

NDOT Formal External Dispute Escalation Procedure (FEDEP)

Nebraska Department of Transportation (NDOT) projects often involve the participation of many other agencies, entities, and organizations (external team members). Due to the differences in goals and missions, NDOT and external team members may develop conflicting interests or areas of dispute on certain projects or actions. NDOT believes efficient and timely communication is the key to successful issue identification and the resolution of disputes. Early communication is imperative to resolving disputes, conflicts, or discrepancies to maintain schedules, prevent ongoing difficulties, and maintain and reinforce the collaborative partnership between NDOT and external team members.

Federal law provides a high level dispute resolution process at [23 USC 139\(h\)](#) (§139(h)). When necessary and appropriate, NDOT will follow the conflict-resolution provisions found in §139(h). However, in most cases, NDOT anticipates this FEDEP will allow the parties to maximize early and focused communication efforts and avoid escalation to §139(h) procedures.

NDOT has developed the FEDEP escalation ladder for projects under NEPA Assignment where NDOT serves as the lead agency. NDOT and external agency team members will use this FEDEP to ensure critical issues are raised and decided as early as possible in the process and to ensure the appropriate parties are informed and involved in critical decision-making. The FEDEP escalation ladder may be started by either NDOT or an external team member when either determine that an issue requires escalation for resolution. It is also understood that either NDOT or an external team member may elect to leave the FEDEP escalation procedure and pursue the formal issue resolution procedures provided by 23 USC 139(h) by providing written notice of the decision to the other.

Under the FEDEP, if a major dispute arises and resolution is not possible within the team, the dispute may be escalated up through the respective chains of command identified by the parties. It is expected that before a decision to escalate is made, the teams of each entity will have exhausted all other reasonable and good faith avenues of resolution. **Use of the FEDEP is intended to be a solution of last resort, and only used when:**

- 1) disputes pertaining to environmental determinations cannot be resolved within the team after discussions in good faith, and
- 2) disputes have a potential to impact project scope, costs, or schedules.

All possible work is to continue during the escalation process.

Consistent with the spirit of 23 USC 139(h)(4), once a resolution is reached, the issue resolved may not be reconsidered unless significant new information or circumstances arise.

EXAMPLES OF TYPES OF DISPUTES APPROPRIATE FOR USE OF THE FEDEP:

- Disputes about necessary or required activities that are not being completed, or will not be completed in a timely manner, resulting in a potential risk to target completion dates.

- Disputes about established requirements of either party that are not being met, cannot be met, or may be contrary to expectations and/or requirements.

NOTE: NDOT is a signatory to various Programmatic Agreements (PA) which contain specific dispute resolution provisions. When a PA provides a specific dispute resolution provision, the NDOT Formal External Dispute Escalation Procedure (FEDEP) is not applicable.

PROCESS AND PROCEDURES:

The table below establishes the template for levels of dispute review, decision authorities, and timeframes for resolution. NDOT will communicate with external partners to complete individual templates on a partner-by-partner basis, and the completed templates will be signed by NDOT and the external partner. In the event no completed template exists for an external partner, NDOT will look first to applicable PA provisions that might assist with dispute resolution, and next to the formal dispute resolution provided by §139(h), as appropriate.

Level	NDOT Decision Authority	*_____ (Partner) Decision Authority	Timeframe for Resolution
Pre-escalation Team Members	<ul style="list-style-type: none"> • NDOT PQS • NDOT Environmental Unit Manager • NDOT Environmental Section Manager 	(List Staff)	(not applicable)
Escalation Authority	NDOT Project Development Engineer completes the Dispute Escalation Form	(List Staff) completes the Dispute Escalation Form	(not applicable)
Decision Authority	NDOT Deputy Director of Engineering	(List Staff)	Within 10 business days of notice of formal notice of escalation

Process:

1. **Dispute Escalation Form** (attached): The Dispute Escalation Form is completed and sent to the responding party’s Escalation Authority and each party’s Decision Authority, triggering the applicable 10-business day resolution response period. To ensure efficient resolution, the 10-day response is mandatory unless otherwise agreed upon by the parties.
2. **Response:** Within 3 business days of receipt, the parties will agree upon a schedule to meet the 10-business day resolution response period, including necessary telephone or in-person meetings (the 3/10 response period).
 - a. If resolution is achieved, the resolution is agreed upon in writing, signed by the applicable Decision Authority, and placed with NDOT’s project documentation (utilize **Dispute Escalation Resolution Form** (attached)).

3. If the issue cannot be resolved, the dispute must be addressed through formal resolution as set forth in 23 USC 139(h)(6).

EXIGENT CIRCUMSTANCES/EXPEDITED REVIEW:

If a dispute arises that requires immediate attention, notification to the other party may be made which includes the reasons for expedited review. The parties agree to make all reasonable efforts to facilitate such requests and to modify the typical 3/10 response periods as much as possible to facilitate expedited review.

RESOLUTION:

Once a resolution is reached, the parties will complete and sign the **Dispute Escalation Resolution Form**. The parties agree to commit necessary personnel and resources, and to communicate an expedited response within their agencies to ensure the agreed upon resolution can be quickly carried out.

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NDOT Formal External Dispute Escalation Form

Project ID:

Initiating Party/Agency:

Initiating Party Decision Authority:

Responding Party/Agency:

Responding Party Decision Authority:

The mandatory resolution response period is 10 business days, unless a different timeframe is agreed on by the parties. Within 3 business days of receipt of this form, the parties will agree on a schedule to meet the resolution response period deadline.

Summary of Dispute:

Desired Outcome:

Support of Basis for Desired Outcome:

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NDOT Formal External
Dispute Resolution Form

Project ID:

Initiating Party/Agency:

Initiating Party Decision Authority:

Responding Party/Agency:

Responding Party Decision Authority:

Describe Agreed Upon Resolution/Outcome of Dispute Escalation:

Signature Initiating Party/Agency:

Date:

Printed Name:

Signature Responding Party/Agency:

Date:

Printed Name:
