



NORTH CAROLINA
Department of Transportation

Common Oversights in LAP Environmental Reviews

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Locally Administered Projects Training Part 2 September 11, 2024

Connecting people, products and places safely and efficiently with customer focus, accountability and environmental sensitivity to enhance the economy and vitality of North Carolina

Type I and II CE Checklist

Type I and II CE Checklist Section E

E. Special Project Information:

Jurisdictional Features: No jurisdictional streams, wetlands, or water supply watersheds were identified in the project study area, as noted in the *Environmental Screening Report* (November 2021).

Riparian Buffers: This project is located in the Yadkin – Pee Dee River Basin. However, no stream associated buffers were identified in the project study area or within 50 feet of the project limits, as noted in the *Natural Resources Technical Memo* (November 2021).

Floodplain Management: There are no Federal Emergency Management Agency (FEMA)-regulated floodways or floodplains within the project study area.

Federally Protected Species: As noted in the *Natural Resources Technical Memo* (November 2021) US Fish and Wildlife Service (USFWS) Information for Planning and Consulting (IPaC) tool lists species that are known to occur within the project area. **Table 1** shows these three listed, proposed for listing, species and federal status of each of these species and the Bald eagle, subject to the Bald and Golden Eagle Protection Act. The NC Natural Heritage Program (NCNHP) element occurs

database (updated October 2021) was reviewed and indicated that there are no known occurrences of any federally protected species within one mile of the project study area.

Table 1. Federally Listed Species Known to Occur within the Project Vicinity

Species	Common Name	Federal Status	Habitat Present	Biological Conclusion
<i>Haliaeetus leucocephalus</i>	Bald eagle	BGPA	No	No Effect
<i>Clemmys muhlenbergii</i>	Bog turtle	T (S/A)	No	Not Required
<i>Myotis septentrionalis</i>	Northern long-eared bat	T	Yes	MANLA
<i>Helianthus schweinitzii</i>	Schweinitz's sunflower	E	Yes	No Effect

BGPA – Bald and Golden Eagle Protection Act, E – Endangered, MANLA – May Affect, Not Likely to Adversely Affect, T – Threatened, T (S/A) – Threatened due to similarity of appearance.

Potentially suitable habitat for Schweinitz's sunflower is present along roadsides and associated maintained rights-of-way and along the edges of forested areas, residential and commercial lot agriculture fields within the project corridor. Although these areas provide potentially suitable habitat, the regular mowing maintenance schedule and herbicide application within these areas would inhibit the plant's success. Additionally, forested edges within the project corridor were overgrown with invasive plant species. Kimley-Horn biologists conducted pedestrian surveys on October 12, 2021, Schweinitz's sunflower within areas of suitable habitat in the project corridor, and no individuals were observed.

Potentially suitable summer roosting habitat for the northern long eared bat (NLEB) may be present within forested areas and structures in the project corridor. The Final 4(d) rule (effective as of February 16, 2016) exempts incidental take of NLEB associated with activities that occur greater than 0.25 miles from a known hibernation site, and greater than 150 feet from a known, occupied maternity roost during the pup season (June 1 – July 31). Kimley-Horn conducted a review of the most current confirmed/known hibernacula and maternity sites for the NLEB (http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html). The action area for this project is located outside of any county in North Carolina with watersheds with known NLEB maternity roost hibernation sites (the highlighted areas/red 12-digit HUICs). In addition, a review of the NCNHP database records (updated October 2021) indicates no known NLEB occurrences in or within 1.0 mile project corridor. There will be no blasting, pile driving, or other percussive activities associated with construction of the project; however, tree-cutting/removal is anticipated. Based on the review proposed activities in the action area occur at a location where any incidental take that may result from the associated activities is exempt under the Final 4(d) rule; therefore, the biological conclusion of "Affect, Not Likely to Adversely Affect" has been rendered for NLEB for this project.

A desktop-GIS assessment of the project study area, as well as the area within a 1.13-mile radius (mile plus 660 feet) of the project limits for bald eagle habitat, was performed in October 2021 using color aerials. Multiple water bodies large enough or sufficiently open to be considered potential foraging sources were identified. Foraging habitat is present within the forested areas in the project corridor; therefore, a survey of the project corridor and area within 660 feet of the project limits was conducted on October 12, 2021. No bald eagle nests or individuals were observed. Additionally, a review of NCNHP database records (updated July 2021) indicates that there are no known occurrences of bald eagle within one mile of the project study area. Due to the lack of known occurrences and the lack of observed individuals or nests, it has been determined that the project would have "No Effect" on bald eagle.

Cultural Resources: A tribal coordination letter was sent to the Catawba Indian Nation on October 2021. A response was received from the Catawba Indian Nation dated November 16, 2021 which stated the Catawba have no immediate concerns with regard to traditional cultural properties, sacred sites

Native American archaeological sites within the project area. However, the Catawba requested that they be notified if Native American artifacts or human remains are located during the ground disturbance phase of this project.

A scoping letter response from the NC State Historic Preservation Office (SHPO) that was signed on November 12, 2021 indicated their office had "no comment" regarding historic and archaeological resources. Section 106 findings and tribal coordination are summarized in the *Cultural Resources Memo* (May 2022).

Community Resources: No community resources are present within the project study area. The area is primarily rural residential and commercial in nature. Therefore, no impacts to community resources are anticipated, as noted in the *Direct and Indirect Screening Tool* memo (January 2022).

Indirect and Cumulative Effects: The project would not notably alter travel patterns, reduce travel time, affect vehicular access to properties in the area, or open areas for development or redevelopment. Due to its minimal transportation impact-causing activities, this project would neither influence nearby land uses nor stimulate growth anticipated as documented in the *Direct and Indirect Screening Tool* (January 2022). Therefore, a detailed indirect and cumulative effects study would not be necessary.

Environmental Justice and Limited English Proficiency: Census data does not indicate a notable presence of populations meeting the criteria for Environmental Justice (EJ) within the Census Block Groups that intersect the project study area. No notably adverse community impacts are anticipated with this project and no EJ populations appear to be affected; thus, impacts to minority and low-income populations do not appear to be disproportionately high and adverse. Benefits and burdens resulting from this project are anticipated to be equitably distributed throughout the community, and no denial of benefit is expected. No disparate impacts are anticipated under Title VI and related statutes.

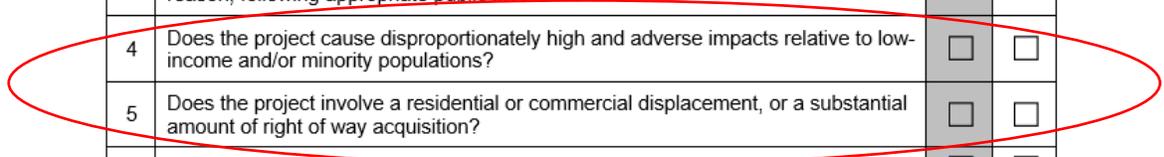
Hazardous Materials: A search of hazardous material databases was conducted using the North Carolina Department of Environmental Quality (NCDEQ) Division of Waste Management's Site Locator Tool to identify potential contaminated sites within the study area. Two properties with underground storage tank (UST) incidents were identified in or adjacent to the project study area. Three underground storage tanks (USTs) incidents are located at 6475 Robinhood Road within the project area. All three USTs were removed on August 6, 1992 after reports of leaking. Two USTs contained gasoline and one UST contained kerosene. Soil and groundwater testing completed in 1995 and 1996 did not find contamination levels exceeding EPA thresholds. A UST incident was also noted at 1320 Lewisville-Vienna Road and the property was issued No Further Action in 2017. GeoEnvironmental findings are summarized in the *Hazardous Materials Memo* (May 2021).

Public Involvement: A virtual local officials informational meeting and a public meeting were held March 16, 2022. Eleven members of the public were in attendance. Verbal comments during the public meeting were generally in support of the project and related to schedule and the right-of-way process. No written comments were received during the comment period, which ended March 31, 2022.

Summarize project relevant information, not just duplicating what's in section F

Type I and II CE Checklist Section F Questions 1-7: 'Threshold Questions'

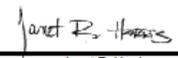
F2. Ground Disturbing Actions – Type I (Appendix A) & Type II (Appendix B)			
<p>Proposed improvement(s) that fit Type I Actions (NCDOT-FHWA CE Programmatic Agreement, Appendix A) including 2, 3, 6, 7, 9, 12, 18, 21, 22 (ground disturbing), 23, 24, 25, 26, 27, 28, &/or 30; &/or Type II Actions (NCDOT-FHWA CE Programmatic Agreement, Appendix B) answer the project impact threshold questions (below) and questions 8 – 31.</p> <ul style="list-style-type: none"> If any question 1-7 is checked "Yes" then NCDOT certification for FHWA approval is required. If any question 1-31 is checked "Yes" then additional information will be required for those questions in Section G. 			
PROJECT IMPACT THRESHOLDS (FHWA signature required if any of the questions 1-7 are marked "Yes".)		Yes	No
1	Does the project require formal consultation with U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS)?	<input type="checkbox"/>	<input type="checkbox"/>
2	Does the project result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act (BGEPA)?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does the project generate substantial controversy or public opposition, for any reason, following appropriate public involvement?	<input type="checkbox"/>	<input type="checkbox"/>
4	Does the project cause disproportionately high and adverse impacts relative to low-income and/or minority populations?	<input type="checkbox"/>	<input type="checkbox"/>
5	Does the project involve a residential or commercial displacement, or a substantial amount of right of way acquisition?	<input type="checkbox"/>	<input type="checkbox"/>
6	Does the project require an Individual Section 4(f) approval?	<input type="checkbox"/>	<input type="checkbox"/>
7	Does the project include adverse effects that cannot be resolved with a Memorandum of Agreement (MOA) under Section 106 of the National Historic Preservation Act (NHPA) or have an adverse effect on a National Historic Landmark (NHL)?	<input type="checkbox"/>	<input type="checkbox"/>



Required Documentation for Relocations

EIS Relocation Report (FRM15-E)

-Documents relocations of low income and minority populations.

EIS RELOCATION REPORT									
North Carolina Department of Transportation RELOCATION ASSISTANCE PROGRAM									
<input checked="" type="checkbox"/> E.I.S. <input type="checkbox"/> CORRIDOR <input type="checkbox"/> DESIGN									
WBS ELEMENT:	50478.1.1	COUNTY:	Forsyth	Alternate	of	Alternate			
T.I.P. No.:	HL-0059								
DESCRIPTION OF PROJECT:	NC 8 (Germanton Rd) at SR 1686 (Oak Summit Rd) intersection Construct turn lanes and signal improvements								
ESTIMATED DISPLACEDS (% MINORITY = 47)*					INCOME LEVEL				
Type of Displacees	Owners	Tenants	Total	Minorities	0-15K	15-25K	25-35K	35-50K	50K UP
Residential	2	2	4	2	0	0	2	2	0
Businesses	0	1	1	0	VALUE OF DWELLING			DSS DWELLING AVAILABLE	
Farms	0	0	0	0	Owners	Tenant Rent	For Sale	For Rent	
Non-Profit	0	0	0	0	0-100K	\$ 0-250	0-100K	2	\$ 0-250
ANSWER ALL QUESTIONS					100-200K	2	250-500	100-200K	21
					200-300K		500-1000	2	300-400K
Yes	No	Explain all "YES" answers.			300-400K		1000-1500	30	1000-1500
	X	1. Will special relocation services be necessary?			400K UP		1500 UP	30	1500 UP
	X	2. Will schools or churches be affected by displacement?			TOTAL	2	2	129	157
X		3. Will business services still be available after project?			REMARKS (Respond by number)				
X		4. Will any business be displaced? If so, indicate size, type, estimated number of employees, minorities, etc.			*% Minority is based on Census data - Please provide Census data for the area				
	X	5. Will relocation cause a housing shortage?			3. Business services will still be available after the project				
	X	6. Source for available housing (list).			4. McCullough Tile, 1SF&M Business, 14,040sqft, 10 employees, minority employees (yes), - displacement determination depends on whether there will be septic impacts				
	X	7. Will additional housing programs be needed?			6. Zillow.com; Trulia.com; Realtor.com, web-based housing sites, newspaper, realtors, MLS				
X		8. Should Last Resort Housing be considered?			8. Last Resort Housing will be available as mandated by law and the URA				
	X	9. Are there large, disabled, elderly, etc. families?			11. Public housing is available				
	X	10. Will public housing be needed for project?			12. DSS housing is available or can be built if necessary				
X		11. Is public housing available?			14. Zillow.com; Trulia.com; Realtor.com, web-based housing sites, newspaper, realtors, MLS				
X		12. Is it felt there will be adequate DSS housing available during relocation period?							
	X	13. Will there be a problem of housing within financial means?							
X		14. Are suitable business sites available (list source).							
		15. Number months estimated to complete RELOCATION? 12 Months							
 Janet R. Harris Division Right of Way Agent				9-29-2023 Date		 Chris Coughlin Relocation Director			
				09/29/2023 Date					

FRM15-E
Revised 4/13/22

Documentation for yes answers on the Type I and II CE Checklist Section F Questions 8-31: 'Other Considerations'

Other Considerations		Yes	No
8	Is an Endangered Species Act (ESA) determination unresolved or is the project covered by a Programmatic Agreement under Section 7?	<input type="checkbox"/>	<input type="checkbox"/>
9	Is the project located in anadromous fish spawning waters?	<input type="checkbox"/>	<input type="checkbox"/>
10	Does the project impact waters classified as Outstanding Resource Water (ORW), High Quality Water (HQW), Water Supply Watershed Critical Areas, 303(d) listed impaired water bodies, buffer rules, or Submerged Aquatic Vegetation (SAV)?	<input type="checkbox"/>	<input type="checkbox"/>
11	Does the project impact Waters of the United States in any of the designated mountain trout streams?	<input type="checkbox"/>	<input type="checkbox"/>
12	Does the project require a U.S. Army Corps of Engineers (USACE) Individual Section 404 Permit?	<input type="checkbox"/>	<input type="checkbox"/>
13	Will the project require an easement from a Federal Energy Regulatory Commission (FERC) licensed facility?	<input type="checkbox"/>	<input type="checkbox"/>

These are more likely for LAPs, so we delve a bit deeper.

Other Considerations for Type I and II Ground Disturbing Actions (continued)		Yes	No
14	Does the project include a Section 106 of the National Historic Preservation Act (NHPA) effects determination other than a No Effect, including archaeological remains?	<input type="checkbox"/>	<input type="checkbox"/>
15	Does the project involve GeoEnvironmental Sites of Concerns such as gas stations, dry cleaners, landfills, etc.?	<input type="checkbox"/>	<input type="checkbox"/>
16	Does the project require work encroaching and adversely affecting a regulatory floodway or work affecting the base floodplain (100-year flood) elevations of a water course or lake, pursuant to Executive Order 11988 and 23 CFR 650 subpart A?	<input type="checkbox"/>	<input type="checkbox"/>
17	Is the project in a Coastal Area Management Act (CAMA) county and substantially affects the coastal zone and/or any Area of Environmental Concern (AEC)?	<input type="checkbox"/>	<input type="checkbox"/>
18	Does the project require a U.S. Coast Guard (USCG) permit?	<input type="checkbox"/>	<input type="checkbox"/>
19	Does the project involve construction activities in, across, or adjacent to a designated Wild and Scenic River present within the project area?	<input type="checkbox"/>	<input type="checkbox"/>
20	Does the project involve Coastal Barrier Resources Act (CBRA) resources?	<input type="checkbox"/>	<input type="checkbox"/>
21	Does the project impact federal lands (e.g. U.S. Forest Service (USFS), USFWS, etc.) or Tribal Lands?	<input type="checkbox"/>	<input type="checkbox"/>
22	Does the project involve any changes in access control or the modification or construction of an interchange on an interstate?	<input type="checkbox"/>	<input type="checkbox"/>
23	Does the project have a permanent adverse effect on local traffic patterns or community cohesiveness?	<input type="checkbox"/>	<input type="checkbox"/>
24	Will maintenance of traffic cause substantial disruption?	<input type="checkbox"/>	<input type="checkbox"/>
25	Is the project inconsistent with the STIP, and where applicable, the Metropolitan Planning Organization's (MPO's) Transportation Improvement Program (TIP)?	<input type="checkbox"/>	<input type="checkbox"/>
26	Does the project require the acquisition of lands under the protection of Section 6(f) of the Land and Water Conservation Act, the Federal Aid in Fish Restoration Act, the Federal Aid in Wildlife Restoration Act, Tennessee Valley Authority (TVA), Tribal Lands, or other unique areas or special lands that were acquired in fee or easement with public-use money and have deed restrictions or covenants on the property?	<input type="checkbox"/>	<input type="checkbox"/>
27	Does the project involve Federal Emergency Management Agency (FEMA) buyout properties under the Hazard Mitigation Grant Program (HMGP)?	<input type="checkbox"/>	<input type="checkbox"/>
28	Does the project include a <i>de minimis</i> or programmatic Section 4(f)?	<input type="checkbox"/>	<input type="checkbox"/>
29	Is the project considered a Type I under the NCDOT Noise Policy?	<input type="checkbox"/>	<input type="checkbox"/>
30	Is there prime or important farmland soil impacted by this project as defined by the Farmland Protection Policy Act (FPPA)?	<input type="checkbox"/>	<input type="checkbox"/>
31	Are there other issues that arose during the project development process that affected the project decision?	<input type="checkbox"/>	<input type="checkbox"/>

8. Is an Endangered Species Act (ESA) determination unresolved or is the project covered by a Programmatic Agreement under Section 7?

1. Search [IPAC site](#) for species listed in the project area. Need up to date IPAC report at each federal action (i.e CE, ROW, Construction). **It changes!**
2. Assess project area for habitat for T&E species listed in IPAC project area.
3. Complete initial surveys for species with habitat in the recommended survey window. **Plan ahead!** Survey times are limited to specific times of the year. Surveys must be up to date at CE signature and prior to habitat disturbance (i.e. utility relocation and construction).
4. Once surveys are completed, coordinate with Division 9 for consultation requirements. **Local governments cannot complete consultations with USFWS directly.**

Link for plant and animal survey windows
<https://connect.ncdot.gov/resources/Environmental/EAU/BSG/Pages/default.aspx>



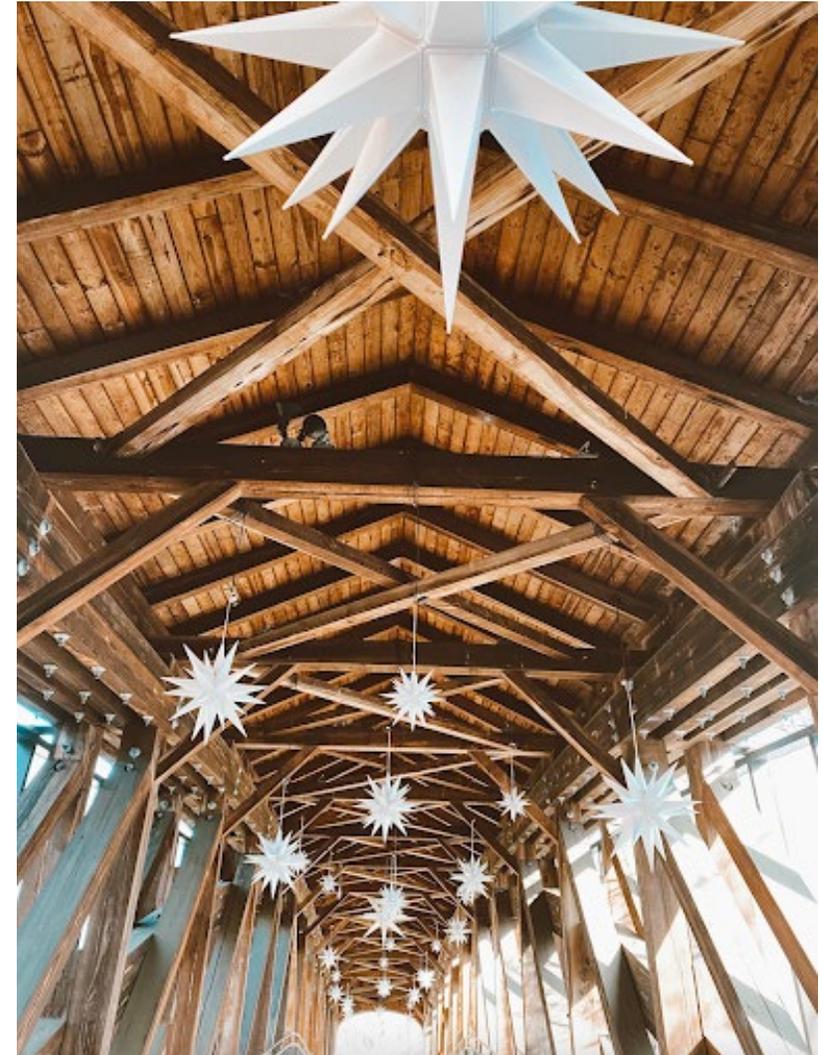
14. Does the project include a Section 106 of the National Historic Preservation Act (NHPA) effects determination other than a No Effect, including archaeological remains?

SHPO coordination

- Direct coordination with SHPO is required. Local governments cannot utilize NCDOT's Section 106 Programmatic Agreement and NCDOT's Cultural Resource staff.

Tribal coordination

- Local governments will prepare a letter on NCDOT letterhead requesting comments on the project. NCDOT will sign.
- Must be complete before signing CE.



15. Does the project involve GeoEnvironmental Sites of Concerns such as gas stations, dry cleaners?

- Project files must include a report showing that you reviewed for geoenvironmental sites
 - NCDOT geoenvironmental section review
 - Independent geoenvironmental review



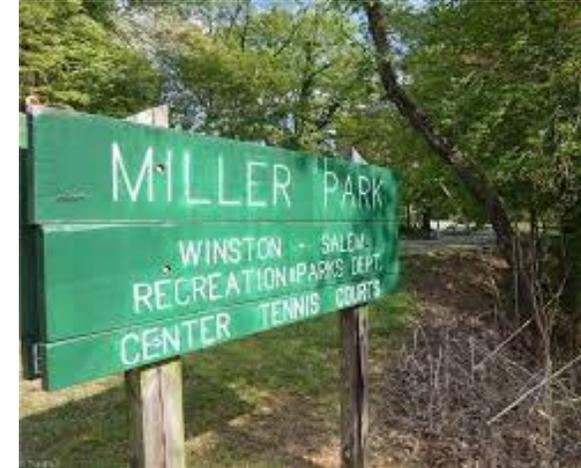
28. Does the project include a *de minimis* or programmatic Section 4(f)?*

https://www.environment.fhwa.dot.gov/env_topics/4f_tutorial/use_deminimis.aspx

1. The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);

2. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource; and

3. The official(s) with jurisdiction over the property are informed of U.S. DOT's intent to make the *de minimis* impact determination based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).



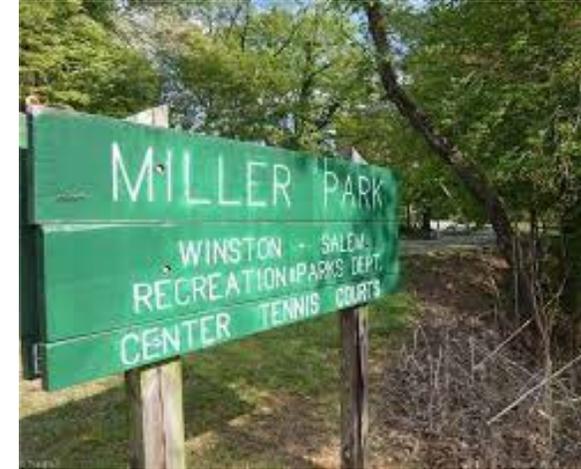
*FHWA must review these BEFORE NCDOT approves the CE.

28. Does the project include a *de minimis* or programmatic Section 4(f)?* contd.

https://www.environment.fhwa.dot.gov/env_topics/4f_tutorial/use_deminimis.aspx

Required documentation for 4f de minimis (parks):

- Copy of Public Notice
- Letter from NCDOT, prepared by LAP, to Parks Director (or person tasked with overseeing park) that is signed by NCDOT and the park representative. Contact NCDOT for template.
- Memo summarizing any public notice comments (or lack there of), attach Parks letter and Public Notice. Attach all 3 to CE.



NOTE: **KEEP FHWA abreast** prior to and during the de minimis review process

What goes in Section G?

- Summarize all 'Yes' answers from the previous section.
- All 'yes' answers require supporting documentation attached to the CE.

G. Additional Documentation as Required from Section F (ONLY for questions marked 'Yes'):

5. Displacements and right of way acquisition: Businesses are located within the study area, particularly in the northern section of Lewisville-Clemmons Road. The project is anticipated to require relocation of six businesses due to property takes, access restrictions, or parking impacts and will impact several others through minor right-of-way takes or construction easements. This would not notably affect the economic viability of the larger business nodes.

8. Federally Protected Species: Kimley-Horn reviewed the NC Natural Heritage Program (NCNHP) element occurrence database (updated October 2023) to determine if there are any known occurrences of federally listed species within the project corridor or the project vicinity. The NCNHP records indicate no known occurrences of any federally protected species in or within 1.0 mile of the project corridor. Due to the presence of suitable habitat, pedestrian surveys for Schweinitz's sunflower and bald eagle were conducted on October 12, 2023. No bald eagle individuals or nests, or Schweinitz's sunflower individuals were observed.

Suitable habitat for the tricolored bat (PESU) is present within the study area due to the presence of a bridge (Lewisville-Clemmons Road Bridge #330104) and multiple culverts/pipes equal to or greater than 60 feet long and 3 feet tall within the study area. Based on the presence of suitable habitat, a habitat assessment for PESU was conducted within the study area on May 24, 2023. There was no evidence of bat use (i.e., urine staining, guano piles, etc.) or bat individuals observed within these culverts/pipes or at Bridge #330104 during the habitat assessment. Additionally, no abandoned structures were identified within the study area. A review of the NCNHP records (updated October 2023) indicates no known occurrences in or within 1.0 mile of the study area. Additional information regarding the onsite habitat assessment can be found in the U-6004 Bat Habitat Determination Report, finalized by Kimley-Horn on June 6, 2023. Based on the lack of caves, mines, and abandoned structures, and the lack of observed evidence of bat use and bat individuals within the culverts/pipes equal to or greater than 60 feet long and 3 feet tall and at Bridge #330104, it is anticipated that PESU winter hibernation habitat is not present within the suitable structures identified in the study area. However, due to the presence of trees and small pockets of forested areas within the study area, potentially suitable PESU summer roosting and foraging habitat is present within the study area. Therefore, it has been determined that the proposed project is "May Affect, but is Not Likely to Adversely Affect" the tricolored bat. Any potential effects resulting from the proposed project are not anticipated to jeopardize the continued existence of the PESU.

15. GeoEnvironmental Sites of Concerns: The NCDOT GeoEnvironmental Section performed a Phase I field investigation on October 4, 2021, to identify known and potential sites of GeoEnvironmental concern. Seventeen sites of concern were identified within the study area. Sites of concern included underground storage tank (UST) sites, gas stations, and dry-cleaning facilities. However, low monetary and scheduling impacts from these sites was noted.

29. Traffic Noise: According to the NCDOT *Traffic Noise Policy* (November 29, 2021), this project is a Type I project since it involves improvements to the Interstate 40 and Lewisville-Clemmons Road interchange, which include the extension of the I-40 Westbound off-ramp and I-40 EB on-ramp by approximately 3,000 feet to accommodate safer merging and diverging movements. A traffic noise evaluation was performed that identified 1 noise barrier that preliminarily meets feasibility and reasonableness criteria. A final traffic noise analysis will be completed during p

Consultations

When do I need a consultation?

1. If one year has lapsed since the completion of the CE and the authorization of ROW funds
2. If one year has lapsed since the completion of the CE and the authorization of Construction funds
3. If substantial changes to the proposed design, evaluation of impacts, or environmental commitments have occurred after approval of the Environmental Document or Supporting Environmental Documentation, but prior to right-of-way acquisition or construction – even if more than one year has not passed.

[Consultation help document](#)

- https://connect.ncdot.gov/resources/Environmental/EPU/NEPA/Documents/Consultations_and_Re-evaluations.pdf

[Consultation forms](#)

- <https://connect.ncdot.gov/resources/Environmental/EPU/NEPA/Pages/default.aspx>

What do I need to know when preparing a consultation?

1. Is your design within your original study area?
2. Has the scope of your project changed?
3. Have you checked IPAC for new T&E species?
4. Are your T&E surveys up to date?
5. Have you fulfilled your project special commitments (i.e. greensheet commitments)?
6. Do you have new special commitments that need to be added?
7. Are there any new cultural resources (i.e. new National Register Properties)?
8. Have any parks been added or did any existing parks receive new 6f or PARTf funds?
9. Do you have previously undocumented relocations?
10. Did we miss anything when the CE was signed?

Questions?

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