

Kent Leben  
Rural Programs  
NDDOT-Local Government

# NDACE CONFERENCE 2017

# Topics

- Federal and State Funding Programs

# Funding Programs

## ◎ Federal

- SC – Roads
- BR – Bridges
- ER – Emergency Relief
- HSIP – Highway Safety Improvement Program
- TA – Transportation Alternatives Program
- FLAP – Federal Lands Access Program
- Rail Program

## ◎ State

- SRF – Special Road Fund
- HB 1358, SB 2103, & HB 1176

# Federal Funding Programs

- SC Funds – 80.93%/19.07%
  - Used for roadway improvements (overlays, chip seals, reconstruction) on CMC Routes
  - Funds are allocated by formula (\$12-13M)
    - 25% - CMC Miles
    - 25% - Population
    - 25% - Land Area
    - 25% - Mill Levies (1204, 1212, & 1233) - (tax \$ collected)
  - Counties prioritize their projects based on available funding
  - Counties are able to bank funds provided all of the funds are used by the remaining counties

# Federal Funding Programs

- ◎ BR Funds – 80.93%/19.07%
  - Used for replacement or rehabilitation of structures on or off the federal aid system
  - Approximately \$5-6M is available annually
    - Bridge has to be on inventory ( $\geq 20.0'$  open span)
    - Replacement – Structural Deficient
    - Rehabilitation – Visit with LG
  - Counties submit bridge for NDDOT approval
    - NDDOT will determine when funding is available based on funds and current projects

## Federal Aid

- Estimating approximately \$19.5M in federal aid available for roads and bridges
  - Total projects submitted to date is \$17.5M
  - Still need approximately \$2.0M in road projects to use up the funding
    - All the bridge funds will be used up at this point

# Federal Funding Programs

- ER (Emergency Relief) Funds – 100% or 80.93%/19.07%
  - Used to repair Structures and Roadways on the Federal System that had were damaged as a result of a declared disaster
    - Governor's or Presidential Declaration is required
    - Each site has to be at least \$5,000 (total costs) in damage
    - An event needs to have \$700,000 (federal) in damage to qualify
    - <https://www.dot.nd.gov/business/emergencyrelief.htm>

# Federal Funding Programs

- ◎ HSIP Funds – Safety 90%/10%
  - Approximately \$10 M Annually (State/County/City)
    - \$5M available to LPA's
  - Application based funding
    - Local agencies notified in October
    - Apps due end of December
    - Funding is usually 3-4 years out, but can be sooner

# Federal Funding Programs

- ① HSIP (con't)

- Funding scenario (LRSP)

- Funds will be separate pot of money, not out of your SC account (funds will be available earlier)
- LPA's will still have to submit projects for consideration

# Federal Funding Programs

- TA (Transportation Alternatives) Program Funds – 80.93%/19.07% or limited
  - Pedestrian and bike facilities, Transportation projects to achieve ADA Compliance, Structural improvements to allow kids to walk or bike to school, turnouts, overlooks, and viewing areas, and also some landscaping
  - \$600,000 is available for the rural area
    - \$maximum award is \$290,000
  - Pam Wenger ([pwenger@nd.gov](mailto:pwenger@nd.gov)) at 328-4787

# Federal Funding Programs

- FLAP (Federal Lands Access Program)  
Funds – 80.93%/19.07%
- Used to improve roads to access federal lands (FWS, USACE, USFS, BOR, & BLM)
- Replaced the Forest Highway funds
- ≈\$1.0M annually is available
- Application based – Applications will be accepted shortly

# Federal Funding Programs

- ◎ Rail funds – 90%/10%
  - \$1.5 M for signals and \$1.0 M for surface upgrades
    - Prioritized by State Hwy, CMC, Urban, County, Local, and Township
      - ADT and crash history affects prioritization as well
    - Jim Styron ([jstyron@nd.gov](mailto:jstyron@nd.gov)) at 328-4409

# State Funding Programs

- ◎ SRF – Special Road Funds 60%/40%
  - Road Improvements to highways to improve access to recreation areas
  - Interest for state funds
    - Maximum award is \$300,000
  - Call for projects may not happen this year due to balance of funds

# State Funds

- ◎ HB 1012 (\$142.0M)
  - Done and complete
- ◎ HB 1358 (\$280.0M)
  - Oil Producing remaining is <\$0.31M
  - Non-oil Producing remaining is \$1.23M
  - Keep sending me the final certifications as projects get finished
  - Last day for NDDOT to make any payments is the end of June in 2017. Any funds that were overpaid will need to be repaid even after that date.

# State Funds

- ◎ SB 2103 (\$352.0M)
  - Oil Producing remaining is \$15.91M
  - Non-oil Producing remaining is \$16.42M
  - Keep sending me the final certifications as projects get finished
- ◎ HB 1176 (\$104.664M)
  - Remaining is \$38.46M
  - Keep sending me the final certifications as projects get finished
- ◎ Last day for NDDOT to make any payments is the end of June in 2019. Any funds that were overpaid will need to be repaid even after that date.

# Questions?



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**NEW NEPA PROCESS &  
PROGRAMMATIC BIOLOGICAL  
ASSESSMENT  
2017**

# Levels of Environmental Docs

- ⦿ Environmental Impact Statement
- ⦿ Environmental Assessment
- ⦿ Categorical Exclusions (CATEX)

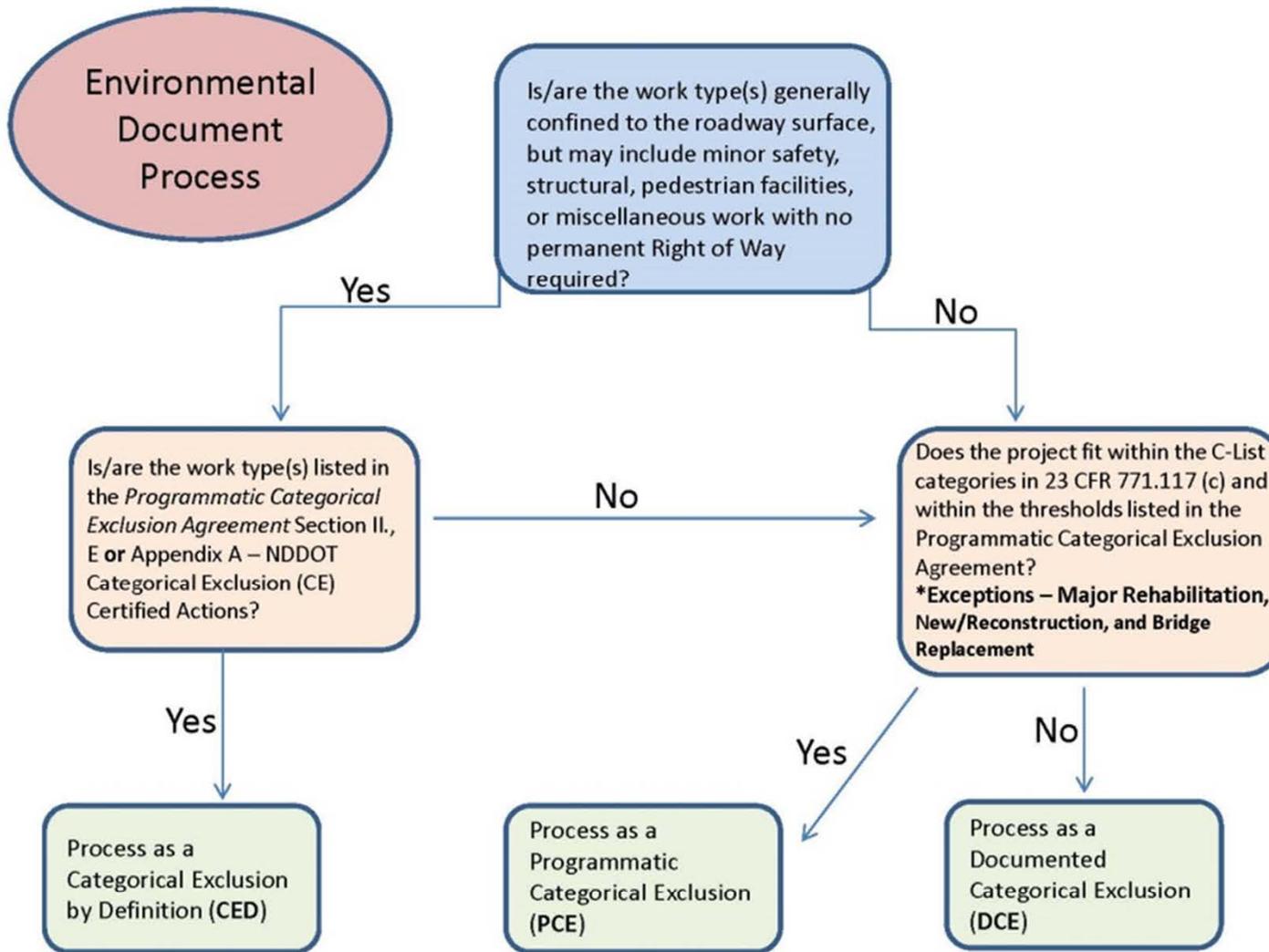
# CATEGORICAL EXCLUSIONS

## ◎ Old

- ECL
- DCE (formerly PCR)

## ◎ New

- CED – Catex by Definition
- PCE – Programmatic CATEX (new level)
- DCE - Documented CATEX



**\*Major Rehabilitation, New/Reconstruction, and Bridge Replacement Projects to be processed as a DCE due to the complexity.**

# NDDOT & FHWA Programmatic Agreement

- ⦿ Signed June 2016
- ⦿ Authorizes NDDOT to approve certain CATEX
- ⦿ Established which types of work are CED

PROGRAMMATIC CATEGORICAL EXCLUSION AGREEMENT  
BETWEEN FEDERAL HIGHWAY ADMINISTRATION, NORTH DAKOTA DIVISION  
AND  
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

REGARDING THE PROCESSING OF ACTIONS CLASSIFIED AS CATEGORICAL EXCLUSIONS FOR  
FEDERAL-AID HIGHWAY PROJECTS

THIS PROGRAMMATIC AGREEMENT ("Agreement"), made and entered into by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE of NORTH DAKOTA, acting by and through its NORTH DAKOTA DEPARTMENT OF TRANSPORTATION ("NDDOT") hereby provides as follows:

WITNESSETH:

**Whereas**, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4370h (2014), and the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508) direct Federal agencies to consider the environmental impacts of their proposed major Federal actions through the preparation of an environmental assessment (EA) or environmental impact statement (EIS) unless a particular action is categorically excluded;

**Whereas**, the Federal Highway Administration's (FHWA) authorization of Federal funds under the Federal-aid Highway Program and approval of actions pursuant to Title 23 of the U.S. Code are major Federal actions subject to NEPA;

**Whereas**, the Secretary of Transportation has delegated to FHWA the authority to carry out functions of the Secretary under NEPA as they relate to matters within FHWA's primary responsibilities (49 CFR 1.81(a)(5));

**Whereas**, the FHWA's NEPA implementing procedures (23 CFR part 771) list a number of categorical exclusions (CE) for certain actions that FHWA has determined do not individually or cumulatively have a significant effect on the human environment and therefore do not require the preparation of an EA or EIS;

**Whereas**, the North Dakota Department of Transportation (NDDOT) is a State agency that undertakes transportation projects that use Federal funds authorized (obligated or advance construction) under the Federal-aid Highway Program, as well as transportation projects that are not authorized for Federal funds but may require a Federal action. In this case, NDDOT must assist FHWA in fulfilling its obligations under NEPA for the NDDOT projects (23 CFR 771.109);

**Whereas**, Section 1318(d) of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allows FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State to determine whether a project qualifies for a CE on behalf of FHWA;

**Whereas**, the FHWA developed regulations implementing the authorities in Section 1318(d) of MAP-21, effective November 6, 2014;

# CED Projects

- Listed in Appendix A
- Work on road top
- Include
  - HMA Overlay
  - Aggregate Surfacing
  - Milling
  - Seal Coat / Micro
  - In kind Pedestrian Replacements
  - Pipe Repair / Pipe Lining

## APPENDIX A NDDOT CATEGORICAL EXCLUSION (CE) CERTIFIED ACTIONS

### Categorical Exclusion by Definition

The NDDOT and FHWA have experience with the projects that are generally confined to the roadway surface but may include minor safety, structural, pedestrian facility, or miscellaneous work that does not require permanent right of way acquisition. Based on that experience the NDDOT certifies that the following project types meet the requirements of a CE under 40 CFR 1508.4 and 23 CFR 771.117 (a). These project types are considered categorically excluded by definition and do not require further NEPA approval by FHWA. NDDOT will ensure that any need for consultation, coordination, notification, or permitting is completed as part of the project development process.

Typical work types include:

- Hot Mix Asphalt Surfacing
- Warm Mix Asphalt Surfacing
- Cold in Place Recycling
- Aggregate Surfacing
- Milling
- Concrete Overlay
- Subcuts (no disturbance outside of foreslope)
- Seal Coat
- Slurry Seal
- Microsurfacing
- Macro Surfacing
- Patching
- Crack Repairs & Sealing
- Dowel Bar Retrofit
- Concrete or Asphalt Pavement Repair
- Grinding
- Mudjacking or Foamjacking
- Landscaping
- Disposal of Excess Right of Way
- Early Acquisition of Right of Way
- Environmental Mitigation
- In Kind Replacement of Pedestrian Facilities
- Curb Ramps
- Curb & Gutter repair (including spot replacement)
- Pipe Repairs or Pipe Liners
- Inlet or Manhole repair or replacement
- Lighting
- Traffic Signals
- Intelligent Transportation Systems
- Railroad Crossings & Warning Devices
- Installation of Electrical & Communication Lines
- Guardrail
- Guardrail embankment (no disturbance outside of foreslope)
- Signing
- Pavement Marking
- Rumble Strips
- Approach Slab Work
- Bridge Deck Overlays
- Bridge Deck Replacement (if traffic is maintained on half the bridge at a time)
- Beam or Abutment Repairs
- Substructure & Deck Sealing
- Repair of Hard Surface Slope Protection
- Bridge Rail Retrofit
- Painting

# What is required for a CED?

- Determination and Approval Form (SFN18878)
- CATEX by Definition Checklist
- Any corresponding figures/tables/reports required by the checklist.
- Cost Estimate

# Determination and Approval Form (SFN 18878)

## DETERMINATION AND APPROVAL FOR CATEGORICAL EXCLUSION

North Dakota Department of Transportation  
Federal Highway Administration - ND Division Office  
SFN 18878 (10-2016)

Project Number	PCN	Date
Project Location	Length	
Work Type		
Project Comments		

**Determination:** Based on the evaluation of this project and the attached documentation, it has been determined the project meets the criteria of a categorical exclusion. Pursuant to the Code of Federal Regulations, Title 23-Highway this project best meets the work type described in 23 CFR 771.117

Based on the project work type the level of NEPA documentation required has been determined to be:

- Categorical Exclusion by Definition (CED)**  
Work is generally confined to the roadway surface but may include minor safety, structural, pedestrian facility, or miscellaneous work that does not require permanent right of way acquisition. Work types are defined in Appendix A of the Programmatic Categorical Exclusion Agreement. No further NEPA documentation is required, but some consultation, coordination, notifications, or permitting may be required.  
*Requires approval by NDDOT Designer/Tech Support.*
- Programmatic Categorical Exclusion (PCE)**  
Work is primarily on the roadway surface, but may also include localized areas of earthwork and enhancement or replacement of structural elements. May require permanent acquisition of minor amounts of right of way.  
*Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer.*
- Documented Categorical Exclusion (DCE)**  
Work involves substantial earthwork, regrading, major rehabilitation, new/reconstruction, or bridge replacements.  
*Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer. If the project exceeds any of the identified thresholds in Section VII of the Programmatic Categorical Exclusion Agreement or is a (d) list project, FHWA approval is also required.*
- FHWA Approval Required

CatEx Addendums/ CatEx Re-Evaluation:  Addendum  Re-Evaluation

**Approvals:** Supporting documentation is complete and compliant with the National Environmental Policy Act (NEPA).

Consultant or Local Public Agency <i>If applicable</i>	Date	NDDOT Designer/Tech Support <i>Required in all cases</i>	Date
NDDOT Environmental Reviewer <i>Only required for PCE and DCE</i>	Date	Federal Highway Administration <i>Only required if NDDOT Approval thresholds are exceeded</i>	Date

# CED Checklist

## Categorical Exclusion by Definition Checklist

Project Number:		PCN:		Date:	
<b>Estimated Cost:</b>					
Although no further NEPA approval is required for the project, the checklist below is intended to identify any additional consultation, coordination, notifications, or permitting that may be required. If the answer is <b>Yes</b> to any of the questions below, additional documentation of that Subject Area is required, shall be added to the project file, and incorporated into the design. For any questions contact your NDDOT Environmental Liaison. If more than one Subject Area is marked <b>Yes</b> , then fly sheets containing the Subject Area name shall be used to separate the additional documentation required. A project location map with the section, township, and range, as well as the beginning and end reference points labeled must be included after the CED Checklist.					
Subject Area	Questions	Yes	No	Documentation added to the Project File	
Right of Way	Is permanent right of way required? <i>If Yes, then a Catex by Definition does <b>not</b> apply.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Are temporary easements required? <i>If Yes, then attach a figure showing the location(s) and amount(s) needed at each location.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Historic	Does the project involve any of the following: - Work on a Historic Bridge                      - Work in a Historic District	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Archeological	Does any element of the proposed construction disturb or conduct earthwork outside of the extents of the existing roadway foreslope? <i>If Yes, then a Class III Survey and consultation may be required. Contact ETS Division, Cultural Resource Section for further guidance.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Section 4(f)	Are there any impacts to Section 4(f) properties such as: - Historic Sites                                      - Publicly owned parks and recreation areas - Wildlife & waterfowl refuges <i>If Yes, then the applicable documentation and agency coordination is required.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Section 6(f)	Are there any permanent impacts to Section 6(f) properties: - Recreational sites that used Land & Water Conservation Funds: <a href="http://www.parkrec.nd.gov/recreation/grants/lwcf/attachments/lwcf_project_listing.pdf">http://www.parkrec.nd.gov/recreation/grants/lwcf/attachments/lwcf_project_listing.pdf</a> <i>If Yes, then a Catex by Definition does <b>not</b> apply and a Documented Catex will be required to be prepared.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Threatened or Endangered Species	Is the project located within 0.5 mile of critical habitat or does the project involve tree removals, work on structures (bridges/box culverts/cattle passes/structural plate pipes), or the adjustment (raising/relocating) or new installation of overhead utility lines in a rural area? See link to designated critical habitat map: <a href="http://gis.dot.nd.gov/external/ge_html/?viewer=wildlifemap">http://gis.dot.nd.gov/external/ge_html/?viewer=wildlifemap</a> <i>If yes, a Section 7 Affect Determination Table needs to be completed and FHWA/USFWS coordination may be required.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Floodway and Floodplain	Is the project located in a floodway or 100 year floodplain? See link for maps: <a href="https://msc.fema.gov/portal">https://msc.fema.gov/portal</a> <i>If Yes, then a floodway authorization or floodplain permit may be required.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Subject Area	Questions	Yes	No	Documentation added to the Project File
Airports	Does the project intersect the glide path of an airport? <i>If Yes then a Notification may need to be provided to the FAA. See Design Manual Section III-17.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Railroads	Does the project intersect any railroads? <i>If Yes, there may need to be agreements for any proposed crossing improvements or for work to be authorized inside the Railroad Right of Way.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Local Public Agencies	Do any Local Public Agencies have an interest in the project? <i>If Yes, then ensure proper coordination/communication has occurred.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Migratory Bird	Does your project involve work on bridges, box culverts, or Structural Plate Pipes? <i>If Yes, then the Migratory Bird Special Provision 0004(14) is required in the plan set.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# PCE & DCE

## ◎ PCE

- Executive Summary
- Environmental Checklist
  - 16 categories
- Email SOVs
- Supporting Documents
- Approved by NDDOT

## ◎ DCE

- Executive Summary
- Environmental Checklist
  - 26 categories
- SOVs Letters
- Supporting Documents
- Approved by NDDOT and/or FHWA if required

If the Yes/No/NA box is shaded with a blue color, and your project requires you to answer **"Yes"**, then the project exceeds the thresholds laid out in the FHWA Programmatic Categorical Exclusion and must be completed as a DCE.

Environmental Impact Checklist			Y/NA	N/NA
Right of Way	1.1	Will the action require permanent right of way?		
	<b>If yes:</b>			
	1.1.1	Number of parcels: [Enter Data]      Number of Acres: [Enter Data]		
	1.1.2	Will the action involve more than the following: 10 acres or more per linear mile (not an average); or more than 3 acres per bridge, intersection, or interchange?		
	1.2	Will the action include acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. 108(d))?		
	1.2.1	Will the action require permanent acquisition of Federal fee-title land or trust lands?		
	1.3	Are there any special property interests such as U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Forest Service, Tribal Lands, Railroad, or State School Lands?		
	<b>If yes:</b>			
	1.3.1	List the type(s):	[Enter Type(s)]	
	1.4	Will the action require relocation of owners or tenants?		
	<b>If yes:</b>			
	1.4.1	Number of Homes to be Relocated:	[Enter Number of Homes to be Relocated]	
	1.4.2	Number of Business to be Relocated:	[Enter Number of Businesses to be Relocated]	
	1.5	Will the action require temporary construction easements?		
	1.5.1	Number of parcels: [Enter Data]      Number of Acres: [Enter Data]		
	1.6	Will the action require any access changes?		
	1.7	Will the action require any access changes on Interstate?		
Historical and Archaeological Preservation	2.1	Will the action involve disturbance off the roadway surface?		
	2.2	Will the action involve disturbance to a bridge or bridge rail?		
	<b>If no to both questions:</b>	<i>The proposed action is the type of actions or activities that have No Potential to Affect Historic Properties; no further Section 106 consideration is required. Skip to Resource Category #9.</i>		
	<b>If yes to either of the two questions above:</b>	<i>Please contact the Cultural Resources Section to complete the following information prior to submittal of the checklist and append by reference the Cultural Resources Report and related correspondence; has this been completed?</i>		

## PCE & DCE CHECKLIST

	12.2.2	Mitigation sites proposed onsite or offsite requires a conceptual mitigation plan (aerial photo with site boundary) attached for review and approval by the resource and/or regulatory agencies. <i>If a mitigation plan is required, has it been attached?</i>		
Temporary Construction	13.1	Will the action include a temporary bridge or roadway (i.e. temporary bypass)?		
	13.2	Will the action require a detour?		
	If yes:			
	13.2.1	Distance (miles):	[Enter Distance of Detour]	
		Route:	[Enter Route of Detour]	
	If yes to any of the above questions:	Please provide description in the Description of the Proposed Build Alternatives.		
Public Involvement	14.1	Were any Public Meetings conducted or scheduled?		
	If yes:			
	14.1.1	Public Information Meeting [Enter Date and Data or NA]		
	14.1.2	Public Input Meeting [Enter Date and Data or NA]		
	14.1.3	Public Hearing [Enter Date and Data or NA]		
Early Coordination	15.1	Have the Master SOV List, SOV emails (PCE level)/letters, and Responses been attached in an Appendix titled Solicitation of Views?		
Environmental Commitments	16.1	Please list the Environmental Commitments: [Enter Data]		

**If the project qualifies as a PCE and no thresholds are exceeded, then the remainder of the checklist does not need to be completed and should be deleted. If a blue highlighted area above is answered "Yes" the whole checklist will need to be completed and the document changed to a DCE instead of a PCE. (Delete this red text when finalizing checklist).**

Air Quality	17.1	Project is not located within or adjacent to USEPA-defined Non-Attainment Area and complies with the State Implementation Plan.		
Economic	18.1	Will the action result in a decrease in business or economic activity along the project corridor?		
Energy	19.1	Will the action impact or deplete the energy supply of natural resources?		
Environmental Justice	20.1	Will the action cause any adverse and/or disproportionate impacts on minority and/or low income populations?		

Based on the project work type the level of NEPA documentation required has been determined to be:



**Categorical Exclusion by Definition (CED)**

Work is generally confined to the roadway surface but may include minor safety, structural, pedestrian facility, or miscellaneous work that does not require permanent right of way acquisition. Work types are defined in Appendix A of the Programmatic Categorical Exclusion Agreement. No further NEPA documentation is required, but some consultation, coordination, notifications, or permitting may be required.

*Requires approval by NDDOT Designer/Tech Support.*



**Programmatic Categorical Exclusion (PCE)**

Work is primarily on the roadway surface, but may also include localized areas of earthwork and enhancement or replacement of structural elements. May require permanent acquisition of minor amounts of right of way.

*Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer.*



**Documented Categorical Exclusion (DCE)**

Work involves substantial earthwork, regrading, major rehabilitation, new/reconstruction, or bridge replacements.

*Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer. If the project exceeds any of the identified thresholds in Section VII of the Programmatic Categorical Exclusion Agreement or is a (d) list project, FHWA approval is also required.*

FHWA Approval Required

CatEx Addendums/ CatEx Re-Evaluation:

Addendum

Re-Evaluation

Approvals: Supporting documentation is complete and compliant with the National Environmental Policy Act (NEPA).

Consultant or Local Public Agency <i>If applicable</i>	Date	NDDOT Designer/Tech Support <i>Required in all cases</i>	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NDDOT Environmental Reviewer <i>Only required for PCE and DCE</i>	Date	Federal Highway Administration <i>Only required if NDDOT Approval thresholds are exceeded</i>	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Every project (CED, PCE & DCE) must have a Determination and Approval Form SFN 18878

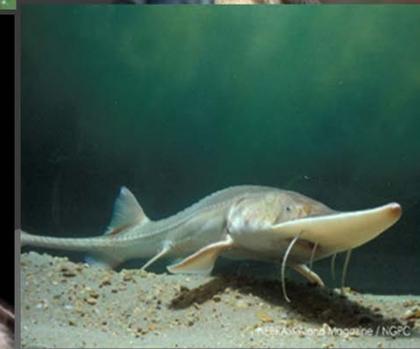


# Endangered Species Act and Programmatic Biological Assessment



# Threatened and Endangered Species of North Dakota

- Interior Least Tern
- Whooping Crane
- Black-Footed Ferret
- Gray Wolf
- Poweshiek Skipperling
- Piping Plover (DCH)
- Western Prairie Fringed Orchid
- Dakota Skipper (DCH)
- Rufa Red Knot
- Northern Long-Eared Bat



# Species on the horizon



- Three Bee Species (Rusty Patched Bumblebee, Yellow Banded Bumblebee and Western Bumblebee)
- Two Butterfly Species (Regal Fritillary and Monarch Butterfly)
- Moose
- Sturgeon Chub and Sicklefing Chub
- Little Brown Bat
- Golden Winged Warbler



- If species or critical habitat are present in the county, there are three scenarios:
  - **FHWA Review Not Required**- Based on review criteria, no effect to species, thus no further action required. Species table included in environmental document to comply with ESA
  - **FHWA Review Required** –Section 7 affect determination package must be prepared in order to recommend a “no effect” determination to FHWA. FHWA must review and sign. Document attached to environmental document to comply with ESA
    - Section 7 Affect Determination Package Timeline – 1 -2+ Months
  - **Biological Assessment Required** – “No Effect” determination cannot be reached
    - Typical timeline for Biological Assessments: 2 – 6+ months
    - Formal consultations take longer – Very few projects
- Current process intended to be temporary until a programmatic agreement was put into place

## Endangered Species Act – Section 7 Current NDDOT Process

- Comprehensive document that analyzes the effects of the NDDOT transportation program on T&E species within North Dakota.
- Describes the implementation process for use of the document to fulfill Section 7 ESA requirements
- Describes NDDOT project types in detail
  - Including new road construction and all types of roadway improvement projects
- Describes life history of all currently listed species (habitat, breeding, threats, current status)
- Identifies stressors and response for each species / critical habitat as a result of roadway projects
  - I.E. Noise, visual, water quality impacts, habitat alteration, lighting, etc and how species respond to those effects
- Provides conservation measures to be implemented to reduce potential effects
  - I.E. Species surveys, avoidance/timing restrictions, general BMP's. etc.
- Provides effect determination for each species and critical habitat.

# What is a Programmatic Biological Assessment?

- Created a Memorandum of Understanding between FHWA and NDDOT
- FHWA and NDDOT Responsibilities
- NDDOT Tasks and Products
  - Preparation of programmatic biological assessment
- FHWA and NDDOT Agreements
  - FHWA delegates informal section 7 consultation responsibilities to the NDDOT. Informal consultations conducted either through PBA or project specific BA
    - Ability of NDDOT to make No Effect determinations on FHWA's behalf
    - Approve projects under the programmatic biological assessment on FHWA's behalf
    - Consult directly with USFWS for informal consultations
- Mutual Agreements
- Term, Renewal, and Termination Clause

## How do we use the Programmatic Biological Assessment?

- Streamlines the Section 7 ESA process.
  - Preparation of individual biological assessments involve repetitive analysis and consultation procedures on routine projects with predictable impacts
- PBA facilitates a standardized approach to making effect determinations for all Federally involved transportation projects in North Dakota.
- Predictable patterns and timeframes for ESA compliance work
  - Speed up project delivery
  - Reduce individual project review time
  - Eliminate individual project review from FHWA/USFWS
- Allows staff to focus efforts on more complex projects with greater concerns for T&E species
- Determine project type and all work activities
  - A revised T&E table will be used to screen projects that may need a biological assessment
  - Projects where adverse effects are anticipated, separate biological assessment will be prepared (i.e. new bridge construction within Missouri River).
- **If one or more species require review**
  - A no effect determination package will be needed – or –
  - A biological assessment will be necessary
    - If scope of work activities fit within the scope of the programmatic biological assessment:
      - Project submittal form will be used

## What Does the Programmatic Biological Assessment Do and How Does it Work?

