

**Environmental Screening and Documentation Guidelines
For Division of Mitigation Services Projects**
Revised November 2021



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Purpose

This document is intended to assist the North Carolina Division of Mitigation Services (DMS) in satisfying the Federal Highway Administration's (FHWA) obligation to ensure compliance with various federal environmental laws and regulations. This obligation is necessary to preserve FHWA's ability to reimburse the North Carolina Department of Transportation (NCDOT) for costs incurred that offset NCDOT impacts through DMS projects. The FHWA recognizes that DMS projects will ultimately improve the quality of the environment. The FHWA is committed to working with DMS, and applicable state, and federal agencies to enhance DMS project delivery in support of environmental stewardship responsibilities.

This guidance recommends a screening procedure to be used as a tool in identifying potential fatal flaws associated with potential mitigation projects early in the DMS project implementation process (before substantial time or money is invested into a site). It is recognized that full compliance cannot always be determined for various laws and regulations this early in the process. In these instances, using best professional judgment, FHWA may give conditional approval to the checklist and supporting documentation, which are the output of the screening procedure.

Introduction

The mission of the DMS is to restore, enhance, preserve and protect the functions associated with wetlands, streams and riparian areas that are essential for the restoration, maintenance and protection of water quality and riparian habitats throughout North Carolina. The goals of the DMS are to:

- Execute the requirements placed on the North Carolina Department of Environment Quality (DEQ) by the North Carolina Wetlands Restoration Program Act;
- Enhance the natural resources of North Carolina by addressing watershed needs;
- Fully satisfy compensatory mitigation requirements for authorized impacts on a programmatic, watershed-level basis;
- Provide in-ground, functioning compensatory mitigation for authorized impacts in advance of the actual impacts;
- Satisfy the compensatory wetland, stream and buffer mitigation needs of the North Carolina Department of Transportation (NCDOT) transportation program; and
- Provide a means for organizing, steering, funding, and implementing ecosystem enhancement efforts in the State of North Carolina.

Federal Nexus

Projects implemented by the Division of Mitigation Services (DMS) must comply with federal environmental laws and regulations when a federal action occurs. Two examples of potential federal actions for DMS projects are federal funding and federal permitting.

- **Funding**— Many DMS projects will be performing compensatory mitigation requirements under Section 404 of the Clean Water Act for the NCDOT. Initially, NCDOT will provide funding to DMS for program expenditures associated with projected NCDOT compensatory mitigation needs. DMS will report these expenditures to NCDOT on a quarterly basis. NCDOT will then request reimbursement from FHWA for applicable program costs. Since the DMS will be providing compensatory mitigation on a programmatic basis and years in advance of impacts, assets from an individual

mitigation site are not “assigned” to a particular NCDOT transportation project until permit issuance. Therefore, at the time of project implementation, DMS staff (and partners) are likely not able to determine whether a particular mitigation project is in response to a federally-funded transportation project, a state-funded transportation project or a non-transportation project (e.g. private development). DMS has the **option** to either assume all DMS projects may have federal-funding or whether only a portion of DMS projects may have federal-funding (thus reducing the level of environmental documentation requirements). FHWA reimbursement to DOT for funding of an DMS project is a federal action requiring compliance with applicable federal laws and regulations.

- **Clean Water Act Section 404 permitting**—When DMS activities involve discharges to Waters of the United States, a permit from the United States Army Corps of Engineers (USACE) is required. Such permitting is also a federal action requiring compliance with federal laws and regulations.

Ultimately, DMS will need to decide what level of environmental documentation will be performed for projects. If an DMS project is likely to need a federal permit or is likely to be reimbursed by FHWA, these guidelines should be followed. If neither federal funding nor federal permits are likely for projects, DMS would not be required to use these guidelines.

As the federal funding agency, it is FHWA’s responsibility to ensure compliance with applicable federal laws and regulations (associated with FHWA’s NEPA responsibility).

Background

The National Environmental Policy Act of 1969 (NEPA) requires federal agencies to use an interdisciplinary approach in planning and decision-making for actions that will have an impact on the environment. This Act established the Council on Environmental Quality (CEQ) and required that every recommendation for major federal actions include a discussion of the environmental impact of the proposed action.

Types of Environmental Documentation

The CEQ developed regulations for implementing the provisions of NEPA (40 CFR Parts 1500-1508), which were made mandatory for all federal agencies in 1977. These regulations established the types of environmental documents to be prepared for federal projects, including highway projects. The types of documents defined by the CEQ regulations include:

- Environmental Impact Statement (EIS) & Record of Decision (ROD);
- Environmental Assessment (EA) & Finding of No Significant Impact (FONSI); and
- Categorical Exclusion (CE).

Categorical Exclusions

The CEQ guidelines define a categorical exclusion as a category of actions that do not individually or cumulatively have a significant effect on the environment. A categorical exclusion document is prepared to demonstrate that a proposed action will not have a significant impact on the environment.

FHWA and NCDOT have determined that DMS activities normally should qualify as Categorical Exclusions. Non-construction activities (e.g. watershed planning) are classified as Type 1 activities and are pre-approved by FHWA. No further environmental documentation is required. Acquisition and construction of wetland, stream and endangered species mitigation sites may be designated as CEs with FHWA's approval.

For purposes of DMS, the basic assumption is that implementation of DMS projects will not involve significant impacts, and therefore a CE is the appropriate type of environmental document. In the event a significant environmental issue is raised during the environmental investigation, the federal agency will decide whether an EIS should be prepared.

FHWA, in cooperation with DMS and various state and federal agencies, has developed environmental screening and documentation guidelines for DMS projects to be processed as categorical exclusions. For purposes of DMS compliance with NEPA and other federal environmental laws and regulations, two scenarios are likely to occur:

- Non-ground-disturbing activities; and
- Ground-disturbing activities.

Non-ground-disturbing Activities

Non-ground-disturbing activities include preservation projects as well as projects that solely involve planting vegetation, such as buffers and certain enhancement projects. For these projects a Section 404 permit will not be required. Thus, the only possible federal action associated with this type of project is from FHWA funding. The FHWA (North Carolina Division Office) has determined that only the following environmental laws must be considered when determining whether to proceed with acquisition of a specific site:

- Section 106 of the National Historic Preservation Act of 1966;
- Comprehensive Environmental Response, Compensation and Liability Act of 1980;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and
- Coastal Zone Management Act.

A CE "checklist" (see Appendix A) has been developed and approved for use by FHWA. For non-ground-disturbing activities, only Parts 1 and 2 of the checklist need to be completed. Appendix B provides instructions on completing the CE checklist. Appendix C contains a list of laws that likely will not affect DMS projects. DMS (or a consultant) should complete the checklist. The CE form must be reviewed and approved by FHWA to preserve eligibility for funding reimbursement.

Ground-disturbing activities

One or more federal actions are likely to occur for projects involving ground-disturbing activities:

- FHWA funding; and/or
- Issuance of a federal permit (e.g. Clean Water Act Section 404 permit, Tennessee Valley Authority permit, US Coast Guard permit, etc.).

A CE “checklist” (see Appendix A) has been developed and approved for use by FHWA. For projects involving ground-disturbing activities, Parts 1, 2 and 3 of the checklist need to be completed. Appendix B provides instructions on completing the CE checklist. Appendix C contains a list of laws that likely will not affect DMS projects. DMS (or a consultant) should complete the checklist. The CE form must be reviewed and approved by FHWA to preserve eligibility for funding reimbursement.

Assuming FHWA approves the CE checklist, DMS may then use the approved CE checklist as part of the supporting documentation for any required federal permits.

Not obtaining FHWA approval of the environmental document jeopardizes FHWA’s ability to reimburse NCDOT for DMS project costs.

FHWA approval of environmental documents does not obviate the need to obtain other Federal, State or local permits, approvals or authorizations required by law.

Contacts

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Appendix A

Categorical Exclusion Form for Division of Mitigation Services Projects
Version 2

Note: Only Appendix A should be submitted (along with any supporting documentation) as the environmental document.

Part 1: General Project Information	
Project Name:	
County Name:	
DMS Number:	
Project Sponsor:	
Project Contact Name:	
Project Contact Address:	
Project Contact E-mail:	
DMS Project Manager:	
Project Description	
For Official Use Only	
Reviewed By:	
_____	_____
Date	DMS Project Manager
Conditional Approved By:	
_____	_____
Date	For Division Administrator FHWA
<input type="checkbox"/> Check this box if there are outstanding issues	
Final Approval By:	
_____	_____
Date	For Division Administrator FHWA

Part 2: All Projects Regulation/Question		Response
Coastal Zone Management Act (CZMA)		
1. Is the project located in a CAMA county?		<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the project involve ground-disturbing activities within a CAMA Area of Environmental Concern (AEC)?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Has a CAMA permit been secured?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Has NCDPCM agreed that the project is consistent with the NC Coastal Management Program?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)		
1. Is this a "full-delivery" project?		<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Has the zoning/land use of the subject property and adjacent properties ever been designated as commercial or industrial?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. As a result of a limited Phase I Site Assessment, are there known or potential hazardous waste sites within or adjacent to the project area?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. As a result of a Phase I Site Assessment, are there known or potential hazardous waste sites within or adjacent to the project area?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5. As a result of a Phase II Site Assessment, are there known or potential hazardous waste sites within the project area?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
6. Is there an approved hazardous mitigation plan?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
National Historic Preservation Act (Section 106)		
1. Are there properties listed on, or eligible for listing on, the National Register of Historic Places in the project area?		<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the project affect such properties and does the SHPO/THPO concur?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. If the effects are adverse, have they been resolved?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)		
1. Is this a "full-delivery" project?		<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the project require the acquisition of real estate?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Was the property acquisition completed prior to the intent to use federal funds?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Has the owner of the property been informed: * prior to making an offer that the agency does not have condemnation authority; and * what the fair market value is believed to be?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Part 3: Ground-Disturbing Activities	
Regulation/Question	Response
American Indian Religious Freedom Act (AIRFA)	
1. Is the project located in a county claimed as "territory" by the Eastern Band of Cherokee Indians?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the site of religious importance to American Indians?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Is the project listed on, or eligible for listing on, the National Register of Historic Places?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Have the effects of the project on this site been considered?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Antiquities Act (AA)	
1. Is the project located on Federal lands?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Will there be loss or destruction of historic or prehistoric ruins, monuments or objects of antiquity?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Will a permit from the appropriate Federal agency be required?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Has a permit been obtained?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Archaeological Resources Protection Act (ARPA)	
1. Is the project located on federal or Indian lands (reservation)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Will there be a loss or destruction of archaeological resources?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Will a permit from the appropriate Federal agency be required?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Has a permit been obtained?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Endangered Species Act (ESA)	
1. Are federal Threatened and Endangered species and/or Designated Critical Habitat listed for the county?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is Designated Critical Habitat or suitable habitat present for listed species?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Are T&E species present or is the project being conducted in Designated Critical Habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Is the project "likely to adversely affect" the specie and/or "likely to adversely modify" Designated Critical Habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5. Does the USFWS/NOAA-Fisheries concur in the effects determination?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
6. Has the USFWS/NOAA-Fisheries rendered a "jeopardy" determination?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Executive Order 13007 (Indian Sacred Sites)	
1. Is the project located on Federal lands that are within a county claimed as "territory" by the EBCI?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Has the EBCI indicated that Indian sacred sites may be impacted by the proposed project?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Have accommodations been made for access to and ceremonial use of Indian sacred sites?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Farmland Protection Policy Act (FPPA)	
1. Will real estate be acquired?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Has NRCS determined that the project contains prime, unique, statewide or locally important farmland?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Has the completed Form AD-1006 been submitted to NRCS?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Fish and Wildlife Coordination Act (FWCA)	
1. Will the project impound, divert, channel deepen, or otherwise control/modify any water body?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Have the USFWS and the NCWRC been consulted?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Land and Water Conservation Fund Act (Section 6(f))	
1. Will the project require the conversion of such property to a use other than public, outdoor recreation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Has the NPS approved of the conversion?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat)	
1. Is the project located in an estuarine system?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is suitable habitat present for EFH-protected species?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3. Is sufficient design information available to make a determination of the effect of the project on EFH?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4. Will the project adversely affect EFH?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5. Has consultation with NOAA-Fisheries occurred?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Migratory Bird Treaty Act (MBTA)	
1. Does the USFWS have any recommendations with the project relative to the MBTA?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Have the USFWS recommendations been incorporated?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Wilderness Act	
1. Is the project in a Wilderness area?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Has a special use permit and/or easement been obtained from the maintaining federal agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Appendix B (Instructions for completing CE Form)

Coastal Zone Management Act (CZMA)

1. Is the project located within a CAMA county?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining CZMA questions. Stop.

See: <https://deq.nc.gov/about/divisions/coastal-management/about-coastal-management/cama-counties> for a map of CAMA counties (Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell & Washington).

2. Does the project involve ground-disturbing activities within a CAMA Area of Environmental Concern (AEC)?

- If “yes”, go to #3.
- If “no”, go to #4.

If the project does not involve ground-disturbing activities, a CAMA permit is not required. However, the project will need a consistency review to determine if the project is consistent with the NC Coastal Management Program. The applicant will determine consistency and NCDCM will either agree or not agree. Contact the NCDCM Consistency Coordinator in the NCDCM Morehead City District Office to determine the process required to obtain a determination of consistency with the NC Coastal Management Program.

If the project involves ground-disturbing activities, send a project description, location map of the project and a list of activities (if known) to the appropriate NCDCM District Office (<https://deq.nc.gov/about/divisions/coastal-management/about-coastal-management/dcm-offices-program-areas>). NCDCM will determine if the project lies within an AEC. If a ground-disturbing project is located within an AEC, a CAMA permit will be required. In most cases, an DMS project will be eligible for authorization under CAMA [General Permit 15A NCAC 07H .2600](#). CAMA General Permits are issued by the appropriate DCM District Office. It is likely that a CAMA permit cannot be issued until construction plans have been finalized.

3. Has a CAMA permit been secured?

- If “yes”, include a copy of the permit. Compliance is satisfied. Stop.
- If “no”, **FHWA may conditionally approve the environmental document.**

Note: Since the FHWA environmental document likely will be completed prior to the design stage, it may not be possible to secure a CAMA permit before plans have been developed. In this case, FHWA will likely conditionally approve the environmental document, pending later issuance of a CAMA permit.

4. Has NCDCM agreed that the project is consistent with the NC Coastal Management Program?

- If “yes”, include a copy of the consistency determination. Compliance is satisfied. Stop.
- If “no”, **FHWA may conditionally approve the environmental document.**

The project will need a consistency determination to determine if the project is consistent with the NC Coastal Management Program. If a CAMA permit is required (see question #3), issuance of a CAMA permit includes a positive consistency determination. If a CAMA permit is not required, a separate consistency determination is necessary. The applicant will determine consistency and NCDCM will either agree or not agree. See <https://deq.nc.gov/about/divisions/coastal-management/coastal-management-permits/federal-consistency> for information on consistency determinations.

Note: Since the FHWA environmental document likely will be completed prior to the design stage, it may not be possible to complete a consistency determination before plans have been developed. In this case, FHWA will likely conditionally approve the environmental document, pending later completion of the consistency determination.

Background on Coastal Zone Management Act

Purpose: Preserve, protect, develop, and (where possible, restore and enhance resources of the coastal zone).

Applicability: All projects significantly affecting areas under the control of the State Coastal Zone Management Agency (CZMA).

General Procedures: A determination of consistency with the approved Coastal Zone Management Plan (CZMP) is required from the state before federal approval can be granted.

Coordination and Consultation: The NC Division of Coastal Management is responsible for coastal program funding and administration.

Links:

US Code: [16 USC 1451-1465](#)

Federal:

[NOAA: Coastal Zone Management Program](#)

State:

[NCDENR Division of Coastal Management](#)

[NC Coastal Area Management Act \(CAMA\) Counties](#)

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

1. Is this a "full-delivery" project?

- If "yes", go to #2.
- If "no", compliance is satisfied. Select "N/A" for remaining CERCLA questions. Stop.

The State Property Office (SPO) complies with CERCLA during the property acquisition process. The SPO handles all property acquisitions for DMS projects other than full-delivery projects.

2. Has the zoning/land use of the subject property and adjacent properties ever been designated as commercial or industrial?

- If "yes", go to #4 (Select N/A for #3).
- If "no", go to #3.

Review zoning/land use history of properties.

3. As a result of a limited Phase I Site Assessment, are there known or potential hazardous waste sites within or adjacent to the project area?

- If "yes", go to #4.
- If "no", compliance is satisfied. Select "N/A" for remaining CERCLA questions. Stop.

Perform a limited Phase I Site Assessment. Include the results of the limited Phase I Site assessment in the CE documentation.

4. As a result of a Phase I Site Assessment, are there known or potential hazardous waste sites within or adjacent to the project area?

- If "yes", go to #5.
- If "no", compliance is satisfied. Select "N/A" for remaining CERCLA questions. Stop.

Perform a Phase I Site Assessment. Include the results of the Phase I Site assessment in the CE documentation.

5. As a result of a Phase II Site Assessment, are there known or potential hazardous waste sites within the project area?

- If "yes", go to #6.
- If "no", compliance is satisfied.

Perform a Phase II Site Assessment. Include the results of the Phase II Site assessment in the CE documentation.

6. Is there an approved hazardous materials mitigation plan?

- If "yes", include a copy of the mitigation plan. Compliance is satisfied. Stop.
- If "no", **consult with DMS/FHWA.**

Background on Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended

Purpose: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides a Federal “Superfund” to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment (whereas [RCRA](#) focuses on active and future facilities). CERCLA was later amended by the Superfund Amendments and Reauthorization Act (SARA).

Applicability: Any project that might take real-estate containing a hazardous substance.

General Procedures: This act regulates the handling of hazardous waste sites. During early planning, the location of permitted and non-regulated hazardous waste sites should be identified. Early coordination with EPA or DEQ will aid in identifying known or potential hazardous waste sites.

Links:

US Code: [42 USC 9601-9675](#)

Federal:

[EPA: Superfund](#)

[EPA: Superfund CERCLA](#)

[EPA: CERCLIS Hazardous Waste Sites](#)

[Site Locator Tool for Sites in NC](#)

State:

[NC DEQ: Division of Waste Management](#)

National Historic Preservation Act (Section 106)

1. Are there properties listed on, or eligible for listing on, the National Register of Historic Places in the project area?

- If “yes”, go to #2.
- If “no”, include a copy of the SHPO concurrence. Compliance is satisfied. Select “N/A” for remaining NHPA questions. Stop.
- Send scoping letter to SHPO/THPO*.
- Photograph all structures on property.
- Review SHPO/THPO files.
- Assess eligibility.
- Consult with SHPO/THPO & FHWA on eligibility.

SHPO/THPO must concur on eligible & non-eligible properties. Need written SHPO/THPO concurrence.

*(*note – when documenting an eligibility recommendation for SHPO/THPO, do not use the term “potentially eligible”. SHPO/THPO must have a clear eligibility recommendation for them to determine whether they concur.)*

*The Eastern Band of Cherokee Indians Tribal Historic Preservation Officer (THPO) assumes the consultation role for projects located on or affecting tribal lands. The North Carolina State Historic Preservation Officer (SHPO) assumes the consultation role for all other projects. For projects not located on EBCI tribal lands but within the following counties (Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes & Yancey), scoping letters and results of any archaeological reports should be sent to the THPO & SHPO. See previous references to SHPO contact and 3 federally recognized Cherokee tribes.

2. Does the project affect such properties (and does the SHPO/THPO concur)?

- If “yes”, go to #3.
- If “no”, include a copy of the SHPO/THPO concurrence. Compliance is satisfied. Select “N/A” for remaining NHPA questions. Stop.

Possible effects determinations:

- “No effect” (for historic structures or for archaeological sites)
- “No adverse effect” (for historic structures only—not for archaeological sites)
- “Adverse effect” (for historic structures or for archaeological sites).

SHPO/THPO must concur on effects on properties. Need written SHPO/THPO concurrence.

3. If the effects are adverse, have they been resolved?

- If “yes”, include a copy of the MOA. Compliance is satisfied. Select “N/A” for remaining NHPA questions. Stop.
- If “no”, **environmental document cannot be approved.**

A Memorandum of Agreement between FHWA, SHPO/THPO, ACHP and property owner will be required for adverse effects. Need signed MOA.

Background on National Historic Preservation Act of 1966, as amended (Section 106)

Purpose: This act declares a national policy of historic preservation to protect, rehabilitate, restore, and reuse districts, sites, buildings, structures, and objects significant in American architecture, history, archaeology and culture, and (Section 106) mandates that federal agencies take into account the effect of an undertaking on a property which is included in, or eligible for inclusion in, the National Register of Historic Places. The NHPA establishes the National Register of Historic Places, State Historic Preservation Offices and programs, and the Advisory Council on Historic Preservation.

Applicability: All properties on or eligible for inclusion on the National Register of Historic Places.

Links:

US Code: [16 USC 470](#)

Code of Federal Regulations: [36 CFR 800](#), [23 CFR 771](#), [36 CFR 60](#), [36 CFR 63](#) **Federal:**

[FHWA: Native American Coordination](#)

[Advisory Council on Historic Preservation](#)

[National Register of Historic Places](#)

[National Register Database](#)

State:

[NC State Historic Preservation Office](#)

Uniform Relocation Assistance and Real Property Acquisition Policies Act

1. Is this a “full-delivery” project?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining Uniform Act questions. Stop.

The State Property Office (SPO) complies with the Uniform Act during the property acquisition process. The SPO handles all property acquisitions for DMS projects other than full-delivery projects.

2. Does the project require the acquisition of real estate?

- If “yes”, go to #3.
- If “no, compliance is satisfied. Select “N/A” for remaining Uniform Act questions. Stop.

Real Estate is defined as any or all interest in property. This includes fee simple acquisition as well as temporary/permanent easements (e.g. temporary construction easements, permanent drainage easements, conservation easements, etc.).

3. Was the property acquisition completed prior to the intent to use federal funds?

- If “yes”, compliance is satisfied. Select “N/A” for remaining Uniform Act questions. Stop.
- If “no, go to #4.

For Full Delivery projects, the “intent” is defined as the date the RFP is issued. When acquisition involves an option, the Uniform Act applies if the option is **executed** subsequent to the RFP date (regardless of when the option was secured).

4. Has the owner of the property been informed in writing (prior to the acquisition):

- **That the acquiring entity does not have condemnation authority; and**
- **what the fair market value is believed to be?**

- If “yes”, include correspondence. Compliance is satisfied. Stop.
- If “no”, **environmental document may not be approved, consult with FHWA.**

Background on Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended

Purpose: These acts, collectively known as the Uniform Act, as amended, provide for uniform and equitable treatment of persons displaced from their homes, businesses, non-profit associations, or farms by federal and federally-assisted programs, and establishes uniform and equitable land acquisition policies. The Act assures that such persons are treated fairly, consistently, and equitably, and so that they will not suffer disproportionate injuries.

Applicability: All projects involving federal funds.

Links:

US Code: [42 USC 4601-4655](#)

Federal:

[FHWA Realty](#)

State:

[NCDOT ROW Branch](#)

American Indian Religious Freedom Act (AIRFA)

1. Is the project located in a county claimed as “territory” by the Eastern Band of Cherokee Indians (EBCI)?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining AIRFA questions. Stop.

Determine if the project is in one of the following counties: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes & Yancey.

Send a scoping letter and any applicable figures/conceptual maps to all three (3) federally recognized Cherokee Tribes: The EBCI; The Cherokee Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma. Copy the DMS Project Manager. EBCI will reply to DMS Project Manager whether the site is of religious importance.

EBCI THPO contacts:

United Keetoowah Band of Cherokee Indians in Oklahoma—

Sheila Bird

Tribal Historic Preservation Office

P. O. Box 746

Tahlequah, OK 74465

918.871.2852

sbird@ukb-nsn.gov

Cherokee Nation—

Elizabeth Toombs

Tribal Historic Preservation Office

PO Box 948 Tahlequah, OK 74465

918.506.8391

elizabeth-toombs@cherokee.org

Eastern Band of Cherokee Indians—

Stephen Yerka, Historic Preservation Specialist

PO Box 455

Cherokee, NC 28719

Phone: 828.359.6852

syerka@nc-cherokee.com

AND/OR

Russell Townsend, Tribal Historic Preservation Officer

828.359.6851

russtown@nc-cherokee.com

2. Is the site of religious importance to American Indians?

- If “yes”, go to #3.
- If “no”, compliance is satisfied. Select “N/A” for remaining AIRFA questions. Stop.

3. Is the project listed on, or eligible for listing on, the National Register of Historic Places?

- If “yes”, follow the [Section 106](#) of the NHPA process elsewhere in this document. Select “N/A” for remaining AIRFA question.
- If “no”, go to #4.

4. Have the effects of the project on this site been considered?

- If “yes”, AIRFA compliance is satisfied.
- If “no”, **consult with DMS.**

Document issues raised by EBCI (attach EBCI correspondence). Document how such issues were considered (were they implemented, why/why not).

Background on American Indian Religious Freedom Act of 1978, as amended

Preamble (from Section 1996): To protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to **access to sites**, use and possession of sacred objects, and the freedom to worship through ceremonials and **traditional rites**.

Purpose: Protect places of religious importance to American Indians, Eskimos, and Native Hawaiians.

General Applicability: All projects affecting places of religious importance to Native Americans.

FHWA Applicability: Places of religious importance are eligible for the National Register, thus Section 106 of the NHPA is applicable if federal funds are used.

Links:

US Code: [42 USC 1996-1996a](#) (PL 95-341 (original) and PL 103-344 (added section 1996a))

Federal:

[FHWA: Native American Coordination](#)

[Advisory Council on Historic Preservation](#)

[US Department of the Interior Homepage](#)

State:

[NC State Historic Preservation Office](#)

[NCDORA Commission of Indian Affairs](#)

Antiquities Act (AA)

1. Is the project located on Federal lands?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining AA questions. Stop.

2. Will there be loss or destruction of historic or prehistoric ruins, monuments or objects of antiquity?

- If “yes”, go to #3.
- If “no”, compliance is satisfied. Select “N/A” for remaining AA questions. Stop.

Consult with the State Historic Preservation Office.

Renee Gledhill-Earley, Environmental Review Coordinator

North Carolina State Historic Preservation Office

4617 Mail Service Center

Raleigh, NC 27699-4617

Phone: 919-807-6579

renee.gledhill-earley@ncdcr.gov

<http://www.hpo.ncdcr.gov/>

3. Will a permit from the appropriate Federal agency be required?

- If “yes”, go to #4.
- If “no”, compliance is satisfied. Select “N/A” for remaining AA questions. Stop.

Contact the federal agency to determine if you will need to obtain a permit under AA. If you already have an existing [ARPA](#) permit, you will not need an AA permit. Document correspondence from federal agency stating whether a permit is necessary.

4. Have you obtained a permit?

- If “yes”, include a copy of the permit. Compliance is satisfied. Stop.
- If “no”, **the environmental document cannot be approved without the permit.**

Background on Antiquities Act of 1906

Purpose: The Act provides for the protection of historic or prehistoric remains on **federal lands**; establishes criminal sanctions for unauthorized destruction or appropriation of antiquities; authorizes the President to declare by proclamation national monuments; and authorizes the scientific investigation of antiquities on federal lands, subject to permit and regulations. Later strengthened by the [Archeological Resources Protection Act of 1979](#).

Applicability: Historic or prehistoric remains on federal lands. Although there is no specific mention of natural or paleontological resources in the Act itself or in the Act’s uniform rules and regulations, “objects of antiquity” has been interpreted to include fossils by the National Park Service (NPS) and the Bureau of Land Management (BLM).

Links:

US Code: [16 USC 431-433](#) (particularly section 433)

Federal:

[Full text of Antiquities Act of 1906](#)

[FHWA: Archaeology and Historic Preservation](#)

State:

[NC State Historic Preservation Office](#)

Archaeological Resources Protection Act (ARPA)

1. Is the project located on Federal or Indian lands (reservation)?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining ARPA questions. Stop.

2. Will there be a loss or destruction of archaeological resources?

- If “yes”, go to #3.
- If “no”, compliance is satisfied. Select “N/A” for remaining ARPA questions. Stop.

See 16 USC 460bb for a definition of “archaeological resource”. Archaeological resources must be at least 100 years old.

Consult with the State Historic Preservation Office:

Renee Gledhill-Earley, Environmental Review Coordinator

North Carolina State Historic Preservation Office

MSC 4617

Raleigh, NC 27699-4617

Phone: 919.733.4763

renee.gledhill-earley@ncmail.net

<http://www.hpo.dcr.state.nc.us/>

3. Will a permit from the appropriate Federal agency be required?

- If “yes”, go to #4.
- If “no”, compliance is satisfied. Select “N/A” for remaining ARPA question. Stop.

Contact the federal agency to determine if an ARPA permit is necessary. If you already have an existing AA permit, you will not need an ARPA permit. Document correspondence from federal agency stating whether a permit is necessary.

4. Has a permit been obtained?

- If “yes”, include a copy of the permit. Compliance is satisfied. Stop.
- If “no”, **environmental document cannot be approved.**

Background on Archaeological Resources Protection Act of 1979

Purpose: To secure the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data.

Applicability: All public and Indian lands. Archaeological resource must be at least 100 years old.

General Procedures: Issuance of permits in order to excavate or remove any archaeological or paleontological resources from federal lands and tribal lands. Unauthorized activities are punishable by fine, imprisonment, or both.

Links:

US Code: [16 USC 470aa-mm](#)

Federal:

[FHWA: Archaeology and Historic Preservation](#)

[Full Text of ARPA](#)

State:

[NC State Historic Preservation Office](#)

Endangered Species Act (ESA)

Determine if the project is in a county covered by the Raleigh or Asheville USFWS jurisdiction. Generate a list of endangered species in the project county and evaluate the area for Critical Habitat. For species in North Carolina or by County, a list can be found at <https://www.fws.gov/endangered/?ref=topbar>. A Critical Habitat mapper and ArcGIS files are available at: <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>.

For the 59 counties under the Raleigh USFWS Field Office, follow the on-line, 9-step compliance process as described here: https://www.fws.gov/raleigh/PR_1.html. Submit a package of all electronic documentation to USFWS; include the USFWS response e-mail in the full categorical exclusion package submission. For the 41 counties under the Asheville USFWS Office, submit your ESA package with a scoping letter to USFWS. Include the USFWS response in the full categorical exclusion package submission.

USFWS contacts:

Holland Youngman, Wildlife Biologist
USFWS Asheville Field Office
160 Zillicoa Street
Asheville NC 28801
Phone: 828.575.3920
holland_youngman@fws.gov

Kathy Matthews
USFWS Raleigh Field Office
P.O. Box 33726
Raleigh, NC 27636-3726
Phone: 919.856.4520x27
kathryn_matthews@fws.gov
Raleigh@fws.gov

1. Are federal Threatened and Endangered species and/or Designated Critical Habitat listed for the county?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Document no listed species for the county(ies) within the project action area. Select “N/A” for remaining ESA questions. Stop.

If no species and Critical Habitat are found or listed for the county, no further ESA activity is needed.

2. Is Designated Critical Habitat or suitable habitat present for listed species?

- If “yes”, go to #3.
- If “no”, compliance is satisfied. Document no habitat (designated and/or suitable) present within the project action area. Select “N/A” for remaining ESA questions. Stop.

If habitat (either Designated Critical Habitat or suitable habitat for species) is not present, the appropriate effects determination is “no effect”. Document absence/presence of habitat. USFWS/NOAA-Fisheries concurrence is not required for “no effect” determinations. (**note – the term “potential habitat” should not be used. A determination needs to be made as to whether the habitat is currently suitable or not suitable for the T&E species of concern*)

3. Are T&E species present or is the project being conducted in Designated Critical Habitat?

- If “yes”, go to #4.
- If “no”, go to #5.

Utilize best available scientific and commercial data to determine species presence. Conduct biological surveys if suitable habitat exists for identified endangered species during the optimal survey times.

If suitable habitat is present but the T&E species is not present, the appropriate effects determination is “not likely to adversely affect”. Document absence/presence of species. USFWS/NOAA-Fisheries written concurrence is required for “not likely to adversely affect” determinations.

Note: (for plant species only) if suitable habitat is present but field surveys indicate the plant species are not present, a “no effect” conclusion is a viable option to a “not likely to adversely affect” conclusion based on best available scientific and commercial data. If this option is chosen (and a “no effect” conclusion is rendered), USFWS/NOAA-Fisheries written concurrence is not required.

4. Is the project “likely to adversely affect” a species and/or “likely to adversely modify” Designated Critical Habitat?

- If “yes”, go to #6.
- If “no”, go to #5.

If species are present and/or the project will modify Designated Critical Habitat, the conclusion will either be “not likely to adversely affect” or “likely to adversely affect”. The project details and locations/amounts of species will dictate which conclusion is appropriate. Written concurrence from USFWS/NOAA-Fisheries is required.

5. Does the USFWS/NOAA-Fisheries concur in the effects determination?

- If “yes”, include a copy of the written concurrence. Compliance is satisfied. Stop.
- If “no”, go to #6.

Written or e-mail concurrence is required for all “likely to adversely affect” determinations. If USFWS/NOAA-Fisheries does not concur in the conclusion, formal consultation will be required.

6. Has the USFWS/NOAA-Fisheries rendered a “jeopardy” determination?

- If “yes”, **environmental document cannot be approved.**
- If “no”, include a copy of the Biological Opinion and Incidental Take Statement. Compliance is satisfied. Stop.

Formal consultation is required. FHWA assumes lead role in formal consultation. A Biological Assessment will need to be prepared and submitted to USFWS/NOAA-Fisheries. If USFWS/NOAA-Fisheries renders a jeopardy opinion, the project cannot proceed. If USFWS/NOAA-Fisheries does not render a jeopardy opinion, an Incidental Take Statement will be issued.

Background on Endangered Species Act of 1973

Purpose: Conserve species of fish, wildlife and plants facing extinction.

Applicability: Any action that is likely to jeopardize continued existence of such endangered or threatened species or result in destruction or modification of critical habitat.

General Procedures: Section 7 requires federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to ensure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of critical habitat for these species. The U.S. Fish and Wildlife Service and the NOAA-Fisheries share responsibilities for administering the Act.

Links:

US Code: [16 USC 1531-1543](#)

Federal:

[USFWS: Endangered Species Program](#)

[NOAA-Fisheries: Endangered Species](#)

[Link to Map of Ecological Services jurisdiction:](#) Raleigh or Asheville

State:

[NC Wildlife Resources Commission](#)

Executive Order 13007 (Indian Sacred Sites)

1. Is the project located on Federal lands that are within a county claimed as “territory” by the EBCI?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining question.

Determine if the project is in one of the following counties: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes & Yancey.

2. Has the EBCI indicated that Indian sacred sites may be impacted by the proposed project?

- If “yes, go to #3.
- If “no”, compliance is satisfied. Select “N/A” for remaining question.

Send a scoping letter and any applicable figures/conceptual maps to all three (3) federally recognized Cherokee Tribes: The EBCI; The Cherokee Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma. Copy the DMS Project Manager. EBCI will reply to DMS Project Manager whether the site is of religious importance.

EBCI THPO contacts:

United Keetoowah Band of Cherokee Indians in Oklahoma—
Sheila Bird

Tribal Historic Preservation Office

P. O. Box 746

Tahlequah, OK 74465

918.871.2852

sbird@ukb-nsn.gov

Cherokee Nation—

Elizabeth Toombs

Tribal Historic Preservation Office

PO Box 948 Tahlequah, OK 74465

918.506.8391

elizabeth-toombs@cherokee.org

Eastern Band of Cherokee Indians—

Stephen Yerka, Historic Preservation Specialist

PO Box 455

Cherokee, NC 28719

Phone: 828.359.6852

syerka@nc-cherokee.com

AND/OR

Russell Townsend, Tribal Historic Preservation Officer
828.359.6851
rustown@nc-chokeee.com

3. Have accommodations been made for access to and ceremonial use of Indian sacred sites?

- If “yes”, compliance is satisfied.
- If “no”, **consult with DMS/FHWA.**

The DMS or full-delivery Project Manager will consult with FHWA. FHWA will coordinate a review of the project with the Eastern Band of Cherokee Indians (EBCI).

Background on Executive Order 13007 (Indian Sacred Sites)

Purpose: Accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites.

Applicability: All federal lands.

General Procedures: Ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites.

Links:

[EO 13007](#)

FHWA:

[FHWA: Native American Coordination](#)

Farmland Protection Policy Act (FPPA)

1. Will real estate be acquired?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining FPPA questions. Stop.

For Full Delivery Providers, if the project property has been acquired (either in fee simple or an easement) prior to the RFP, then the FPPA doesn’t apply.

2. Has NRCS determined that the project contains prime, unique, statewide or locally important farmland?

- If “yes”, go to #3.
- If “no”, compliance is satisfied. Do not complete remaining FPPA question. Stop.

“Farmland” is defined in 73 USC 4201(c)(1) as either “prime, unique, statewide or locally important”. The NRCS maintains soil survey maps depicting areas having soil types that could be “prime, unique, or statewide important farmland.”

- a. Fill out Parts I and III of [NRCS Form AD-1006](#) Farmland and Conversion Impact Rating Form/). Submit to the NC NRCS Soil Scientist together with maps indicating locations of site(s). (NRCS has 45 days from receipt of the form to make a determination as to whether the site(s) of the proposed project contains prime, unique, statewide or local important farmland. NRCS will complete Parts II, IV, and V of the form, in cases where farmland will be converted. NRCS will return the form.)
- b. If Parts IV and V are completed in the returned form, then complete Parts VI and VII of the form (otherwise, NRCS determined in Part II that there was no prime, unique, statewide or local important farmland affected).
- c. Submit completed form to NRCS field office.

NRCS contact information:

Kristin May
Soil Scientist, USDA-NRCS
704-680-3541
kristin.may@usda.gov

3. Has the completed Form AD-1006 been submitted to NRCS?

- If “yes”, include Form AD-1006 and the NRCS correspondence. Compliance is satisfied.
- If “no”, **environmental document cannot be approved.**

Background on Farmland Protection Policy Act of 1981

Purpose: Minimize impacts on farmland and maximize compatibility with state and local farmland programs and policy.

Applicability: All projects that take real-estate in farmland, as defined by the regulation.

General Procedures: This act requires that before taking or approving any federal action that would result in conversion of farmland, the agency must examine the effects of the action using the criteria set forth in the Act, and, if there are adverse effect, must consider alternatives to lessen them.

1. Early coordination with the Natural Resources Conservation Service (NRCS);
2. Land Evaluation and Site Assessment (LESA); and
3. Determination of whether to proceed with farmland conversion, based on severity of impacts and other environmental considerations.

Links:

US Code: [73 USC 4201-4209](#)

Federal:

[NRCS: Farmland Protection](#)

[NRCS North Carolina](#)

State:

[NCDA Division of Soil and Water Conservation](#)

Fish & Wildlife Coordination Act (FWCA)

1. Will the project impound, divert, channeldeepen, or otherwise control/modify any water body?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining FWCA questions. Stop.

2. Have the US Fish & Wildlife Service (USFWS) and the NC Wildlife Resources Commission (NCWRC) been consulted?

- If “yes”, document recommendations and responses. Compliance is satisfied.
- If “no”, **environmental document cannot be approved.**

Send project scoping letters to USFWS and NCWRC. Document USFWS/NCWRC recommendations and whether they were incorporated. If the recommendations were not incorporated, provide a clear explanation of the basis and reasons for not incorporating the recommendations. FHWA will determine whether or not any recommendations have been considered. (FWCA compliance does not require concurrence from USFWS or NCWRC).

USFWS contacts:

Holland Youngman, Wildlife Biologist
USFWS Asheville Field Office
160 Zillicoa Street
Asheville NC 28801
Phone: 828.575.3920
holland_youngman@fws.gov

Kathy Matthews
USFWS Raleigh Field Office
P.O. Box 33726
Raleigh, NC 27636-3726
Phone: 919.856.4520x27
kathryn_matthews@fws.gov
Raleigh@fws.gov

NCWRC contact:

Shannon Deaton,
North Carolina Wildlife Resource Commission Division of Inland Fisheries, Habitat Conservation Program Manager
1721 Mail Service Center
Raleigh, NC 27699
Phone: 919.733.3633
shannon.deaton@ncwildlife.org

Background on Fish and Wildlife Coordination Act of 1934, as amended

Purpose: Conservation, maintenance, and management of wildlife resources.

Applicability: This act applies to any federal project where the waters of any stream or other body of water are impounded, diverted, deepened or otherwise modified.

General Procedures: Project proponents are required to consult with the U.S. Fish and Wildlife Service (USFWS) and the appropriate state wildlife agency. Reports and recommendations prepared by these agencies document project effects on wildlife and identify measures that may be adopted to prevent loss or damage to wildlife resources. The term “wildlife” includes both animals and plants. Provisions of the Act are implemented through the NEPA process and Section 404 permit process.

Links:

US Code: [16 USC 661-667\(d\)](#)

Federal:

[USFWS Southeast Region 4](#)

[USFWS: Fish and Wildlife Coordination Act](#)

State:

[NCWRC: Habitat Conservation Program](#)

Land and Water Conservation Fund Act (Section 6(f))

1. Will the project require the conversion of such property to a use other than public, outdoor recreation?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining 6(f) questions. Stop.

Determine if the project will convert recreation lands purchased or improved with Section 6(f) funds. The following link contains a list of Section 6(f)-funded properties for each county in North Carolina: <http://projects.invw.org/data/lwcf/grants-nc.html>. The park will have either a map or a boundary description of the 6(f) area. The area may or may not include the entire park. If the project is going to occur on a 6(f)-funded property, then coordination with NPS, DENR and the park owner should occur.

2. Has the NPS approved of the conversion?

- If “yes”, include written NPS approval. Compliance is satisfied.
- If “no”, **environmental document cannot be approved.**

There will need to be a commitment to mitigate such impacts with in-kind replacement. NPS must provide written approval of the conversion and the mitigation.

Background on Land and Water Conservation Fund Act of 1964, as amended (Section 6(f))

Purpose: Preserve, develop, and assure the quality and quantity of outdoor recreation resources for present and future generations.

Applicability: All projects impacting recreational lands purchased or improved with land and water conservation funds. This Act provides funding to preserve and develop recreational lands.

General Procedures: The Secretary of the Interior must approve any conversion of property acquired or developed with Section 6(f) assistance to a use other than public, outdoor recreational use.

Links:

US Code: [16 USC 460I4-11](#)

Federal:

[NPS: LWCFA](#)

[USFS: LWCFA](#)

[Full Text of LWCFA](#)

State:

[NC Division of Parks and Recreation: LWCFA](#)

Magnuson-Stevens Fishery Conservation and Management Act (EFH)

1. Is the project located in an estuarine system?

- If “yes”, go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining EFH questions. Stop.

2. Is suitable habitat present for EFH-protected species?

- If “yes”, go to #3.
- If “no”, compliance is satisfied. Select “N/A” for remaining EFH questions. Stop.

Contact NC Division of Marine Fisheries to assist in determining if suitable habitat is present. Protected species include: pink shrimp, brown shrimp, white shrimp, red drum, atlantic bluefish and summer flounder.

3. Is sufficient design information available to make a determination of the effect of the project on EFH?

- If “yes”, go to #4.
- If “no”, environmental document can be “conditionally” approved. Further coordination with FHWA and NOAA-Fisheries will need to occur prior to issuance of a USACE permit.

Note: Since the FHWA environmental document likely will be completed prior to the design stage, it may not be possible to make a determination of effect before plans have been developed. In this case, FHWA will likely conditionally approve the environmental document, pending later completion of the determination of effect.

4. Will the project adversely affect EFH?

- If “yes”, go to #5.
- If “no”, compliance is satisfied. Select “N/A” for remaining EFH question. Stop.

“Adverse effect” is defined as “any impact which reduces quality and/or quantity of EFH...[and] may include direct (e.g. contamination or physical disruption), indirect (e.g. loss of prey, reduction in species’ fecundity), site-specific or habitat wide impacts, including individual, cumulative, or synergistic consequences of actions.”

If the project will not adversely affect EFH, consultation with NOAA-Fisheries is not required.

If the project will adversely affect EFH, consultation with NOAA-Fisheries is required.

Document determination.

5. Has consultation with NOAA-Fisheries occurred?

- If “yes”, include NOAA-Fisheries conservation recommendations and response to such recommendations. Compliance is satisfied.
- If “no”, **environmental document cannot be approved.**

Prepare an [EFH Assessment](#). Submit to NOAA-Fisheries.

Contact information:

Fritz Rohde
Beaufort Field Office
101 Pivers Island Road
Beaufort, NC 28516-9722
fritz.rohde@noaa.gov

NOAA-Fisheries will provide conservation recommendations. Document response to Conservation Recommendations, including whether such recommendations were incorporated. Response must occur within 30 days of receipt of conservation recommendations.

Background on Magnuson-Stevens Fishery Conservation and Management Act

Purpose: Congress defined Essential Fish Habitat (EFH) for federally managed fish species as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The conservation of essential fish habitat is an important component of building and maintaining sustainable fisheries.

Applicability: The EFH requires Federal agencies that authorize, fund, or conduct activities that "may adversely affect" EFH to work with the National Marine Fisheries Service (NMFS) to develop measures that minimize damage to EFH. In North Carolina, only CAMA counties are affected.

Links:

US Code: [16 USC 1801-1803](#)

Federal:

[NOAA-Fisheries EFH](#)

[NMFS Southeast Regional Office](#)

[South Atlantic Fishery Management Council](#)

State:

[NC Division of Marine Fisheries](#)

Migratory Bird Treaty Act (MBTA)

1. Does the USFWS have any recommendations with the project relative to MBTA?

- If "yes", go to #2.
- If "no", compliance is satisfied. Select "N/A" for remaining MBTA question. Stop.

Send scoping letter to USFWS requesting a review based on MBTA. (The scoping letter allows USFWS an opportunity to make recommendations relative to MBTA, however, USFWS is not required to make any recommendations. Project managers should not delay projects waiting on a response from USFWS regarding MBTA.)

A list of migratory birds can be found at: <https://www.fws.gov/birds/management/managed-species/migratory-bird-treaty-act-protected-species.php>.

USFWS contacts:

Holland Youngman, Wildlife Biologist
USFWS Asheville Field Office
160 Zillicoa Street
Asheville NC 28801
Phone: 828.575.3920
holland_youngman@fws.gov

Kathy Matthews
USFWS Raleigh Field Office
P.O. Box 33726
Raleigh, NC 27636-3726
Phone: 919.856.4520x27
kathryn_matthews@fws.gov
Raleigh@fws.gov

2. Have the USFWS recommendations been incorporated?

- If "yes", include recommendations and response. Compliance is satisfied.
- If "no", **environmental document may not be approved, consult with FHWA.**

Document how USFWS recommendations have been addressed. (Compliance with MBTA does not require USFWS concurrence).

Background on Migratory Bird Treaty Act (MBTA)

Purpose: To protect migratory birds found in the United States.

General Applicability: Makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird.

FHWA Applicability: The indirect killing of birds by destroying their nests and eggs is covered by the act, so construction in nesting areas during nesting seasons can constitute a taking. Bridge rehabilitation/removal and clearing/grubbing are the types of projects most likely to affect nesting areas. If nests are present on bridges, methods to exclude birds from the bridge and prevent nesting activity might be undertaken, prior to the nesting season. Such methods might include: netting, removal of existing nests, and other aversion approaches. If these methods aren't effective then construction avoiding the nesting season might be required. Clearing and grubbing of potential nesting habitat during the nesting seasons should be avoided. Other construction activities can occur throughout the year on the cleared areas. Clearing and grubbing of natural habitats should be minimized to such areas essential for proper safety measures and necessary construction.

Links:

US Code: [16 USC 703-712](#)

Federal:

[USFWS: Migratory Bird Program](#)

State:

[NC Wildlife Resources Commission](#)

Wilderness Act

1. Is the project in a Wilderness area?

- If “yes” go to #2.
- If “no”, compliance is satisfied. Select “N/A” for remaining Wilderness Act questions. Stop.

A general list of Wilderness areas in North Carolina can be found at:

<http://www.wilderness.net/index.cfm?fuse=NWPS&sec=stateView&state=nc>

From this general map, locate the Wilderness area that may be near the project site and contact either the Swan Quarter National Wildlife Refuge (for projects in the Swan Quarter Wilderness Area) or the local USDA Forest Service Ranger District (for all other Wilderness areas) to obtain a map of the particular Wilderness area. From this, determine if the project will encroach on a Wilderness area. If so, send project information to the maintaining agency for comments (initially) and possibly for a special use permit and/or encroachment agreement. Early coordination is very helpful. [Contact USFS Asheville Office](#)

2. Has a special use permit and/or easement been obtained from the maintaining federal agency?

- If “yes”, include a copy of the special use permit and/or easement. Compliance is satisfied.
- If “no”, **environmental document cannot be approved.**

Background on Wilderness Act of 1964, as amended

Purpose: This act preserves and protects wilderness areas in their natural condition for use and enjoyment by present and future generations.

Applicability: All lands designated by Congress as part of the wilderness system.

Public Laws: PL 88-577 (Wilderness Act of 1964), [PL 93-622 \(Eastern Wilderness Areas Act of 1975\)](#), [PL 94-557](#), [PL 98-324 \(North Carolina Wilderness Act of 1984\)](#),

Links:

US Code: [16 USC 1131-1136](#)

Federal:

[USFS](#)

[USFWS](#)

[NPS](#)

[USDOI Bureau of Land Management](#)

Other:

[Full text of the Wilderness Act](#)

[Wilderness Areas in North Carolina](#)

Appendix C (Laws where DMS projects have minimal or no effect)

Anadromous Fish Conservation Act, as amended
Archaeological and Historical Preservation Act of 1974
Bald and Golden Eagle Protection Act
Clean Air Act, as amended
Clean Water Act of 1977, as amended
Coastal Barrier Resources Act
Department of Transportation Act (Section 4(f))
Emergency Wetlands Resources Act of 1986
Executive Order 11593 - Protection and Enhancement of Cultural Environment
Executive Order 11988, Floodplain Management
Executive Order 11990 (Protection of Wetlands)
Executive Order 12898 Environmental Justice
Executive Order 12962 (Recreational Fisheries)
Executive Order 13112 (Invasive Species)
Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds)
Federal-Aid Highway Act, Section 109(h)
Federal Insecticide, Fungicide and Rodenticide Act
Federal Land Policy and Management Act of 1976
Federal Water Pollution Control Act of 1972
Highway Beautification Act of 1965
Historic Sites, Buildings and Antiquities Act of 1935
Marine Mammal Protection Act of 1972, as amended
Marine Protection, Research and Sanctuaries Act of 1972
National Flood Insurance Reform Act of 1994
National Trails System Act of 1968
Native American Graves Protection and Repatriation Act of 1990
Noise Control Act of 1972
Reservoir Salvage Act of 1960
Resource Conservation and Recovery Act of 1976, as amended
Rivers and Harbors Appropriations Act of 1899 (Sections 9 & 10)
Safe Drinking Water Act of 1944, as amended
Toxic Substances Control Act
Water Bank Act (Wetlands Mitigation Banks)
Wild and Scenic Rivers Act
Wildflowers (Surface Transportation and Uniform Relocation Act of 1987, Section 130)

Appendix D (Supporting Documents for Categorical Exclusion At-A-Glance)

Coastal Zone Management Act

- ✓ Provide scoping letter and document concurrence from NCDCM **IF** project in CAMA county (*Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell & Washington*).

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- ✓ Document that there are no known or potential hazardous waste sites through a Limited Phase I Site Assessment report, such as an EDM report. **IF** sites are present, provide additional screening documentation or work with DMS/FHWA.

National Historic Preservation Act (Section 106)

- ✓ Provide scoping letter and document concurrence from SHPO.
- ✓ Provide scoping letter and document concurrence from ECBI **IF** located in ECBI County (*Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes & Yancey*)

Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)

- ✓ Document through signed Option Agreement or landowner letter as evidence that all project landowners were informed of fair market value of their property and notified that the land could not be acquired through eminent domain.

American Indian Religious Freedom Act (AIRFA)

- ✓ Provide scoping letter and document concurrence from three federally recognized Cherokee tribes **IF** located in ECBI County.

Antiquities Act (AA)

- ✓ Provide scoping letter and document concurrence from SHPO **IF** project located on federal lands. May require permit based on consultation.

Archaeological Resources Protection Act (ARPA)

- ✓ Provide scoping letter and document concurrence from SHPO **IF** project located on federal lands or Indian lands. May require permit based on consultation.

Endangered Species Act (ESA)

- ✓ Provide a species list and effect determinations, evaluate for critical habitat
- ✓ Provide scoping letter and document concurrence from USF&W and NOAA (if applicable)
- ✓ For sites under the Raleigh USF&W field office jurisdiction, follow the 9-step on-line process and provide Self Certification letter, species conclusion table, and email receipt.

Executive Order 13007 (Indian Sacred Sites)

- ✓ Provide scoping letter and document concurrence from three federally recognized Cherokee tribes **IF** located in ECBI County.

Farmland Protection Policy Act (FPPA)

- ✓ Provide documentation of completed NRCS form AD-1006, with assistance from NRCS.

Fish and Wildlife Coordination Act (FWCA)

- ✓ Provide scoping letter and document concurrence from USF&W and NCWRC, if project will affect any water body.

Land and Water Conservation Fund Act (Section 6(f))

- ✓ Provide scoping letter and document concurrence from NPS **IF** project will convert recreation lands

Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat)

- ✓ Provide scoping letter and document concurrence from NCDMF **IF** project is in estuarine system.

Migratory Bird Treaty Act (MBTA)

- ✓ Provide scoping letter to USF&W to identify any recommendations relative to MBTA

Wilderness Act

- ✓ Provide permit or easement **IF** project is in a Wilderness area