

***NORTH DAKOTA  
FEDERAL-AID HIGHWAY  
PROGRAM  
STEWARDSHIP AGREEMENT***

Developed in partnership by the North Dakota Division of FHWA and the North Dakota Department of Transportation.

2005  
**NORTH DAKOTA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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## **I. INTRODUCTION**

This Stewardship Agreement clarifies the roles and responsibilities of both Federal Highway Administration (FHWA) and NDDOT (North Dakota Department of Transportation) in implementing the Federal aid highway program. In situations where the NDDOT has accepted the responsibility for project oversight through the exemptions provided in 23 USC 106, the NDDOT is to have an action that takes the place of the prior role of FHWA. The Stewardship Agreement is intended to result in the efficient and effective management of public funds and to ensure that the Federal aid highway program is delivered consistent with laws, regulations, policies and good business practices.

Since 1991, Federal highway legislation has allowed the delegation of project level responsibilities to States for actions in design, plans, specifications, estimates, contract awards, and inspections of projects. This stewardship agreement is the documentation of the exemptions, under Section 106 of Title 23, from direct Federal oversight that are desired and accepted by NDDOT and recognized by FHWA. The exemption options of Section 106 are desirable for NDDOT for the streamlining of processes. Exemptions are desirable for FHWA because reduced project-level involvement allows for more effective application of personnel resources.

Only actions and authorities rooted in Title 23 are able to be delegated under 23 USC 106. Therefore, actions and authorities such as NEPA approvals and right-of-way approvals are not delegated when a State requests exemption of direct Federal oversight under 23 USC 106.

The Stewardship Agreement contains chapters on 17 broad program areas that address most of the Federal aid highway program. These program area chapters are arranged in alphabetical order based on a representative name given to the program area. Most of these program names reflect common divisions of work related to highway projects, such as design, construction, maintenance, etc.

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**II. EXEMPTIONS UNDER TITLE 23 SECTION 106**

<b>TYPE OF PROJECT</b>	<b>PRIMARY OVERSIGHT RESPONSIBILITY</b>
<b>NHS-projects with construction cost &gt;\$3 million</b>	<b>FHWA</b>
<b>NHS-projects with construction cost &lt;\$3 million*</b>	<b>NDDOT</b>
<b>Non-NHS-all projects*</b>	<b>NDDOT</b>
<b>*Projects Selected by Mutual Agreement</b>	<b>FHWA</b>

NHS-projects are defined by system, irrespective of Federal funding source.

\* Projects Selected by Mutual Agreement are to be selected by an FHWA & NDDOT team on an annual basis. Examples of projects likely to be selected:

- Complex Emergency Relief Projects
- Complex Urban Reconstruction Projects
- Major Structure Projects
- Environmental Impact Statement Projects

Involvement by FHWA in Projects Selected by Mutual Agreement may be limited to key steps. The steps of FHWA involvement will be determined by mutual agreement at the time of selection.

For an overview of the steps of a project that FHWA is involved in on exempt and non-exempt projects, please see the chart on the following page.

For additional information on oversight responsibility by NDDOT and FHWA, see the discussion and charts in the various program area chapters.

**FEDERAL AID PROJECT INVOLVEMENT  
Required FHWA Project-Level Actions**

	<i>Begin Project</i>
<b>All Projects Are Subject to Special Reviews &amp;/or Technical Assistance At Any Time</b>	<b>STIP</b>
	<b>NEPA-Environment</b> Categorical Exclusion, or Draft Environmental Assessment- Final Environmental Assessment – FONSI, or Draft Environmental Impact Statement – Final Environmental Assessment – ROD
	<b>Authorization</b> Preliminary Engineering Right-of-Way Utility Adjustment
	<b>Project Agreement</b>
	Design Exception
	Proprietary Product
	State Owned/Furnished Material
	Plans, Specifications, and Estimate (usually combined with Construction Authorization)
	<b>Authorization</b> Receipt of Bids/Construction Construction Engineering
	Concurrence in Award
	Change Order
	Time Extension
	Claim Adjustment
	Final Inspection
	Final Acceptance
<b>Final Voucher</b>	
	<i>End Project</i>

Key: All steps shown require FHWA interaction on Full Involvement (Non-Exempt) Federal aid Projects.  
The steps in **Bold** require FHWA interaction on Limited Involvement (Exempt) Federal aid Projects.

**FHWA and NDDOT mutually agree to the exemptions defined in this section of the Stewardship Agreement as allowed by Title 23 Section 106 and further agree to abide by the procedures, practices, and business standards outlined throughout this Stewardship Agreement.**

**It is further agreed that incremental changes may be made to this agreement with the concurrent approval of the Deputy Director for Engineering of the NDDOT and the Assistant Division Administrator of FHWA for North Dakota, while retaining the integrity of the overall Stewardship Agreement.**

**APPROVED: Date: \_\_\_\_\_**

**APPROVED: Date: \_\_\_\_\_**

\_\_\_\_\_  
**David Sprynczynatyk**  
**Director**  
**North Dakota Department of Transportation**

\_\_\_\_\_  
**Allen R. Radliff**  
**Division Administrator**  
**Federal Highway Administration**

**Programmatic Agreement for Inherently Low-Risk Oversight Projects on the Interstate System between the Federal Highway Administration North Dakota Division Office (FHWA) and the North Dakota Department of Transportation (NDDOT)**

For the following reasons:

The FHWA has the responsibility for administering Federal requirements with respect to all projects constructed with funds made available under title 23, United States Code, including responsibilities relating to design, plans, specifications, estimates, contract awards, contract administration, and inspections. There are some projects on the Interstate System that are routine and inherently low risk that are generally non-controversial and in which the State DOTs have a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements.

It is mutually desirable to both the FHWA and NDDOT to streamline the approval process of these routine and inherently low risk projects.

Title 23 U.S.C. 106(c) (4) provides that the Secretary of the United States Department Transportation may not assume greater responsibility than the Secretary is permitted on September 30, 1997.

On September 30, 1997, 23 U.S.C. 106(b) permitted the States to approve, on a project-by-project basis, plans, specifications, and estimates for projects to resurface, restore, and rehabilitate highways on the National Highway System (NHS), and further permitted the States to request that the Secretary no longer review and approve highway projects on the NHS with an estimated construction cost of less than \$1,000,000.

The FHWA and NDDOT agree as follows:

I. Inherently low risk oversight projects include those that are routine, low risk projects and generally non-controversial in which the State DOTs have a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements. These projects would not include complex or unique engineering features, would not traditionally involve major changes in scope or cost, satisfy design standards, and would not jeopardize the safety or operation of the Interstate System. Complex projects that are classified as "major projects," or involve new partners (Public/private partnerships), or involve new, innovative contracting methods, or are viewed as high risk, are not considered inherently low risk oversight projects. For purposes of this agreement, inherently low risk oversight projects include all Interstate projects over \$1,000,000 and under \$5,000,000.

2. For the projects listed in paragraph I, FHWA is granting its approval, in advance of the actual delivery of the projects, for these projects' designs, plans, specifications, estimates, contract awards, contract administration, and inspections. These advance

approvals are not deemed to occur until after the completion of the National Environmental Policy Act (NEPA) process and the satisfaction of other related environmental laws and procedures.

3. For the projects listed in paragraph 1, FHWA's oversight will be satisfied by a risk management framework and process/program reviews. It is understood that FHWA's approval of funds for these projects at either the pre-construction or construction phase constitutes a determination that the project in question is eligible for Federal-aid and that the appropriate federal requirements have been met to date or defined steps are to be taken to ensure that requirements will be met. Notwithstanding this determination, FHWA continues to retain overall responsibility for all aspects of Federal-aid programs and, as such, shall be granted full access to review any aspect or record of a Federal-aid project at any time.

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## **1. BRIDGE AND STRUCTURES**

### **a. Program Overview**

The FHWA is responsible for administering the Highway Bridge Replacement and Rehabilitation Program (HBRRP). The purpose of the Program is to replace or rehabilitate public highway bridges over highways, railroads, waterways, or other topographical barriers, when it has been determined that a bridge is deficient because of structural or physical deterioration, or functional obsolescence.

Reimbursable scopes of work include:

- replacement,
- rehabilitation, and
- low water crossing replacement.

The FHWA is responsible for administering the National Bridge Inspection Standards (NBIS) and National Bridge Inventory (NBI). The NBIS requires that all highway bridges over 20 feet in length be inspected at least once every two years. Certain structures, such as box culverts, may be inspected at a lesser frequency if past experience and favorable past experience and analysis justify the increased interval of inspection. NDDOT currently has received approval from FHWA to decrease inspection frequency of concrete box culverts from 2 years to 4 years.

The NBI also requires the State to ensure that all bridges within its borders including county and municipal owned bridges are inspected in accordance with the NBIS. All bridges over 20 feet in length are also required to be listed on the State's inventory and their inventory information is to be submitted annually to FHWA to be included in the NBI.

Other Federal aid highway funds administered by FHWA may also be used to construct or rehabilitate bridges. Project approval

actions are similar to those that apply to the HBRRP program except the existing bridge need not be deficient.

Federal bridge funds may also be used for preventive maintenance on bridges included in the national inventory that are not owned by a federal agency. Other eligible items may include but are not limited to:

- Seismic retrofits,
- Scour countermeasures,
- Bridge painting,
- Bridge approach slab corrections,
- Bridge rail replacement or retrofit.

**b. Applicable Laws, Regulations, and Orders**

- Title 23 USC 144 Highway Bridge Replacement and Rehabilitation Program
- Title 23 USC 151 National Bridge Inspection Program
- 23 CFR 650 Bridges, Structures, and Hydraulics

**c. Program Approval Actions and Required Submittals**

- FHWA will make an annual determination of compliance with the NBIS.
- NDDOT will submit the annual NBI data to FHWA Headquarters.
- NDDOT will submit bridge unit cost data, to be reviewed by the FHWA Division Office and forwarded to FHWA Headquarters.
- NDDOT will submit biannual reports of scour-critical bridges to the FHWA Division Office. Scour Plans of Action (POA) will be submitted to the Division Office as they are developed or updated.

**d. Project Approval Actions**

- FHWA will approve eligible bridge projects that are on the NHS according to the stewardship chart.
- Unusual or complex bridge projects on the Interstate System will require FHWA Headquarters review and approval of the preliminary Type Size and Location (TS&L) report.
- Unusual, complex, or large bridges located off of the Interstate or NHS system may be designated for increased FHWA oversight ranging from technical assistance, to preliminary plan review and approval, to complete PS&E approval, as appropriate. The NDDOT and the North Dakota

Division Office will make this determination on a case-by-case basis.

- NDDOT is required to carry out a Value Engineering (VE) analysis for:
  - All Federal-aid highway funded projects on the Federal-aid system with an estimated total cost of \$25 million or more,
  - A bridge project with an estimated cost of \$20 million or more,
  - Any other Federal-aid project that the FHWA determines appropriate.

#### **e. Monitoring**

FHWA North Dakota Division Office will:

- Screen bridges for eligibility for HBRRP based on the selection list.
- Review environmental documents.
- Review project concept reports.
- ~~Review Critical Bridge Inspection reports.~~
- Review Quarterly reports for bridge posting, critical findings, and inspection frequency.
- Review semi-annual scour evaluation and underwater inspection program.
- Perform special process reviews of specific program elements such as hydraulics, geotechnical, design, or construction on a periodic basis.
- Perform annual reviews to establish compliance with the NBI.
- Review Bridge Construction Unit costs submittal.
- Perform Bridge Maintenance Inspections.

#### **f. Business Standards**

- NDDOT will allow FHWA 2 weeks, from receipt date, to review Project Concept Reports.
- NDDOT will submit the annual update of NBI data to FHWA by April 1<sup>st</sup> of each year.
- NDDOT will submit the Construction Unit Cost data by March 1<sup>st</sup> of each year.

#### **g. Approved Procedures/Agreements/Manuals**

- NDDOT Design Manual

- NDDOT Standard Specifications
- NDDOT Bridge Inspection Procedures
- NDDOT Local Government Manual
- FHWA Bridge Inspection Coding Guide
- AASHTO Standard Specifications for Highway Bridges
- AASHTO LRFD Bridge Design Specifications
- Technical Advisory T 5140.21, REVISIONS TO THE NATIONAL BRIDGE INSPECTION STANDARDS

**PROJECT ACTIVITY APPROVAL CHART**

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects Non-delegated	NHS Projects Delegated	Non-NHS Projects Delegated	<i>Other Projects by Mutual Agreement Non-delegated</i>
HBRRP eligibility determinations	23 CFR 650 Subpart D	<i>FHWA</i>	NDDOT	<i>NDDOT</i>	FHWA/NDDOT
Bridge Project Concept Reports		<i>FHWA</i>	NDDOT	<i>NDDOT</i>	FHWA/NDDOT
TS & L	23 USC 106 23 CFR 630	<i>FHWA</i>	NDDOT	<i>NDDOT</i>	FHWA/NDDOT
PS & E	23 USC 106 23 CFR 630	FHWA	NDDOT	NDDOT	FHWA/NDDOT
Exempt bridge from Coast Guard permit requirements	23 CFR 650.805	FHWA	FHWA	FHWA	FHWA

**PROGRAM ACTIVITY APPROVAL CHART**

<b>PROGRAM</b>	<b>REFERENCE</b>	<b>AGENCY RESPONSIBLE</b>
NBIS Review	23 CFR 650 Subpart C	FHWA
Bridge Unit Cost submittal	23 CFR 650 Subpart D	NDDOT
Discretionary Bridge Candidate submittals	23 CFR 650 Subpart G	NDDOT
Innovative Bridge Research and Construction Program candidate submittals	23 USC 503 (b)	NDDOT
Construction Inspections	FAPG G 6042.8	FHWA/NDDOT
Buy America Requirements	23 CFR 635.410	FHWA
Semi-Annual scour updates		NDDOT
Quarterly reports for: Bridge Posting, Critical Findings, and Inspection Frequency		NDDOT

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## **2. CIVIL RIGHTS**

### **a. Program Overview**

The FHWA Division Office is committed to effectively implement and enforce civil rights programs within NDDOT in its planning, construction, and management of the multimodal North Dakota transportation system. Federal law establishes the State as responsible for nondiscrimination as the recipient of Federal aid, but does not allow the delegation of FHWA Civil Rights federal responsibilities to NDDOT at any project level. If projects are managed by a sub-recipient, NDDOT must ensure that the sub-recipient is well qualified and suitably equipped to perform the work (23 CFR 1.11). If sub-recipients are involved, NDDOT is obligated to ensure nondiscrimination in all programs and activities, and in the provisions of all services and benefits, as a basis for continued receipt of FHWA funds. NDDOT can delegate the activity but cannot delegate their responsibility.

### **b. Applicable Laws, Regulations, and Orders**

- Title VI of the 1964 Civil Rights Act
- Equal Employment Opportunity Act of 1972
- Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Americans with Disabilities Acts of 1967 & 1990
- Civil Rights Restoration Act of 1987
- 23 USC 140, 142, 324
- 49 CFR Part 21 & 26
- 23 CFR Part 230, 633
- 13 CFR Part 121
- 29 CFR Part 1,3,5,6,7
- Executive Order 11246

### **c. Program Approval Actions**

PROGRAM ACTIVITIES		AGENCY RESPONSIBILITY		
Approval Action	Reference Document	Review	Approve	Remarks
Disadvantaged Business Enterprise Program and Supportive Service Plans	49 CFR Part 26 Title VI of the 1964 Civil Rights Act 23 CFR Part 230 Subpart B 13 CFR Part 121 SBA, Size Standards	FHWA	FHWA	Coordination of approval with Washington Office Review Team. Division Administrator approves program. Division office reviews DBE/SS work plan and approves.
State Highway Agency Affirmative Action (External/Internal) Plans	23 USC 140 23 CFR Part 230 Subpart C Title VI of the 1964 Civil Rights Act Equal Employment Opportunity Act of 1972 American with Disabilities Acts of 1967 & 1990	FHWA	FHWA	Programs are reviewed annually and approved by the Division Administrator
Contract Compliance Review Program	Section 22(a.) 1968 Federal-Aid Highway Act (23 USC 140) 23 CFR Part 230 Subparts A & D Title VI of the 1964 Civil Rights Act Exec. Order 11246 23 CFR Part 633	NDDOT	FHWA	Federal-aid highway contracts of \$10,000 or more are monitored by NDDOT. Contract compliance reviews/audits are conducted by NDDOT. Reviews are audited by FHWA at annual review period.
Equal Employment Opportunity On-the-Job Training/Supportive Services Programs	23 USC 140 23 CFR Part 230 Subpart A & C Title VI of the 1964 Civil Rights Act Equal Employment Opportunity Act of 1972 American with Disabilities Acts of 1967 & 1990	FHWA/ NDDOT	FHWA	OJT Training Programs are reviewed and approved by NDDOT and FHWA concurrence. FHWA reviews the Supportive Services work plan and approves each year.
Labor Compliance	29 CFR Parts 1, 3, 5, 6 & 7	FHWA	FHWA	Forwarded to HQ
Title VI/ Non-discrimination	Title VI of the 1964 Civil Rights Act 49 CFR Part 21 23 CFR Part 200 Section 504 of the Rehabilitation Act of 1973 49 CFR Part 27 Age Discrimination Act of 1975 Civil Rights Restoration Act of 1987 Uniform Relocation Act of 1987 23 USC 142 23 USC 324	FHWA	FHWA	Programs are developed by NDDOT and reviewed and approved annually by FHWA Division Office

**d. Project Approval Actions**

Not applicable for Civil Rights Program.

**e. Monitoring**

FHWA will review and approve NDDOT's programs on an ongoing basis through process and program reviews, and through active participation in continuous program evaluation and improvement. Appropriate FHWA representatives will actively participate in NDDOT's initiated reviews, task forces, and other civil rights initiatives upon request and to the extent feasible. Finally, FHWA will analyze civil rights reports submitted by NDDOT to help identify trends and provide feedback and recommendations to NDDOT.

**f. Business Standards**

<b>WORK ACTIVITY</b>	<b>NDDOT ACTION</b>	<b>FHWA ACTION</b>	<b>REMARKS</b>
DBE Program Plan Revisions	Prepare and Submit as Required	Review and Act On (20 Days)	Updates Accurately Reflect Appropriate Program Changes
Title VI Program Update	Prepare and Submit upon Completion	Review and Act Upon (20 Days)	Updates Accurately reflect NDDOT's Title VI Program
State Internal AA/EEO and Contract Compliance Program Reports (Title VII) (Includes EEO-4 Report)	Prepare and Submit Within One Year From the Date of Approval of the Preceding Program	Review and Act Upon (20 Days)	Report is Accurate and Meets CFR Requirements
Annual Contractor Employment Report-PR1392	Prepare and Submit No Later Than September 25	Review and File. Submit to FHWA HQ	
Contractor Compliance Review Schedule and Reports	Prepare and Submit Upon Completion	Review and Act Upon (14 days)	
DBE and OJT Supportive Service Work Requests/ Reports	Prepare and Submit per Contract	Review and Act Upon (14 days)	
On-the-Job Training Program	Prepare and Submit (No Later than March 1)	Review and Act Upon (20 Days)	
On-the-Job Training Goals and Accomplishments	Prepare and Submit (No Later Than November 30)	Review and Act Upon (14 Days)	Previous year's accomplishments and current year's projection

**g. Approved Procedures/Agreements/Manuals**

- DBE Program Administration Document – March 2001
- Other Manuals Used by NDDOT Not Requiring FHWA Approval:
  1. External Civil Rights Manual-March 2003 (Updated Every 2 Years)
  2. Davis-Bacon Wage & Payroll Requirements Manual

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### **3. CONSTRUCTION & CONTRACT ADMINISTRATION**

#### **a. Program Overview**

The FHWA is required to assure compliance with Federal-aid contract provisions on all projects that utilize Federal-aid funds. Federal responsibility includes assurance that specific procedures are followed in the advertisement and award of Federal-aid contracts. The FHWA specific contract administration responsibilities in accordance with Federal law include (but are not limited to):

- Project Authorization
- Competitive Bidding
- Contract Awards
- Buy America provisions

By law, FHWA is responsible for the inspection of construction projects utilizing Federal-aid funds. The primary purpose of FHWA review and administration in construction is to protect the public investment, assure effective quality controls, and to verify that the project is completed in accordance with the plans, specifications, and Special Provisions. Title 23 of the US Code (23 USC) allows the delegation of FHWA construction review, oversight, and administration responsibilities, except those based on non-Title 23 Federal requirements to the state DOT. The FHWA specific construction monitoring responsibilities include stewardship in the following areas (but not limited to):

- Quality Control and Improvement
- Contract Claims
- Change Orders
- Payment to Contractor

FHWA also provides technical assistance in problem solving and recommendations for improvements to State and local construction programs to ensure that high quality products are constructed.

FHWA also provides sharing of identified state-of-the-art practices and innovations in materials, equipment, construction practices, and contracting methods for the purposes of highlighting best practices.

**b. Applicable Laws, Regulations, and Orders**

- 23 USC, 102, 106, 112, 114, 117, 121
- 40 USC 276(a) Davis-Bacon Act
- 23 CFR 635 Construction and Maintenance
- 23 CFR 637 Construction Inspection and Approval

**c. Program Approval Actions**

- FHWA will have specific approval authority for the authorization and obligation of Federal-aid funds for all Federal-aid projects.
- FHWA will approve NDDOT Standard Specifications and Supplemental Specifications.
- FHWA will approve the updates to the Liquidated Damages specification every two years. (Every even numbered year.)

**d. Project Approval Actions**

- FHWA will approve all project and construction authorizations.
- FHWA will approve project agreements, modified project agreements, and final vouchers on all projects.
- FHWA will conduct routine project and final inspections on new construction or reconstruction of Interstate and NHS non-delegated highway projects and other projects as mutually selected by FHWA and NDDOT.
- FHWA may conduct inspections, including finals, on any Federal-aid project. This may be on a specific project basis or, more typically, on a statewide sampling basis through annual QA reviews.
- The NDDOT will conduct inspections including final inspections on delegated projects, as part of providing construction oversight of Federal-aid projects by local governments.

**e. Monitoring**

FHWA Division Office will:

- Evaluate the State and local agencies' transportation construction programs, including their procedures and controls for assuring transportation improvements are

constructed in accordance with approved standards and acceptable contracting methods.

- Evaluate the quality of materials, equipment, construction practices, and work force used for the purpose of evaluating the quality of the constructed product.
- Track the cost of a sample of construction projects to determine the relationship of the final cost to the amount bid for the project.
- Conduct and document construction inspections on non-delegated projects, and in special circumstances, on delegated projects.

#### **f. Business Standards**

- The NDDOT will allow FHWA 2 weeks, from receipt date, to review Supplemental Specifications, PS&E's, construction plans, and major Change Orders. The 2-week time frame may be reduced in emergency or unusual situations.
- In conjunction with reducing the current backlog of projects requiring closeout, FHWA will establish a goal of completing 80% of its final acceptance reports for non-delegated NHS projects within 12 months of receipt of NDDOT final acceptance letter.

#### **g. Recognized Procedures/Agreements/Manuals**

- NDDOT Design Manual
- NDDOT Work Zone Safety and Mobility Program
- NDDOT Construction Records Manual
- NDDOT Standard Specifications for Road and Bridge Construction
- NDDOT Supplemental Specifications
- FHWA Contract Administration Manual
- NDDOT Design Guidelines
- Federal-Aid Policy Guide (FAPG) See website for this guidance.

<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>

#### **h. Program Measures**

The following are mutually considered helpful measures or indicators of program effectiveness and efficiency:

- Percent of contracts completed within the contract time plus approved time extensions.
- Percent of project completed within 10% of the bid amount.

## PROJECT ACTIVITY APPROVAL CHARTS

PROJECT ACTIVITIES		AGENCY RESPONSIBLE			
Approval Action	Reference Document	NHS Projects Non-delegated	NHS Projects Delegated	Non-NHS Projects Delegated	<i>Other Projects by Mutual Agreement</i> Non-delegated
Authorize Construction	23 CFR 635.112	FHWA	FHWA	FHWA	FHWA
Approve exceptions to competitive bidding	23 CFR 635.104 & 204	<b>FHWA</b>	FHWA	NDDOT	FHWA
Approve advertisement & addenda	23 CFR 635.112	FHWA	FHWA	NDDOT	FHWA
Approve advertising period of <3 weeks	23 CFR 635.112	FHWA	FHWA	FHWA	FHWA
Concur in award of contracts	23 CFR 635.114	FHWA	NDDOT	NDDOT	FHWA
Concur in rejection of bids	23 CFR 635.114	FHWA	NDDOT	NDDOT	FHWA
Approve change and extra work orders	23 CFR 635.120	FHWA	NDDOT	NDDOT	FHWA
Approve time extensions	23 CFR 635.121	FHWA	NDDOT	NDDOT	FHWA
Accept material certifications	23 CFR 637.207	FHWA	NDDOT	NDDOT	NDDOT
Concur in settlement of claims	23 CFR 635.124	FHWA	FHWA	NDDOT	FHWA
Concur in termination of contracts	23 CFR 635.125	FHWA	FHWA	NDDOT	FHWA
Final Acceptance/Inspection	23 USC 114a & 121	FHWA	NDDOT	NDDOT	FHWA
Construction inspections	FAPG G 6042.8	FHWA	NDDOT	NDDOT	NDDOT
Emergency Relief *	23 CFR 668	FHWA	NDDOT	NDDOT	FHWA

PROGRAM	REFERENCE	AGENCY RESPONSIBLE
Buy America	23 CFR 635.410	FHWA
Local Public Agency Projects **	23 CFR 635.105	NDDOT
Project/ Construction Authorization	23 CFR 635.112	FHWA
Quality Assurance (Program) reviews	23 USC Section 114	FHWA

\* See Emergency Relief Section

\*\* See Local Government Section

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## **4. DESIGN**

### **a. Program Overview**

Design is a phase of project development that can begin in the planning stage; occurs through the environmental stage; and, following the environmental decision, concludes in the final Plans, Specification, and Estimate (PS&E) development stage; and, as the project transitions to advertisement, bid and award. The FHWA-NDDOT stewardship arrangement provides for a mix of project-level and program-level Federal oversight of design.

To increase involvement and input in early project planning, FHWA participates in preconcept field reviews for projects in which FHWA retains full involvement (non-delegated NHS projects) and projects selected by mutual agreement. This allows FHWA to get a better understanding of early conceptual project planning and design considerations, and to participate in the transition between the transportation planning process and the earliest stage of plan development. It will also provide FHWA an opportunity for early input into the design considerations/parameters. This process will tie in with the long-range planning and management systems as a means of selecting projects. FHWA and NDDOT view this as an important step toward improving the partnership association and cooperation in joint stewardship.

For NHS projects delegated to NDDOT (limited FHWA involvement), periodic in-depth process review/product evaluations (PR/PE's) may be undertaken by FHWA or by FHWA and NDDOT. These reviews will normally be scheduled as part of FHWA annual work plan following discussion with NDDOT management. Such reviews may focus on design standards, as well as design exceptions, that NDDOT has executed. Other elements, such as pavements, structures, safety, materials, construction zone signing, and utilities, may also be selected for review. In addition, NDDOT's internal plan development and review process of these projects could also be included.

Non-NHS projects are excluded from detailed FHWA involvement in the project level design process. The Division conducts only limited checks for eligibility and limits involvement in project level design to issues directly related to environmental determinations and provides response to NDDOT requests for technical assistance.

FHWA operations staff will continue being involved on a programmatic basis in other elements of design irrespective of NDDOT's assumption of design responsibilities on certain projects. Examples of this involvement include pavement design, hydraulic design, and specification development.

FHWA will ensure that appropriate NDDOT personnel are informed of changes to Federal requirements; innovative processes, procedures, and equipment; and technological advances which may affect the design process and are likely to result in a better product.

FHWA will continue to promote and participate in design-related training.

#### **b. Applicable Laws, Regulations, and Orders**

- Title 23 USC, Chapter 1, Subchapter I, Section 109 – Standards
- 23 CFR 470 Highway Systems
- 23 CFR 620 Engineering
- 23 CFR 625 Design standards for highways
- 23 CFR 627 Value engineering
- 23 CFR 630 Preconstruction procedures
- 23 CFR 635 Construction and Maintenance
- 23 CFR 636 Design-build contracting
- 23 CFR 645 Utilities
- 23 CFR 650 Bridges, structures, and hydraulics
- 23 CFR 652 Pedestrian and bicycle accommodations and projects
- 23 CFR 655 Traffic Operations
- 23 CFR 710 Right-of Way and Real Estate
- 28 CFR 35 Nondiscrimination on the Basis of Disability in State and Local Government Services
- 28 CFR 36 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities
- 49 CFR 27 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance
- 49 CFR 37 Transportation Services for Individuals with Disabilities [Americans with Disabilities Act (ADA)]

### c. Program Approval Actions

The following are approved on a program basis (as opposed to project-by-project) by FHWA:

- NDDOT Standard Drawings
- NDDOT Standard Specifications for Road and Bridge Construction
- Supplemental Specification updates
- NDDOT Design Guidelines (which include 3R and preventive maintenance standards)
- Work Zone Safety and Mobility Program
- The Statewide Preliminary Engineering Agreement
- NDDOT's consultant selection procedures

### d. Project Approval Actions

- FHWA will approve all full involvement (non-delegated) project's and mutually agreed upon project's final plans, estimates, and Special Provisions. Various project approval actions applicable to design are included in the PROJECT ACTIVITY APPROVAL CHART below.
- NDDOT is required to carry out a Value Engineering (VE) analysis for:
  - All Federal-aid highway funded projects on the Federal-aid system with an estimated total cost of \$25 million or more,
  - A bridge project with an estimated cost of \$20 million or more,
  - Any other Federal-aid project that the FHWA determines appropriate.

### e. Monitoring

- FHWA will monitor project design through step-by-step involvement in full involvement (non-delegated) projects on the NHS as well as on other mutually agreed upon projects.
- For delegated NHS projects (excluding Interstate), Design Exceptions are to be documented by NDDOT and will be monitored and reviewed by FHWA on a periodic basis. **Design exceptions involving the Interstate, including delegated projects, must be approved by FHWA.**
- Other facets of design including cost and cost growth and including NDDOT's oversight of local agency design for Federal-aid projects, will be monitored on a programmatic basis, with special reviews normally precipitated through FHWA's risk assessment process and FHWA-NDDOT mutual risk assessment discussions.

- Additional monitoring will be done through quarterly sampling of delegated projects authorized by FHWA. A checklist of basic – Federal-aid requirements will be used to review the selected projects.

#### **f. Business Standards**

- NDDOT will provide FHWA two weeks, from receipt date, to review and comment on Project Concept Reports. (See also Section 7, Environment)
- NDDOT will provide FHWA two weeks, from receipt date, to review/approve PS&E's.
- FHWA will respond to NDDOT on changes to the Design Manual within 30 days of a request by NDDOT for input.

#### **g. Recognized Procedures/Agreements/Manuals**

- NDDOT Design Manual
- NDDOT Erosion Control Manual
- Accommodation of Utilities on State Highway Right-of-Way – Policies and Procedures
- Utility Relocations, Adjustments, and Reimbursement – Policies and Procedures
- NDDOT Right-of-Way Operations Manual (FHWA approved)
- NDDOT Local Government Manual
- NDDOT Standard Specifications for Road and Bridge Construction and the approved supplements (FHWA approved)
- 2007 NDDOT Design Guidelines, as amended. (FHWA approved)
- Statewide Preliminary Engineering Agreement (Also see Financial Management) (FHWA approved)
- Work Zone Safety and Mobility Program (FHWA approved)
- Federal Aid Policy Guide (FAPG) See website for this guidance.

<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>

#### **h. Program Measures**

The following are mutually considered helpful measures or indicators of program effectiveness and efficiency:

- Percent of projects bid within 20% of the environmental documents estimate. [or STIP estimate?]
- Percent of projects bid that meet approved standards (i.e., without a design exception).

## PROJECT ACTIVITY APPROVAL CHART

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
<b>Approval Action</b>	<b>Reference Document</b>	<b>NHS Projects Non-Delegated</b>	<b>NHS Projects Delegated</b>	<b>Non-NHS Projects <i>Delegated</i></b>	<b><i>Other Projects by Mutual Agreement</i></b>
Design standards, policies and standard specifications, for applications to geometric and structural design	23 CFR 625.1 & 2	<b><i>FHWA</i></b>	FHWA	<b><i>NDDOT</i></b>	FHWA
Design exceptions	23 CFR 625.3(f)	<b><i>FHWA</i></b>	NDDOT*	<b><i>NDDOT</i></b>	NDDOT
Value engineering	23 CFR 627.5, SAFETEA-LU Section 1904	<b><i>FHWA</i></b>	NDDOT	<b><i>NDDOT</i></b>	NDDOT
Monitoring Federal-aid highway design projects	23 CFR 630.205	FHWA	NDDOT	NDDOT	FHWA & NDDOT
PS&E review and approval / project authorization	23 CFR 630.106	FHWA	NDDOT	NDDOT	FHWA & NDDOT
Traffic control plans	23 CFR 630.1002 23 CFR 655.601	FHWA	NDDOT	NDDOT	FHWA & NDDOT
Interstate highway new, revised, or temporary access	23 CFR 470 23 CFR 710	FHWA	FHWA	NA	NA
Material or product selection: proprietary products, recycled materials, public interest findings	23 CFR 635.411	FHWA	NDDOT	NDDOT	NDDOT
Design-build	23 CFR 636 TEA-21, Section 1307 SEP-14	FHWA	FHWA	FHWA	FHWA
Utilities	23 CFR 645.113	FHWA	NDDOT*	NDDOT	NDDOT
Hydraulics design, erosion and sediment control design	23 CFR 650.115 23 CFR 650.211	FHWA	NDDOT	NDDOT	NDDOT
Pedestrian and bicycle accommodations and design	23 CFR 652.13	FHWA	NDDOT	NDDOT	FHWA & NDDOT
ADA criteria and design	23 CFR 652 28 CFR 35 & 36 49 CFR 27 & 37	FHWA	NDDOT	NDDOT	FHWA & NDDOT

\* Except on Interstate, where FHWA approval is required.

**NORTH DAKOTA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

## **5. EMERGENCY RELIEF**

### **a. Program Overview**

Emergency Relief (ER) is a special program that uses non-formula funds for the repair or reconstruction of Federal-aid highways that have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help pay for unusually high expenses resulting from extraordinary conditions.

ER funds are not intended to cover all damage repair costs nor interim emergency repair costs that will necessarily restore the facility to pre-disaster conditions. Disasters must be of such magnitude as to be considered extraordinary to be considered for ER funding. To be considered extraordinary, the estimated Federal portion of the damage must meet a threshold of \$700,000. Individual sites must reach a threshold of \$5,000 in total cost to be eligible. This threshold is to distinguish a qualifying disaster site from maintenance.

See the attached flow chart for a graphic program overview.

### **b. Applicable Laws, Regulations, and Orders**

- Title 23, Section 125
- 23 CFR 668

### **c. Program Approval Actions**

- The NDDOT must specifically request assistance under the ER program for each natural disaster or catastrophic event. This should be initiated with a letter of intent to seek ER funds as soon as it is evident that there is eligible damage. (See FHWA ER manual for sequence of events.)
- FHWA will respond to written requests for ER assistance with a letter of acknowledgement and brief instructions on how to proceed. Typically, the letter of acknowledgement establishes a beginning date of potential eligibility for immediate emergency repairs.

- Following a site-by-site inspection, the NDDOT prepares a Damage Survey Summary Report, which is submitted to FHWA in support of the request for ER funding.
- FHWA will respond to the report with a determination of ER eligibility. The list of sites outlined in the report constitutes the program of projects required prior to authorization of permanent repairs.

#### **d. Project Approval Actions**

- FHWA's Acknowledgement Letter will establish a date of eligibility for those emergency repairs and protective measures that must be undertaken immediately. These type of repairs are categorically excluded from NEPA by definition. Contracts to do this type of emergency repair may be accomplished through abbreviated procedures, but care should be taken to include applicable Federal aid requirements.
- FHWA's Determination of Eligibility letter will inform the NDDOT of which projects are to be considered full involvement by FHWA and which projects may proceed under delegated authority. Because of the nature of the ER program, the thresholds used for this purpose for regular Federal aid apportioned funds, may or may not be found applicable for a particular disaster or particular damage sites.
- For ER projects determined in the Determination of Eligibility letter to be fully involved, normal Federal aid oversight procedures will apply: design/concept approval, PS&E approval/advertise for bids, concurrence in award, change order approval, etc.
- All ER projects that do not fall into the category of work needed immediately to protect the facility from further damage or keep the route open for the safe flow of traffic (first response type work) will require environmental approval by FHWA. See Chapter 7, Environment.

**e. Monitoring**

- The FHWA will either inspect separately or co-inspect with the NDDOT a sample of the damage sites during the development of the disaster estimate.
- FHWA will conduct final inspections of all ER projects that it determines to be full involvement.
- FHWA may conduct final inspection of additional ER projects on a sample or random basis.

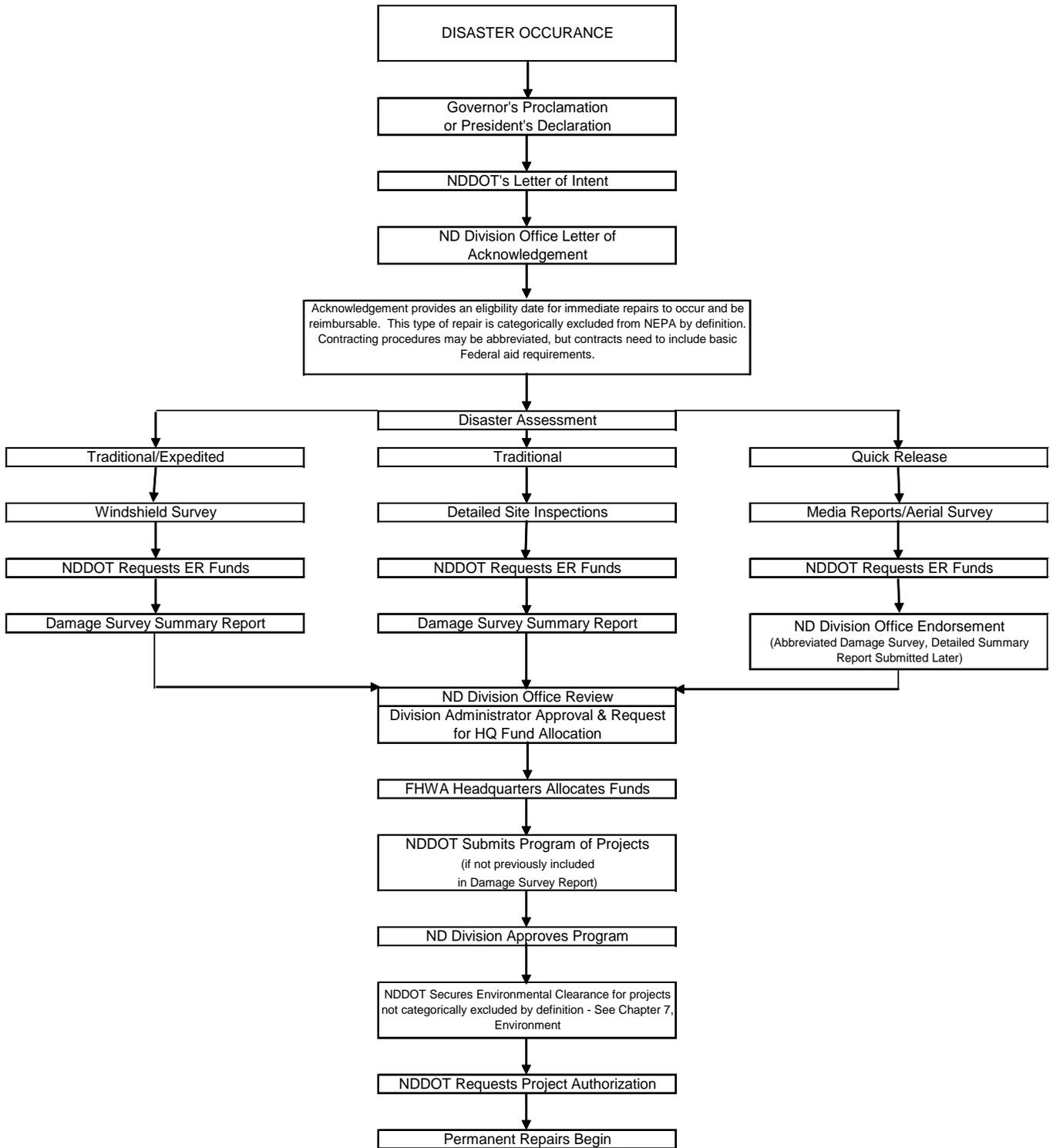
**f. Business Standards**

- FHWA will respond to an NDDOT letter of intent to seek ER funding within 3 working days.
- The NDDOT is expected to complete a reasonable survey of the damage (Damage Survey Summary Report) with associated estimates of cost within 4 to 6 weeks of the event. This may vary depending on the area of impact of the disaster.
- FHWA will respond to NDDOT requests for ER disaster eligibility supported by the Damage Survey Summary Report within 2 weeks with a Determination of Eligibility.

**g. Approved Procedures/Agreements/Manuals**

- FHWA Emergency Relief Manual (August 2003)
- NDDOT Emergency Relief Procedures Manual

## ER PROGRAM OVERVIEW CHART



## Description of ER PROGRAM OVERVIEW CHART

### **Start**

From DISASTER OCCURANCE

### **To**

Governor's Proclamation/President's Declaration

### **To**

NDDOT's Letter of Intent to ND Division Office Letter of Acknowledgement

### **To**

Acknowledgement provides an eligibility date for immediate repairs to occur and be reimbursable. This type of repair is categorically excluded from NEPA by definition. Contracting procedures may be abbreviated, but contracts need to include basic Federal aid requirements.

### **To**

Disaster Assessment

### **To**

Traditional, Traditional/Expedited, or Quick Release

If to Traditional to Detailed Site Inspections, then to NDDOT Requests ER funds to Damage Survey Summary Report, o ND Division Office Review/Division administrator approval and requisition for HQ fund allocation

### **Or**

If to Traditional/Expedited, then to Windshield Survey, Damage Survey Summary Report, to ND Division Office Review/Division administrator approval and requisition for HQ fund allocation

### **Or**

If to Quick Release to Media Reports/Aerial Survey, to Damage Survey Summary Report, to Damage Survey Summary Report, o ND Division Office Review/Division administrator approval and requisition for HQ fund allocation

### **From**

Damage Survey Summary Report, o ND Division Office Review/Division administrator approval and requisition for HQ fund allocation

### **To**

FHWA Headquarters Allocates Funds

### **To**

NDDOT Submits Program of Projects (if not previously included in Damage Survey Report)

### **To**

ND Division Approves Program

### **To**

NDDOT Secures Environmental Clearance for projects not categorically excluded by definition - See Chapter 7, Environment

### **To**

NDDOT Requests Project Authorization

### **To**

Permanent Repairs Begin

### **End**

**NORTH DAKOTA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

## **6. EMERGENCY/SECURITY**

### **a. Program Overview**

The purpose of this plan is to establish procedures to respond to national and local emergencies. These procedures are intended to address security, emergency preparedness, and response capability in the face of disaster and emergency situations.

One purpose of this program is to establish notification procedures to rapidly advise the Federal Highway Administrator, the Office of the Secretary of Transportation, the Office of Emergency Transportation, and the Federal Highway Administration (FHWA) Regional Emergency Transportation Coordinators (RETCO's) of significant events affecting highway transportation, and to provide for follow up reports, as appropriate.

The other purpose of this program is to share our policies and guidance and keep FHWA and the North Dakota Department of Transportation (NDDOT) at an acceptable level of readiness in the event of an emergency.

### **b. Applicable Laws, Regulations, and Orders**

- Executive Order 12656
- FHWA Order 5181.1
- FHWA Order 1910.2C
- DOT Order 1900.9
- DOT Order 1910.8

### **c. Program Approval Actions**

FHWA approval is not required at the program level. The emergency/security program is based on cooperation between FHWA and NDDOT.

#### **d. Project Approval Actions**

The emergency/security program is not project related and is based on cooperation between FHWA and NDDOT.

#### **e. Monitoring**

- FHWA relies on the NDDOT to report information regarding significant highway related incidents. The incident types and reporting criteria are listed in FHWA Order 5181.1. These incidents should be reported to the FHWA at the earliest possible time. FHWA will maintain a list of contacts that would be available during non-working hours. See website for FHWA Order 5181.1.

<http://www.fhwa.dot.gov/legregs/directives/orders/51811.htm>

- FHWA will submit incident reports to the FHWA Emergency Coordinator based on the information supplied by the NDDOT.

#### **f. Business Standards**

- FHWA will allow NDDOT 3 weeks, from receipt date, to review FHWA's Continuity of Operations Plan (COOP).
- NDDOT will allow FHWA 3 weeks, from receipt date, to review the NDDOT Emergency Plan.
- Changes in the point of contact list should be shared with FHWA as soon as possible.

#### **g. Approved Procedures/Agreements/Manuals**

- FHWA COOP
- NDDOT Emergency Plan

**EMERGENCY/SECURITY ACTIVITY CHART**

<b>EMERGENCY/SECURITY ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>
Activity	Reference Document	
Data collecting and reporting	FHWA Order 5181.1	<i>NDDOT</i>
Submitting Alert Bulletins	FHWA Order 5181.1	<i>FHWA</i>
Maintain emergency contact list	FHWA Order 5181.1	<i>FHWA</i>
Emergency Communications	FHWA Order 1910.2C	FHWA
Maintain COOP	FHWA Order 1910.2C	<i>FHWA</i>
National Security Coordination	FHWA Order 1910.2C	<i>FHWA</i>
Federal Response Plan Participation	FHWA Order 1910.2C	<i>FHWA</i>
NDDOT Emergency Plan	EO 12656	<i>NDDOT</i>
Emergency Highway Traffic Regulation (EHTR) Plan	EO 12656	<i>NDDOT</i>

**NORTH DAKOTA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

<b>Section Revision</b>	<b>NDDOT</b>		<b>FHWA</b>	
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## **7. ENVIRONMENT**

### **a. Program Overview**

For projects using Federal funds administered by FHWA, FHWA is the lead Federal agency in integrating the full range of environmental requirements under a single, unified process that results in effective and sound transportation decisions.

Under current law and regulation, FHWA may delegate responsibility to NDDOT for activities to address the various environmental laws, Executive Orders, and regulations, but environmental approval authority has not been delegated to NDDOT. Therefore NDDOT is obligated to submit most environmental documents to FHWA for approval.

These documents include among others: Environmental Impact Statement (EIS), Environmental Assessment (EA), and categorical exclusion (CE) decisions for projects not specifically defined as categorically excluded from environmental documentation in regulation. An EIS is applicable to projects that significantly affect the environment. An EA is applicable to projects where the significance of the environmental impact is not clearly established. A CE is applicable to projects that do not have a significant environmental effect (excluded from the requirement to prepare an EIS or an EA). The final environmental documents will be prepared by NDDOT. Following a satisfactory final review, FHWA will issue the Record of Decision (ROD) and Finding of No Significant Impact (FONSI).

### **b. Applicable Laws, Regulations, and Orders**

- Title 1, Clean Air Act Amendments of 1990
- Section 404 of the Clean Water Act
- Section 401(b) of the Clean Water Act
- Section 7 of the Endangered Species Act

- 42 USC 4321-4347, National Environmental Policy Act (NEPA) as amended (P.L. 91-190) (P.L. 94-83)
- 49 USC 303 and 23 USC 138, Section 4(f) and 6(f)
- 23 USC 109(h), FHWA Environmental Guidelines
- 23 USC 128 and 23 CFR 140, Public Hearings/Public Involvement
- 23 CFR 771, 772, and 777, FHWA Environmental Regulations
- 36 CFR 800, Section 106 of the National Historic Preservation Act
- 40 CFR 1500, Council on Environmental Quality
- Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991
- Executive Order 11990, Protection of Wetlands
- SAFETEA-LU, Public Law 109-59, 8/10/05

### **c. Program Approval Actions**

- NDDOT has been delegated programmatic approval authority for specific categorical exclusions and categorical exclusion by 23 CFR 771.117(c) definition.
- NDDOT, as joint lead agency, performs the informal Section 7 ESA consultation and Section 106 consultation.
- NDDOT public involvement procedures are approved by FHWA.

### **d. Project Approval Actions**

- As early as practicable in a project's development, NDDOT and FHWA will collaborate on the proper environmental (NEPA) classification for a project: Class I = EIS, Class II = CE (except for programmatic CEs and CE by definition), Class III = EA.
- For all projects that require an action to be taken by FHWA, FHWA and NDDOT will work together in the project pre-engineering phase to ensure compliance with NEPA and other applicable laws before an alternative is selected. The level of involvement is commensurate with the level of environmental impacts or project complexity.
- All projects that meet the approved Programmatic Categorical Exclusion agreement between FHWA and NDDOT are to be documented in accordance with FHWA and NDDOT agreements. Other Categorical Exclusions (except those clearly determined categorical exclusion by definition), EAs, EISs, Programmatic Section 4(f) Evaluations, and Section 4(f) Evaluations are prepared by NDDOT and

submitted to FHWA for review and approval. Projects deemed categorical exclusion by definition are so marked on the project authorization documents transmitted to FHWA by NDDOT.

- FHWA is also an active member of individual project teams and helps guide the project planning.
- All documents requiring legal sufficiency review (Final EIS and Final Section 4(f) Evaluations) are sent to FHWA Legal Counsel by the Division Office prior to approving these documents. It is the goal of FHWA Legal Counsel to provide legal sufficiency review comments to the Division Office within 30 days after receipt of the document.
- Environmental reevaluations are conducted through informal consultation and formal written documentation, when appropriate.

#### **e. Monitoring**

- The FHWA will monitor compliance with environmental requirements through project-by-project approval actions. Additional monitoring may be done on a program-wide basis using process reviews.
- The NDDOT will review and monitor environmental documents produced by local governments and consultant firms to the degree necessary for NDDOT to determine that the project fits a defined programmatic categorical exclusion or to recommend those environmental documents for action by FHWA.
- The NDDOT Environmental Section will review all EAs and EISs to assure the documents are of adequate quality and that the documents are in compliance with all Federal laws and regulations, as well as the policies and procedures outlined in NDDOT's Design Manual.

**f. Business Standards**

See chart below.

Work Activity	NDDOT Action	FHWA Action	Result
Programmatic Categorical Exclusion (CE)	Prepare and Approve	Periodic Audit	Approved CE
Draft Project Concept Report (PCR) Non-Programmatic CE	Prepare, review, and submit to FHWA for review	Review and Comment (14 days)	Comments
Final Project (PCR) Non-Programmatic CE	Prepare, review, and submit to FHWA for approval	Review and approve CE (14 days)	Approved CE
Draft Environmental Assessment (EA)	Prepare, review, and submit to FHWA for review	Review and comment (30 days)	Comments
EA	Prepare, review and submit to FHWA for approval	Review and approve EA for circulation or return for revision (14 days)	Approved EA or instructions for revision
Draft Final Environmental	Prepare, review, and submit to FHWA for review	Review and comment (30 days)	Comments
Final Environmental Document	Prepare FONSI request including approval of Final Environmental Document and conclusions and submit to FHWA	Prepare and issue FONSI Statement or notify NDDOT of need for EIS (14 days)	FONSI or NOI
Notice of Intent (NOI)	Prepare Draft Notice of Intent and forward to FHWA	Review and revise NOI and publish in the Federal Register (14 days)	Published NOI in the Federal Register
Cooperating/Participating Agency Request Letters	None	Prepare and distribute request letters	Cooperating Agency identified
Preliminary Draft Environmental Impact Statement (DEIS)	Prepare, review, and submit to FHWA for review	Review and comment (30 days)	Comments
DEIS	Prepare, review, and submit to FHWA for approval	Review and approve DEIS for circulation or return for revision (21 days)	DEIS or instructions for revision
Preliminary Final Environmental Impact Statement (FEIS)	Prepare, review, and submit to FHWA for review	Review and comment (45 days)	Comments
FEIS Legal Sufficiency	Prepare, review, and submit to FHWA for review	Legal Sufficiency by Legal Counsel (30 days)	FEIS Legal Sufficiency
FEIS	Prepare, review, and submit to FHWA for approval	Review and approve FEIS or return for revision (21 days)	FEIS or instructions for revision

Work Activity	NDDOT Action	FHWA Action	Result
Record of Decision (ROD)	Prepare, review, and submit a Draft ROD to FHWA for review	Review, revise, and issue ROD (30 days)	ROD
Programmatic Section 4(f) Evaluation	Prepare, review, and submit for FHWA approval	Review and approve Programmatic Section 4(f) Evaluation or return for revision (14 days)	Approved Section 4(f) Evaluation or instructions for revision
Draft Section 4(f) Evaluation	Prepare, review, and submit to FHWA for review	Review and comment (14 days)	Comments
Section 4(f) Legal Sufficiency	Prepare, review, and submit to FHWA for review	Legal Sufficiency by Legal Counsel (30 days)	Section 4(f) Legal Sufficiency
Final Section 4(f) Evaluation	Prepare, review, and submit for FHWA approval	Review and approve or return for revision (14 days)	Final Section 4(f) Evaluation or instructions for revision
Section 106 Adverse Effect Determination	Prepare, review, and submit to FHWA for Determination	Make determination and forward to the Advisory Council on Historic Preservation (30 days)	Adverse Effect Determination
Section 106 Memorandum of Agreement (MOA)	Negotiate MOA, acquire other approvals, approve, and submit to FHWA for approval	Sign MOA or return for revision (14 days)	Executed Section 106 MOA or instructions for revision
Draft written Reevaluation	Prepare, review, and submit to FHWA for review	Review and comment (30 days)	Comments
Written Reevaluation	Prepare, review, and submit to FHWA for approval	Review and approve Reevaluation or return for revision (14 days)	Reevaluation or instructions for revision

#### g. Recognized Procedures/Agreements/Manuals

- NDDOT Design Manual
- NDDOT Wetland Banking Procedures (approved)
- Agreement for Programmatic Categorical Exclusions (approved)
- Public Involvement Procedures (approved)
- Programmatic Agreement for Tribal Consultation (approved)

## h. Program Measures

The following are mutually considered helpful measures or indicators of program effectiveness and efficiency:

- EIS-ROD within agreed time
- EA-FONSI within agreed time
- Project bid openings postponed due to delay in environmental clearance or receipt of a permit.

### PROJECT ACTIVITY APPROVAL CHART

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects Non-delegated	NHS Projects Delegated	<i>Non-NHS Projects</i>	<i>Other Projects by Mutual Agreement</i>
Programmatic Categorical Exclusion	23 CFR 771	<i>NDDOT</i>	NDDOT	NDDOT	<i>NDDOT</i>
Categorical Exclusion	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Environmental Assessment	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Finding of No Significant Impact	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Environmental Impact Statement	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Record of Decision	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Section 4(f) Evaluation	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Section 106 Compliance	36 CFR 800	FHWA	FHWA	FHWA	FHWA

**NORTH DAKOTA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

## **8. FINANCIAL MANAGEMENT**

### **a. Program Overview**

While ISTEA and TEA-21 changed FHWA's stewardship of certain Federal-aid highway projects, it had little affect on the overall financial management and responsibilities of the Federal-aid program.

NDDOT recognizes that the correctness and propriety of all Federal-aid claims are its primary responsibility whether the primary cost document originates within NDDOT or with some third party. This responsibility is fulfilled by NDDOT maintaining adequate and tested operating policies and procedures and a sound accounting system with proper internal controls together with suitable audit activities. FHWA recognizes a need for complete understanding of all pertinent financial and operating policies and procedures of NDDOT. It is FHWA's responsibility to provide technical assistance and advice in funding and financial areas.

### **b. Applicable Laws, Regulations and Orders**

- Title 23 USC
- Title 23 CFR
- 48 CFR Part 18 – USDOT Common Rule Application
- OMB Circular A-133, Single Audit Act of 1984
- OMB Circular A-87, Cost Principles for State & Local Governments
- Cash Management Improvement Act of 1990

### **c. Program Approval Actions**

- FHWA will approve the accounting process used to develop the payroll additive rates and indirect cost rates. At this time NDDOT, has opted not to develop an indirect cost plan and therefore, will not seek reimbursement for indirect costs.
- FHWA will approve the resolution of OIG and State audit findings
- FHWA will approve the Federal-aid Current Billing

**d. Project Approval Actions**

FHWA will approve final vouchers, project agreements, and modified project agreements on all projects.

**e. Monitoring**

FHWA will monitor all financial management and accounting activities primarily through periodic contacts and program level Quality Financial Management Initiative (QFMI) reviews. Reviews will encompass both NDDOT and Local Agencies. Through periodic contact with NDDOT personnel FHWA will provide guidance and technical assistance in such areas as fiscal document processing, financial management and reimbursement. FHWA will, to the maximum extent possible, utilize the work of ND State Auditors to limit the scope of FHWA reviews. Risk assessment techniques will be used where appropriate to determine areas for review.

**f. Business Standards**

WORK ACTIVITY	NDDOT ACTION	FHWA ACTION	REMARKS
Current Billing	Submits electronically as often as desired	Act Upon within 2 hours of notification	Source documentation will randomly sampled and reviewed by FHWA
SIB Annual Report	Prepare annually within days from the end of the Federal FY	Review and Forward to Finance Office in Washington, DC	
Project Funds Management	Annually review a designated list of inactive projects and submit justification by September 1 <sup>st</sup> for those that must remain open	Review for concurrence and forward to Finance Office in Washington, DC required	
NDDOT Single Audit	Ensure audit is completed as required and copies of audit reports are submitted	Review and take action to ensure findings are resolved	
NDDOT Sub-Recipient Single Audits	Review and take action to ensure findings are resolved, submit summarizing listing to FHWA	Review and take action to ensure compliance	
Project Authorizations/Agreements and Modifications	Prepare and submit	Review and act upon within 5 working days	
Final Vouchers/Final Acceptance	Prepare and submit	See Contract Administration Section	

<b>WORK ACTIVITY</b>	<b>NDDOT ACTION</b>	<b>FHWA ACTION</b>	<b>REMARKS</b>
CMAQ Annual Project Lis	See Planning Section	See Planning Section	
Monthly Status Of Funds	Prepare and submit	Review and monitor	
Year End Document for Utilization of Federal-aid Funds	Prepare and submit by September 15 <sup>th</sup>	Review and act upon within 5 working days	Documents that require processing must be submitted to NDDOT Planning and Programming September 1
Consultant Audits	Annually conduct audits submit listing of audits completed	Review listing. Sample periodically to ensure compliance.	

**g. Approved Procedures/Agreements/Manuals**

- Additive Rate Methodology – December 2004
- Statewide Preliminary Engineering Agreement – Scheduled for revision (Also see Design)
- Federal-Aid Policy Guide (FAPG) See website for this guidance.

<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>

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## **9. INTELLIGENT TRANSPORTATION SYSTEMS (ITS)**

### **a. Program Overview**

NDDOT works cooperatively with FHWA to take a lead role in development of Intelligent Transportation Systems (ITS) initiatives in North Dakota and actively pursues ITS deployment, integration, research and operational testing. NDDOT has established a multi-disciplinary ITS Core Team, of which FHWA is a member, to provide a technical screening and ITS oversight function as well as lead NDDOT efforts in managing an ITS Strategic Plan and a Statewide ITS Architecture.

NDDOT and FHWA work cooperatively with the Bismarck, Fargo and Grand Forks Metropolitan Planning Organizations (MPOs) to promote ITS planning, regional architecture use, and adoption and integration of ITS at the local level. The three MPO areas are actively implementing planning studies related to ITS deployment in the metropolitan areas. NDDOT uses the Advanced Traffic Analysis Center (ATAC) as a primary resource in assessing overall ITS needs, application of ITS tools, development of ITS architecture and integrator of systems. NDDOT and FHWA will work cooperatively to assure that ITS projects are consistent with the National ITS Architecture, incorporate ITS Standards and are fully integrated.

A primary ITS goal of NDDOT is to ensure that transportation facilities operate efficiently and that no opportunities to provide integrated ITS features are overlooked during reconstruction.

See Appendix B for key definitions pertinent to stewardship of ITS projects.

### **b. Applicable Laws, Regulations, and Procedures**

- TEA - 21 Title V Subtitle C
- 23 CFR Part 940

### **c. Program Approval Actions**

- Regional ITS architectures for each of the MPOs must be developed and maintained to document the ITS integration strategies and guide the development of specific projects and programs. FHWA will serve as a technical resource during the development of the regional architectures and will be furnished a copy of the adopted regional architectures and any amendments. It will be up to the owners of the regional architecture to decide whether they want to request FHWA approval, concurrence or acknowledgement of the regional architecture.

### **d. Project Approval Actions**

- All ITS projects (stand alone or ITS incorporated in other work) need to accommodate the interface requirements and information exchanges specified in the regional ITS architecture and there must be a commitment to the operations, management and maintenance of the overall system. NDDOT will make a determination of conformity of ITS Projects with the regional ITS architecture. FHWA will concur in the project level determination of conformity with the regional ITS architecture consistent with partnership agreement procedures for involvement.
- All ITS projects need to be developed based on a systems engineering analysis. NDDOT will make a determination of conformity of ITS Projects with the systems engineering analysis requirement. FHWA will concur in the project level determination of conformity with the systems engineering analysis consistent with partnership agreement procedures for involvement.
- All ITS projects need to use applicable ITS standards and interoperability tests that have been officially adopted, by rulemaking, by US DOT. NDDOT will make a determination of conformity of ITS projects with the ITS standards requirement. FHWA will concur in the project level determination of conformity with the ITS standards requirement consistent with partnership agreement procedures for involvement.
- Projects advanced under TEA – 21 Section 5208 (ITS Integration Program) are normally non-construction projects and will be advanced/approved on a case-by-case basis. Typically, the projects are designated by earmark in appropriations acts with specific implementation processes

issued by FHWA Washington Headquarters for each appropriation cycle.

#### **e. Monitoring**

- FHWA will provide ongoing technical assistance on the use of regional ITS architectures, systems engineering analysis, and ITS standards, include these areas in routine risk assessments evaluations, and work cooperatively with NDDOT to use process review techniques to assess and improve processes and procedures.
- FHWA will participate in project steering committees or other ongoing oversight processes for ITS Integration Program projects.

#### **f. Business Standards**

- NDDOT will provide FHWA with copies of ITS regional architectures or amendments within 30 days of adoption. If the owners of the regional architectures choose to have FHWA approve or concur in the Architecture, FHWA will be allowed 3 weeks, from receipt date, to review and act on the document.
- FHWA will follow prescribed processing requirements for individual project actions related to regional architecture conformity, systems engineering analysis completion, and standards conformity as defined in the partnership agreement.
- FHWA will follow prescribed processing requirements for ITS Integration Program projects as defined in Washington Headquarters instructions issued with each appropriations cycle.

#### **g. Approved Procedures/Agreements/Manuals**

- NDDOT and MPO ITS Strategic Plans
- NDDOT and MPO Regional ITS Architectures

**PROJECT ACTIVITY APPROVAL CHART – ITS Infrastructure Projects**

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects >\$3 million	NHS Projects <\$3 million	Non-NHS Projects	<i>Other Projects by Mutual Agreement</i>
Regional Architecture Conformity Determination	23 CFR 940.11	<i>FHWA</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
Systems Engineering Analysis Determination	23 CFR 940.11	<i>FHWA</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
ITS Standards Determination	23 CFR 940.11	FHWA	NDDOT	NDDOT	FHWA

Special instructions for ITS Projects:

“ITS projects” can be standalone construction projects or may be larger projects that include ITS features. The above listed approval actions apply whether the ITS project is advanced on either a standalone or included basis. All other stewardship and oversight functions such as environmental determination, right of way clearance, etc. are project size, system and work type dependent with no other special processing requirements for ITS purposes beyond routine stewardship and oversight.

**PROJECT ACTIVITY APPROVAL CHART – ITS Integration and Deployment Projects**

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects >\$3 million	NHS Projects <\$3 million	Non-NHS Projects	<i>Other Projects by Mutual Agreement</i>
Case by case determination	Instructions issued annually by Washington Headquarters	<i>FHWA and NDDOT</i>	<i>FHWA and NDDOT</i>	<i>FHWA and NDDOT</i>	<i>FHWA and NDDOT</i>

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## **10. LOCAL AND TRIBAL GOVERNMENTS**

### **a. Program Overview**

The North Dakota Department of Transportation (NDDOT) is responsible for all requirements of the Federal-aid program whether these requirements stem from Title 23 or non-Title 23 status. Since Title 23 U.S.C. does not recognize local entities as direct recipients of Federal-aid funds, local agencies cannot take the place of the NDDOT in the context of the Federal-aid highway program. Although the NDDOT cannot delegate responsibility, activities can be delegated and the local entities held accountable to the NDDOT. In those cases where activities are delegated to Cities or Counties, the NDDOT will take actions necessary to assure local compliance with all requirements of Federal laws. The FHWA will work in partnership with the NDDOT on these review and assurance actions. The NDDOT may, at the request of a City or County, consider requests to approve the use of standards and procedures for projects administered by the City or County. Also, NDDOT is responsible for considering the needs of Indian Tribal governments that have jurisdiction over land within the boundaries of the state. To identify needs and address concerns of the Indian Tribal governments, NDDOT consults with Tribal governments throughout the transportation planning process.

#### **1. Local Government**

NDDOT is permitted to delegate certain activities, under its supervision, to local agencies (cities, counties, private organizations, or other state agencies) under federal regulation 23 CFR 1.11 and 635.105. North Dakota Century Code 24-04-03 authorizes NDDOT to act as agent and to accept federal funds on behalf of local agencies for transportation projects. Nearly all transportation projects under the jurisdiction of local agencies are projects off the NHS. Projects on the NHS will follow the processes and procedures identified in the Stewardship Plan for NHS projects. NDDOT and FHWA, on a case-by-case basis, will review all NHS projects administered by local agencies to determine allowable delegation.

Non-NHS projects administered through NDDOT will be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards, in lieu of NHS-based Title 23 U.S.C. requirements (23 USC 106). Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not limited to, transportation planning, procurement of professional services, Davis-Bacon wage rates, advertising for bids, award of contracts, use of convict produced materials, Buy America Act provisions, and other requirements. All non-NHS projects must comply with applicable non-Title 23 U.S.C. requirements (see a. Program Overview).

By written agreement with the local agency, NDDOT may delegate all or some project activities to local agencies, whether or not Federal-Aid is used for the activity. Those activities include, but are not limited to:

- Environmental studies
- Procurement of consultant services
- Preliminary design
- Surveying
- Right of Way acquisition and certification
- Work by local forces or utility companies
- Preparation of plans, specifications and estimates
- Preparation of bid proposal package
- Advertisement for letting
- Contracting
- Contract administration
- Inspection

Normally NDDOT delegates most local government design and environmental study activities as well as contract administration and inspection. The projects may be included as a part of NDDOT's bid openings. NDDOT reviews the bids for math errors and checks if the DBE goals are met. Environmental studies will be reviewed as described in Chapter 4 (Environmental) of the Stewardship Agreement. NDDOT then concurs in the use of federal funds and the local agency signs the contract with the Contractor. Either NDDOT or the local agency makes payment to the contractor.

Occasionally on small projects or Emergency Relief projects, the local agency will assemble the contract documents and bid the project locally. NDDOT will determine if the local agency is qualified, adequately staffed, and able to administer the project

before delegating this activity. NDDOT will review each request on a case-by-case basis.

On all projects, an agreement will be executed between NDDOT and the local agency that outlines the responsibility of both NDDOT and the local agency.

NDDOT retains its responsibilities under Federal law and regulations for all delegated activities. NDDOT will provide the necessary processes, approvals, oversight, and review to ensure that delegated projects receive adequate supervision and inspection, and that they are completed in conformance with approved plans and specifications and applicable federal requirements. While NDDOT will offer any training, advice, or other assistance as may be needed by a local agency to aid it in successfully completing its Federal-aid project, it is understood that the project is controlled by the local agency. As such, NDDOT cannot compel a local agency to change a course of action that it is determined to take, and in the worst-case scenario, NDDOT's only recourse is to remove Federal-aid funds from the project.

The following activities will not be delegated to local agencies:

- NEPA review and approval
- Design Exception approval
- Right of Way certification
- Plan Approval
- DBE Goals
- Labor compliance enforcement
- Final Inspection and Acceptance
- Project Audit
- Tribal Consultation

## **2. Tribal Governments**

NDDOT will consult with the tribal governments during the planning process of projects to assure tribal concerns regarding the preservation of environmental, scenic, cultural or historic values are addressed. This consultation process is separate from the consultation process required under Section 106 (36 CFR 800, Protection of Historic Properties).

NDDOT will require contractors to work with the Tribal Employment Rights Office (TERO) for hiring non-core workers on all projects or portions of projects on or near boundaries of

the reservation. NDDOT will negotiate with tribal officials to address TERO fees and regulations the department will enforce while the contractor is working on or near the reservation.

**b. Applicable Laws, Regulations, and Orders**

- 23 U.S.C. 106(c)(2)
- 23 U.S.C. 109(o)
- 23 CFR 1.11
- 23 CFR 635

**c. Program Approval Actions**

To the extent permitted in 23 U.S.C. Section 109(o), non-Federal-aid projects administered through NDDOT will follow state laws, rules, and standards for state-aid funded projects, in lieu of Title 23 requirements.

Local agency Federal-aid projects will comply with the oversight requirements found elsewhere in this Agreement, summarized as follows:

- Projects will be developed in accordance with applicable NDDOT Manuals (i.e. Local Government, Design, Bridge, Right-of-Way, etc.). Deviations from geometric design standards will be handled as design exceptions in accordance with the Manuals.
- Procurement of consultant services, to be reimbursed with federal aid, will be performed in accordance with NDDOT procedures and State Statutes.
- Project funding will be in accordance with Federal and State requirements.
- Projects will be let in accordance with State Statutes and Federal regulations.
- NDDOT will enforce compliance with applicable Title 23 U.S.C. requirements and all non-Title 23 U.S.C. federal regulations such as NEPA, Civil Right (DBE), Davis Bacon Wage Rates, Buy America, right-of-way acquisition laws, and other applicable requirements, as required by state statute and FHWA regulations.
- Projects will be constructed in accordance with the current edition of NDDOT's Standard Specifications.

#### **d. Project Approval Action**

- A Memorandum of Understanding (MOU) between NDDOT and Tribal Governments is developed for each Federal aid project, on state maintained roads, on or partially on and near the reservation. Terms and conditions of the MOU are included in contract documents (i.e. TERO special provisions, etc.).
- Environmental clearance must be obtained from FHWA (or determined to be a categorical exclusion by definition or a pre-determined programmatic categorical exclusion) prior to the design or right-of-way processes on all projects using Federal aid funds unless approved by FHWA.
- Contract documents for projects, with full involvement, are submitted to FHWA prior to each bid opening approval.

#### **e. Monitoring**

All Federal-aid highway projects are subject to review at any time by NDDOT and or FHWA. FHWA's primary monitoring method in this program area will be process reviews or program evaluations. The decision to conduct a process review or program evaluation would likely stem from the FHWA Division Office/NDDOT risk assessment process.

FHWA will also monitor, on a quarterly basis, delegated (non-full involvement) projects authorized for construction. These projects (typically 3 per quarter) are selected on a random basis and may include projects sponsored by local governments. FHWA will review the selected projects to ensure that basic federal-aid requirements are met in the PS&E process. Following the completion of fourth quarter project verification reviews, FHWA will examine all of the reviews from the previous year to determine if program actions are warranted or if the sample size should be modified.

#### **f. Business Standards**

NDDOT will provide FHWA at least 2 weeks to review and comment on the draft and final local government manual. NDDOT will provide FHWA 2 weeks to review and approve project authorizations. See Environment Chapter in regards to agreed business standards between the NDDOT and FHWA related to the environmental process.

NDDOT will involve FHWA in decisions involving special and unusual circumstances at the earliest reasonable time to ensure thorough and appropriate decisions can be made collectively.

#### **g. Recognized Procedures/Agreements/Manual**

- NDDOT Local Government Manual
- NDDOT's Design Manual
- NDDOT's Standard Specifications for Road and Bridge Construction.
- NDDOT's Construction Records Manual
- NDDOT's Field Sampling and Testing Manual
- FHWA's Contract Administration Manual
- Federal Aid Policy Guide (FAPG) See website for this guidance.

<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.html>

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## **11. MAINTENANCE**

### **a. Program Overview**

Title 23 of the United State Code defines maintenance as, "...the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway." Title 23 further requires a State transportation department to maintain each project constructed with Federal-aid funds until such time that it no longer constitutes a part of the Federal-aid system. It is FHWA's role to see that maintenance of Federal-aid projects is adequate and to provide technical assistance in disseminating information on successful maintenance techniques.

For the most part, though maintenance is required by statute, regulation and project agreement for projects on which Federal-aid is spent, common maintenance is not eligible for Federal-aid. Traditional activities considered to be maintenance are snow plowing, vegetation control, pot-hole patching, up-keep of signal and lighting installations, cleaning and up-keep of rest-areas, control of right-of-way encroachment, etc. These types of maintenance activities are considered the obligation of the State or local jurisdiction under State charter. This section of the Stewardship Plan pertains to the activities and the management of those activities that are required to be accomplished by the NDDOT (or caused to be accomplished by the NDDOT) to fulfill its obligation under Title 23 without Federal-aid reimbursement.

Additional activities that are sometimes considered maintenance are sealing pavement joints, spot-repair of bridge coating systems, replacement of damaged highway signs, and pavement patching. While these type activities were at one time universally considered ineligible for Federal-aid, changes in highway legislation since 1991 have made them eligible for Federal-aid under certain conditions within the preventive maintenance program. For more on this special area of maintenance that is eligible for Federal-aid, see Chapter 4, Design.

## **b. Applicable Laws, Regulations, and Orders**

- 23 USC 116
- 23 USC 119
- 23 CFR 1.27
- 23 CFR 633.208
- 23 CFR 140
- MUTCD

## **c. Program Approval Actions**

FHWA approval is not required on a program level for maintenance activities unless special or unusual circumstances exist.

## **d. Project Approval Actions**

FHWA approval is not required on a project level for maintenance activities unless special or unusual circumstances exist. The maintenance agreement, which is a part of the project agreement, is a project level action in which the NDDOT agrees to maintain the constructed facility.

## **e. Monitoring**

As a condition of receipt of Federal funds, NDDOT is required to maintain or cause to be maintained the Federally funded roadways and associated appurtenances in the state of North Dakota. FHWA will review road and bridge maintenance through a sampling of field observations, process reviews, program reviews, and Quality Assurance Reviews (QAR) as necessary. At least one program review (or a District QAR) will be done on a segment of the NHS annually, while reviews for non-NHS routes will be done on a random or as-needed basis. Any review may include appropriate representatives from local, State, and Federal Agencies or may be conducted solely by FHWA. Any specific instances of inadequate maintenance or concerns regarding NDDOT's overall maintenance program will be brought to the attention of NDDOT by FHWA.

- NHS (Including Interstate) MAINTENANCE  
Maintenance of the NHS is monitored through a combination of condition observations, activity evaluations, process reviews, Windshield Inspection Program (WIP) and QAR's that are conducted in various NDDOT Districts. The level of review is usually determined by the risk assessment process,

i.e. more extensive and detailed reviews are triggered by an indication of increased risk.

- **Non-NHS MAINTENANCE**  
Maintenance of the non-NHS system is also monitored through the FHWA ND Division WIP. This monitoring may include any combination of condition observation, activity evaluation, and/or process reviews. A WIP may also be performed on local government Federal-aid routes on a cyclical basis by NDDOT and/or FHWA personnel.
- **BRIDGE MAINTENANCE**  
A sample of bridges will be reviewed annually by the FHWA Division Operations Engineers for assurance that repair recommendations are being addressed. Special emphasis will be given to bridges that have received critical bridge inspection findings (ND Alert Code 3). See Chapter 1, Bridges and Structures for more on bridge safety inspections.
- **WINDSHIELD INSPECTION PROGRAM (WIP)**  
In the WIP, all FHWA personnel are asked to be observant during the course of official and private travel, reporting any noteworthy items in need of maintenance attention and repair to the NDDOT Maintenance Engineer, Director of Operations or District Engineer as deemed most appropriate.
- **ANNUAL SELECTED ITEMS**  
Each year additional specific activities may be selected that support the goals of maintenance in response to national, regional, or local emphasis. This will be included in the FHWA ND Division Annual Work Plan.
- **SUMMARY**  
The Maintenance Monitoring Program activities will be summarized by the FHWA Division Maintenance Coordinator by the end of the calendar year in the Division's annual report. Findings and observations from the annual report will be input to the annual risk assessment. The report and risk assessment results will be used to determine further action including Division Office Unit Plan activities.

**f. Business Standards**

- NDDOT will involve FHWA in decisions involving special or unusual circumstances at the earliest reasonable time to ensure thorough and appropriate decisions can be made collectively.
- NDDOT is to provide the FHWA Division Maintenance Coordinator any updates to the NDDOT Maintenance Operations Manual.

**g. Approved Procedures/Agreements/Manuals**

- NDDOT Maintenance Operations Manual
- AASHTO Maintenance Manual
- Guidance only: FHWA Maintenance Review Manual

**PROGRAM/PROJECT ACTIVITY APPROVAL CHART**

<b>MAINTENANCE ACTIVITIES</b>				
<b>AGENCY RESPONSIBLE FOR MAINTENANCE/MONITORING</b>				
Interstate*	NHS*	State Non-NHS*	<i>County Level Roadway</i>	<i>City Level Roadway</i>
FHWA/NDDOT	FHWA/NDDOT	FHWA/NDDOT	NDDOT	NDDOT

\* Maintenance activities will be the ultimate responsibility of the NDDOT. Assistance with this effort will be given from FHWA through QAR's and the WIP.

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## **12. PAVEMENT AND MATERIALS**

### **a. Program Overview**

Pavement: 23 CFR 626 requires that pavements be designed in accordance with current and predicted traffic needs in a safe, durable and cost effective manner. The regulations do not specify the procedures to be followed to meet this requirement. NDDOT is expected to use a design procedure that is appropriate for their conditions.

Materials: Subsection (a) of 23 U.S.C. 109 requires that the FHWA ensure that the plans and specifications for all proposed Federal-aid highway projects provide for facilities that will adequately serve the existing and planned future traffic in a manner that is conducive to safety, durability, and economy of maintenance. To fulfill this requirement for all Federal-aid highway projects, the FHWA ND Division prime objectives are to:

- Maintain a close working relationship with NDDOT materials and construction staff.
- Promote improvements when new approaches or technologies are developed and where deficiencies are identified.
- Ensure that the materials incorporated in the construction work and the construction operations controlled by sampling and testing are in conformity with the approved plans and specifications.

Furthermore, the FHWA is required, by means of an approved quality assurance program, to assure the quality of materials incorporated into Federal-aid highway projects on the National Highway System (NHS). For Federal-aid projects on the NHS, the primary objectives are to:

- Assure that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing are in conformity with the approved plans and specifications.
- Provide oversight of construction materials and compliance with Federal requirements on a statewide basis.

- Assure adequate and qualified staff to maintain NDDOT's quality assurance responsibility as part of its Quality Control/Quality Assurance (QC/QA) program.
- Assure compliance with, and assist in, maintaining the NDDOT Transportation Technician Qualification Program

#### **b. Applicable Laws, Regulations, and Orders**

- Title 23 USC, 106, 109, 114
- 23 CFR 625.4 Standards, policies, and standard specifications
- 23 CFR 626 Pavement Policy
- 23 CFR 635 Construction and Maintenance
- 23 CFR 637 Construction Inspection and Approval

#### **c. Program Approval Actions**

- The NDDOT Standard Specifications for Road and Bridge Construction are approved by FHWA on a program basis to facilitate project approvals (typically on a 2 – 5 year cycle).
- Supplemental Specifications are approved by FHWA on a program basis (typically per bid opening).
- Each State must develop a quality assurance program that will assure that materials and workmanship incorporated into each Federal aid highway construction project on the NHS are in conformity with the requirements of the approved plans and specifications. The program must be approved by FHWA. The NDDOT's Quality Assurance Program was formally approved 01/30/2003.

#### **d. Project Approval Actions**

- FHWA will approve changes in project specifications for materials.
- FHWA will approve QC/QA plans for specific NHS projects.

#### **e. Monitoring**

- FHWA will monitor NDDOT's Quality Assurance Program through construction inspections on NHS full oversight (non-exempt) projects.
- FHWA will monitor the acceptance and testing of materials in accordance with NDDOT's Standard Specifications for Road and Bridge Construction and the NDDOT Field Sampling and

Testing Manual on all Federal-aid projects through process reviews.

**f. Business Standards**

- NDDOT will provide 2 weeks for FHWA to review and respond to Supplemental Specifications revisions, project materials specifications, and QC/QA plans for NHS projects.
- NDDOT will provide 30 days for FHWA to review and respond to substantive changes in its Quality Assurance Program.
- Time to review and approve a complete revision of the Standard Specifications will be negotiated prior to the activity.
- See Quality Assurance Program Summary Table for more business standard detail.

**g. Approved Procedures/Agreements/Manuals**

- NDDOT Standard Specifications for Road and Bridge Construction
- NDDOT Field Sampling and Testing Manual
- NDDOT Transportation Technician Qualification Program Manual
- NDDOT Design Manual
- AASHTO Pavement Design Guide
- FHWA Contract Administration Manual
- Federal Aid Policy Guide (FAPG) See website for this guidance.

<http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm>

**Quality Assurance Program  
Summary Table**

	<b>All NHS Exemption Not Applicable</b>		<b>Non-NHS Exempt</b>	
<b>Activity/Item</b>	<b>NDDOT Action</b>	<b>FHWA Action</b>	<b>NDDOT Action</b>	<b>FHWA Action</b>
Quality Assurance Program  Materials test methods and updates, Field Sampling and Testing Manual	Maintain (on going)	Review and Act Upon (10 Working Days)	NDDOT prepares and approves	<i>No action</i>
Transportation Technician Qualification Program	Develop and implement	Review and Act Upon when updated (10 Working Days)	Required by NDDOT	<i>No action</i>
Qualified Laboratory Program	Develop and implement	Review and Act Upon when updated (10 Working Days)	Required by NDDOT	<i>No action</i>
AASHTO accreditation inspection reports, use of outside testing facility	Maintain accreditation, submit inspection report, approve outside testing facility	Review, make recommendations for consideration (as necessary)	Required by NDDOT	<i>No action</i>
North Dakota Standard Specifications for Road and Bridge Construction (Supplemental Issues)	Maintain (on going)	Review and Act Upon (10 Working Days)	Required by NDDOT	<i>No action</i>

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## **13. PLANNING**

### **a. Program Overview**

#### **1. Work Programs**

Title 23 CFR, Part 420, Planning and Research Program Administration, and Part 450, Planning Assistance and Standards, contains the policies and procedures for administering activities and studies undertaken by States and Metropolitan Planning Organizations (MPOs) funded through their respective Work Program or as separate projects not included in a Work Program.

#### **a. Statewide Planning and Research (SPR) Work Program**

The North Dakota Department of Transportation (NDDOT) prepares the SPR Work Program annually. FHWA provides pre-program guidance; draft review comments, if any; approves the SPR Work Program; and authorizes SPR funds. FHWA monitors the work throughout the year using day-to-day involvement, as appropriate. The NDDOT submits Semiannual Accomplishments and Expenditure Reports to FHWA.

#### **b. MPOs' Unified Planning Work Program (UPWP)**

The MPO UPWPs are prepared biennially by each MPO and reviewed by NDDOT, FHWA, and Federal Transit Administration (FTA). FHWA and FTA provide comments to the respective MPOs, jointly with NDDOT's, or may be provided individually through the MPOs' Technical Advisory Committee review process. FHWA authorizes Urban Planning Funds upon joint FHWA/FTA approval of the MPO UPWPs. These funds are traditionally referred to as "PL" funds. The NDDOT and FHWA monitor the UPWP accomplishments through monthly status and expenditure reports, and by participation in MPO

meetings. The North Dakota MPOs participate in the Consolidated Planning Grant (CPG) administered by FHWA and FTA (see Section 3c.).

## **2. Statewide Transportation Planning**

Title 23 CFR, Part 450, Subpart B, addresses the requirements of the statewide transportation planning process.

### **a. Statewide Long-Range Transportation Planning**

The NDDOT develops a Statewide Long-Range Transportation Plan (TransAction II) which considers all modes of transportation. The Plan is a policy-based document which covers a 20-year planning horizon (20 years into the future), considers the eight planning factors as outlined in the CFR, and provides an opportunity for public comment. These factors are outlined below:

1. Support the economic vitality of the metropolitan area (or State), especially by enabling global competitiveness, productivity, and efficiency;
2. Increase the safety of the transportation system for motorized and non-motorized users;
3. Increase the security of the transportation system for motorized and non-motorized users;
4. Increase the accessibility and mobility options available to people and for freight;
5. Protect and enhance the environment, promote energy conservation, and improve quality of life
6. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
7. Promote efficient system management and operation; and
8. Emphasize the preservation of the existing transportation system.

The NDDOT updates the State's Long-Range Transportation Plan on a 4-5 year cycle.

b. Statewide Transportation Improvement Program (STIP)

The NDDOT develops a STIP containing all projects to be funded by FHWA and FTA for a four (4) year period. The STIP is typically updated annually by NDDOT and submitted to FHWA and FTA for approval by October 1<sup>st</sup> of each year. (FHWA submits a copy of the STIP to FTA, on behalf of NDDOT, per the FHWA/FTA Planning Memorandum of Agreement (MOA).) Projects contained in the STIP must be consistent with the Statewide Long-Range Transportation Plan (TransAction II), the MPO Long-Range Transportation Plans, and the MPO Transportation Improvement Plans (TIPs), and must include public involvement and provide interested parties a reasonable opportunity to comment on the proposed program. Along with the STIP, NDDOT will certify the projects in the STIP are based on a planning process that meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303, and 23 CFR 450.

### **3. Metropolitan Transportation Planning**

a. MPO Long-Range Transportation Plan

Title 23, CFR Part 450, Subpart C, addresses metropolitan planning requirements. Each MPO must update their Long-Range Transportation Plan every five (5) years which: covers at least a 20-year planning horizon; includes long-range and short-range strategies which lead to an integrated intermodal plan; includes a financial plan which compares estimated revenues with costs of construction, maintenance, capital purchases, and operations; considers the eight planning areas; and provides an opportunity for public comment.

b. MPO Transportation Improvement Program (TIP)

Each MPO, in cooperation with the State and its public transit operators, will prepare and update a TIP each year covering at least four (4) years. The TIP shall include all projects requiring FHWA and FTA approval, include a priority list of projects to be carried out in the four (4) year period, identify each project or phase, and be financially constrained. The TIP development process must provide a reasonable opportunity for public comment. Highway and transit projects must be selected in accordance with the specific funding programs.

c. Consolidated Planning Grant (CPG)

In 1997, NDDOT agreed to be a CPG pilot State and continues to be the lead State for carrying out all State and metropolitan planning activities between the States of North Dakota and Minnesota, in relation to the MPOs. Since two of the MPOs border Minnesota, the Minnesota Department of Transportation (MNDOT) also agreed to be a party to this planning program.

The CPG program allows NDDOT and MPOs to develop biennial UPWPs that will address intermodal transportation needs. Since all Federal FHWA and FTA planning funds, provided for both States, are pooled in the CPG, this process eliminates the need of keeping track of the different categories of funds as they are spent on various UPWP activities. The accounting and billing process is simplified; and NDDOT, as a lead agency, draws down the necessary funds to cover the expenditures as substantiated by biannual progress reports, spending first the Minnesota FHWA funds, secondly all FTA funds, and lastly North Dakota FHWA funds.

Under the current CPG program, FTA has agreed to delegate its responsibility to the North Dakota FHWA Division Office in administering its planning activities in North Dakota. This allows NDDOT and the MPOs to have one source for their Federal guidance needs.

#### **4. Traffic Monitoring**

Title 23 CFR, Part 500, provides the regulatory guidance for the development and operation of a traffic monitoring system for highways including traffic counting, vehicle classification, and weigh-in-motion programs. The system is guided by the "AASHTO Guidelines for Traffic Data Programs," augmented by the FHWA "Traffic Monitoring Guide" and the "Highway Performance Monitoring System Field Manual."

#### **5. Highway Performance Monitoring System (HPMS)**

Title 23 USC 315, 23 CFR 1.5, and 23 CFR 420.105(b) addresses the policy for states to provide data that support FHWA's responsibilities to the Congress and to the public.

The Highway Performance Monitoring System Field Manual provides instructions for collecting and reporting quality and timely data in the condition and performance of the highways and streets.

## **6. Highway Statistics Reports**

Title 23 CFR 1.5 and 23 CFR 420.105(b) addresses the policy for states to provide data that supports FHWA's responsibilities to the Congress and to the public. The "Guide to Reporting Highway Statistics" manual provides instructions for compiling and reporting: motor fuel consumption, motor fuel tax revenues, motor vehicle registrations and fees, driver licenses and fees, highway income and expenditures, debt service, and highway capital outlay and maintenance expenditures which traditionally are referred to as the "500 series reports".

## **7. Certification of Public Road Mileage**

Title 23 CFR, Part 460, addresses the policies and procedures for identifying and reporting public road mileage for utilization in the statutory formula for the apportionment of Highway Safety funds under 23 U.S.C. 402(c). By June 1 of each year, the Governor or NDDOT Director certifies the public road mileage in the State as of the end of the previous calendar year. In North Dakota, the NDDOT Director has been selected as the Governor's designee.

## **8. Certification of Enforcement of Heavy Vehicle Use Tax (HVUT)**

Title 23 CFR, Part 669, prescribes requirements for states to follow in order to annually certify that proof of payment of the Federal HVUT is obtained before individuals can register their heavy trucks. By July 1 of each year, the Governor or NDDOT Director certifies that North Dakota is obtaining proof of payment of the HVUT as a condition of registration. The 12-month certification period ends May 31. In North Dakota, the NDDOT Director has been selected as the Governor's designee.

### **b. Applicable Laws, Regulations, and Procedures**

- Title 23 CFR, Part 420
- Title 23 CFR, Part 450, Subpart B

- Title 23 CFR Part 450, Subpart C
- Title 23 CFR, Part 460
- Title 23 CFR, Part 470
- Title 23 CFR, Part 500
- Title 23 CFR, Part 669

### **c. Program Approval Actions**

FHWA approval is on a yearly basis for all the programs listed above and where noted on the following chart. As a condition for receipt of Federal funds, NDDOT agrees to develop plans and work programs for statewide, metropolitan, and other transportation planning activities. FHWA will review these plans and programs to assure they meet applicable laws and regulations.

Programs requiring oversight include:

- 1) State and metropolitan planning sub-programs under the State Planning and Research Program (SPR).
- 2) Statewide transportation planning process, including the STIP.
- 3) Metropolitan Planning Organization (MPO) transportation planning process.

The NDDOT must also submit other planning related reports to FHWA. The reports include information on public road mileage for apportionment of highway safety funds; information collected from the HPMS; and information relating to the identification of Federal-aid highways, the functional classification of roads and streets, the designation of urban area boundaries, and the designation of routes on the Federal-aid highway systems.

FHWA will serve on the MPOs' Technical Advisory Committees as an advisor and not as a voting member. Through FHWA/NDDOT's involvement with the MPOs, both agencies will continue to stress the importance of the public involvement process (as outlined in the consultative planning process) and will assist in applying appropriate levels of environmental consideration and pavement preservation during the planning process to result in a more feasible, efficient, and acceptable transportation planning product.

### **d. Project Approval Action**

Projects not originally included in an approved work program or TIP/STIP will need individual project approval from FHWA. An amendment to the appropriate planning document also needs to be processed.

#### **e. Monitoring**

The NDDOT will monitor all SPR activities, including those of sub-recipients (local governments including county, municipalities, etc.) to assure the work is being managed and performed satisfactorily and that time schedules are being met. The NDDOT will submit a report annually to FHWA documenting the results of its monitoring process, as a part of the SPR submittal.

The NDDOT will periodically review its Statewide Long-Range Transportation Plan (TransAction II) to assure the goals and objectives are still applicable. If necessary, NDDOT will update or rewrite the Statewide Long-Range Transportation Plan.

FHWA and NDDOT periodically monitor MPO plans and activities to ensure they are in conformance with all applicable Federal and State guidelines.

#### **f. Business Standards**

The NDDOT will provide FHWA at least 30 days to review and comment on the draft and final Statewide Transportation Improvement Program (STIP), Metropolitan TIPs, State Planning and Research (SPR) Work Program, the MPO UPWPs, and the Statewide and Metropolitan Long-Range Transportation Plans.

The NDDOT will involve FHWA in decisions involving special and unusual circumstances at the earliest reasonable time to ensure thorough and appropriate decisions can be made collectively.

#### **g. Recognized Procedures/Agreements/Manual**

The NDDOT is required to submit to FHWA and FTA, for joint approval, a Statewide Transportation Improvement Program (STIP). The NDDOT has typically updated the STIP annually, as stated in Section 2.b, and submitted the STIP for approval to FHWA and FTA.

The NDDOT and the MPOs shall annually certify to FHWA that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements.

- Joint FTA/FHWA Planning Memorandum of Agreement (MOA)
- Joint FHWA/NDDOT STIP Memorandum of Understanding (MOU)

## 1. Modifying an Approved STIP:

A modification to the STIP is defined as:

- a. Shifting funds between programs without a change in total program STIP funding amounts.
- b. Does not involve a significant change in the scope of the project.
- c. Minor change in expenditures for transit projects.
- d. Obvious data entry errors.
- e. Splitting or combining projects already in the program, with no change in overall project schedule or funding.
- f. Changes or clarifying elements of a project description, with no change in project funding. This would generally be less than 10% change in project termini. This change would not alter the original project intent.
- g. Movement of a project or phase thereof within the first four (4) years of the approved STIP.
- h. Cost increases for 100% State or local funded projects do not require an amendment, regardless of the State/local source.
- i. Changes in project information or funding to match an MPO TIP.
- j. Modification of existing STIP/TIP projects in order to make STIP/TIP documents match, provided the modification involves minor changes in the scope or funding of a project as provided by this section.
- k. Adding projects to be funded under discretionary (allocated) programs. Originally, these projects were "marked" as "pending" in the approved STIP and now funding has been identified.

STIP modifications do not require Federal approval. Also, a modification to the STIP does not require the initiation of the statewide public participation process. However, the STIP modification process does consist of notification to all involved parties of the latest revision of the STIP. NDDOT's Planning and Programming staff will provide, to FHWA/FTA, a summary of STIP modifications semiannually. The summary will include the source of funding for each project, assuring that the financial constraint of the STIP is maintained. Cost changes made to the second, third, and fourth years of the STIP will be balanced during the STIP development process.

## **2. Amending an Approved STIP:**

The approved North Dakota STIP may be amended at any time throughout the year. A formal STIP amendment process will be required for any new projects added during the course of the year, significant project limit changes, changes in type of work, etc. If the project is located within the MPO planning boundaries, both a TIP and STIP amendment is required. A STIP amendment is any change to the project listings, and/or funding tables, in an existing TIP or STIP.

In terms of public involvement, the MPOs' public involvement process will be sufficient for metropolitan area TIP/STIP amendments. The NDDOT will utilize a separate public involvement process for amendments outside the MPO boundaries.

An amendment to the STIP is:

- a. Adding a new project or phase(s) to the STIP/TIP, not programmed in the previously approved TIP/STIP.
- b. A change in funding source from 100% non-Federal funds to partial or fully funded with Federal funds.
- c. A change in funding sources across modes for existing projects in the STIP/TIP (the funding for a project change from transit to STP or vice versa.)
- d. A major scope change for a project including: major changes in type of work, length, or major project termini.
- e. Movement of a project from an illustrative (information only) list to an MPO TIP project list. Presently, NDDOT includes pending projects in the STIP project listing, which this statement does not apply.
- f. Increases in the amount of FTA and/or local funding to existing transit grants (amendments) or with the development of new grants.
- g. The addition of FTA discretionary projects (Section 5309).
- h. Projects that are broken out of, or tied to a larger project, but were not included in the original project cost, are considered new projects and require amendment.
- i. A major change in project costs where a project exceeds 2% of the overall Federal program and has a project cost change exceeding 50% of the original STIP programmed amount. This particular requirement becomes effective October 1, 2008.

STIP amendments require Federal approval prior to project authorization. The NDDOT will submit a STIP amendment to FHWA and/or FTA requesting approval of the addition or change, stating

the source of funding to maintain a balanced STIP and summarizing the completed public involvement process. Cost changes made to the second, third, and fourth year of the STIP will be balanced during the STIP development process.

Semiannually, FHWA and NDDOT will meet to review 1.) the project authorizations, 2.) approved STIP amendments, and 3.) processed STIP modifications completed. As a part of the meeting, a summary of the cost differences between the STIP estimate and project authorization amount will be reviewed for each project authorized during the past quarter. Also, the +/- cost changes associated with approved STIP amendments and STIP modifications will be reviewed. STIP changes will be reviewed for the year. Once the net total of the STIP "changes" exceed 10% of the total Federal funds available during the fiscal year (i.e., \$230 million Federal funds available for current fiscal year and net changes exceed \$23 million), NDDOT and FHWA/FTA will:

- a. Review STIP fiscal constraint and identify strategies to maintain fiscal constraint for the remainder of the current year.
- b. Identify, for possible deletion or delay, from the current element of the STIP, projects or phases of projects to maintain fiscal constraint.
- c. Such changes (i.e., deletion or delaying of projects from the current element of the STIP), may be considered and processed as an amendment to the STIP depending upon the status of the fiscal constraint analysis, status of the development of the next STIP, and completed or proposed public involvement procedures by NDDOT.

In regards to public involvement and amendments, NDDOT will publish a news release and circulate to all daily newspapers in North Dakota. In addition, a notification will be placed on NDDOT's web page detailing the STIP amendment. The State will allow 15 calendar days for public review and written comment.

#### **h. Program Measures**

The following are mutually considered by NDDOT and FHWA to be helpful measures or indicators of program effectiveness and efficiency:

- Percent of STIP/TIP projects advanced to construction
- Percent of STIP/TIP projects advanced to construction within 25% of estimate. (Presently, NDDOT is not prepared to implement this performance measure. Additional data elements need to be collected and mechanisms implemented

in order to track this information. The implementation of this performance measure is considered long term.)

## PROGRAM APPROVAL CHART

<b>PROGRAM ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>		
<b>Approval Action</b>	<b>Ref. Source</b>	<b>Review</b>	<b>Approve</b>	<b>Remarks</b>
20-YR Statewide Long-Range Transportation Plan	23 CFR 450.214	<i>FHWA</i>	<i>NDDOT</i>	<i>FHWA reviews and comments on Statewide LRTP, but no official approval action is taken.</i>
Statewide Transportation Improvement Prog. (STIP)	23 CFR 450.216	<i>FHWA</i>	<i>FHWA/FTA</i>	<i>Minimum 4-year period; update required every 4 years, but NDDOT traditionally updates annually.</i>
State Planning & Research (SPR) Work Program	23 CFR 420.111	FHWA	FHWA	NDDOT annually develops work program.
Highway Performance Monitoring System (HPMS) Annual Data Submittal from State and Field Verification Review and Report	23 U.S.C. 502/23 CFR 450	FHWA	None	FHWA HQ required Field Verification review to be conducted by the Division Offices. Based on this review, the Division Office recommends the acceptance of the HPMS data for funding apportionment and allocation purposes.
Certification of Public Road Mileage	23 CFR 460.3	FHWA	None	Due by June 1 <sup>st</sup> of each year.
Heavy Vehicle Use Tax (HVUT) Annual Certification by State & Triennial Division Office Review	23 CFR 669.21	FHWA	None	NDDOT required to certify that HVUT is being collected. FHWA HQ recommends a review be completed every 3 years.
Highway Statistics: 500 Series Reports	23 CFR 420.105	FHWA	None	NDDOT is required to submit several Highway Statistics forms annually.
Traffic volume Monthly Automated Traffic Recorder Data	23 CFR 1.5	FHWA	None	NDDOT submits required ATR data reports directly to FHWA HQ.
Annual Truck Weight Characteristics Data	23 CFR 1.5	FHWA	None	NDDOT annually submits required data directly to FHWA HQ.
Metropolitan 20-Year Long-Range Transportation Plan (LRTP) (Bismarck, Fargo & Grand Forks)	23 CFR 450.322	FHWA & NDDOT	MPO	FHWA & NDDOT reviews and comments on Metropolitan LRTPs, but no official approval action is taken by FHWA.
Metropolitan Transportation Improvement Program (TIP) (Bismarck, Fargo & Grand Forks)	23 CFR 450.324	FHWA & NDDOT	Governor or Designee	Minimum 4-year period; updated at least every 4 years. FHWA reviews and comments on TIPs. All TIPs are developed by the MPO and included in the STIP, by reference, which is approved by FHWA. MPOs update TIPs annually.
Metropolitan Unified Planning Work Program (UPWP) (Bismarck, Fargo & Grand Forks)	23 CFR 450.314	FHWA & NDDOT	FHWA/NDDOT	MPOs annually develop and submit work program. FHWA & NDDOT review and comment on UPWPs from each MPO.

Transportation Planning Process Reviews in MPOs less than 200,000.	Not required	FHWA & NDDOT	None	Planning process reviews in Bismarck, Fargo, and Grand Forks are completed on 3-year cycle.
Vehicle (Truck) Size and Weight Enforcement Certification	23 CFR Part 657	FHWA	FHWA	State is responsible for enforcing vehicle size and weight laws. State is required to develop a plan for maintenance of an effective enforcement process. Each State plan is approved by FHWA and will then serve as a basis by which the annual State certification of enforcement will be judged. In North Dakota, this Certification is completed by the Highway Patrol.

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## **14. RESEARCH, DEVELOPMENT AND TECHNOLOGY**

### **a. Program Overview**

The purpose of the program is to implement the provisions of 23 U.S.C. 504 and 505 for research, development, technology transfer, programs, and studies undertaken with FHWA planning and research funds.

#### **1. State Planning and Research (SPR) Program**

The main requirements under 23 CFR 420 are to create a SPR Work Program, monitor planning and research activities, submit performance and expenditure reports, conduct peer exchanges, develop and maintain an FHWA approved research and development management process, and maintain program certification.

The SPR Work Program consists of two parts: (1) Part I, Planning, which is prepared by NDDOT's Planning and Programming Division and (2) Part II, Research, which is prepared by NDDOT's Materials and Research Division. The North Dakota DOT is responsible for preparation and overall coordination of the Work Program in accordance with 23 CFR 420. The SPR Program operates on a calendar year basis with program approval every 2 years. Amendments and revisions are submitted annually for approval.

#### **2. Local Technical Assistance Program (LTAP)**

LTAP was created to provide educational training, technical assistance and related support services for rural, small urban, tribal governments, consultants and contractors that do work for local agencies on roads, bridges, and public transportation. The LTAP program is regulated under 23 U.S.C. 504(b). The North Dakota State University (NDSU), Civil Engineering Department was established as the North Dakota LTAP Center in 1984.

The LTAP Center Advisory Committee determines the direction for the North Dakota LTAP program. The Committee, consisting of federal, state and local government

officials and other interested representatives, typically meets once a year. The Advisory Committee reviews program progress and provides direction on program needs and strategies.

NDSU coordinates with NDDOT and the FHWA to draft an LTAP Work Plan based on a calendar year. NDDOT and FHWA review a draft LTAP Work Plan. Comments from both parties are incorporated into the draft and the final version is approved by FHWA.

#### **b. Applicable Laws, Regulations, and Procedures**

- 23 USC applies to all research and technology transfer activities
- Title 23, CFR, Part 420 and 450 apply to State Planning and Research Program Administration
- North Dakota DOT, State Research, Development and Technology Transfer Program Manual

#### **c. Program Approval Actions**

NDDOT will administer the research program in accordance with the North Dakota DOT State Research, Development and Technology Transfer Program Manual, which has been reviewed and approved by the Division Office. Significant changes to this manual shall be submitted to the FHWA Division Office for approval.

The research work program is submitted to the Division Office as Part II of the NDDOT's Planning and Research Work Program. Currently, the Division Office approves the research work program on an annual basis. The NDDOT's research work program shall meet the requirements of 23 CFR, Part 420.209(a)-(c).

#### **d. Project Approval Action**

NDDOT will identify and implement research projects that address high priority transportation issues. An interactive process involving NDDOT management and Research Advisory Committee (RAC) members as described in the NDDOT State Research, Development, and Technology Transfer Program Manual shall be used for the identification and prioritization of projects to be included in the research work program. The NDDOT shall determine the funding level at which the identified and prioritized projects will be supported with FHWA research funds.

Other types of projects, including Experimental Features, Demonstration Projects, Application Projects, Test and Evaluation Projects and Special Projects, will be approved by the FHWA Division Office.

The LTAP project is funded annually on the basis of an annual work plan approved by the Division Office based on funds allocated to the North Dakota DOT.

**e. Monitoring**

The NDDOT will submit, annually, to the FHWA Division Office performance and expenditure reports that meet the requirements of 23 CFR, Part 420.117, (a)-(c).

The NDDOT will host a peer exchange and report their findings to the FHWA Division Office in accordance with 23 CFR, Part 420.209. The interval between peer reviews will not exceed three years.

FHWA participates in the NDDOT RAC process which reviews research program progress and provides recommendations on program priorities and projects.

FHWA provides oversight to the LTAP project through review of the annual work plan and work plan amendments and participation in the LTAP Advisory Committee and LTAP peer exchanges.

**f. Business Standards**

NDDOT will provide FHWA at least 30 days to review and comment on the draft and final State Planning and Research (SPR) Work Program.

NDDOT will involve FHWA in decisions involving special and unusual circumstances at the earliest reasonable time to ensure thorough and appropriate decisions can be made collectively.

NDDOT, in cooperation with the LTAP Center, will provide FHWA at least 30 days to review and approve the LTAP annual work plan.

**g. Approved Procedures/Agreements/Manual**

In regards to the SPR, the FHWA exercises its oversight responsibilities through review of the annual program prior to approval actions, review of SPR Work Program amendments prior

to approval, and ongoing participation of its technical specialists in pooled fund study technical panels. As appropriate, FHWA personnel may participate in peer exchanges.

The NDDOT State Research, Development, and Technology Transfer Program Manual was developed and approved in July, 2001. The manual serves as guidance for the program.

**PROGRAM APPROVAL CHART**

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>		
<b>Approval Action</b>	<b>Ref. Source</b>	<b>Review</b>	<b>Approve</b>	<b>Remarks</b>
State Planning & Research (SPR) Work Program Part II	23 CFR 422.09	FHWA	FHWA	Annually developed work program
LTAP	23 USC 504(b)(1) and (2)	FHWA	FHWA	Annually developed work plan.

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## **15. RIGHT-OF-WAY**

### **a. Program Overview**

The purpose of this section is to address the right-of-way (ROW) functional areas of appraisal, acquisition and relocation, the principal activities used to acquire space for highway projects. These right-of-way activities are covered under Title 49 CFR (24), which has no provision for exemptions under Title 23 U.S.C. Therefore, the rules of Title 49 and Title 23 apply in the situation where Federal aid is being used to fund the right-of-way activity and/or if Federal-aid is being used to fund the project.

The work activities listed below are covered under 23 CFR and require specific approval and/or oversight by FHWA:

- ROW certification
- State ROW operations manual
- ROW authorization
- Air rights on the interstate
- Airspace leases/joint use agreements
- Sale/transfer of excess ROW
- Early acquisition, protective buying, and hardship
- Functional replacement
- Highway beautification

The work activities listed below are covered in 23 CFR and do not require specific program or project approvals, but are not exempted from FHWA oversight under Title 23 U.S.C.:

- Direct eligible costs including administrative, legal and court settlements.
- Real property donations

### **b. Applicable Laws, Regulations, and Orders**

- 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
- 49 CFR 18, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR 620, Subpart B, Relinquishment of Highway Facilities
- 23 CFR 635.309, Right-of-Way Certification

- 23 CFR 710, Right-of-Way and Real Estate
- 23 CFR 750, Highway Beautification
- 23 CFR 751, Junkyard Control and Acquisition

### **c. Program Approval Actions**

The approval of the NDDOT Right-of-Way Operations manual is a program approval action required by 23 CFR 710.201(c).

### **d. Project Approval Actions**

FHWA project-level approval actions include authorization of federally aided right-of-way activities, early acquisition approval, acceptance of project right-of-way certifications, etc. See the Project Activity Approval Chart for more detail.

### **e. Monitoring**

- Even though there are no exemptions under the law for any functions covered in 49 CFR 24, for practical purposes there are two levels of review of those elements. One level depends on whether the project involves ROW acquisition and has Federal-aid in the ROW project phases. Although the ROW regulations must be followed under both levels, less attention is given to the reasonableness of the actual dollar expenditures made for ROW activities on those projects where there is no Federal-aid in the ROW activities.
- For the second level of projects, there is a dual concern for the rights of property owners and displaced persons and the stewardship of the federal dollars. Continuous review of the State's activities has proven to be an effective means of assuring that the rights of owners and displaced persons are protected as well as monitoring the expenditure of federal funds. A high level of FHWA involvement will be continued under this stewardship plan on projects that have Federal-aid in the ROW activities.
- Local Public Agencies (LPAs), i.e., cities and counties, are required to comply with the Uniform Act and its governing regulations found in 49 CFR 24 in the same manner as NDDOT. As stipulated in 23 CFR 710.201(b), NDDOT is responsible for assuring that ROW acquisitions by local public agencies are made in compliance with Federal and State laws and regulations.

- FHWA is responsible for in-depth reviews of NDDOT's program for appraisal, acquisition, and relocation. Review of the ROW activities will be conducted through periodic joint FHWA/NDDOT process reviews, peer reviews and/or spot-checking reviews accomplished jointly by FHWA ROW personnel and NDDOT as determined through a risk assessment process. The purpose of the reviews is to address known problems; assist in complying with State and Federal requirements; and to assure adequacy of program oversight and accountability of public resources. State and local agency right-of-way program activity, as well as the NDDOT's oversight of local agency ROW activity is subject to review at any time.
- Review and technical assistance in the Highway Beautification program are also provided by FHWA.
- Right-of-Way Operations Manual
  - NDDOT is responsible for full compliance with FHWA requirements.
  - Future changes to a manual, because of new FHWA requirements or changes in State law, etc., will be submitted to FHWA for acceptance within a reasonable period of time.
  - In-house administrative manual changes should be transmitted to FHWA for informational purposes.
  - In accordance with 23 CFR 710.201(c), NDDOT shall certify to the FHWA every five years that the Right-of-Way Operations Manual is current and in compliance with federal and state laws and regulations. This was last accomplished 04/03/2001.

## f. Business Standards

<i>Work Activity</i>	<i>NDDOT Action</i>	<i>FHWA Action</i>	<i>Result</i>
Appraisals	Review, Certification, and Approval – All Projects	Authorization & Oversight – All Projects (7 days)	Appraisal Reports
Acquisitions	Performance and Approval – All Projects	Authorization & Oversight – All Projects (7 days)	Property Ownership/Title, Easements
Relocations	Performance and Approval – All Projects	Authorization & Oversight – All Projects (7 days)	Relocations
ROW Authorizations and Agreements	Requests	Authorize – All Projects (7 days)	Authorization & Agreements
ROW Certification	Approve Non-NHS & NHS <\$3 million	Approve Interstate & NHS >\$3 million (7 days)	Certificates
Functional Replacement	Approval and Oversight	Concur (14 days)	Functional Replacement of Real Property
Air Rights – Interstate	Request	Review and Approve (14 days)	Airspace Agreement
Airspace Leases/Joint Use Agreements	Approve & Oversight Non-Interstate	Approve – Interstate (14 days)	Leases/Agreements
Disposal of Excess ROW	Approve Non-Interstate	Review and Approve Interstate & Less than Fair Market Value	Property Sale & Revenue to Transportation Fund
Federal Land Transfer	Prepare Request	Review and Approve (90 days)	Transfer Deeds
Early Acquisition, Hardship, Protective Buying	Prepare Submission	Review, Approve, and Authorize (14 days)	Property Ownership
ROW Operations Manual	Prepare Manual	Review and Approve (14 days)	Manual
Highway Beautification	Prepare Request	Review and Approve (14 days)	Manual
Administrative, Legal, and Court Awards	Approve	Stewardship & Oversight	Property Acquisition
Access Control – Disposal and Changes	Request or approve as per NDDOT Policy	Review and Approve all Interstate and others as per NDDOT Policy (14 days)	Disposition/Change
Early Acquisition Cost	Approve	Concur (14 days)	Reimbursement/Matching Credit

### g. Approved Procedures/Agreements/Manuals

- NDDOT ROW Operations Manual
- NDDOT Local Public Agency Manual

#### PROJECT ACTIVITY APPROVAL CHART

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects >\$3 million By FHWA	NHS Projects <\$3 million By NDDOT	Non-NHS Projects	<i>Other Projects by Mutual Agreement</i>
Appraisals	49 CFR 24	<b><i>NDDOT</i></b>	NDDOT	NDDOT	<b><i>NDDOT</i></b>
Acquisitions	23 CFR 710	<b><i>NDDOT</i></b>	NDDOT	NDDOT	<b><i>NDDOT</i></b>
Relocations	49 CFR 24	<b><i>NDDOT</i></b>	NDDOT	NDDOT	<b><i>NDDOT</i></b>
ROW Authorizations and Agreements	23 CFR 710	FHWA	NDDOT	NDDOT	NDDOT
ROW Certification	23 CFR 710 23 CFR 635	FHWA	FHWA	NDDOT	FHWA
Functional Replacement (Federal Funds in ROW)	23 CFR 710	FHWA	FHWA	FHWA	FHWA
Air Rights – Interstate	23 CFR 710	FHWA	FHWA	N/A	FHWA
Airspace Leases/Joint Use Agreements	23 CFR 710	FHWA	FHWA	NDDOT	FHWA
Disposal of Excess ROW	23 CFR 620 23 CFR 710	FHWA*	FHWA*	NDDOT	NDDOT
Federal Land Transfer	23 CFR 710	FHWA	FHWA	FHWA	FHWA
Early Acquisition, Hardship, Protective Buying	23 CFR 710	FHWA	FHWA	FHWA	FHWA
Administrative, Legal, and Court Awards	23 CFR 710	NDDOT	NDDOT	NDDOT	NDDOT
Access Control – Disposal and Changes	23 CFR 620 23 CFR 710	FHWA**	FHWA**	NDDOT	FHWA**

\* Interstate or below fair market value

\*\* Interstate and as per NDDOT Policy

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Section Revision	NDDOT		FHWA	
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## **16. SAFETY**

### **a. Program Overview**

#### **1. Highway Safety Improvement Program (HSIP)**

The HSIP is a core Federal-aid program established for purposes of hazard elimination and rail-highway crossing safety. NDDOT performs HSIP components of *Planning, Implementation, and Evaluation* to accomplish requirements of the program. These components involve: identification of high-crash locations and other identified safety needs, developing an annual program to address the locations and safety needs, and an annual report on progress and effectiveness. FHWA is involved in all three components, both formally and through informal technical assistance.

#### **2. 402 Highway Safety Program**

Title 23 USC Section 402 establishes a program area for roadway safety that is "non-construction" oriented. FHWA-funded activities target identification and surveillance of crash locations; highway design, construction, and maintenance; traffic engineering services; and pedestrian and bicycle safety.

The National Highway Traffic Safety Administration (NHTSA) has been delegated the lead role in handling financial and administrative aspects of FHWA's portion of the program.

NDDOT prepares an annual Highway Safety Plan (HSP) as the planning component of the program, submits a certification statement, and issues a benchmark report. Federal approval is provided by NHTSA in the form of a letter acknowledging NDDOT's submission. NHTSA is the lead agency in working with NDDOT on using the results of the evaluation process, with FHWA available to provide technical support either to NDDOT or NHTSA in the area of roadway safety.

### **3. Strategic Highway Safety Plan (SHSP)**

NDDOT has adopted and is maintaining an SHSP based on criteria established in SAFETEA-LU Section 1410. The purpose of the SHSP is to identify key State safety needs and enable the State to make strategic investment decisions to achieve significant reductions in traffic fatalities and serious injuries. The SHSP is an over arching plan that provides the comprehensive framework for improving traffic safety. The NDDOT SHSP was adopted in September 2006, and FHWA affirmed that the process followed by NDDOT in establishing the SHSP complied with SAFETEA-LU requirements.

### **4. Other Safety Activities**

FHWA provides general technical support to NDDOT in the following safety-related areas:

- Participates as a member of the NDDOT Traffic Control Review Team that is responsible for assessing work zone traffic control practices and safety, as well as new traffic and safety-related technology and devices.
- Receives, reviews, and analyzes crash reports for all fatal crashes.
- Participates as a team member in NDDOT-led task forces and teams that are formed as needed to address perceived needs or problems.
- Provides technical support in handling of special program areas such as the annual Section 159 certification.
- Provides technical support and participates in the NDDOT Traffic Records Coordinating Committee and NDDOT SHSP Action Plan Work Team.

#### **b. Applicable Laws, Regulations, and Orders**

- 23 USC Sections 130, 148, 152, 159, 163, 164, 315, 402
- 23 CFR Part 924 and Part 1200

#### **c. Program Approval Actions**

- 23 USC Sections 130 and 148: NDDOT will submit for FHWA approval a programming process and amendments, an annual program of projects and an annual program evaluation report under the HSIP, including Hazard Elimination Projects and Rail Crossing Improvement Projects.

- 23 USC Section 159: NDDOT will submit an annual certification to FHWA indicating either opposition to or enactment/enforcement of a law requiring the revocation or suspension of drivers' licenses of individuals convicted of drug offenses.
- 23 USC Section 402: FHWA will coordinate with NHTSA on program-based Federal actions necessary under the Section 402 Program.

#### **d. Project Approval Actions**

- FHWA will verify that projects are in the current HSIP and approve project agreements, modified project agreements, and final vouchers on all Section 130 and 148 projects.
- FHWA will collaborate with NHTSA on any project-level action required for Section 402 projects.

#### **e. Monitoring**

- FHWA may conduct inspections, including finals, on a statewide sampling basis through annual reviews.
- FHWA will provide ongoing technical assistance in the planning, implementation, and evaluation components of the HSIP; will include the safety program as an area of routine risk assessment evaluations; and will work cooperatively with NDDOT to use process review techniques to assess and improve procedures.
- FHWA will support NHTSA in monitoring of Section 402 Program activities by participating in periodic management reviews conducted by NHTSA and by working cooperatively with NDDOT.
- FHWA will participate in the NDDOT SHSP processes.

#### **f. Business Standards**

- FHWA will review for approval changes to the Implementation Process for the HSIP within 30 days of request.
- NDDOT will allow FHWA 2 weeks, from receipt date, to accomplish any actions pertaining to the annual HSIP as prescribed in the Implementation Process for the HSIP.
- NDDOT will provide FHWA informational copies of updates to the NDDOT Traffic Safety Program/Procedures Manual within 30 days of adoption.

### g. Recognized Procedures/Agreements/Manuals

- NDDOT Implementation Process for the HSIP approved by FHWA on September 22, 2000. (Any revisions or modifications will be submitted to FHWA for approval.)
- NDDOT Traffic Safety Program Procedures Manual as amended
- NDDOT Local Government Manual as amended
- NDDOT Design Manual as amended
- NDDOT SHSP as amended

### h. Program Measures

Program measures are addressed in detail in the SHSP, annual reporting of progress and effectiveness under the HSIP, and in supporting documentation for the Section 402 HSP.

### PROJECT ACTIVITY APPROVAL CHART – Section 130 & 148 Projects

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects Non-Delegated	NHS Projects Delegated	Non-NHS Projects Delegated	<i>Other Projects by Mutual Agreement</i>
ROW Clearance	23 CFR 635.309	<i>FHWA</i>	<i>FHWA</i>	<i>NDDOT</i>	<i>FHWA</i>
Contract Changes & Extra Work	23 CFR 635.120	<i>FHWA</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
Environmental Determination	23 CFR 771	FHWA	FHWA	FHWA	FHWA
Obligation of Funds	23 USC 106	FHWA	FHWA	FHWA	FHWA
Final Construction Inspection	23 USC 106	FHWA	NDDOT	NDDOT	FHWA
Final Voucher	23 USC 106	FHWA	FHWA	FHWA	FHWA

## Special Instructions for Section 130 Projects:

NDDOT uses the "simplified" procedure contained in 23 CFR 646.218 for advancing all rail/highway grade crossing projects to the construction stage. Normally, several crossing locations are constructed under a single project number. Each single project will consist of locations that are either entirely National Highway System (NHS) or entirely non-NHS. NDDOT will work with the railroad and local road authority (when necessary) to develop a fully executed agreement, right of way (ROW) certification, and detail estimate for the first location that is ready under the project. FHWA will be furnished with a funding request, ROW certification, and environmental clearance for obligation of funds for all project locations based on the initial fully executed agreement. Upon authorization by FHWA, NDDOT will authorize the railroad to proceed with construction for each location as fully executed agreements are developed for the other individual locations under the project. If a project with only NHS locations has been tied to a project with only non-NHS locations, funds for all locations may be obligated on the basis of the first fully executed agreement for either project.

In cases where railroads request authorization to acquire and stockpile materials to accelerate completion, NDDOT will enter into an abbreviated agreement with the railroad that identifies crossing locations, describes the improvements and preliminary cost estimates, and provides estimated completion schedules. The abbreviated agreement can then serve as the basis for NDDOT to request FHWA obligation of construction funds for material acquisition and stockpiling purposes. Upon obligation of funds, NDDOT will notify the railroad to proceed with that activity. NDDOT will not notify the railroad to begin physical construction beyond material acquisition and stockpiling until a fully executed detailed agreement replaces the abbreviated agreement.

Section 130 projects are normally funded with a 90% Federal share and 10% State or local match. However, for non-NHS locations in an organized township or in a city with a population of less than 5,000 the Federal share can be increased to 97% if the customary 10% match is a hardship to the local agency pursuant to 23 USC Section 130(h). By NDDOT definition, "a hardship is created when the normally required 10% exceeds 3% of the local agency funds available for highway construction and maintenance." NDDOT will make and document this determination. State or other non federal funds must be used for the remaining 3% matching share.

It is NDDOT and FHWA policy to assure that adequate warning devices are selected and installed when Federal funds are used at rail/highway grade crossings. The determination of adequacy is made cooperatively between the railroad company, the road authority having jurisdiction over the highway, NDDOT, and FHWA. As a condition of the construction funding request

submitted to FHWA, NDDOT and FHWA agree that FHWA obligation of funds serves as Federal approval of a determination of adequacy pursuant to 23 CFR 646.214(b).

**NORTH DAKOTA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

## **17. TRAFFIC OPERATIONS**

### **a. Program Overview**

Traffic Operations is a cross cutting program area that touches many aspects of the highway program. Traffic operations contributes heavily to project development through engineering analysis of vehicle and pedestrian movement that are needed to produce sound project level decisions affecting safe and efficient highway operations. It is also an area that contributes heavily to the operations and physical maintenance of highway facilities by providing techniques, procedures, management practices/systems and inventory tools.

Examples of traffic operations studies and analyses that are inherent to project development include:

- Traffic signal warranting and operational studies
- Capacity, traffic operations and geometric analysis
- Lighting studies
- Pedestrian and bicycle facility studies (including ADA analysis)
- Crash analysis and countermeasure development

Examples of traffic operations areas contributing to operations and maintenance of highways include:

- Device (such as signs, signal systems, pavement marking, etc.) and system inventory/management
- Incident management systems
- Construction and maintenance work zone operations
- Traffic signal timing and operation
- Monitoring and surveillance of conditions and operations

### **b. Applicable Laws, Regulations, and Orders**

- 23 USC Sections 101, 104, 109, 114, 116, 217, 315, 402
- 23 CFR Subchapters F, G, J and K

### **c. Program Approval Actions**

NDDOT, in cooperation with FHWA, will monitor, review and implement policies, guides and standards issued by organizations that provide the key technical documents that support the Traffic Operations program area. NDDOT will keep FHWA informed of the status of adoption of key technical documents such as the MUTCD and any locally developed interpretations or applications of policies, standards and guidance.

### **d. Project Approval Actions**

FHWA works with NDDOT to determine appropriate application and use of the tools that are available. FHWA also provides technical support in interpreting and applying available tools and in having access to the state of the practice information that allows timely advancement and innovation in traffic operations.

Individual studies performed in support of project decision-making are the responsibility and prerogative of NDDOT with no specific FHWA approval actions required, except in the case of freeway interchange addition or modification.

FHWA's specific approval of traffic operations elements of project development will occur coincident with environmental approvals when the traffic operations studies are supporting alternative selection decisions.

FHWA's specific approval of traffic operations elements of project plans will be approved coincident with PS&E approval dependent on the project's exemption status.

FHWA's approval of traffic analyses that support interchange/access modification will be approved coincident to the interchange/access modification.

### **e. Monitoring**

- FHWA will conduct routine project and final inspections of traffic operations aspects on Interstate completion and new/reconstruction Interstate projects. For all other Federal NHS and non-NHS projects, FHWA may conduct inspections, including finals, on a statewide sampling basis through annual QI&A reviews.

- FHWA will conduct routine evaluation of the maintenance of Federal-aid projects to assure traffic operations components are being adequately maintained.
- FHWA will provide ongoing technical assistance in the area of traffic operations, will include this area in routine risk assessment evaluations, and will work cooperatively with NDDOT to use process reviews to assess and improve processes and procedures.

#### **f. Business Standards**

- NDDOT will notify FHWA of adoption or significant locally produced application of regulatory provisions including the MUTCD, AASHTO Policy and Work Zone Safety and Mobility Regulations within 30 days of adoption.
- FHWA will follow prescribed processing requirements for individual project actions related to Traffic Operations as defined in the partnership agreement.
- NDDOT will fully involve FHWA in all aspects of freeway interchange addition or change studies and proposals.

#### **g. Approved Procedures/Agreements/Manuals**

- NDDOT Design Manual as amended
- NDDOT Local Government Manual as amended
- ITS Regional Architectures and Strategic Plans
- NDDOT Standard Specifications
- NDDOT Standard Detail Drawings
- NDDOT Maintenance Manual as amended
- NDDOT Construction Manual
- NDDOT Supplemental Specifications and Special Provision
- MUTCD

**PROJECT ACTIVITY APPROVAL CHART – Studies and Analysis**

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects >\$3 million (FHWA involvement required)	NHS Projects <\$3 million	Non-NHS Projects	<i>Other Projects by Mutual Agreement</i>
Traffic Signal Study	23 CFR 625	<i>NDDOT</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
Capacity, Traffic and Geometric Study	23 CFR 625	<i>NDDOT</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
Lighting Study	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA
Pedestrian and Bicycle Facility Study	23 CFR 625 and 652	NDDOT	NDDOT	NDDOT	FHWA
Crash and Countermeasure Analysis	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA
Signing Study	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA
Pavement Marking Study	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA
Speed Study	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA
Interstate System Access Revision Study	23 CFR 625	FHWA Approval Required	FHWA	FHWA	FHWA
Access Control Study	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA
MUTCD Implementation and Compliance	23 CFR 655	NDDOT	NDDOT	NDDOT	FHWA
Highway- Rail Grade Crossing Study	23 CFR 646	NDDOT	NDDOT	NDDOT	FHWA
Parking Facility Study	23 CFR 625	NDDOT	NDDOT	NDDOT	FHWA

**PROJECT ACTIVITY APPROVAL CHART – Physical Operations**

<b>PROJECT ACTIVITIES</b>		<b>AGENCY RESPONSIBLE</b>			
Approval Action	Reference Document	NHS Projects >\$3 million	NHS Projects <\$3 million	Non-NHS Projects	<i>Other Projects by Mutual Agreement</i>
Device Maintenance	23 CFR 1.27	<i>NDDOT</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
Device and System Inventory and Management	23 CFR 1.27	<i>NDDOT</i>	<i>NDDOT</i>	<i>NDDOT</i>	<i>FHWA</i>
Traveler Information Systems	23 CFR 1.27	NDDOT	NDDOT	NDDOT	FHWA
Incident Management Systems	23 CFR 1.27	NDDOT	NDDOT	NDDOT	FHWA
Construction and Maintenance Work Zone Operations	23 CFR 630	NDDOT	NDDOT	NDDOT	FHWA
Traffic Signal Timing and Operation	23 CFR 1.27	NDDOT	NDDOT	NDDOT	FHWA
Monitoring and Surveillance of Conditions and Operations	23 CFR 1.27	NDDOT	NDDOT	NDDOT	FHWA

**NORTH DAKOTA  
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## **IV. DISPUTE RESOLUTION**

While most requests by the NDDOT for Federal approval result in a positive response within the anticipated turn-around time, there are occasions when agreement cannot be rapidly reached. It is the intent of this section of the Stewardship Agreement to provide a template for escalating issues that have reached impasse at the normal operational level.

It is expected that nearly all issues should be resolved between FHWA's Operations Engineers or program specialist and the NDDOT representative who has submitted the request within the business operation time frames denoted in this Stewardship Agreement.

When the above operational level cannot reach agreement, it is expected that negotiations will continue but with the involvement of NDDOT's Division head and/or District Engineer.

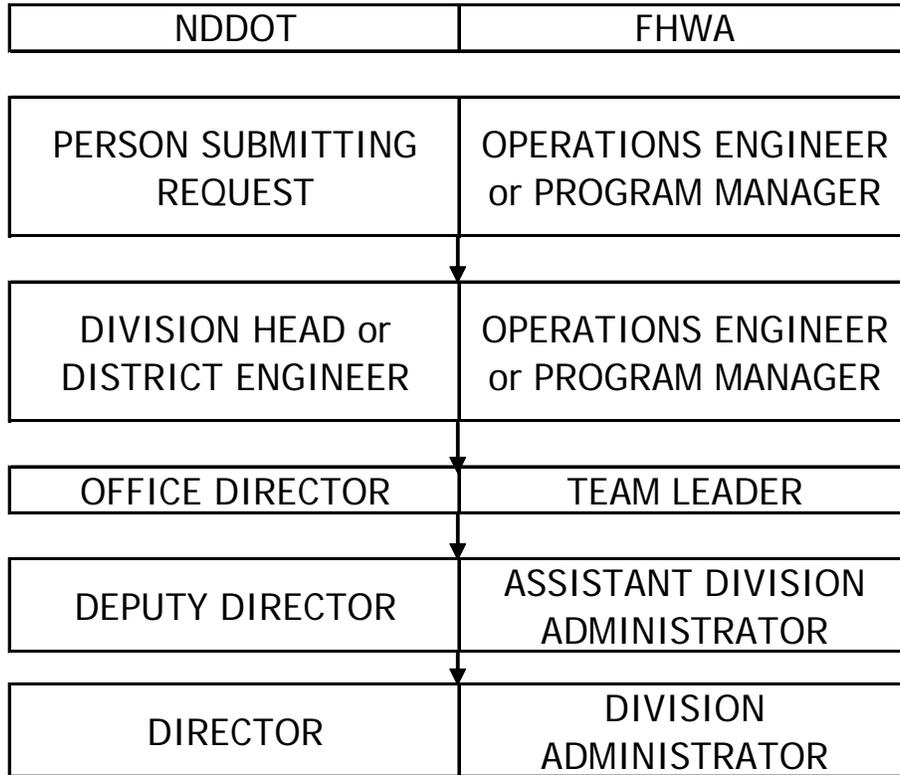
When the Operations Engineer/program specialist-Division/District level cannot reach agreement, it is expected that the FHWA Team Leader will become involved on behalf of FHWA, while the NDDOT will involve the appropriate Office Director.

If the above-mentioned levels are unable to resolve the issue at hand, FHWA's Assistant Division Administrator and NDDOT's Deputy Director for Engineering or Deputy Director for Business Support will seek resolution.

Should none of the above negotiations result in a satisfactory resolution, the FHWA Division Administrator and the Director of Transportation will determine the final outcome.

Since time is nearly always an important factor, escalation to the next level should be accomplished by the respective sides as soon as it has been determined that the issue cannot be resolved at the level where the question is stalled.

**NDDOT-FHWA DISPUTE RESOLUTION**



Graph is described in text of IV. Dispute Resolution

## ACRONYMS

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
CE	Categorical Exclusion
CFR	Code of Federal Regulations
COOP	Continuity Of Operations Plan
DBE	Disadvantaged Business Enterprise
DCP	Delegated Contract Process
EA	Environmental Assessment
EIS	Environmental Impact Statement
ER	Emergency Relief
FAPG	Federal Aid Policy Guide
FHWA	Federal Highway Administration
FONSI	Finding Of No Significant Impact
HBRRP	Highway Bridge Replacement and Rehabilitation Program
HSIP	Highway Safety Improvement Program
HSP	Highway Safety Plan
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITS	Intelligent Transportation Systems
LPA	Local Public Agency
LRFD	Load and Resistance Factor Design
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
NDDOT	North Dakota Department of Transportation
NBI	National Bridge Inspection
NBIS	National Bridge Inspection Standards
NEPA	National Environmental Policy Act
NHS	National Highway System
NHTSA	National Highway Traffic & Safety Administration
NOI	Notice of Intent
OJT	On the Job Training
PR/PE	Process Review/Product Evaluation
PS&E	Plans, Specifications and Estimate
QA	Quality Assurance
QAR	Quality Assurance Review
QC/QA	Quality Control/Quality Assurance
QI&A	Quality Improvement and Assurance
RETCO	Regional Emergency Transportation Coordinators
ROW	Right-Of-Way
TEA-21	Transportation Equity Act for the 21st Century
TERO	Tribal Employment Rights Office
TERO	Tribal Employment Rights Ordinance
TS&L	Type Size and Location
USC	United States Code
VE	Value Engineering
WIP	Windshield Inspection Program
WLS	Western Legal Services

	<b>APPENDIX B</b>
	<b>DEFINITIONS</b>
Exempt	Relieved of direct Federal oversight of project level actions in design, plans, specifications, estimates, contract awards, and inspections as per Title 23 Section 106 subject to the State fulfilling the former role of FHWA.
Intelligent Transportation System (ITS)	Electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.
ITS project	Any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.
Major ITS project	Any ITS project that implements part of a regional ITS initiative that is multi-jurisdictional, multi-modal, or otherwise affects regional integration of ITS systems.
National ITS Architecture (also "national architecture")	A common framework for ITS interoperability comprised of logical architecture and physical architecture that satisfy a defined set of user services.
Oversight	The act of ensuring that the Federal highway program is delivered consistent with applicable laws, regulations and policies, and that state-of-the-practice procedures and practices are employed.
Peer Review	Any in-depth analysis of a process or program involving a representative who is working or has worked extensively in an area of expertise directly related to the topic of review but in a different State or geographic area than where the review will be focused.
Process Review	An analysis of a defined process plus an examination of the products resulting from the process with the primary purpose of validating current process or solving problem areas. The defined process may be very limited in scope or be comprised of multiple and complex sub-processes. This form of review is sometimes called a process review/product evaluation or pr/pe.

Program Evaluation	An analysis of a program area of the Federal-aid process such as financial management, civil rights, roadside safety, bridge design, etc. The program area may be defined narrowly or broadly, depending on the goals of the analysis. The purpose of a program evaluation is typically to determine the program's state of compliance with regulation and/or best practices.
Project level ITS architecture	A framework that identifies the institutional agreement and technical integration necessary to interface a major ITS project with other ITS projects and systems.
Quality Assurance Review (QAR)	A systematic review of a District of the NDDOT conducted by FHWA following a prescribed outline that generally includes the following elements: Project Development and Design, Construction, Materials and Specifications, Construction Traffic Control, Operational Safety and Maintenance including bridge inspection.
Region (as applied to ITS)	The geographical area that identifies the boundaries of the regional ITS architecture and is defined by and based on the needs of the participating agencies and other stakeholders.
Regional ITS architecture	A regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.
Risk assessment	A subjective determination of vulnerability involving an evaluation of approximately 100 Federal-aid program areas based on knowledge of experience, complexity of process, FHWA involvement to date (day-to-day or process review) and FHWA experience, availability of written guidance or procedures, and history of problems within the program area being evaluated.
Stewardship	The efficient and effective management of the public funds that have been entrusted to the Federal Highway Administration.
Stewardship agreement	The agreement required by Title 23 Section 106 (c ) (3) which states: <i>The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.</i>
Sub-grantee/Sub-recipient	The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Systems engineering	A structured process for arriving at a final design of a system. The final design is selected from a number of alternatives that would accomplish the same objectives and considers the total life-cycle of the project including not only the technical merits of potential solutions but also the costs and relative value of alternatives.
Unit Plan or Unit Performance Plan	An annual (fiscal year) plan of activities of the FHWA Division Office that support national and state strategies and goals. The plan is compiled by the Division Office, based on the FHWA Performance Plan, the Division Office risk assessment process, risk assessment discussions with NDDOT, and added input from Division Office staff.