe on-going scour action that may affect the structural integrity of the structure
- Debris removal
  - MAP-21 placed limits on the ER eligibility for debris removal. In most cases, debris removal previously eligible for ER funding will be eligible for FEMA funding. In the following cases debris removal would be eligible under the ER program:
    1. The event is declared an emergency by the Governor, but the President has not issued an emergency declaration
    2. The event is declared to be an emergency by the President, but FEMA has determined that debris removal is not eligible for its assistance
    3. In cases where the Governor's emergency declaration includes counties that the President's emergency declaration did not include
  - Prevailing wage rate requirements do not apply to contracts where the scope of work is solely for the removal of debris and related clean up; however, if the debris removal is performed in conjunction with other repair or reconstruction work, prevailing wage rate requirements apply
  - Types of debris removal that may be eligible as Emergency Repair are removal of debris within the limits of the shoulders of the roadway, removal



of debris that presents an imminent threat, and removal of ice floes and associated debris that is damaging a roadway or structure or impeding the flow of water

- Removal of ice floe and associated debris at structures is eligible as Emergency Repair if ice/debris is damaging the structure or impeding the flow of water through the structure

## 2.4 Permanent Restoration

Permanent Restoration work typically occurs after Emergency Repairs have been completed and is intended to restore the roadway to pre-disaster conditions.

Permanent Restoration work performed prior to FHWA authorization is not eligible for federal ER funding. FHWA approval of the Detailed Damage Inspection Report (DDIR) does not constitute authorization. FHWA authorization occurs once funding for the Permanent Restoration work has been identified and assigned to the project by NDDOT Programming Division. Permanent Restoration must proceed to construction prior to the end of the second fiscal year following the ER event. If the Permanent Restoration cannot advance to construction within two years, FHWA may grant time extensions in one-year increments with sufficient justification.

Permanent Restoration work shall comply with Chapter 6 Construction Contracts & Contract Requirements.

In certain specific cases, Permanent Restoration work may be completed concurrently with Emergency Repairs. Permanent Restoration completed concurrently with Emergency Repairs shall comply with the requirements of Section 2.4 Permanent Restoration Done Concurrently with Emergency Repairs and comply with the Emergency Relief Programmatic Agreement found in Appendix B.

Permanent Restoration done independently shall be administered using normal federal-aid contracting procedures. With prior FHWA approval, NDDOT or LPAs may use streamlined bidding procedures (e.g., A + B bidding, reduced advertising period, etc.) as allowed under ND Century Code § 24-03-04.

The reimbursement rate for Permanent Restoration work is:

- Interstate Highways: 90% federal 10% state

- Indian Reservation Roads (IRR): 100% federal
- All other federal aid routes: 80.93% federal 19.07% local/state

Permanent Restoration shall be awarded in accordance with section 6.4 NDDOT & LPA Permanent Restoration or section 6.5 NDDOT Permanent Restoration bid at District.

Permanent Restoration may involve one or more of the following categories of work:

- Restoration-in-Kind – repair any damage within roadway right of way to pre-disaster conditions
- Replacement-in-Kind – replace damaged roadway section, structure, or culvert with new section that functions at pre-disaster level
  - A larger structure or culvert may be eligible if warranted by the hydraulic analysis
  - Relocating a roadway may be eligible to avoid high water or slide areas
- Permanent Grade Raises

## 2.5 Permanent Restoration done Concurrently with Emergency Repairs

The intent of allowing Permanent Restoration work to be completed concurrently with Emergency Repair work is to restore the site to pre-disaster conditions in a cost effective and timely manner. If minor permanent work is required (e.g. seeding) that would not be cost effective to bid as a separate project, it is allowed if it meets the following requirements:

- There must be Emergency Repair work at the site
- The cost estimate for Permanent Restoration construction work is less than \$150,000, not including engineering. If, after the Permanent Restoration work is completed, the construction cost exceeds \$150,000, the FHWA share is limited to \$150,000.
- The economic feasibility of doing the work concurrently is identified in the DDIR
- The Permanent Restoration done concurrently is awarded in accordance with section 6.3 NDDOT & LPA Permanent Restoration done Concurrently with Emergency Repairs
- Permanent Restoration work done concurrently shall include the most current version of all of the required federal provisions/documents in the proposal or contract documents found in Appendix I.

- The Permanent Restoration work must be considered Category I or Category II as described in Section 7.2 Environmental Categories.

If substantial permanent work is required at a site (e.g. permanent grade raise) it must be bid as a separate project and follow the requirements of Sections 2.3 and 6.4. It is not the intent of this section to allow \$150,000 of Permanent Restoration work to be completed concurrently, followed by a separate permanent project.

The reimbursement rate for Permanent Restoration done concurrently with Emergency Repairs is:

- Interstate Highways: 90% federal 10% state
- Indian Reservation Roads (IRR): 100% federal
- All other federal aid routes: 80.93% federal 19.07% local/state
- Emergency Repair work will be reimbursed at the rates shown in section 2.3  
Emergency Repairs

## 2.6 Eligible Items

All elements of the highway within the highway right of way damaged as a direct result of a disaster are eligible for repair under the ER program.

Preliminary engineering, construction engineering, right of way necessary for Permanent Restoration, project features resulting from the NEPA process such as wetland mitigation sites, equipment lease or rental rates, and equipment operating costs are eligible for reimbursement under the ER program. Engineering services must be acquired in accordance with Section 6.6 of this manual.

Traffic Damage is only eligible when caused by:

1. Vehicles making repairs to FA highways
2. Traffic on an officially designated detour route
3. Vehicles responding to a disaster

Damage outside of the highway Right of Way is eligible if these three criteria are met:

1. The work is directly related to protecting the highway facility
2. No other agency has responsibility for funding or completing such work
3. The applicant agrees to accept the future maintenance of all work performed

## 2.7 Ineligible Items

ER funds are only intended to cover work that exceeds heavy maintenance, is extraordinary, and will restore pre-disaster service. Activities that are not eligible for ER funding include:

- Heavy or regular maintenance activities
- Damage to sites estimated to be under \$5,000 in total cost
- Traffic Damage – except as noted in Section 2.6
- Frost heaving
- Damage caused by weak or insufficient sub-grade, base or pavement
- Applicant-Owned material – i.e. destroyed or damaged stockpiles or equipment
- Erosion damage from rainfall
- Prior Scheduled Work –Deficient bridges scheduled for replacement with other funds damaged during a disaster are not eligible for ER funds. A bridge is considered scheduled when the construction phase is in the first year of the current FHWA approved Statewide Transportation Improvement Program (STIP)
- Snow and/or ice removal – except as specified in section 2.3 Emergency Repairs
- Emergency transportation services/first responders
- Mitigation/Preventive Work/Evacuation prior to a Disaster
- Emergency transit operations and maintenance costs
- Damage to shared use paths or trails located outside of the highway right of way is not eligible for ER funds

## 2.8 Betterments

Betterments can only be incorporated into ER projects if they can be justified to show an economical savings in costs to the ER program should future ER-eligible disasters occur. Betterments typically associated with ER work include the following:

- Adding riprap, where none previously existed, to protect against wave action damage
- Scour protection at bridges
- Stabilization of embankments, slopes and landslide areas that have had no history of instability
- Relocating facility to a higher elevation or raising roadway grades

- Providing additional hydraulic capacity by lengthening or raising bridges, adding additional culverts, replacing culverts with bridges, and/or deepening channels in traditional damage situations
  - Grade raises which safely open roads to traffic are not betterments. Grade raises that reduce the future cost to the ER program are considered betterments. Grade raises are discussed in more detail in Section 3.4, 3.5 and 3.6 of this manual
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## 3. Damage Types

### 3.1 Traditional Damage

Traditional damage typically occurs in North Dakota as a result of fast flowing water from excessive spring runoff or heavy rainfall. Traditional damage impacts are those that result in erosion and displacement of surfacing material from sheet water flows. These damages typically include the scouring and washing out of bridges, pipes, approaches, embankments or riprap; land or mud slides and associated damage; haul roads or other infrastructure damage resulting from levee construction or other efforts to protect transportation facilities.

### 3.2 Basin Damage

A basin is a large depression in the land with no natural drainage outlet such that the water level decreases only due to infiltration or evaporation. FHWA and NDDOT have mutually agreed on the four basins listed in the following section. These four Defined Basins are large geographical land areas containing many smaller basins that for the purposes of the ER Program are treated as a single basin and are discussed in detail in Section 3.2.1. Basins occurring outside one of the four Defined Basins are discussed in Section 3.2.2.

ER funding is available to raise the grades of critical Federal-aid highways faced with long-term loss of use due to an extraordinary rise in basin water level when basin flooding is considered a natural disaster for the purpose of the ER program. Loss of use is defined as the flood water elevation above the edge line of the traveled lane.

Basin flooding is considered an eligible disaster under the ER program if it can be shown that there has been an extraordinary rise in the basin water level, both in terms of the magnitude of the increase and the time frame in which this increase occurred, and there is severe damage that results in long-term loss of use of critical Federal-aid routes.

### 3.2.1 Defined Basins

The four Defined Basins in North Dakota shown in Appendix A are:

- Devils Lake Basin
- Sheyenne/James River Basin
- Southern Mouse River Basin
- West James River Basin

Each Defined Basin is handled as a separate disaster and evaluated individually under the ER program. Each basin will be evaluated individually based on the water level rise that has occurred within that basin. The above criteria must be satisfied for that basin before ER funding will be considered. In a Defined Basin, the total cost of all eligible grade raises and associated work has to be equal or greater than \$700,000 for the federal share to be eligible as an ER event. Once the \$700,000 threshold has been met for the Defined Basin, a permanent grade raise may be eligible if a site meets the requirements of Section 3.4, 3.5 & 3.6.

### 3.2.2 Isolated Basins

For Isolated Basins located outside of a Defined Basin, each basin site is handled as a separate disaster and evaluated individually under the ER program. To be eligible as an ER event, the total federal share of the damage repair cost for each isolated site must exceed \$700,000. With FHWA approval, multiple non-traditional damage sites affected by the Isolated Basin or multiple non-traditional damage sites along the same federal aid route in close proximity may be grouped to meet the \$700,000 threshold. Once the \$700,000 threshold has been met for the Isolated Basin, a permanent grade raise may be eligible if a site meets the requirements of Section 3.4, 3.5 & 3.6.

## 3.3 Local Conditions

Fore-slope damage is typically caused by flowing waters in a traditional damage scenario or wave action in a basin damage scenario. Wave action damage will vary significantly based on prevailing winds and length of fetch.

Fore-slope damage that occurs within ten feet of the roadway surface (edge of pavement or edge of gravel) is eligible as Emergency Repairs. Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a

betterment as Permanent Restoration to prevent future wave action damage. Please see Appendix J for additional details.

A thin layer of surfacing to restore the roadway to full use may be considered eligible if shallow water is expected to remain within the driving lanes for an extended period of time. The layer would consist of 2-3" of asphalt or 4-6" of aggregate surfacing. This is not intended to address soft sub grade situations, which are not eligible for ER funding.

On the Interstate System, temporary dirt or water filled tube levees are eligible to prevent imminent inundation.

### 3.4 Grade Raises - General

To be eligible for a grade raise using ER funds, the following criteria must be met:

1. The route affected must be critical. The determination of the lost facility as critical will be mutually agreed upon by NDDOT and the FHWA Division Office.
2. There is no acceptable alternate or detour route.
3. The route must have long term loss of use. Loss of use is defined as the flood water encroaching upon the edge line of the traveled lane (24' road top or edge of gravel lane). The anticipated length (number of days/weeks) must also be taken into account. The acceptable length is dependent on the functional classification of the roadway.
4. The determination of the lost facility as critical will be mutually agreed upon by NDDOT and the FHWA Division Office
5. For Defined Basins, discussed in Section 3.2.1, the basin flood-related damage within each Defined Basin must exceed \$700,000 federal share during each disaster event.
6. For Isolated Basins, discussed in Section 3.2.2, the basin flood-related damage at an Isolated Basin site must exceed \$700,000 federal share for each individual site, or in special cases, group of sites.
7. The damage at each individual site must exceed \$5,000.

When loss of use is imminent, grade raises are allowed on the NHS (including Interstate) with prior FHWA approval. After the fact documentation must be provided demonstrating that the water would have inundated the road or otherwise led to

closure of the road. This documentation shall be thorough and include calculations, pictures, and reasoning for ER eligibility. Eligibility for ER funds cannot be based on an anticipated rain or a similar future event.

For ER sites on the NHS, if water elevation in a basin rises due to equalization of surrounding basins, a case could conceivably be made for ER eligibility in advance of the inundation. If this situation arises, early FHWA coordination must occur to determine the potential eligibility of the site.

Where shallow water is only expected to remain on the traveled portion of the roadway for a few days, the eligibility for ER funds, subject to minimum site threshold criteria, would be limited to the special signing necessary to warn motorists of the hazard or to temporarily reroute traffic

Standing water in the clear zone is not a criterion for ER eligibility

## 3.5 Emergency Grade Raises

Emergency grade raises occur as soon as possible after an event and are intended to restore essential traffic. Emergency grade raises are not intended to restore the original cross section. Rather, they are constructed to temporarily open essential routes, typically at a lower speed, until a disaster event concludes or a permanent grade raise is constructed.

Basin Flooding: Emergency grade raises are limited in height to two feet from the water elevation to the centerline subgrade elevation, unless otherwise approved by FHWA. The fore-slope shall be constructed to the minimum slope required to establish a stable roadbed. Fore-slope protection, such as riprap, is eligible and should be designed and installed so that it can be salvaged and relayed as part of the Permanent Restoration project. Emergency grade raises are temporary measures meant to be followed up by a permanent grade raise. If NDDOT or LPA elects not to construct a permanent grade raise, the NDDOT or LPA is responsible for returning the roadway section to acceptable design standards.

Traditional Flooding: Temporary grade raises are allowed at traditional damage sites that have been inundated. Temporary grade raises are meant to restore essential traffic and shall be removed once the water has subsided. The cost to remove the temporary grade raise material is eligible for ER reimbursement, if removed within two federal fiscal years of the disaster.



## 3.6 Permanent Grade Raises

Permanent grade raises typically occur after the event has concluded. Permanent grade raises are intended to restore the roadway to its pre-disaster condition.

Acceptable permanent grade raise practices for Devils Lake waters include:

- A five foot grade raise is eligible if the existing centerline pavement elevation is within three feet of the 50 Percent Long-Range Probabilistic Outlook Elevation (rounded up to the nearest foot) as determined by the National Weather Advanced Hydrologic Prediction Service to a maximum finished grade elevation of 1465.0 feet about mean sea level
  - For the US 2 grade raise project to become eligible again, Devils Lake must reach 1,454.39 feet or the 50 Percent Long-Range Probabilistic Outlook Elevation must reach or exceed 1,454.8 feet
- For paved roads, a hydraulic analysis is required to determine the applicable grade raise height. For gravel roads, the LPA can choose a grade raise with finished subgrade centerline elevation 2' above the water elevation or perform a hydraulic analysis and raise the grade accordingly. The NDDOT Grade Raise Policy can be found in Appendix D

Acceptable permanent grade raise practices for all other Defined Basins, and eligible sites outside of a Defined Basin:

- For paved roads a hydraulic analysis is required to determine the applicable grade raise height. For gravel roads, the LPA can choose a grade raise with finished subgrade centerline elevation 2' above the water elevation or perform a hydraulic analysis and raise the grade accordingly.
- For guidance on design of grade raises refer to Section III-04 of the NDDOT Design Manual.
- For guidance on completing hydraulic analyses refer to Section V-04.10 of the NDDOT Design Manual.

## 3.7 Slides

When a slide that is directly attributable to an eligible ER event causes damage to a federal aid route, the work required to remove the material and repair the roadway are eligible for ER reimbursement. If shown to be cost effective, efforts to stabilize slide areas or to relocate roadways away from slide areas are also eligible as betterments under the ER program.

### 3.8 Erosion and Sediment Control Guidelines for Emergency Grade Raises

Erosion and Sediment Control Guidelines for Emergency Grade Raise projects have been separated into three scenarios defined by the scope of work of the project. Erosion Controls for these projects may consist of any acceptable best management practice including, but not limited to: riprap, erosion control blanket, turf reinforcement mat, articulated concrete block mat, etc. Sediment Controls for these projects may consist of any acceptable best management practice including, but not limited to: flotation silt curtain, fiber rolls, silt fence, etc.

Erosion and sediment control implementation shall be conducted as follows:

**Scenario 1:** Aggregate fill placed within the shoulders on top of the roadway: Sediment Controls are not required to be installed before or during fill placement. However, Erosion and Sediment Controls shall be placed where appropriate after the fill has been placed to maintain the structural integrity of the fill material and minimize impacts due to erosion and sediment movement.

**Scenario 2:** Fill placed outside the top of the roadway, but within the existing roadway footprint: Sediment Controls shall be installed before the fill is placed if said installation will not significantly delay the fill placement operation. Fill shall be placed rapidly, and Erosion Controls shall be placed immediately as the fill work progresses. If a situation arises that prevents the rapid placement and protection of the fill, Sediment Controls shall be installed with all deliberate speed to minimize impacts due to erosion and sediment movement.

**Scenario 3:** Fill placed outside the top of the roadway, and outside of the existing roadway footprint: Sediment Controls shall be installed before fill placement or with all deliberate speed immediately after the beginning of the fill placement operation. Fill shall be placed rapidly, and Erosion Controls shall be placed immediately as the fill work progresses.

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## 4. Detailed Damage Inspection Report (DDIR)

### 4.1 Site Inspection

#### Site Inspections Objectives:

- Gather information for determining eligibility
- Assign site number
- Describe damage
- Discuss options for corrective measures to be completed as Emergency Repairs and Permanent Restoration
- Map site location
- Photograph site
- Complete ER Site Inspection Checklist, found in Appendix K

#### Site inspection personnel:

- State Highway – NDDOT Maintenance Division and NDDOT District personnel
- Local Federal Aid Route (CMC or Urban) – NDDOT Local Government, NDDOT District, LPA Representative, Consultant (if applicable)
- FHWA staff will be invited and will attend at their discretion

Site inspections should occur as soon as practical after the disaster

### 4.2 DDIR

#### DDIR must include:

- The specific location, type of Federal-aid highway, cause, nature and extent of damage, including mileposts where available
- The most feasible and practical method of repair
- DDIR must clearly show what work was or will be accomplished as:
  1. Emergency Repairs (Completed and Remaining)
  2. Permanent Restoration completed concurrently with Emergency Repairs
  3. Permanent Repairs
- Detailed estimate including materials, quantities and unit costs
- Potential environmental/historical impacts
- Photographs supporting the above
- A location map and field site sketch
- All supporting documentation uploaded to the DDIR software

#### DDIR Completion:

- State Highway – NDDOT staff completes the DDIR. Once complete, the NDDOT Maintenance and NDDOT Environmental and Transportation Services (ETS) divisions review the DDIR and Local Government division submits it to FHWA for approval
- Local Federal Aid Route – The LPA staff or consultant completes the DDIR. Once complete, the NDDOT Local Government division reviews the DDIR and submits it to FHWA for approval
- DDIRs should be completed and submitted to FHWA as soon as feasible after sites are accessible for inspection.

#### DDIR Revision:

- If the scope of work changes substantially during project development or construction, the DDIR will be revised and resubmitted for review.
- DDIR revisions are not required for project costs increases from the DDIR estimate as long as the project scope has not changed.

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## 5. Sequence of Events and Application Process

### 5.1 Sequence of Events

1. Disaster occurs
  - a. Emergency Repairs can begin
2. Begin site documentation
  - a. Including photos, timesheets, expenses, contracts, etc.
3. Emergency Declaration by President or Governor
  - a. If an Emergency Declaration does not occur, no costs will be reimbursable through the ER program
4. NDDOT sends Letter of Intent to FHWA ND Division Office
5. FHWA ND Division Office sends Letter of Acknowledgement
6. Site Inspection
7. Complete DDIR
8. State submits DDIRs to FHWA for approval
9. FHWA division reviews and approves DDIRs
10. NDDOT submits summary of DDIRs (Program of Projects) and requests ER funds
11. FHWA Division Administrator reviews NDDOT request
12. FHWA Division Administrator submits request to FHWA HQ for fund allocation
13. FHWA Headquarters allocates funds
14. ER Permanent Restoration projects are programmed
15. FHWA approves projects as programmed
16. Permanent Restoration can begin (if NDDOT chooses to Advance Construct (AC)a project, this step can move forward prior to ER fund allocation)
  - a. LPAs must be Title VI compliant to AC a project

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## 6. Construction Contracts & Contract Requirements

### 6.1 NDDOT Emergency Repairs bid at District

#### Approval

Prior approval from the Federal Highway Administration (FHWA) is not required to complete Emergency Repairs

#### Authorization

Prior authorization in Fiscal Management Information System (FMIS) from FHWA is not required to complete Emergency Repairs

#### Contracting Methods

1. Solicited Contract
2. Negotiated Contract
3. Force account

The NDDOT shall make a good faith effort to contact a minimum of three (3) contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file. Pursuant to North Dakota Century Code § 24-03-04, a site specific emergency declaration may be made by the NDDOT director. Under the emergency procurement rules of ND Century Code § 24-03-04 the NDDOT may contact a single contractor to complete the necessary work.

#### Advertising period

There is no minimum advertising period required.

#### Contract Documents Required

The following documents are required to be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- Contract
- Insurance Certification
- Contract Bond
- Davis-Bacon Wage Rates
- FHWA-1273
- Equal Employment Opportunity (EEO) Affirmative Action Requirements
- Race-neutral Disadvantage Business Enterprise (DBE) Special Provision (SP)
- Prompt Payment
- Buy America

- Convict Labor
- NDDOT ADA Requirements
- Material Source Approval – information can be found on the NDDOT Contractor Information Website here:  
<https://www.dot.nd.gov/business/contractors.htm>

## 6.2 LPA Emergency Repairs

### Approval

Prior approval from the Federal Highway Administration (FHWA) is not required to complete Emergency Repairs

### Authorization

Prior authorization in Fiscal Management Information System (FMIS) from FHWA is not required to complete Emergency Repairs

### Contracting Methods

1. Solicited Contract
2. Negotiated Contract
3. Force account

The LPA shall make a good faith effort to contact a minimum of three (3) contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file. Under the emergency procurement rules of ND Century Code § 24-03-04 the LPA may contact a single contractor to complete the necessary work.

### Advertising period

There is no minimum advertising period required.

### Contract Documents Required

The following documents are required to be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- Contract
- Insurance Certification
- Contract Bond
- Davis-Bacon Wage Rates
- FHWA-1273
- Equal Employment Opportunity (EEO) Affirmative Action Requirements
- Race-neutral Disadvantage Business Enterprise (DBE) Special Provision (SP)

- Prompt Payment
- Buy America
- Convict Labor
- NDDOT ADA Requirements
- Material Source Approval – information can be found on the NDDOT Contractor Information Website here:  
<https://www.dot.nd.gov/business/contractors.htm>

### 6.3 NDDOT & LPA Permanent Restoration done Concurrently with Emergency Repairs

In certain specific cases, Permanent Restoration work may be completed concurrently with Emergency Repairs. Permanent Restoration completed concurrently with Emergency Repairs shall comply with the requirements of Section 2.5 Permanent Restoration Done Concurrently with Emergency Repairs and comply with the Emergency Relief Programmatic Agreement found in Appendix B.

#### Approval

Prior approval from FHWA is not required to complete these repairs.

#### Authorization

Prior authorization in FMIS from FHWA is not required to complete these repairs.

#### Contracting Methods

1. For Permanent Restoration completed concurrently with Emergency Repairs totaling  $\leq$ \$150,000 (full value of estimated permanent work only, not including engineering) the contract shall be awarded by one of the following methods:
  - Solicited Contract
  - Negotiated Contract
  - Force account (NDDOT or Local Agency)

The NDDOT or LPA shall make a good faith effort to contact a minimum of three (3) contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file. If the full value of the Permanent Restoration work contract is near \$150,000, FHWA shall be contacted for approval.
2. For permanent repairs totaling  $\geq$ \$150,001 (full value of estimated permanent work only, not including engineering) the Permanent Restoration work will be removed and bid separately as specified in section 6.4 or 6.5. Exceptions may be approved on a project-by-project by FHWA.



### Advertising period

For Permanent Restoration completed concurrently with Emergency Repairs totaling ≤\$150,000 (full value of estimated permanent work only, not including engineering) there is no minimum advertising period required.

### Contract Documents Required

The following documents are required to be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- Contract
- Insurance Certification
- Contract Bond
- Davis-Bacon Wage Rates
- FHWA-1273
- Equal Employment Opportunity (EEO) Affirmative Action Requirements
- Race-neutral Disadvantage Business Enterprise (DBE) Special Provision (SP)
- Prompt Payment
- Buy America
- Convict Labor
- NDDOT ADA Requirements
- Material Source Approval – information can be found on the NDDOT Contractor Information Website here:

<https://www.dot.nd.gov/business/contractors.htm>

## 6.4 NDDOT & LPA Permanent Restoration

Permanent Restoration is bid like a regular NDDOT or LPA federal aid project.

### Approval

FHWA approval of the DDIR is required to complete these repairs. If eligibility of the damaged roadway/facility is immediately unknown, proceed as if all federal requirements need to be met until approval or denial is known.

### Authorization

Prior authorization in FMIS from FHWA is required to complete these repairs.

Authorization will need to identify a funding source. Funding options include:

1. Advanced Construction (AC) and apply ER funds when available
2. Regular federal funds if available and convert to ER funds when available
3. Use ER funds if available

## Contracting Methods

Competitive bidding through the NDDOT normal bid process

## Advertising period

A minimum of three (3) weeks is required. If the NDDOT or Local Agency desires to advertise a project for less than three (3) weeks, a shortened period may be approved by FHWA on a project-by-project basis.

## 6.5 NDDOT Permanent Restoration bid at District

If a NDDOT District Office is interested in bidding a Permanent Restoration project, they must contact the Construction Services Division for further information.

## 6.6 Engineering Services

Engineering Services for Emergency Repairs and Permanent Restoration must be acquired in accordance with the NDDOT Consultant Administration Procedures Manual [1] and FHWA consultant services procedures [2].

[1] <http://www.dot.nd.gov/manuals/environmental/Proceduremanual.pdf>

[2] <http://www.fhwa.dot.gov/programadmin/consultant.cfm>

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## 7. Regulatory Compliance and Environmental Guidelines

### 7.1 USACE Regulatory Compliance

Work shall be completed in accordance with the USACE Nationwide Permit (NWP) 3 for maintenance activities. Paragraph (a) of the permit provides for the repair, rehabilitation, or replacement of structures or fills; preconstruction notification is not required. Paragraph (c) of the permit also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. The NWP 3 applies provided impacts are minimal. The following general conditions, as appropriate, must be complied with, in addition to any regional or case-specific conditions imposed by the USACE Division Engineer or District Engineer, to be authorized to conduct the work:

- Work in spawning areas during the spawning season must be avoided to the maximum extent practicable. Turbidity control measures must be placed to minimize effects. (Spawning restrictions may be waived by the USACE or other resource agencies as may be applicable; contact the Environmental and Transportation Services Division Environmental Services to obtain requirements.)
- Fills within 100-year floodplain do not require authorization since the original footprint would be reestablished.
- Erosion and sediment control measures must be used and maintained in effective operating conditions during construction, and all exposed soil and other fills must be permanently stabilized to prevent erosion and sedimentation.
- Temporary structures must be removed in their entirety and the affected areas returned to preconstruction elevations, and re-vegetated as necessary.
- Material Sources (fill, gravel, riprap, etc.) must be from a pre-approved or previously established source. New material sources must be cleared pursuant to the material source clearance process
- Compliance with the Endangered Species Act is addressed by limiting the work to preexisting conditions and by coordination with the USFWS during the material source clearance process.
- Compliance with the National Historical Preservation Act is addressed by limiting the work to pre-existing conditions and by coordination with the State Historical Preservation Office (SHPO) through the material source clearance process

Additional Information can be found in the **Emergency Relief Programmatic Agreement between the USACE, the USFWS, the FHWA, and the NDDOT** that can be found in appendix B.

## 7.2 Environmental Categories

### Category One

Category One is a Categorical Exclusion (CATEX) in accordance to 23 CFR 771.117(c)(9). Emergency Repairs that are expected to have little or no environmental impacts and, due to the emergency corrective type of work, do not require any additional submittal of data to FHWA to obtain the Class of Action of a Categorical Exclusion other than an approved DDIR.

These projects are processed as a CATEX by "definition" using an approved DDIR.

### Category Two

Category Two is a CATEX that requires no further NEPA review but may require permits. These projects include Emergency Repairs and Permanent Restorations where impacts are expected to be minor in nature. The projects are considered in accordance to 23 CFR 771.117(c)(9). These are Permanent Restoration projects that occur by FHWA program approval and include minor alterations or betterments that require coordination and/or permits and approval from state or federal agencies.

These projects may have impacts and/or mitigation that require public and/or state and federal agency coordination. This coordination should be documented by a spreadsheet listing the projects and coordination or activities completed, e.g., 404 Permit Floodplain, Section 106, Hydraulic Review, etc. These projects are processed as CATEXs using an approved DDIR. NDDOT shall certify to FHWA in the authorization request that all required permits have been obtained. Local project owners certify to NDDOT that all required permits have been obtained.

### Category Three

Category Three is a CATEX that requires a documented NEPA evaluation. These include Permanent Restoration projects that occur by FHWA program approval and include major alterations or betterments that require coordination and/or permits and approval from state or federal agencies. Examples include box culvert and bridge replacements, projects that impact 4(f) properties, permanent grade raises, major typical section changes, major footprint changes, etc. that have the potential for adverse effects. These projects may require public involvement and/or have engineering analysis or environmental impacts that require state and/or federal agency coordination, permits, etc.

The class of action and level of documentation required in the NEPA process should be coordinated with FHWA on a project-by-project basis. FHWA NEPA approval must be obtained prior to FHWA authorization.

## 7.3 Wetland Impacts

The Programmatic Agreement for Wetland Mitigation on Emergency Relief Projects can be found in Appendix E. This Programmatic Agreement establishes the wetland mitigation requirements for ER projects.

Compensatory mitigation is not required for unavoidable non-jurisdictional wetland impacts. NDDOT will continue to document and track non-jurisdictional wetland impacts associated with future Emergency Relief projects by the NDDOT in a separate ledger. This agreement is limited to an additional 325 credits for non-jurisdictional wetland impacts or to 10 years from the date of the Agreement, whichever comes first. If impacts associated with future Emergency Relief projects exceed 325 debits within the next 10 years, NDDOT and FHWA will resume compensatory mitigation.

The programmatic agreement does not apply to jurisdictional wetland impacts or USFWS wetland easement impacts. Compensatory mitigation is required for unavoidable jurisdictional wetland impacts and for unavoidable USFWS wetland easement impacts.

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## 8. Roles and Responsibilities

### FHWA

- Review and determine eligibility of ER Event based on Letter of Intent
- Issue Letter of Acknowledgement
- Review and determine eligibility of DDIRs
- Request and distribute ER funds to NDDOT once projects are approved

### NDDOT – State Sites

- Inspect damage sites
- Prepare and submit DDIR to FHWA
- Request ER Funds from FHWA
- Bid and award emergency and permanent projects
- Select contractors and consultants

### LPA

- Notify NDDOT of damage
- Inspect damage sites
- Prepare DDIR and submit to NDDOT
- Bid and award Emergency Repairs
- Select consultants

### NDDOT – LPA Sites

- Assist in site inspection
- Review DDIRs and submit to FHWA
- Request ER Funds from FHWA
- Bid and award permanent repairs

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## 9. Acronyms and Definitions

- Closed Basin – An area where topography prevents the outflow of water, no natural outlet exists, and water can escape only by evaporation or percolation
- DDIR – Detailed Damage Inspection Report
- EPA – Environmental Protection Agency
- ER – Emergency Relief
- Federal Aid System – State and local roads that are eligible for federal aid administered through the FHWA
- Fetch or Fetch Length – In a body of water, the area over which wind blows in an essentially constant direction and the horizontal length over which the wave-generating wind blows
- FHWA – Federal Highway Administration
- FHWA Approval – for ER purposes, FHWA Approval happens when FHWA signs the DDIR approving the project as eligible for ER funds
- FHWA Authorization– for ER purposes, FHWA authorization occurs once FHWA has approved the project in Fiscal Management Information System (FMIS)
- Heavy Maintenance –work typically performed by highway agencies to repair damage normally expected from seasonal and occasionally unusual natural conditions or occurrences
- Loss of Use – for ER purposes, Loss of use is defined as the flood water elevation above the edge line of the traveled lane
- NDDOT – North Dakota Department of Transportation
- NEPA – National Environmental Policy Act of 1969
- NHS – National Highway System
- ROW – Right of Way
- USACE – United States Corps of Engineers
- USFWS – United States Fish and Wildlife Service

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## 10. Additional FHWA Guidance

More information on the ER program and answers to frequently asked questions about the ER program can be found at the following link:

- <http://www.fhwa.dot.gov/map21/qandas/qaer.cfm>

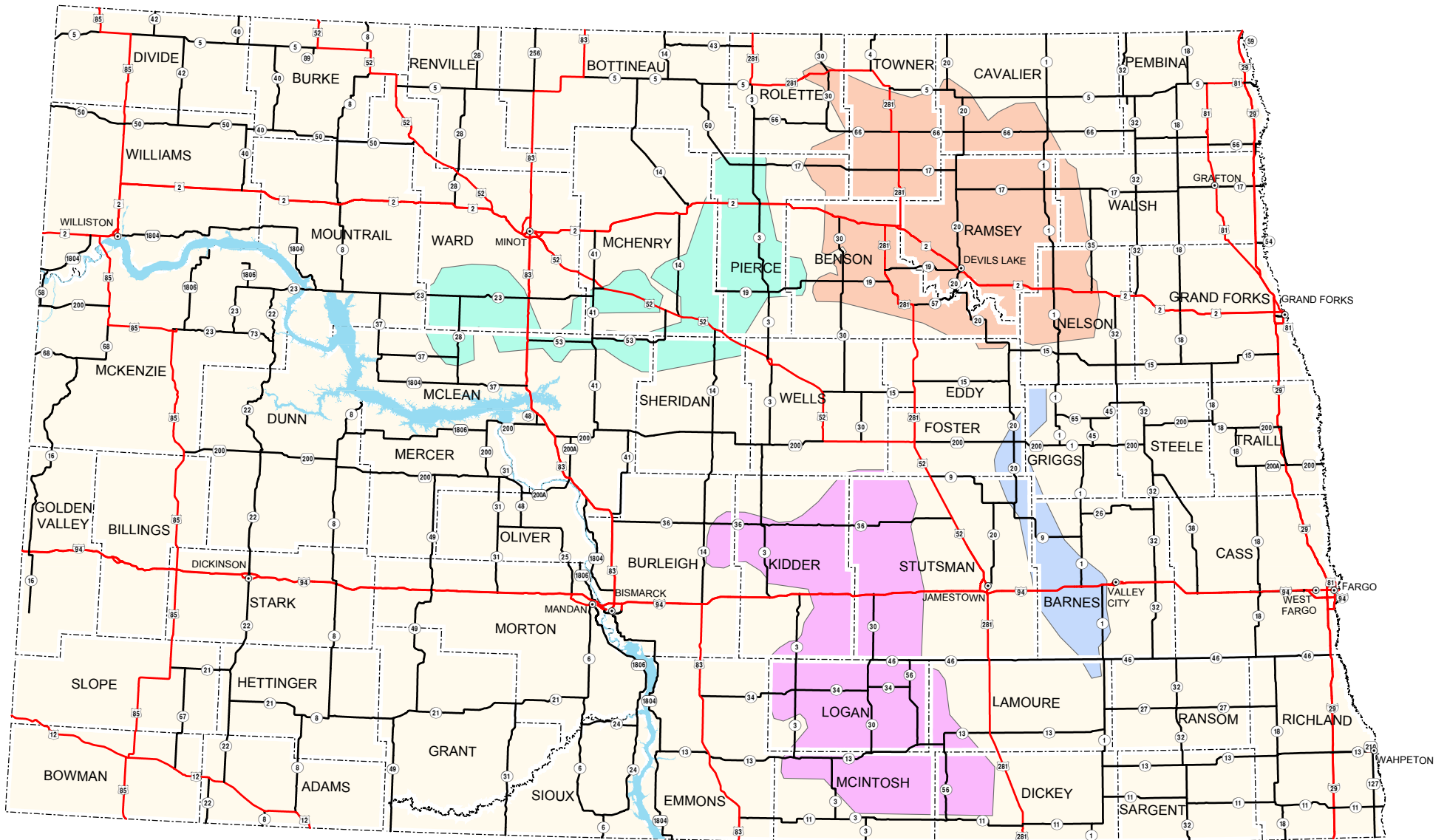
# Appendix A



# NORTH DAKOTA BASIN SYSTEM

## BASINS

- SHEYENNE/JAMES RIVER
- SOUTHERN MOUSE RIVER
- WEST JAMES RIVER
- DEVILS LAKE
- STATEWIDE



**Notice of Disclaimer**  
 The North Dakota Department of Transportation (NDDOT) makes this map available on an "as is" basis as a public service. Under no circumstances does NDDOT warrant or certify the information to be free of errors or deficiencies of any kind. NDDOT specifically disclaims all warranties, express or implied, including but not limited to the warranties of merchantability and fitness for a particular purpose.

STATE OF  
 NORTH DAKOTA  
 PREPARED BY THE  
 NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
 PLANNING / ASSET MANAGEMENT DIVISION  
 IN COOPERATION WITH THE  
 U.S. DEPARTMENT OF TRANSPORTATION  
 FEDERAL HIGHWAY ADMINISTRATION  
 JANUARY 17, 2012

NOTE: THESE BOUNDARIES ARE GENERIC AND ARE TO BE USED AS A GUIDELINE ONLY.

# Appendix B

**EMERGENCY RELIEF PROGRAMMATIC AGREEMENT  
BETWEEN  
THE UNITED STATES ARMY CORPS OF ENGINEERS,  
THE UNITED STATES FISH AND WILDLIFE SERVICE,  
THE FEDERAL HIGHWAY ADMINISTRATION, NORTH DAKOTA DIVISION,  
AND THE NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the United States Army Corps of Engineers (USACE) is the federal agency with statutory responsibilities for issuing permits for the discharge of dredged or fill material into the navigable waters under 33 U.S.C. 403,

**WHEREAS**, the USACE Nationwide Permit (NWP) 3 authorizes the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events,

**WHEREAS**, the United States Fish & Wildlife Service (USFWS) is the federal agency with statutory responsibilities for trust fish and wildlife resources including migratory birds, bald and golden eagles, threatened and endangered species, certain marine mammals, international resources within the continental United States, interjurisdictional fish, and all fish and wildlife on lands under Service control, and the Ecological Services Division consults with and advises other federal, state, and local agencies on their responsibilities to protect and conserve these trust resources,

**WHEREAS**, 50 CFR 402.05 allows informal consultation on possible effects to threatened and endangered species through alternate procedures where emergency circumstances mandate the need to consult in an expedited manner with formal consultation initiated, as needed, as soon as practical after the emergency is under control,

**WHEREAS**, the Federal Highway Administration (FHWA), North Dakota Division, is the federal agency with statutory responsibilities for administering the Emergency Relief (ER) program under Title 23 U.S.C. - Highways,

**WHEREAS**, 23 CFR 668.105(c) requires the expenditure of ER funds for emergency repairs to be promptly constructed in a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work,

**WHEREAS**, the FHWA ER Manual permits permanent repairs to be performed concurrently with emergency repairs in situations where immediate completion of the permanent work is determined to be more economical or practical,

**WHEREAS**, the signatories to this agreement desire to reduce additional work and expedite the project delivery of permanent repairs so as to perform such work concurrently with emergency repairs,

**NOW, THEREFORE**, the USACE, the USFWS, the FHWA North Dakota Division, and the North Dakota Department of Transportation (NDDOT), pursuant to 23 CFR 668, agree that the ER program for federal-aid highways, these being public highways other than those functionally classified as local roads or rural minor collectors, shall be implemented in accordance with the following stipulations.



## STIPULATIONS

The FHWA shall ensure that the following stipulations are carried out:

I. **Emergency Repairs**

a. **Eligibility**

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects (23 CFR 668.109(a)). A detailed explanation of emergency repairs is found in Section D(1) of Chapter II of the FHWA ER Manual. The Detailed Damage Inspection Report (DDIR) is the document the FHWA uses to determine eligibility. DDIRs for emergency repair projects are normally prepared after the work is completed. DDIRs for emergency repair projects must be promptly completed and submitted to the FHWA, not to exceed six weeks after the work is completed.

b. **Contracting Method**

Emergency repair work may be accomplished by contract, negotiated contract, or NDDOT or local public agency (LPA) force account methods as determined by the NDDOT or LPA as best suited to protect the public health and safety (23 CFR 668.105(i)). Emergency repairs must include the most current version of the all required federal provisions/documents in the proposal or governing specifications including Davis Bacon wage rates, FHWA-1273, Equal Employment Opportunity (EEO) Affirmative Action Requirements, ER Race-Neutral Disadvantaged Business Enterprise (DBE) Special Provision, Prompt Payment, Buy America, and Convict Labor. Davis Bacon requirements do not apply to state or local government agency employees who perform emergency repairs or construction work on a force account basis, or emergency contract work that is only for the removal of debris and related clean up.

c. **Federal Share**

The federal share payable for emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the initial day of the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof (23 CFR 668.107(a)). The initial day of the actual occurrence of the natural disaster or catastrophic failure serves as the beginning date of ER eligibility unless a different date is approved by FHWA. The NDDOT's letter of intent serves as the beginning date of ER eligibility for a basin flooding disaster unless a different date is approved by FHWA.

For costs of all repairs incurred after the first 180 days, the federal share is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For Interstate highways, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share using the sliding scale is 80.93 percent.

d. **Prior FHWA Approval**

Prior FHWA DDIR approval and Fiscal Management Information System (FMIS) authorization is not required for emergency repairs and preliminary engineering (23 CFR 668.109(a)(1)).

## II. Repairs Performed Concurrently with Emergency Repairs

### a. Eligibility

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects (23 CFR 668.109(a)). A detailed explanation of permanent repairs can be found in Section D(2) of Chapter II of the FHWA ER Manual. The DDIR is the document the FHWA uses to determine eligibility. DDIRs with permanent repairs performed concurrently with emergency repairs are normally prepared after the work is completed. The DDIR must clearly note which permanent repairs were performed concurrently with emergency repairs. DDIRs must be promptly completed and submitted to the FHWA, not to exceed six weeks after the work is completed.

The FHWA permits all permanent repairs to be performed concurrently with emergency repairs within 180 days after the actual occurrence of the natural disaster or catastrophic failure. The initial day of the actual occurrence of the natural disaster or catastrophic failure serves as the beginning date of ER eligibility unless a different date is approved by FHWA. The NDDOT's letter of intent serves as the beginning date of ER eligibility for a basin flooding disaster unless a different date is approved by FHWA. All permanent work performed after the first 180 days shall be considered as permanent repairs **not** performed concurrently with emergency repairs.

### b. Contracting Method

The FHWA permits permanent repairs performed concurrently with emergency repairs to be administered according to emergency contracting procedures as contained in the NDDOT ER Manual. All permanent repairs must include the most current version of all required federal provisions/documents in the proposal or governing specifications including Davis Bacon wage rates, FHWA-1273, EEO Affirmative Action Requirements, ER Race-Neutral DBE Special Provision, Prompt Payment, Buy America, and Convict Labor. Davis Bacon requirements do not apply to state or local government agency employees who perform emergency repairs or construction work on a force account basis, or emergency contract work that is only for the removal of debris and related clean up.

Permanent repairs performed concurrently with emergency repairs may be completed by solicited contract, negotiated contract, or force account at a cost of less than \$150,000\*. By this Programmatic Agreement, either method best suited to protect the public health or safety is deemed cost effective. If completed by solicited contract, a minimum of three quotes may be obtained for permanent repairs performed concurrently with emergency repairs at a cost of less than \$150,000 (full value of permanent work). Permanent repairs valued at \$150,000 and greater are accomplished by competitive bidding. Any expenditure exceeding the \$150,000 limit will be the responsibility of the contracting agency. Exceptions to the contract awarded by competitive bidding for permanent repairs performed concurrently with emergency repairs over \$150,000 shall be approved in advance by the FHWA Division Administrator on a project-by-project basis.

### c. Federal Share

The permanent repair work continues to be reimbursed at the normal pro rata share for that facility even if the permanent repair is performed concurrently with emergency repair work. The federal share is based on the type of federal-aid highway that is being repaired. For Indian



Reservations Roads, the federal share is 100 percent. For projects on the Interstate System, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share using the sliding scale is 80.93 percent.

d. **Prior FHWA Approval**

Prior FHWA DDIR approval and FMIS authorization is not required for permanent repairs performed concurrently with emergency repairs (23 CFR 668.109(a)(2)).

III. Permanent Repairs

a. **Eligibility**

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects (23 CFR 668.109(a)). A detailed explanation of permanent repairs can be found in Section D(2) of Chapter II of the FHWA ER Manual. The DDIR is the document the FHWA uses to determine eligibility. DDIRs for permanent repair projects must be approved by FHWA before the projects have been authorized. FHWA authorization is required prior to project advertisement. DDIRs must be promptly completed and submitted to the FHWA.

b. **Contracting Method**

Permanent repairs shall be performed only by competitive bidding unless the NDDOT (or LPA with NDDOT concurrence) adequately demonstrates that some other method is more cost effective (23 CFR 668.105(i)). Exceptions to competitive bidding for permanent repairs shall be approved by the FHWA Division Administrator on a project-by-project basis. All permanent repairs must include the most current version of the all required federal provisions/documents in the proposal or governing specifications including Davis Bacon wage rates, FHWA-1273, EEO Affirmative Action Requirements, Standard Race Conscious/Race Neutral DBE Special Provision, Prompt Payment, Buy America, and Convict Labor.

c. **Federal Share**

The federal share is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For projects on the Interstate System, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share using the sliding scale is 80.93 percent.

d. **Prior FHWA Approval**

Prior FHWA DDIR approval and FMIS authorization is required for permanent repairs not performed concurrently with emergency repairs (23 CFR 668.109(a)(2)).

IV. Criteria for Environmental Classification of Emergency Work

Emergency work procedures are described in 23 CFR 668 Emergency Relief Program and eligibility is defined in part 668.109. Additional guidance is also included in FHWA's Emergency Relief Manual (<http://www.fhwa.dot.gov/reports/erm/erm.pdf>). FHWA's environmental classification as described below does not relieve the NDDOT from obtaining other permits or agency approvals. The environmental classification for the emergency work is categorized and processed as follows with one exception: all material (borrow, aggregate, riprap, etc.) incorporated into the emergency repair

requires a material source clearance. All environmental classifications for emergency work require a Governor's proclamation and/or request for Presidential declaration or an actual Presidential declaration.

**a. Category One**

Category One is a Categorical Exclusion (CATEX) in accordance to 23 CFR 771.117(c)(9). Emergency Repairs that are expected to have little or no environmental impacts and, due to the emergency corrective type of work, do not require any additional submittal of data to FHWA to obtain the Class of Action of a Categorical Exclusion other than an approved DDIR.

The emergency repair work is limited to the work necessary to immediately restore the roadway to pre-existing conditions and work completed in accordance to the regulatory and environmental guidelines as detailed in the Emergency Repair Guidelines, as amended.

Examples:

- i. *Temporary traffic control operations, including detours*
- ii. *Roadway and structural embankments and fill*
  1. *Reestablish the original footprint (cross section and profile).*
  2. *Repair or replace the roadway surface, roadbed, inslopes, scour holes, and/or riprap.*
- iii. *Pipes and culverts*
  1. *Reinstall or replace at pre-existing size(s) and invert(s).*
  2. *Modestly increase the pipe size to accommodate the use of readily available pipe in a supply yard. This is not intended to delay repairs to perform hydraulic analysis. The pipe invert should be maintained at pre-existing elevations.*
  3. *Repair or replace previously existing riprap.*
  4. *The Pipe Material Selection Guidelines do not apply.*
- iv. *Temporary structures or bypasses*
  1. *Construct temporary crossings, bridge supports, cofferdams, earthen berms, or other structures that are necessary to conduct the repairs as necessary in accordance with NWP 3.*
  2. *Work outside department right-of-way may require temporary easements or a right to enter agreement prior to the initiated activity.*
  3. *Remove temporary measures immediately after construction.*
  4. *Raise Minimal Emergency grades to restore essential traffic.*
- v. *Debris or slide removal*

As these projects repair or restore to pre-existing conditions and have little or minor effects, no additional review is required. These projects are processed as a CATEX by "definition" using an approved DDIR.

**b. Category Two**

Category Two is a CATEX that requires no further NEPA review but may require permits. These projects include permanent repairs or restorations where impacts are expected to be minor in nature. The projects are considered in accordance to 23 CFR 771.117(c)(9). These are permanent repairs or restoration that occur by FHWA program approval and include minor alterations or betterments that require coordination and/or permits and approval from state or federal agencies. Examples are projects that include, but are not limited to: additional riprap (more than

pre-existing); projects that impact wetlands beyond pre-existing conditions; projects that require Endangered Species Act clearance or Section 106 review of location or material sources (non pre-approved); projects that include other than minor upgrades in pipe, which as a result of a hydraulic analysis, require a modest increase in pipe size (e.g., 2 standard diameter increases or 30" to 42" diameter) or length (approximately 10 percent increase) to bring the typical section up to current standard.

These projects may have impacts and/or mitigation that require public and/or state and federal agency coordination, this coordination should be documented by a spreadsheet listing the projects and coordination or activities completed, e.g., 404 Permit, Floodplain, Section 106, Hydraulic Review, etc.

These projects are processed as CATEXs using an approved DDIR. NDDOT shall certify to FHWA in the authorization request that all required permits have been obtained. Local project owners certify to NDDOT that all required permits have been obtained.

**c. Category Three**

Category Three is a CATEX that requires a documented NEPA evaluation. These projects include permanent repairs or restorations that occur by FHWA program approval and include major alterations or betterments that require coordination and/or permits and approval from state or federal agencies. Examples include box culvert and bridge replacements, projects that impact 4(f) properties, permanent grade raises, major typical section changes, major footprint changes, etc. that have the potential for adverse effects. These projects may require public involvement and/or have engineering analysis or environmental impacts that require state and/or federal agency coordination, permits, etc.

The class of action and level of documentation required in the NEPA process should be coordinated with FHWA on a project-by-project basis. FHWA NEPA approval must be obtained prior to FMIS authorization.

**d. Documentation**

The Local Government Division develops and maintains the master Emergency Relief spreadsheet. The spreadsheet is located to provide accessibility to local government, Environmental and Transportation Services, Maintenance Division, and programming divisions. The respective divisions populate the spreadsheet as necessary.

The Local Government Division processes the local government (urban and county) projects. Environmental and Transportation Services processes the state projects.

Category classification is identified with the DDIR for approval by the FHWA.

The DDIR is placed into FileNet after the Project Control Number (PCN) and Project Number have been assigned.

The Programming Division uses the DDIR and includes the category classification when requesting project authorization from FHWA.



V. Regulatory Compliance and Environmental Guidelines

Work shall be completed in accordance with the NWP 3 for maintenance activities. Paragraph (a) of the permit provides for the repair, rehabilitation, or replacement of structures or fills; preconstruction notification is not required. Paragraph (c) of the permit also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. The NWP 3 applies provided impacts are minimal.

*The NWP 3 Factsheet, General Conditions, Regional Conditions and 401 Water Quality Certifications are at <http://www.nwo.usace.army.mil/html/od-rnd/factsheet.htm> and click on Maintenance, NDDH 401 Cert and EPA 401 Cert for each respective document.*

The Department or other agency must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the USACE Division Engineer or District Engineer, to be authorized to conduct the work:


- a. Work in spawning areas during the spawning season must be avoided to the maximum extent practicable. Turbidity control measures must be placed to minimize effects. (Spawning restrictions may be waived by the USACE or other resource agencies as may be applicable; contact the Environmental and Transportation Services Division – Environmental Services to obtain requirements.)
- b. Fills within 100-year floodplain do not require authorization since the original footprint would be reestablished.
- c. Erosion and sediment control measures must be used and maintained in effective operating conditions during construction, and all exposed soil and other fills must be permanently stabilized to prevent erosion and sedimentation.
- d. Temporary structures must be removed in their entirety and the affected areas returned to preconstruction elevations, and revegetated as necessary.
- e. Material Sources (fill, gravel, riprap, etc.) must be from a pre-approved or previously established source. New material sources must be cleared pursuant to the Material Source Clearance process (Section 107.04 of the current edition of the *NDDOT Standard Specifications for Road and Bridge Construction*) prior to initiating activity.
  - i. Compliance with the Endangered Species Act is addressed by limiting the work to pre-existing conditions and by coordination with the USFWS during the Material Source Clearance process.
  - ii. Compliance with the National Historical Preservation Act is addressed by limiting the work to pre-existing conditions and by coordination with the State Historical Preservation Office (SHPO) and through the Material Source Clearance process.

EXECUTION of this Programmatic Agreement shall constitute conclusive evidence that the USACE, USFWS, FHWA, and NDDOT agree to be bound by the foregoing conditions and to perform the obligations herein set forth.

Any agency to this Programmatic Agreement may terminate their participation by providing thirty (30) days written notice to the other agencies, provided that the agencies will consult during the period before termination to seek agreement on amendments or other action that would avoid termination.


Signed by:

UNITED STATES ARMY CORPS OF ENGINEERS

  
Daniel E. Cimarosti  
State Program Manager, Bismarck Regulatory Office

31 Mar 11  
Date

UNITED STATES FISH AND WILDLIFE SERVICE

  
Jeffrey K. Towner  
Field Supervisor, North Dakota Field Office

3/31/11  
Date

FEDERAL HIGHWAY ADMINISTRATION

  
Wendall L. Meyer  
North Dakota Division Administrator

3/31/11  
Date

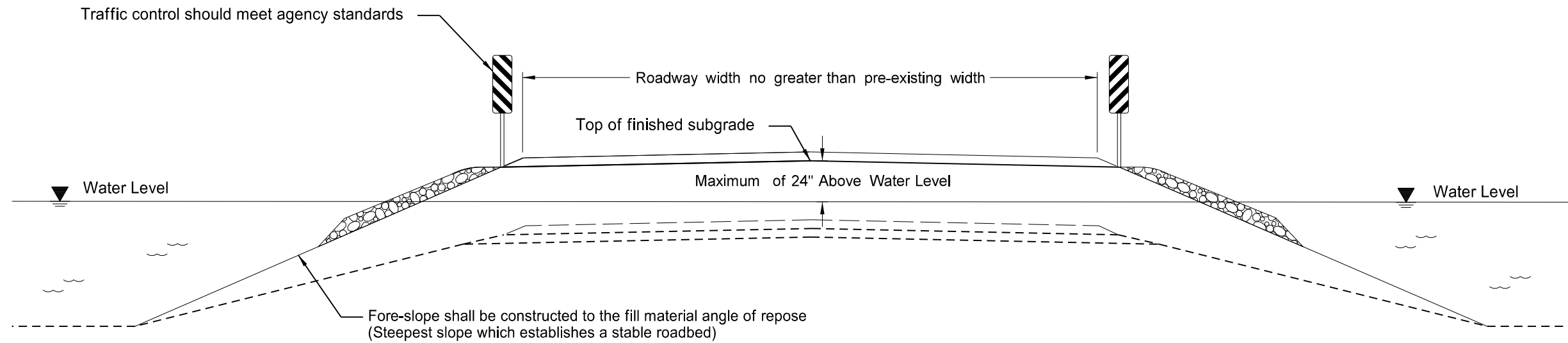
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

  
Francis G. Ziegler  
Director

3/31/11  
Date

# Appendix C

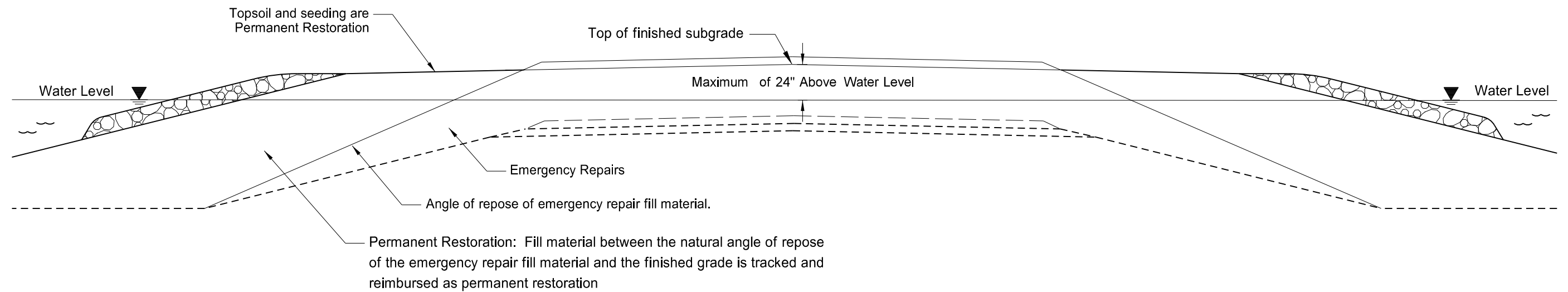
	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND			



- Refer to Section 3.7 for erosion and sediment control best practices
- Embankment material may be aggregate or borrow from an approved source
- Grade may be raised a maximum of 24" above the water level
- Emergency grade raises more than 24" above existing water elevation must be approved by FHWA. Documentation and justification for going above 24" must be provided to FHWA and the additional height must be approved by FHWA prior to any of the additional work occurring
- Riprap may be placed on the inslope when wave action damage is a concern, any other type of erosion protection must be approved by FHWA
- Work to install, extend, or repair a centerline pipe to accommodate the Emergency Grade Raise and equalize the closed basin may be eligible as Emergency Repairs
- Temporary paving of existing asphalt roads may be eligible emergency repairs if the permanent restoration will not be completed until the following year. Prior FHWA approval is not required for NHS highways. Prior FHWA approval is required for all other state highways and LPA roads.
- Emergency grade raises should be followed by a permanent restoration project to build the roadway to the current safety design standards

Emergency grade raise to be followed by permanent grade raise

	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND			



- Refer to Section 3.7 for erosion and sediment control best practices
- Embankment material may be aggregate or borrow from an approved source
- Grade may be raised a maximum of 24" above the water level
- Emergency grade raises more than 24" above existing water elevation must be approved by FHWA. Documentation and justification for going above 24" must be provided to FHWA and the additional height must be approved by FHWA prior to any of the additional work occurring
- Riprap may be placed on the inslope when wave action damage is a concern, any other type of erosion protection must be approved by FHWA
- Work to install, extend, or repair a centerline pipe to accommodate the Emergency Grade Raise and equalize the closed basin may be eligible as Emergency Repairs
- Temporary paving of existing asphalt roads may be eligible emergency repairs if the permanent restoration will not be completed until the following year. Prior FHWA approval is not required for NHS highways. Prior FHWA approval is required for all other state highways and LPA roads.
- Up to \$150,000 of eligible Permanent Restoration may be completed concurrently with Emergency Repairs if at least three quotes were obtained to perform the Permanent Restoration

Emergency grade raise which will not be followed by a permanent grade raise

# Appendix D

# ER Site Inspection Checklist

Site Information		
Site No.		Location:
Hwy		
Sec/Twp/Rge		
Latitude		Damage Description:
Longitude		

Damage Detail	Dimensions	Repairs Needed (Emergency and/or Permanent)
Foreslope		
Washout		
Debris		
Inundation		
Slide Area		
Other		

Site Inspection Personnel:
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# Appendix E



PROGRAMMATIC AGREEMENT  
FOR WETLAND MITIGATION ON EMERGENCY RELIEF PROJECTS  
BETWEEN  
FEDERAL HIGHWAY ADMINISTRATION, NORTH DAKOTA DIVISION, (FHWA-ND),  
FEDERAL HIGHWAY ADMINISTRATION, CENTRAL FEDERAL LANDS HIGHWAY  
DIVISION (FHWA-CFLHD),  
US FISH AND WILDLIFE SERVICE (USFWS), NORTH DAKOTA FIELD OFFICE,  
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT),  
AND NORTH DAKOTA GAME AND FISH DEPARTMENT (NDGFD)

WHEREAS, the unique regional weather conditions of recent years have caused water levels, including wetlands, to expand at an unprecedented rate in the state of North Dakota. The result of these conditions is inundation of other valuable resources, including but not limited to agricultural lands and road infrastructure.

WHEREAS, Executive Order (EO) 11990 requires federal agencies to "...avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative ..." and to "... take action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities..."

WHEREAS, compensatory mitigation for unavoidable impacts to wetlands is not required under EO 11990. It is Federal Highway Administration (FHWA) policy (23 CFR 777.11(g)) that wetland mitigation should result in a net gain in the function and value of wetlands.

WHEREAS, the Devils Lake Collaborative Working Group (DLCWG), and Devils Lake Executive Committee (DLEC) consisting of members from NDGFD, FHWA-ND, USFWS, and US Army Corps of Engineers (USACE) was established to streamline the determination of need and mechanisms for providing compensatory mitigation for emergency grade raise projects and other emergency relief projects in the Devils Lake basin.

WHEREAS, the North Dakota Interagency Review Team (NDIRT), including agency members of the DLCWG/DLEC, similarly have been meeting during 2009-2011 and discussing the issue of compensatory mitigation for the large volume of emergency relief projects statewide to develop alternatives for mitigation.

WHEREAS, NDIRT recognizes that some roads have required multiple grade raises at the same location, and mitigation for wetland impacts have occurred for each emergency grade raise.

WHEREAS, NDIRT field review in 2011 focused on emergency grade raise projects and proposed that additional compensatory mitigation would not be required for wetland impacts to *non-jurisdictional* wetlands associated with emergency relief projects statewide.

WHEREAS, NDDOT has advanced and received federal approval for 741 emergency relief sites statewide during the 2009-2011 time period (285 in 2009, 123 in 2010, and 333 in 2011) under the Emergency Relief program under Title 23 U.S.C.

WHEREAS, NDDOT has restored, enhanced, created, and preserved approximately 2160 acres of wetlands for the Federal-Aid highway program since the late 1970s. NDDOT has received approximately 1279 acres of wetland mitigation credit from the 2160 acres of wetland restoration, enhancement, creation, and preservation. To date NDDOT's Federal-Aid highway program has resulted in a net gain of over 880 acres of wetland habitat during the period of 1971 through 2011.

WHEREAS, in implementing Emergency Relief projects statewide during the 2009 – 2011 time period, NDDOT has deducted approximately 325 credits for nonjurisdictional impacts from the mitigation site ledgers. This constitutes more than 25% of the total credits used in NDDOT's 40 year mitigation history.

THEREFORE, NDDOT will credit the mitigation site ledgers for a total of approximately 325 credits for the debits taken for the non-jurisdictional impacts associated with all Emergency Relief projects that occurred statewide in 2009-2011.

THEREFORE, NDDOT will continue to document and track wetland impacts associated with future Emergency Relief projects by the NDDOT in a separate ledger. This agreement is limited to an additional 325 credits for non-jurisdictional wetland impacts or up to 10 years of the date of the Agreement, whichever comes first. If impacts associated with future Emergency Relief projects exceed 325 debits within the next 10 years, NDDOT and FHWA-CFLHD will resume compensatory mitigation.<sup>1</sup> Upon approval of an in-lieu fee wetland mitigation program, NDDOT and FHWA may use an in-lieu fee strategy as a means to meet any compensatory mitigation requirements for non-jurisdictional wetland impacts during the term of this agreement.

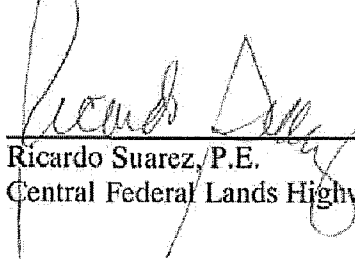
EXECUTION of this Programmatic Agreement shall constitute conclusive evidence that the NDGFD, NDDOT, USFWS, FHWA-CFLHD, and FHWA-ND agree to the foregoing conclusions and to perform the obligations herein set forth on projects eligible for Emergency Relief funding and administered by the NDDOT or the FHWA. This agreement does not supersede any other legal responsibilities, administrated at either the Federal or State levels of government.

---

<sup>1</sup> The 325 credits will be used by NDDOT and FHWA – CFLHD as follows: NDDOT will utilize up to 320 credits and FHWA – CFLHD up to 5 credits. If either party exceeds their threshold in debit or time, then that party will resume compensatory mitigation. Neither party(s) exceeding the acreage threshold will dictate when the other party will resume compensatory mitigation.

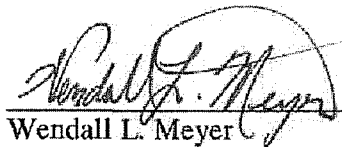
Signed by:

FEDERAL HIGHWAY ADMINISTRATION

  
Ricardo Suarez, P.E.  
Central Federal Lands Highway Division Engineer

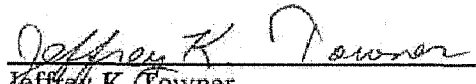
2/24/2012  
Date

FEDERAL HIGHWAY ADMINISTRATION

  
Wendall L. Meyer  
North Dakota Division Administrator

2/27/2012  
Date

US FISH AND WILDLIFE SERVICE

  
Jeffrey K. Fowner  
Field Supervisor, North Dakota Field Office

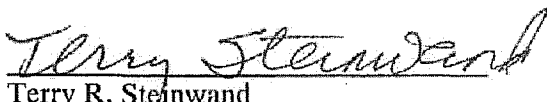
2/27/2012  
Date

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

  
Francis G. Ziegler, P.E.  
Director

3/5/2012  
Date

NORTH DAKOTA GAME AND FISH DEPARTMENT

  
Terry R. Steinwand  
Director

2/28/2012  
Date

# Appendix F

Division Administrator  
Federal Highway Administration  
1471 Interstate Loop  
Bismarck, ND 58503-0567

## REQUEST FOR EMERGENCY RELIEF FOR 2011 FLOODING STATEWIDE

Under provisions of Title 23, U.S.C. Section 125, this is notice of intent by the North Dakota Department of Transportation (NDDOT) to request Emergency Relief (ER) funds to assist in the cost of repairing damages to facilities on the Federal-Aid Highway System statewide in North Dakota.

A copy of the EXECUTIVE ORDER 2011-03 declaring a state of emergency signed by Governor Jack Dalrymple is enclosed. Please request concurrence by the Secretary of Transportation in this Declaration.

The Executive Order was a result of the continued statewide wet cycle combined with excessive precipitation in 2010 and early 2011 that has saturated soils and exceeded surface water storage capacity in sloughs, ponds, and drainage areas. As the spring melt occurs, high waters, fast flows, and high winds are anticipated to impact roads and structures. Additional precipitation will compound the high water problems.

Potential agricultural and recreation industry losses, expenditures for damage repair, as well as private and other business losses, will constitute a serious economic hardship throughout North Dakota. Actions are necessary to reduce the economic hardships, to address threats to public health and safety, and to assist recovery and mitigation efforts.

Preliminary estimates to repair anticipated roadway damages on the Federal-Aid Highway system are listed below for the facilities of concern up to this point:

State Highway System	\$19 Million
County and Urban System	\$10.3 Million

We will take all necessary steps to provide safe travel ways through the affected areas. We are also proceeding with measures to protect existing highway facilities from future damage.

FRANCIS G. ZIEGLER, P.E., DIRECTOR

38/kl/sas  
Enclosure  
C:

# Appendix G

Division Administrator  
Federal Highway Administration  
1471 Interstate Loop  
Bismarck, ND 58501

**EMERGENCY RELIEF (ER) FUNDING REQUEST FOR STATEWIDE TRADITIONAL DAMAGES UNDER INCIDENT ND10-2**

This request is a follow-up to our April 28, 2010 notice of intent to apply for ER funds which relates to EXECUTIVE ORDER 2010-05, issued by Governor Hoeven's office on February 26, 2010. The area and type of disaster being requested is Statewide Traditional Damage.

As noted in our letter of intent, the damages in North Dakota are the result of severe winter storms on top of the area already having saturated soils causing spring runoff flooding. High water, fast flows, and high winds have impacted roads statewide. Additional precipitation may contribute to the existing high water problems.

Based on completed DDIR's, damages have exceeded \$6,250,000 (fed. portion), refer to enclosed document. Although not all inspections and DDIR's are completed, the total damage amount statewide for ND10-2 is expected to exceed \$7,750,000 (fed. portion) based preliminary estimates. Based on the foregoing, we are requesting formal approval for ER funding to cover the cost incurred, or to be incurred, on those projects that have been approved by FHWA.

**PAUL BENNING – INTERIM LOCAL GOVERNMENT ENGINEER**

38:blf  
Enclosure

# Appendix H





US Department  
of Transportation  
**Federal Highway  
Administration**

1471 Interstate Loop  
Bismarck, North Dakota 58503-0567

March 25, 2011

Mr. Francis G. Ziegler  
Director  
North Dakota Department of Transportation  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505-0700

Dear Mr. Ziegler:

Subject: Request for Emergency Relief (ER) Funds for Damages Sustained from  
Spring 2011 Runoff – Statewide; ND11-2

This is to acknowledge receipt of your letter of intent, dated March 23, 2011, to request Emergency Relief (ER), authorized under Sections 120 and 125 of Title 23, U.S.C., for the repair of damage to Federal-aid highways resulting from flood conditions due to snowmelt and additional precipitation. The resulting continued statewide wet cycle combined with excessive precipitation in 2010 and early 2011 has saturated the soils and exceeded surface water storage capacity at sloughs, ponds, and drainage areas. We note the February 10, 2011 Executive Order 2011-03 and Emergency Proclamation signed by Governor Dalrymple attached to your letter which covers that statewide event. A copy of this response will be sent to FHWA's Central Federal Lands Highway Division for information and possible further coordination in the event there are any potential reservation sites not on State highways. If this event is approved for Emergency Relief funding, we will recognize qualifying sites statewide without further proclamation supplement.

The North Dakota Department of Transportation (NDDOT) and local agencies should proceed with performance of emergency operations, including emergency repairs necessary on the Federal-aid highways to restore essential travel; to protect the remaining facilities; and to reduce the extent of damage. Also, you may begin preliminary engineering comprising of surveys, design, and preparation of construction plans; to perform the permanent restoration work required as an associated part of the emergency operations; and to use State forces and/or negotiated equipment rental contracts as necessary to perform the work.

Your letter indicates the NDDOT's intent to accomplish repairs on state highways and on various County Major Collector routes statewide with total preliminary estimated costs of about \$29.3 million. Since your letter refers to a statewide runoff event, we assume the majority of this will be traditional damage as opposed to basin related damage. Per FHWA's Emergency Relief Manual, to qualify as a basin disaster, each basin is evaluated individually based on the water level rise that has occurred within that basin, and the criteria in the Emergency Relief Manual must be satisfied for that




basin before ER funding will be considered for grade raises. However, special cases may arise where several basins in close proximity, all of which are affecting the same critical Federal-aid routes, may be treated as one event for the purposes of an ER finding that a disaster has occurred. Where essential Federal-aid routes are closed due to high standing water and the above criteria cannot be met, we will look for means to reestablish service using traditional damage repair methods. It is recognized that the ER program does not provide restoration for all problems that arise from high water situations.

A decision as to whether the event meets criteria established in 23 CFR 668 will be made following our review and approval of the Damage Survey Summary Report. This event will be referred to as Disaster Number ND11-2. The Damage Survey Summary Report should include estimates of cost to repair and reconstruct the damaged Federal-aid highways. We expect that the estimate of costs will be documented with Detailed Damage Inspection Reports. An example of this form is included in the Emergency Relief Manual. NDDOT will be expected to provide support for its request for ER funding following the most recent guidance of FHWA's Emergency Relief Manual, which can be found at: <http://www.fhwa.dot.gov/reports/erm/index.cfm>. It is important to reemphasize that the minimum per site amount is \$5,000.

The Damage Survey Summary Report should be submitted within six week, if possible. If additional time will be required for NDDOT to prepare support for your ER request, please request an extension of time. Permanent restoration work, other than that performed concurrently with the emergency repairs, shall not be performed prior to approval and authorization by this office.

Record keeping should be sufficient to permit audit of costs on a site-by-site basis.

Sincerely yours,



Wendall L. Meyer  
Division Administrator

cc: Mr. Bob Fode, Director, Office of Transportation Programs, NDDOT  
Mr. Ronald J. Henke, Director, Office of Project Development, NDDOT  
Mr. Brad Darr, Maintenance Engineer, NDDOT  
Mr. Paul Benning, Local Government Engineer, NDDOT  
W.O. (Mr. Greg Wolf, HIPA-10)  
Mr. Ricardo Suarez, Division Engineer, CFLHD

# Appendix I

## Emergency Relief Contract Requirements

Project Number:

ER Site:

Location:

Year:

The Contractor shall perform all work in accordance with the *North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction* and the most current *Supplemental Specifications*. The Contractor's signature and initials below indicated he has received or will obtain via the provided links and will abide by the policies and regulations of each of the following:

\_\_\_\_\_ FHWA 1273 – Required Contract Provisions

\_\_\_\_\_ NDDOT ADA Requirements

\_\_\_\_\_ NDDOT Revision to Race-Neutral DBE Special Provision

\_\_\_\_\_ NDDOT Special Provision – DBE Race-Neutral (with revision)  
[www.dot.nd.gov/divisions/civilrights/dbeprogram.htm](http://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm).

\_\_\_\_\_ EEO Affirmative Action Requirements  
[www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf](http://www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf)

\_\_\_\_\_ Prompt Payment – 46 CFR 26.29  
[www.dot.nd.gov/divisions/civilrights/docs/dbe/promptpay20080118.pdf](http://www.dot.nd.gov/divisions/civilrights/docs/dbe/promptpay20080118.pdf)

\_\_\_\_\_ Davis-Bacon Wage and Payroll Requirements  
[www.dot.nd.gov/divisions/civilrights/laborcompliance.htm](http://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm)

\_\_\_\_\_ Buy America Provision  
<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

\_\_\_\_\_ Convict Produced Material/ Convict Labor Provision  
<http://www.fhwa.dot.gov/construction/cqit/convict.cfm>

\_\_\_\_\_ All materials shall come from an approved location. Pre-approved locations can be found on the NDDOT website at:  
[www.dot.nd.gov/dotnet2/materialsource/certificatesofapproval.aspx](http://www.dot.nd.gov/dotnet2/materialsource/certificatesofapproval.aspx)  
For new locations the contractor shall complete and submit SFN 58466 -  
MATERIAL SOURCE APPROVAL REQUEST

\_\_\_\_\_  
NDDOT or LPA witness

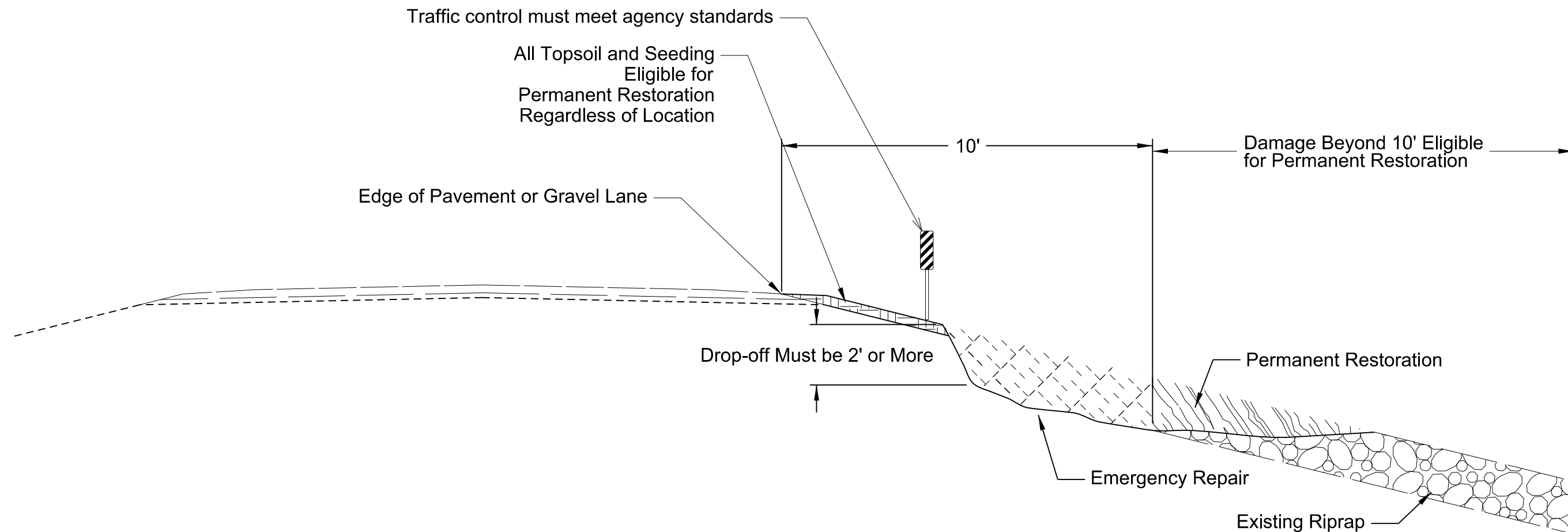
\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Date

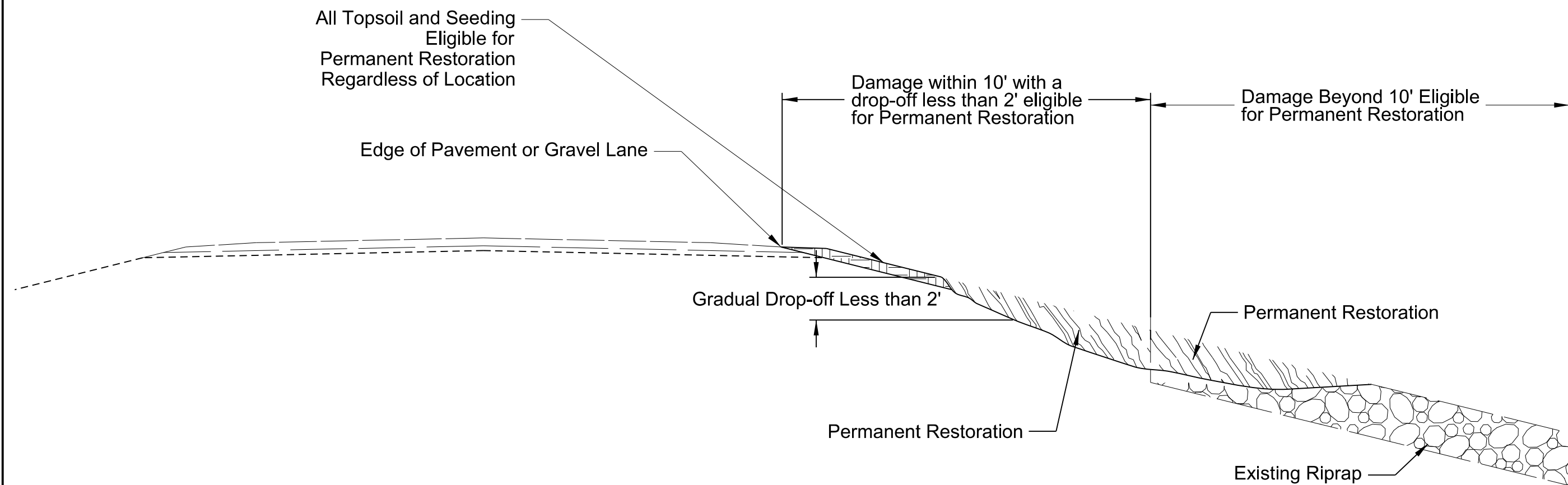
# Appendix J





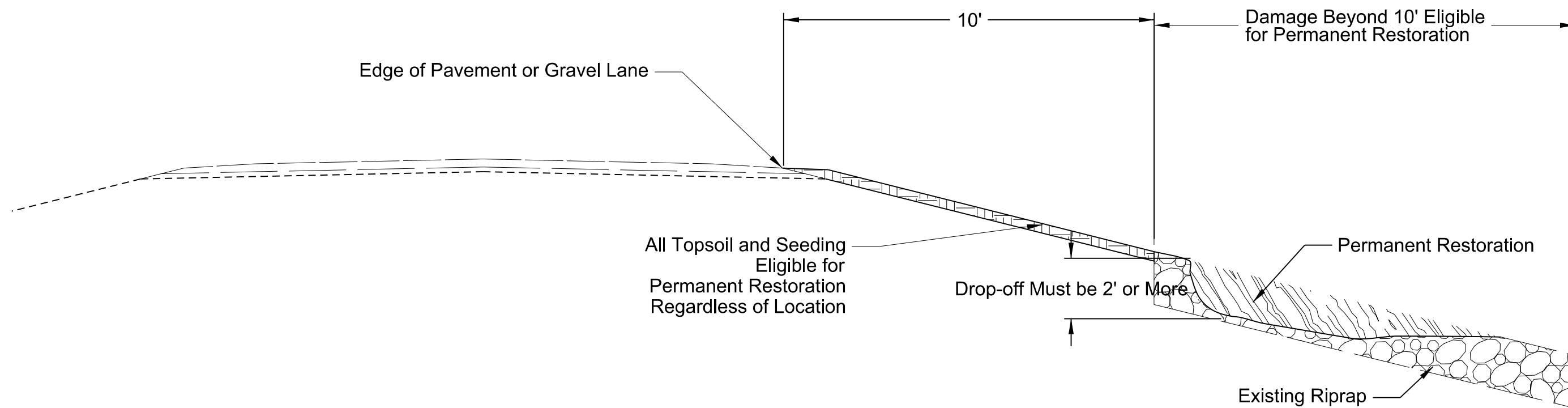
- Wave action damage within 10' of the edge of the pavement, or edge of the gravel lane, with a drop of of 2' or more is eligible for Emergency Repair
- Wave action damage beyond 10' is eligible for Permanent Restoration
- Topsoil and seeding are Permanent Restorations, regardless of the location
- If water levels have risen above the elevation of the pre- existing riprap or slope protection, placement of riprap or slope protection to the new water level will be eligible as emergency repairs if within 10' of the pavement or gravel lane
- Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment and is considered permanent restoration
- Up to \$150,000 of eligible Permanent Restoration may be done concurrently with eligible Emergency Repair
- Photographs and documentation of the damage should be provided in the DDIR to justify eligibility

WAVE ACTION DAMAGE WITHIN  
10' OF PAVEMENT OR GRAVEL LANE



- Wave action damage within 10' of the edge of the pavement, or edge of the gravel lane, with a gradual drop of of less than 2' is eligible for Permanent Restoration
- Wave action beyond 10' is eligible for Permanent Restoration
- Topsoil and seeding are Permanent Restorations, regardless of the location
- If water levels have risen above the elevation of the pre- existing riprap or slope protection, placement of riprap or slope protection to the new water level will be eligible as Permanent Restoration
- Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment and is considered permanent restoration

WAVE ACTION DAMAGE WITHIN 10'  
OF PAVEMENT OR GRAVEL LANE  
BUT LESS THAN 2' DROP-OFF



- Wave action damage outside of 10' from the edge of the pavement, or edge of the gravel lane, with a drop of 2' or more is eligible for Permanent Restoration
- Topsoil and seeding are Permanent Restorations, regardless of the location
- If water levels have risen above the elevation of the pre-existing riprap or slope protection, placement of riprap or slope protection to the new water level will be eligible as Permanent Restoration
- Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment and is considered permanent restoration

WAVE ACTION DAMAGE OUTSIDE  
OF 10' FROM PAVEMENT  
OR GRAVEL LANE