

Categorical Exclusions

By Kristen Sperry

Environmental Scientist

North Dakota Department of
Transportation

National Environmental Policy Act (NEPA)

- Signed into law January 1, 1970.
- Requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.

NEPA Umbrella

- Title VI of Civil Rights Act of 1964
- Uniform Relocation Assistance of Real Property Acquisition Policies Act of 1970
- Americans with Disabilities Act
- Executive Order 12898 (Environmental Justice)
- Section 4(f) of USDOT Act (49 USC 303)
- Clean Air Act
- Clean Water Act 404
- Executive Order 11988 (Floodplain Management)
- Executive Order 11990 (Protection of Wetlands)
- Farmland Protection Policy Act
- Endangered Species Act
- Solid Waste Disposal Act
- Resource Conservation and Recovery Act of 1976
- Noise 23 CFR 772
- Wetlands 23 CFR 777
- National Historic Preservation Act
- Economic, Social, and Environmental Effects
- Highway Noise Standards
- Public Hearing Requirements 23 USC 128
- Archaeological and Historic Preservation Act
- Archaeological Resources Protection Act
- And many, many MORE...

Classes of Actions

- There are 3 classes of actions which prescribe the level of documentation required in the NEPA process.
 - Class I (Environmental Impact Statement)
 - Class II (Categorical Exclusions (CE))
 - Class III (Environmental Assessments)

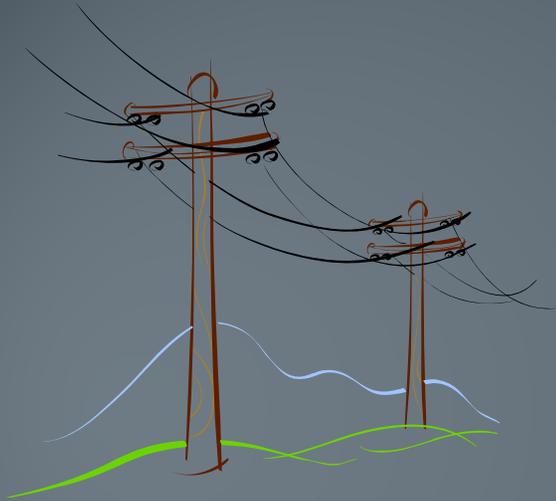
Categorical Exclusions

- Must meet the definition contained in 40 CFR 1508.4, and based on past experience with similar actions, do not involve significant environmental impacts.

23 CFR Section 771.117(c) “c-list”

- Establishes specific lists of categories of actions that the Agencies have determined normally do not individually or cumulatively have a significant effect on the human environment and do not require an EA or EIS.

771.117(c) “c- list” Types of Projects



Environmental Checklist (ECL)

• <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>

PROGRAMMATIC CATEGORICAL EXCLUSION

Project #: _____ PCN: _____ Date: _____

The work for this project is generally confined to the roadway surface with the exception of some Structural, Guardrail, ITS, and Miscellaneous types of work. Select all work items that will be applied to the project. The pavement marking will be replaced if removed or covered as a part of the project. The abbreviation in the parentheses designates the investment strategy in the Design Guidelines (PM = Preventive Maintenance, MiR = Minor Rehabilitation, SI = Structural Improvement, MaR = Major Rehabilitation, N/R = New/Reconstruction).

- The "Decision Document for ECL" is required for any work item selected below that is designated as: (MiR), (SI), (MaR), (N/R), or (-Dec.Doc.) and is also required for any projects located within the 12 major cities.
- Attach Worksheet C – Supporting Documentation for any work item selected below designated with (+)

1) Surface Treatments: Use additional pages to discuss the applicable Americans with Disabilities Act (ADA) of 1990 requirements. An asterisk (*) denotes ADA requirements may be required as a part of the project.

- | | |
|---------------------------------------|--|
| _____ Seal Coat (PM) | _____ Aggregate Surfacing (PM) |
| _____ Slurry Seal (PM) | _____ *Patching (PM) |
| _____ Microsurfacing (PM) | _____ *HBP ≤ 2" (PM) |
| _____ Macrosurfacing (PM) | _____ *Mill and Overlay ≤ 2" (PM) |
| _____ Crack Pouring/Sealing (PM) | _____ *HBP up to 3" (MiR) |
| _____ Route and Seal (PM) | _____ *Mill and Overlay up to 3" (MiR) |
| _____ Repair of depressed cracks (PM) | _____ *HBP > 3" (SI) |
| _____ Dowel Bar Retrofit (PM) | _____ *White Topping (SI) |
| _____ Mudjacking (PM) | _____ *Cold in Place Recycle (MiR) |
| _____ Grinding (PM) | |
| _____ CPR ≤ 10% area per mile (PM) | |

2) Minor Structural Work:

- | | |
|---------------------------------------|--------------------------------------|
| _____ Mudjacking (PM) | _____ +Deck Replacement (N/R) |
| _____ Approach Slabs (PM) | _____ +Deck Rehabilitation (MaR) |
| _____ Sealing Deck/Substructures (PM) | _____ +Abutment Repair (PM) |
| _____ Painting (PM) | _____ +Slope Repair/ Protection (PM) |
| | _____ +Rail Retrofit (PM) |

3) Guardrail Work:

- _____ Guardrail Removal, Resetting, or Installation (+if embankment required)

4) Intelligent Transportation Systems (ITS): The purpose is to install, replace, or update items.

- _____ +Automated Traffic Recorder, ATR (-Dec.Doc.)
 _____ +Weigh in Motion, WIM (-Dec.Doc.)
 _____ +Environmental Sensor Station (ESS) (-Dec.Doc.)
 _____ +NDDOT Road Weather Information System, RWIS (-Dec.Doc.)
 _____ +Dynamic Message Signs, DMS (-Dec.Doc.)
 _____ +Surveillance Camera (-Dec.Doc.)
 _____ +Video Detection System for Signals

5) Miscellaneous Items: The purpose is to install, replace, or update items.

- | | |
|------------------------------------|--|
| _____ Rumble Strips (PM) | _____ +Flashing Beacon (-Dec.Doc.) |
| _____ Pavement Markings (PM) | _____ +Pedestrian Facilities/Curb Ramps |
| _____ Railroad Warning Devices | _____ +Landscaping (-Dec.Doc.) |
| _____ Fencing (-Dec.Doc.) | _____ +Pipe Repair/Replacement |
| _____ +Traffic Signals (-Dec.Doc.) | _____ +Advanced Acquisition of ROW (-Dec.Doc.) |
| _____ +Signs (-Dec.Doc.) | _____ +Disposal of Excess ROW |
| _____ +Lighting (-Dec.Doc.) | _____ +Environmental Mitigation (-Dec.Doc.) |

6) Other Types of Work: _____

(signature of person filling out documentation)

 print name, Consultant or NDDOT District/Division Date

*(signature) –see instructions below in red**

 print name, NDDOT District/Division Date

*instructions (delete these instructions)

- NDDOT Technical Support Person required to sign here for all consultant projects.
- If "6) Other Types of Work" is filled out, then ETS Division is required to sign here.
- If "6) Other Types of Work" is blank, then delete this signature (non-consultant projects only).

ECL Continued

Worksheet A ENVIRONMENTAL CHECK LIST

Project #: _____ PCN: _____ Date: _____

Answer the environmental questions below. If any of the questions below are answered "YES", attach Worksheet C – Supporting Documentation and coordinate with the ETS Division for environmental and cultural clearance or permits.

- Yes No SECTION 4(F)/6(F): Are there any impacts to Section 4(f) or 6(f) property (public owned land of a public park, recreation area, or wildlife and waterfowl refuge and historic sites)?
- Yes No HISTORIC / ARCHAEOLOGICAL: Are there any impacts to HISTORIC / ARCHAEOLOGICAL properties?
- Yes No THREATENED OR ENDANGERED SPECIES: Does the action affect species or critical habitat protected by the Endangered Species Act?
- Yes No RIGHT OF WAY: Is there any action required for new right of way or temporary easement, minor access change, relocations, and does it have any risk of hazardous materials involvement?
- Yes No PRIME AND UNIQUE FARMLAND: Does this action involve the acquisition of prime and unique farmland?
- Yes No STATE SCENIC RIVER: Does the action impact the Little Missouri River, a state designated scenic river?
- Yes No FLOODPLAIN/FLOODWAY: Based on SOV Letter #6 to the ND State Water Commission, is the project located in a floodplain or floodway? (SOVs are required for projects as noted in section II-05.02.01 of the Design Manual).
- Yes No WETLANDS: Does the action have temporary or permanent impacts to any wetlands?
- Yes No NOISE: Is this action a Type I action in accordance with 23 CFR 772 and does it significantly impact noise levels? (Increases the carrying capacity of the roadway by allowing more volume).
- Yes No AIR: Will the action significantly impact air quality?
- Yes No WATER QUALITY: Does the project disturb greater than one acre and if it does a Pollution Discharge Elimination System NDPDES (NDDOH) / NPDES (EPA) Construction Permit must be obtained.
- Yes No PUBLIC CONTROVERSY: Is this action controversial?

(signature of person filling out documentation)
(print name of person filling out documentation)

Date

Section 7 Affect Determination Package

NDDOT Threatened, Endangered, Proposed, Candidate Species and Critical Habitat Affect Determination Table							
Project:		PCN:	Location:	County:			
Species	Listing	Guidance	FHWA Review Required?		Determination		Additional Documentation Included
			Yes	No	Not Present	No Effect	
Interior Least Tern	E	FHWA Review required for work in or along the shoreline of the Missouri River System including reservoirs from April 15 through August 1.					
Whooping Crane	E	FHWA Review required for work involving above ground utilities or towers, or new guy wires unless lines are buried.					
Black-footed Ferret	E	FHWA Review required for ground disturbing activities within 100 feet of prairie dog towns of at least 80 acres in size. Projects within the existing right-of-way will not require FHWA review.					
Pallid Sturgeon	E	FHWA Review required for work in or along the shoreline of the Missouri River (including reservoirs) and Yellowstone River Systems.					
Gray Wolf	E	Listed West of US 83; Delisted East of US 83					
Poweshiek Skipperling	E	FHWA Review required for work occurring outside of the right of way in undisturbed native tall grass prairie and wet swales					
Piping Plover	T	FHWA Review required for ground disturbing activities within 1/2 mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Western Prairie Fringed Orchid	T	FHWA Review required for all ground disturbing activities on non-flooded, undisturbed ground, known habitat, and native prairie. High probability of species in or near the Sheyenne National Grassland.					
Dakota Skipper	T	FHWA Review required for work occurring outside of the right of way in high quality native prairie containing a high diversity of wildflowers and grasses.					
Northern Long-Eared Bat	P	FHWA Review required for work involving the removal of trees or buildings, ground disturbance in areas with caves, mines, and rock crevices, or work on structures. See NLEB Guidance for NDDOT Projects for further assistance.					
Rufa Red Knot	P	FHWA Review required for work activities impacting Piping Plover Critical Habitat or sewage lagoons. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Greater Sage Grouse	C	FHWA Review Required for work activities occurring outside the right of way in native sagebrush grasslands where big sagebrush (<i>Artemisia tridentata</i>) is present.					
Sprague's Pipit	C	FHWA Review Required for work activities occurring outside the right of way in large native short-to-mixed grass prairie patches of approximately 72 acres or greater.					
Piping Plover Critical Habitat	D	FHWA Review required for ground disturbing activities within 1/2 mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Poweshiek Skipperling Critical Habitat	P	FHWA Review required for ground disturbing activities within 0.6 mile of proposed Poweshiek Skipperling critical habitat. See link for Poweshiek Skipperling proposed critical habitat maps: https://www.fws.gov/midwest/endangered/insects/posk/poskPropCHMapUnitsND_SD.html					
Dakota Skipper Critical Habitat	P	FHWA Review required for ground disturbing activities within 0.6 mile of proposed Dakota Skipper critical habitat. See link for Dakota Skipper proposed critical habitat maps: http://www.fws.gov/midwest/endangered/insects/dask/CHmaps/daskNDCMmaps.pdf					

Listing Key: E – Endangered T – Threatened P – Proposed C – Candidate D – Designated Critical Habitat

***Found in the Design Manual, Reference and Forms, NEPA Documentation Section**

ECL Continued

Worksheet B PROJECT DATA

Project #: _____ PCN: _____ Date: _____

Estimated Cost: \$ _____ STIP Cost: \$ _____

Traffic Volumes: _____ Current ADT: _____ Percent Trucks: _____

Highway Classification

- Interstate State Corridor Rural Two Lane Interstate Divided
 Interregional District Corridor Rural Divided
 District Collector Urban (all cross sections)
 Other -

Cross Section

Type of Project: _____

Existing Roadway Width: _____ *Proposed Roadway Width: _____ Minimum Roadway Width Required: _____

**If the proposed roadway width is less than the minimum roadway width required in the Design Guidelines, forward to the Planning & Programming Division*

Any Design Exception required for this project: Yes _____ No _____
(Check the Design Guidelines)

Have any safety issues been identified through the Statewide Safety Program? Yes _____ No _____

If yes, what: _____

What are the ADA Requirements to be considered for improvements?

Have any traffic control devices been identified that do not comply with the current MUTCD?

Yes _____ No _____ If yes, what? _____

Do all railroad crossings have adequate protective devices in place? Yes _____ No _____

If no, what? _____

Is the project located within 5 miles of an airport? *Yes _____ No _____

**If yes, send general SOV letter and coordinate with NDDOT Utilities Engineer*

Cost Effective Analysis: The Cost Effective Analysis is for Preventive Maintenance projects only. Delete these sentences prior to final submittal.

STRUCTURAL IMPROVEMENT		PREVENTIVE MAINTENANCE	
Improvement Cost	\$650,000	PM Overlay Cost	\$180,000
Estimated Service Life	20	Estimated Design Life	4.72
Discount Rate	4%	Discount Rate	4%
Life Cycle Cost	\$650,000	Life Cycle Cost	\$650,000

This document is preliminary and not for construction or implementation purposes.

This document was originally issued and sealed by NAME, Registration number PE-NUMBER on MM/DD/YY and the original document is stored at the North Dakota Department of Transportation.

(signature of person filling out documentation)
(print name of person filling out documentation)

Date

ECL Continued

If the scope of the project changes it is important to provide an updated project area to the environmental and cultural sections so they can be accurately evaluated for environmental impacts.

Worksheet C

SUPPORTING DOCUMENTATION

The following items will be attached to this worksheet to assist with the approval of environmental and cultural clearance through coordination with the ETS Division:

- Attach project location map with township, section, and range.
- Attach cross sections and plan and profile sheets from the old grading plans showing the locations of work, any widened areas, limits of construction and disturbance, any devices, location of the power and route to get to it, required trenching, controllers, and soil disturbance areas.
- Attach any available pictures of the proposed work areas.

The project has been reviewed based on the accuracy of the information provided.

Comments: _____

Environmental Services, ETS Division

Date

Comments: _____

Cultural Resource Services, ETS Division

Date

Section 771.117(d) “d-list”

- **Section 771.117(d)** list examples of actions that may be categorically excluded from further NEPA review but require additional documentation demonstrating that the specific criteria for a CE are satisfied and that no significant environmental impacts will result from the action.

771.117(d) “d- list” Types of Projects

- (1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
- (2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
- (3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

And more...

Documented Catex

DRAFT DOCUMENTED CATEX

HOT BITUMINOUS OVERLAY

Project No.

PCN

SS-5-085(030)124

12345

From point A to point B



Prepared by

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
BISMARCK, NORTH DAKOTA

<http://www.dot.nd.gov/>

DIRECTOR
Grant Levi, P.E.

PROJECT DEVELOPMENT DIRECTOR
Robert A. Fode, P.E.

Principal Author: (Consulting Firm OR name, NDDOT Division name)
Environmental Reviewer: (name, NDDOT Division name)
June 2013

23 USC § 409
NDDOT Reserves All Objections

D-LIST PROJECT CHECKLIST (DCE)

The Documented CatEx (DCE) (D-list) was developed to enable prompt consideration of the full range of alternatives, environmental issues, regulatory processes, potential impacts, including significant impacts, and unusual circumstances that must be considered before Administrative (FHWA) approval. Supporting documentation demonstrates any commitments or criteria for this CatEx is satisfied and that the action does not involve unusual circumstances^[1] or result in significant environmental impacts^[2], which would warrant higher level environmental documentation. The Documented CatEx does not eliminate the need for full and complete documentation, agency coordination, permitting, and any additional commitments included in the project record.

Primary Author: _____
Once complete with analysis, delete this red text, sign, and date.

NDDOT Environmental Reviewer: _____
Once complete with review, delete this red text, sign, and date.

Pursuant to MAP-21 Section 1323(b) Reporting Requirements, this project best meets the Category of Action, 23 CFR 771.117(d): _____
NDDOT Environmental Reviewer will enter section number that applies.

Additional reporting data will be compiled in a Report on the types and justifications for use by the Secretary of Transportation for each CatEx processed through 02/12/2016 by the Environmental Reviewer within each Division (Environmental Transportation Services Division and Local Government Division).

How many build alternatives? 1

If a Yes/No question mark an 'X' or 'NA'. Or fill in Data Requested.

#	Resource / Issue Category		Questions to Determine Potential Effects Applicable in North Dakota	Alt B	
				YES	NO
1	Air Quality	1.1	Project is not located within or adjacent to USEPA-defined Non-Attainment Area and complies with the State Implementation Plan.		
2	Economic	2.1	Will the action result in a decrease in business or economic activity along the project corridor?		
3	Energy	3.1	Will the action impact or deplete the energy supply of natural resources?		
4	Environmental Justice	4.1	Will the action cause any adverse and/or disproportionate impacts on minority and/or low income populations?		
5	Farmland	5.1	Will the action convert farmland (prime, unique, other than prime or unique that is of statewide importance or local importance) to nonagricultural use?		
		5.1.1	The action involves disturbance of 10 acres or less per linear mile or 3 acres per bridge or interchange. <i>Pursuant to Section 310 of the General Manual, Subpart A, 403.4(b) (4), the project is exempt from FPPA; no further action is required.</i>		
		5.1.2	The action involves disturbance of 10 acres or more per linear mile or greater than 3 acres per bridge or interchange. <i>NRCS Consultation is required; has the Farmland Conversion Form been attached?</i>		
6	Floodplain /	6.1	Will the action occur within a 100 year floodplain?		

Project Title
 Project No. X-XXX(XXX)XXX
 Month Year

Environmental Checklist (D-List) Page 1
 PCN XXXXX
 Documented CatEx (DCE)

Moving Ahead for Progress in the 21st Century Act (MAP-21)

- On July 6, 2012, President Obama signed into law MAP -21, which contains new requirements that the FHWA must meet related to NEPA.
 - The areas where changes occurred that will focused on are:
 - **23 CFR Section 771.117(c) “c-list”**
 - **23 CFR Section 771.117(d) “d-list”**

MAP 21 Changes

- MAP 21 - 1318(b) would allow moving 3 actions that are currently in 771.117(d)(1) through (3) to paragraph 771.117(c).
- MAP 21 – 1318(d) also allows opportunities to enter into programmatic agreements, including agreements that would allow a State to determine, on behalf of FHWA, whether a project is categorically excluded.

1318(b): Moving 771.117(d)(1) through (3) to paragraph 771.117(c).

- 1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g. parking, weaving, turning, climbing). (c)26
- 2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting. (c)27
- 3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings. (c)28

2 New CEs Effective 2/12/14

- The new CEs were required by Sections 1316 and 1317 in MAP-21.
 1. 23 CFR 771.117(c)(22) Projects which take place entirely within the existing operational right-of-way.
 2. 23 CFR 771.117(c)(23) Projects receiving limited federal funding.
- ❖ 23 CFR 1323(b) New Reporting Requirement
- http://www.dot.ca.gov/ser/downloads/guidance/new_ce_factsheet.pdf

How are changes viewed by other agencies?

- USACE Nationwide Permit 23 – the Clean Water Act section 404 Nationwide Permit for actions that qualify for CEs approved by the USACE.
 - The Agencies agree that until the USACE approves the new CEs for use under NWP 23, the CEs could not be used to meet NWP 23 and a different NWP or an Individual Permit application would be needed.
 - <https://www.federalregister.gov/articles/2014/10/06/2014-23660/environmental-impact-and-related-procedures-programmatic-agreements-and-additional-categorical#h-11>

**What do these changes mean for
NDDOT Projects?**

Questions?

Contact Information:

Kristen Sperry

Environmental Scientist - NDDOT

(701)328-3704

ksperry@nd.gov