

# FHWA - Project Development Resources

**Endangered Species Act  
Section 7 Consultation Process  
for FHWA-funded Projects in North Carolina  
(Final Version 8.7.07)**

- Q) When does Section 7 of ESA apply?
- A) When the project has a federal nexus
  
- Q) Who is FHWA's designated non-federal representative in NC?
- A) NCDOT
  
- Q) What are BC options for ESA analysis?
- A) NE, MANLAA, & MALAA

## Section 7 Q&A

- Q) What type of effect is ok for NE?
- A) None
  
- Q) What species effects are MANLAA?
- A) Insignificant, Discountable, Beneficial
  
- Q) What are aspects of species life-cycle?
- A) breeding, feeding, shelter

## Section 7 Q&A Con't

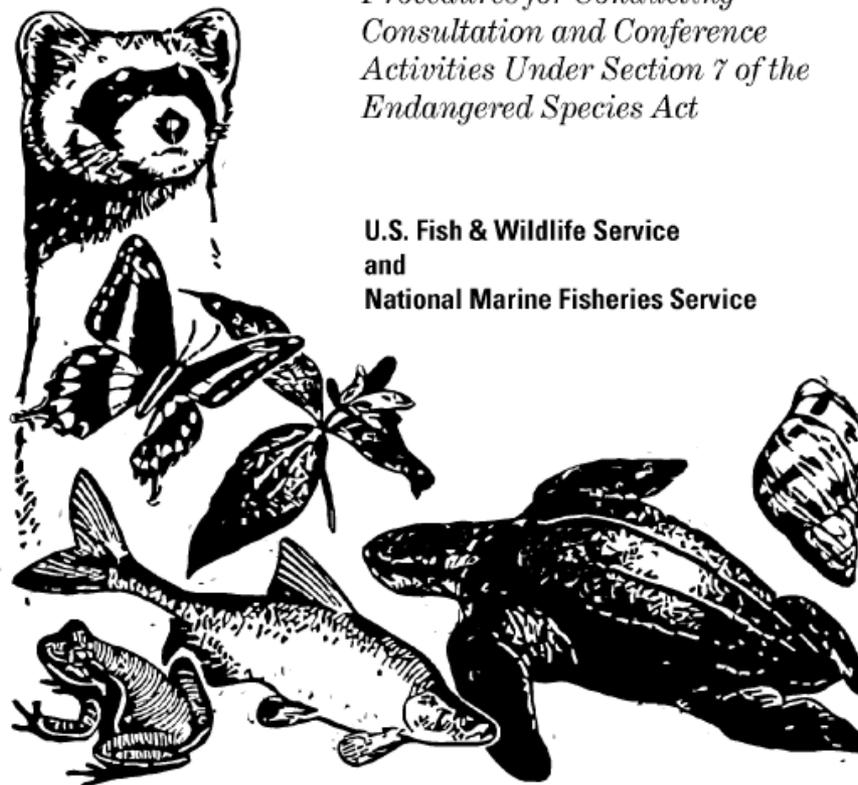
*Endangered Species*



# Consultation Handbook

*Procedures for Conducting  
Consultation and Conference  
Activities Under Section 7 of the  
Endangered Species Act*

**U.S. Fish & Wildlife Service  
and  
National Marine Fisheries Service**

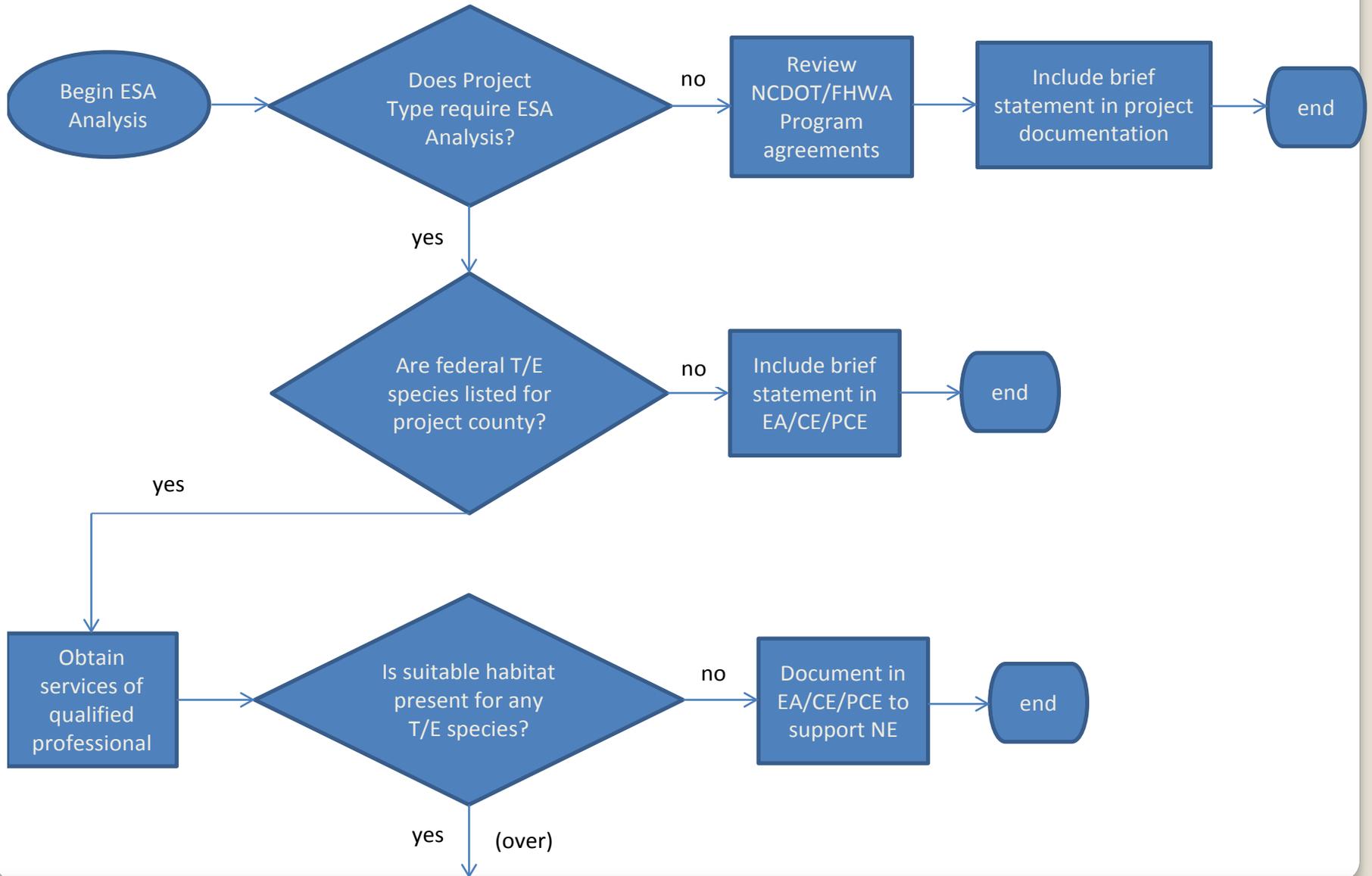


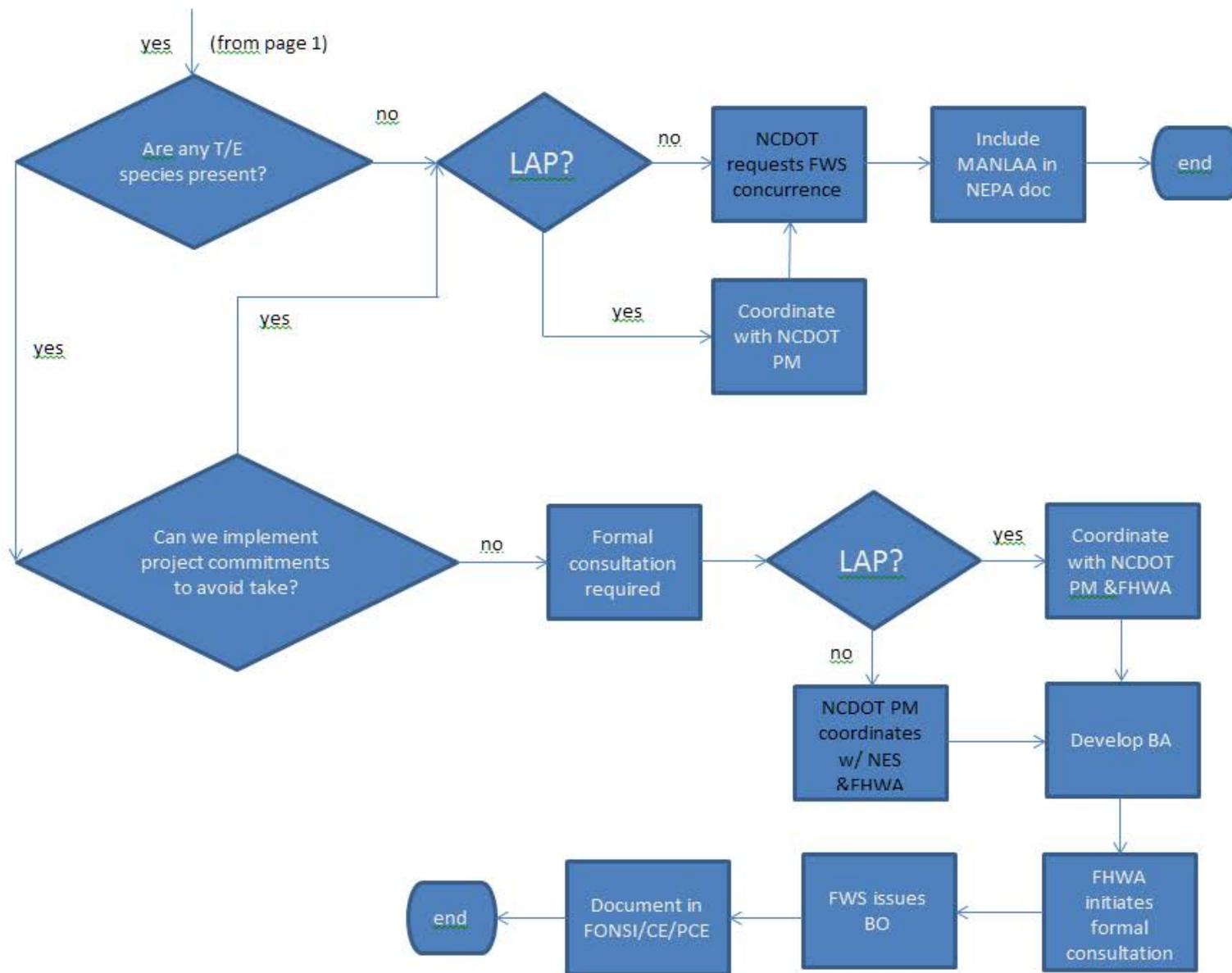
**March 1998  
Final**

- Q) Does a NE require FWS concurrence?
- A) No
  
- Q) Who is authorized to request concurrence for FHWA projects in NC?
- A) NCDOT
  
- Q) Who is required to initiate formal consultation?
- A) Federal action agency

## Section 7 Q&A Con't

# Section 7 Flow-chart





# AASHTO PRACTITIONER'S HANDBOOK

# 06

February 2007

## CONSULTING UNDER SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

This Handbook provides recommendations for complying with Section 106 of the National Historic Preservation Act during the environmental review process for transportation projects.

Issues covered in this Handbook include:

- Preparing for Section 106 consultation
- Defining an area of potential effects (APE)
- Inviting consulting parties
- Evaluating eligibility for the National Register of Historic Places
- Determining adverse effects
- Resolving adverse effects
- Developing memoranda of agreement (MOAs) and programmatic agreements (PAs)
- Using alternative procedures to satisfy Section 106 requirements

- 
- Section 106 PA executed in 2000
  - Minor Transportation Projects 106 PA (recently amended)
  - Exempt activities list (included in minor trans projects PA)
  - AASHTO Practitioner's Handbook

## **Section 106 Resources**

PROGRAMMATIC AGREEMENT

AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
FOR ADMINISTRATION OF THE FEDERAL AID HIGHWAY PROGRAM

WHEREAS, the Federal Highway Administration (FHWA) provides funding for various highway projects administered throughout the state of North Carolina by the North Carolina Department of Transportation (NCDOT) as authorized by 23 USC 771; and

WHEREAS, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and its implementing regulations (36 CFR Part 800, as amended); and

WHEREAS, FHWA has determined that implementation of the federal aid highway program may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the North Carolina State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR § 800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act; and

WHEREAS, the NCDOT employs qualified professional staff and consultants capable of completing many of the steps of the Section 106 review process on behalf of FHWA, and has a considerable record of successful compliance with Section 106; and

**AMENDED PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,  
FOR  
**MINOR TRANSPORTATION PROJECTS** IN NORTH CAROLINA**

**WHEREAS**, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in North Carolina, authorized by (23 U.S.C. 101 et seq.), through the North Carolina Department of Transportation (NCDOT) (23 U.S.C. 315); and,

**WHEREAS**, the Division Administrator, FHWA, is the “Agency Official” responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 USC 300101 et seq.) and its implementing regulations ( 36 CFR Part 800, as amended) for Federal Aid Highway Programs; and

**WHEREAS**, the FHWA and NCDOT desire to streamline consultation for Section 106 of the NHPA on Federally funded and/or permitted minor transportation projects in North Carolina that may affect properties included in or eligible for inclusion in the National Register of Historic Places (“historic properties”); and

**WHEREAS**, FHWA and NCDOT have consulted with the North Carolina State Historic Preservation Officer (SHPO), including the Office of State Archaeology (OSA), and the Advisory Council on Historic Preservation (ACHP) to develop and execute this Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b) to establish an efficient and effective program alternative for taking into account the effects of minor transportation projects on historic properties in North Carolina and afford the ACHP a reasonable opportunity to comment on undertakings covered by the PA; and

**WHEREAS**, FHWA, Council, SHPO, and NCDOT executed a PA for Administration of the Federal Aid Highway Program on March 20, 2000 (Federal Aid Highway PA) that allows NCDOT’s qualified Cultural Resource Specialists (CR Specialists) to perform the work and consultation with the SHPO described in specific sections of 36 CRF 800.3 through 800.5 on behalf of the FHWA; and

**WHEREAS**, the Section 106 Federal Aid Highway PA (signed in 2000 and included in Appendix D) remains in force for FHWA undertakings, except for those defined herein as minor transportation projects; and

**WHEREAS**, the US Army Corps of Engineers (USACE), Tennessee Valley Authority (TVA), United States Forest Service (USFS), United States Coast Guard (USCG), and National Park Service (NPS), may manage Federal lands affected by or be responsible for issuing permits or licenses related to the construction of minor transportation projects by NCDOT, and have been invited to participate in the development of and to be a concurring party to this PA; and

**WHEREAS**, FHWA notified the Eastern Band of the Cherokee Indians, the Cherokee Nation of Oklahoma, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Catawba Indian Nation, and the Tuscarora Nation, and these tribes have been invited to participate in the development of and to be a concurring party to this PA; and

**WHEREAS**, the definitions contained in 36 CFR 800.16 shall be used in this PA; and

**WHEREAS**, NCDOT has a staff of CR Specialists and employs consultants, who meet the professional qualifications defined in the *Secretary of the Interior's Professional Qualifications Standards* at 36 CFR Part 61; and 48 FR 44716 in the fields of archaeology, architectural history, or historical architecture, to carry out NCDOT's historic preservation programs and responsibilities; and

**WHEREAS**, this PA applies to projects administered directly by NCDOT, not to projects administered by a sub-recipient of federal-aid highway funds, commonly referred to as locally-administered projects (LAP); and

**WHEREAS**, NCDOT and SHPO agree that NCDOT may use the provisions of this PA to address the applicable requirements of North Carolina General Statute (NCGS) 121-12(a) for minor transportation projects;

**NOW THEREFORE**, FHWA NCDOT, ACHP, AND SHPO agree that minor transportation projects are defined as Federal or state transportation projects that qualify as **Categorical Exclusions and Environmental Assessments** under the National Environmental Policy Act (NEPA), as defined in 23 CFR 771, and by the FHWA (NC Division), or the state equivalent (State Environmental Policy Act, SEPA), as defined in NCGS 113A-1 et seq. and 19A NCAC 02F.0102; and

FHWA, NCDOT, ACHP, and SHPO agree that minor transportation projects carried out by NCDOT with Federal-aid funding and/or requiring Federal permits shall be administered in accordance with the following stipulations to ensure that all federal responsibilities under Section 106 of NHPA are implemented; and as agreed to between the NCDOT and SHPO, all state responsibilities under NCGS 121-12(a) are implemented.

The activities in Appendix C are exempted from further review, provided the undertaking meets all of the following conditions:

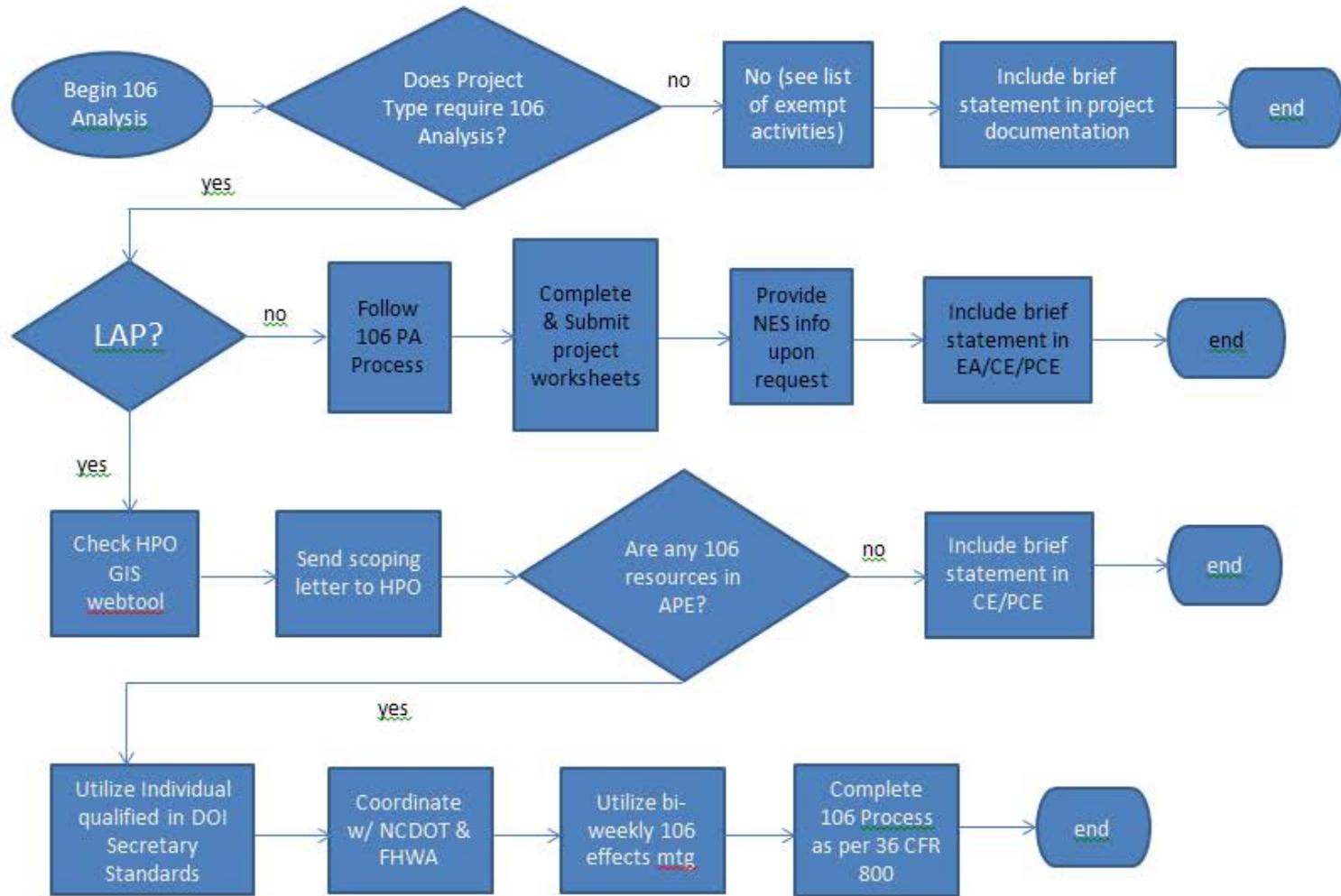
- is limited to the activities specified;
- is not part of a larger undertaking;
- is not questioned by the owner of a historic property;
- has no known public controversy based on historic preservation issues; and
- is classified as a "categorical exclusion" (or state-equivalent) project.

#### EXEMPT ACTIVITIES

- Mowing, seeding/reseeding, and other ground cover maintenance activities;
- Installation or replacement/repair of fixed static signs, interconnection devices, surveillance cameras, closed circuit TV and other minor incident management devices, railroad warning devices, and improved rail crossing surfaces;
- In-kind replacement, reconstruction, or ordinary repair or modification of existing lighting, guardrails, modern fencing, traffic signals, curbs and gutters, sidewalks, and variable message signs;
- Activities that do not involve construction or ground disturbance, such as preliminary engineering, training, technical studies, non-invasive inspections, and educational programs;
- Overlay, milling, grooving, repairing (concrete or asphalt patching or slurry seal), striping, or resurfacing of existing ramp, roadway, and parking lot surfaces where there will be no new impacts outside an existing facility; rumble strips, loop detectors, pavement markings (normal and raised), and snow and ice detectors to the same;
- Activities within the existing disturbed median, including installation of new or replacement median barriers or guard rail;
- Modernization of an existing transportation facility by widening less than a travel lane or adding lanes, provided such widening does not extend beyond the limits of existing improved right-of-way (includes shoulder additions to roadways, bridge approaches, turn lanes within the existing improved facility);
- Correcting substandard roadway geometrics and intersections (i.e., spot improvements), provided such corrections do not extend beyond the limits of existing improved right-of-way;
- Minor bridge rehabilitation, bridge rails, or substructure alterations where the work is confined to the bridge itself, and
  - a. the bridge is no older than 45 years at the date of NCDOT's project review, or
  - b. the bridge has been determined ineligible for the National Register of Historic Places;
- Minor safety related drainage improvements, including but not limited to: installation, replacement or removal of culverts and headwalls; installation, replacement and extensions of pipes; and addition of pipe end sections;
- Routine cleaning, maintenance and repair of existing drainage, stormwater management, and water quality facilities and devices, not including projects that seek to expand or extend such facilities;

Replacement/Installation of existing and proposed utilities in-kind and within existing footprint

# 106 Flow-chart



Documentation Requirements and Approval Procedures  
of Federal-Aid Projects Classified as Categorical Exclusions

US Department of Transportation  
Federal Highway Administration

And

North Carolina Department of Transportation

Approved:

April 11, 2003  
Date

Calvin W. Leggett  
Calvin Leggett, PE, Manager  
Program Development Branch, NCDOT

10 Apr 03  
Date

Gregory J. Thorpe  
Gregory J. Thorpe, PhD, Manager  
Project Development & Environmental Analysis Branch, NCDOT

April 15, 2003  
Date

Donald J. Voelker  
Donald J. Voelker  
Acting Division Administrator, FHWA

G. CE Approval

TIP Project No. \_\_\_\_\_  
State Project No. \_\_\_\_\_  
Federal-Aid Project No. \_\_\_\_\_

Project Description: (Include project scope and location. Attach location map.)

Categorical Exclusion Action Classification: (Check one)

\_\_\_\_\_ TYPE II(A)  
\_\_\_\_\_ TYPE II(B)

Approved:

\_\_\_\_\_ Date \_\_\_\_\_ Assistant Manager  
Planning & Environmental Branch

\_\_\_\_\_ Date \_\_\_\_\_ Project Planning Unit Head  
Planning & Environmental Branch

\_\_\_\_\_ Date \_\_\_\_\_ Project Planning Engineer  
Planning & Environmental Branch

For Type II(B) projects only:

\_\_\_\_\_ Date \_\_\_\_\_ Division Administrator  
Federal Highway Administration

NCDOT PROGRAMMATIC CATEGORICAL EXCLUSION (PCE)  
ACTION CLASSIFICATION FORM

G. PCE Approval



TIP Project No. \_\_\_\_\_  
WBS Element \_\_\_\_\_  
Federal-Aid Project No. \_\_\_\_\_

Project Description: (Repeat all information from Page 1)

\_\_\_\_\_

Categorical Exclusion Action Classification: (Check one)

<input type="checkbox"/>	TYPE I (A)	NO BOXES Checked	} refer to Section E
<input type="checkbox"/>	TYPE I (B)	ANY BOX Checked	
<input type="checkbox"/>	TYPE II(A)	NO BOXES Checked	}
<input type="checkbox"/>	TYPE II(B)	ANY BOX is Checked	

**Prepared By:**

\_\_\_\_\_  
Date Name, Title  
\_\_\_\_\_  
Company/Agency, Telephone #

NOTE: Form needs to be completed by either a Professional Engineer (PE),  
Biologist, Planner, or AICP

**Prepared For:**

\_\_\_\_\_  
Local Government Agency

**Reviewed:**

\_\_\_\_\_  
Date Project Dev. Unit Head / Division Representative  
NCDOT PDEA / NCDOT Division \_\_\_\_\_

NOTE: NCDOT Review may occur at either PDEA or the Division Office.  
Mark through non-applicable position.

**Approved: For Type I(B) or II(B) projects only:**

\_\_\_\_\_  
Date Division Administrator  
Federal Highway Administration

- 
- 2010 agreement btw NCDOT & FHWA
  - Pre-approves LIBR as CE
  - NCDOT Divisions evaluate thresholds to confirm class of action
  - NCDOT developed LIBR manual in 2010
  - Low impact data sheet serves as PCE

**LIBR – Division managed**

# **Low Impact Bridge Replacement**

**January 2010**



**North Carolina Department of Transportation**

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

1/8/2010

Date



John F. Sullivan, III, PE  
Division Administrator

## Attachment G: Low/Minimal Impact Bridge Project Data Sheet

1	TIP NO	B-	B-	B-	B-
2	WBS Element No.				
3	County				
4	Bridge Number				
5	Description				
6	Stream	Basin			
7		Classification			
8		SIN			
9		Type			
10		Size			
11	Existing Structure	Type			
12		Size			
13		Suff. Rating			
14	Proposed Structure	Type			
15		Size			
16	Stream	USACE (LF)			
17		NCDVQ Impacts (LF)			
18	Wetlands	USACE Impacts (AC)			
19		Non 404 Impacts (AC)			
20		CAMA Impacts (SF)			
21	NCDVQ Buffers Impacts (SF)				
22	Buffer Application Required (Y/N)				
23	State Stormwater Permit Required (Y/N)				
24	T&E	Habitat			
25		Species Present			
26		Bio Conclusion			
27	Moratorium	Type			
28		Dates			
29	Trout Waters	Native/Hatchery			
30		Trout Species Present			
31		Trout Conditions (Y/N)			
32		WRC Reviewer			
33	CAMA AECs				
34	Essential Fish Habitat				
35	Nav. Opening				
36	USCG Permit				
37	Historic Properties				
38	Archaeological Resources				
39	Tribal Lands				
40	4(f) Resources				
41	6(f) (LVVCF) Resources				
42	Wild and Scenic River				
43	Federal Lands				
44	TVA Area				
45	FEMA Buyout				
46	FEMA Flood Study				
47	USTs Haz Mats				
48	Relocates				
49	Location	LAT			
50		LONG			
51	Project Comments				
Completed by:				Date:	
Lead Engineer					
				Date:	
Division Environmental Officer					

- 
- 2010 agreement btw NCDOT & FHWA
  - Eligibility Requirements for NCDOT IMPP
  - NEPA Requirements for NCDOT IMPP
  - Pre-approves IMPP as CE
  - IMPP Environmental Documentation checklist used to confirm class of action

## **Interstate Maintenance Preservation Program**

Federal Highway Administration's Eligibility Requirements for  
North Carolina Department of Transportation's  
Interstate Maintenance Preservation Program



December 1, 2010

Date

A handwritten signature in black ink, appearing to read "John F. Sullivan, III".

John F. Sullivan, III, PE

Division Administrator

Federal Highway Administration's National Environmental Policy  
Act Requirements for North Carolina Department of  
Transportation's Interstate Maintenance Preservation Program



December 1, 2010  
Date

John F. Sullivan, III  
John F. Sullivan, III, PE  
Division Administrator

North Carolina Department of Transportation  
Interstate Maintenance Preservation Program  
Environmental Documentation Checklist

Description of the proposed IMPP project:

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<p>1. Are you using Federal-Aid Highway Funds for this project?</p> <p><b>Are you using Federal-Aid Highway Funds for this project?</b></p> <ul style="list-style-type: none"><li>• If "yes", go to #2.</li><li>• If "no", do not use "<i>Federal Highway Administration's National Environmental Policy Act Requirements for North Carolina Department of Transportation's Interstate Maintenance Preservation Program (December 1, 2010)</i>".</li></ul>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<p>2. Is your proposed activity eligible for the Interstate Maintenance Preservation Program?</p> <p><b>Is your proposed activity eligible for the Interstate Maintenance Preservation Program?</b></p> <ul style="list-style-type: none"><li>• If "yes", go to #3.</li><li>• If "no", do not use "<i>Federal Highway Administration's National Environmental Policy Act Requirements for North Carolina Department of Transportation's Interstate Maintenance Preservation Program (December 1, 2010)</i>".</li></ul>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<p>3. Are there any unusual circumstances regarding your proposed activity?</p> <p><b>Are there any unusual circumstances regarding your proposed activity?</b></p> <ul style="list-style-type: none"><li>• If "yes", consult with FHWA.</li><li>• If "no", you may use "<i>Federal Highway Administration's National Environmental Policy Act Requirements for North Carolina Department of Transportation's Interstate Maintenance Preservation Program (December 1, 2010)</i>". Document to the project file that you have verified that your project is excluded from having to prepare an Environmental Impact Statement in accordance with "<i>Federal Highway Administration's National Environmental Policy Act Requirements for North Carolina Department of Transportation's Interstate Maintenance Preservation Program (December 1, 2010)</i>".</li></ul>	Yes <input type="checkbox"/> No <input type="checkbox"/>

Prepared by: \_\_\_\_\_ Date \_\_\_\_\_  
Division Environmental Officer

Approved by: \_\_\_\_\_ Date \_\_\_\_\_  
Division Engineer

- 
- 2008 agreement btwn FHWA & NCDOT
  - NEPA & other federal environmental laws
  - No specific checklist developed
  - Certain SRTS activities included
  - Preapproves included activities as CE

**Safe Routes to School**

**Administrative Action**  
**Programmatic Categorical Exclusion**  
 (Pursuant to the National Environmental Policy Act (42 USC 4332(2)(c)))  
 and  
**Documentation of Compliance with other Federal Environmental Laws**  
 For the  
**Safe Routes to School Program**

**US Department of Transportation, Federal Highway Administration**  
 and  
**North Carolina Department of Transportation**

**(Final Version)**



7.22.08  
Date

John F. Sullivan, III, PE  
for John F. Sullivan, III, PE  
Division Administrator

July 21 2008  
Date

Leza Wright Mundt  
Leza Wright Mundt, AICP  
NCDOT Safe Routes to School Coordinator

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- LIBR manual -  
<http://www.ncdot.gov/download/projects/ncbridges/lowimpactbridge/finalmanual.pdf>
  - FHWA NC – Interstate Maintenance Preservation Program NEPA requirements & FHWA NC Eligibility Requirements for NCDOT Interstate Maintenance Preservation Program -  
<https://connect.ncdot.gov/resources/Asset-Management/Pages/Interstate%20Maintenance%20Preservation.aspx>
  - FHWA NC & NCDOT PCE for the Safe Routes to School Program document
  - Section 106 Minor Transportation Projects PA implementation manual & exempt activities -  
<https://connect.ncdot.gov/resources/Environmental/PDEA%20Procedures%20Manual%20Documents/Programmatic%20Agreement%20-%20Categorical%20Exclusions.pdf>
  - NCDOT LPA website with link to PCE Checklist -  
<https://connect.ncdot.gov/municipalities/funding/Pages/default.aspx>
  - Documentation Requirements and Approval Procedures of Federal-Aid Projects Classified as Categorical Exclusions document (2003)
  - Endangered Species Act Section 7 Consultation Process for FHWA-funded Projects in NC
  - USFWS Endangered Species Consultation Handbook  
[http://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf)

## Resources