



# Recreation Trails (RTP) Program Manual

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## Introduction

The North Dakota Parks and Recreation Department (NDPRD), in cooperation with the North Dakota Division Office of the Federal Highway Administration (FHWA), has prepared this manual to answer questions and establish guidance relating to project application and management. For a program overview, please reference the RTP manual at [https://www.fhwa.dot.gov/environment/recreational\\_trails/overview/](https://www.fhwa.dot.gov/environment/recreational_trails/overview/).

## Program Overview

The Recreational Trails Program (RTP) is a federal-aid assistance program (CFDA: 20.219) to help states provide and maintain recreational trails for both motorized and non-motorized trail use. The RTP is intended to be a program through which the State provides a grant to trail project sponsors through an open competition process based on the merit of project proposals. The program provides funds for all kinds of recreational trail uses, such as pedestrian uses (hiking, running, and wheelchair use), bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, canoe/kayak trails, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

The RTP funds come from the Federal Highway Trust Fund and represent a portion of the motor fuel excise tax collected from non-highway recreational fuel use: fuel used for off-highway recreation by snowmobiles, all-terrain vehicles, off-highway motorcycles, and off-highway light trucks.

The U.S. Department of Transportation, Federal Highway Administration (USDOT/FHWA) administers the RTP program. The Governor of North Dakota has designated the North Dakota Parks and Recreation Department (NDPRD) as the agency responsible for administering apportionments made to the state. RTP funds represent a portion of the federal gasoline tax attributed to recreation on non-gasoline tax-supported roads. The federal government prescribes many of the regulations governing this program.

Project sponsors will be required to comply with a minimum of two inspections from the NDPRD. The first inspection will be conducted within 30 days of initial construction. This inspection is designed to ensure the project sponsor operates within the intended scope of work. The second inspection will be a final inspection to ensure the project was completed within the scope of work and is functioning as intended. Failure to meet inspection goals can result in delayed or denied reimbursement requests or termination of the grant agreement.

NDPRD, along with the Recreational Trail Program Advisory Committee (RTPAC), intends that RTP grant funding be used to enhance trail opportunities by achieving results that would not otherwise be possible. RTP grants are primarily for recreational projects rather than serving a more practical transportation function. The following is a list of eligible projects:

- Construction of new recreation trails
- Restoration of existing trails (re-routes)
- Development and rehabilitation of trailside and trailhead facilities and trail linkages

- Purchase and lease of recreational trail construction and maintenance equipment
- Land acquisition/easements
- Trail accessibility assessment

## **Title VI**

Title VI of the Civil Rights Act of 1964 ensures that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, including sex, age, disability, low-income, or LEP discrimination, under any program or activity for which the Recipient receives Federal financial assistance. The Civil Rights Restoration Act of 1987 clarified the original intent of Congress concerning Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

All project sponsors must comply with Title VI before coordinating bidding and/or procurement. All bidding, procurement, and construction must adhere to Title VI requirements. Additional information on the Title VI Program is at the NDPRD website at [http://www.parkrec.nd.gov/information/department/title\\_vi.html](http://www.parkrec.nd.gov/information/department/title_vi.html).

Sponsors who are not Title VI compliant will work with the NDPRD Title VI representative to attain Title VI qualifications post award notice and before soliciting any procurement processes.

## **RTP Funding**

The Recreational Trails Program funds up to 80% of eligible costs for trail projects. At the time of application, the project sponsor must demonstrate proof of or provide their anticipated plan to match a minimum of 20% of the total project cost available. The local share may include tax sources (appropriations), bond issues, or force account contributions. The donated value of land, cash, labor, equipment, and materials may also be used.

Individual subgrantee awards are limited to a **minimum of \$30,000 and a maximum of \$250,000**. NDPRD and the RTPAC reserve the right to change the minimum/maximum dollar amounts to ensure the complete expenditure of RTP funds.

## **Eligible Project Sponsors**

Grants may be awarded to any of the following:

- Non-profit organizations - A qualified non-profit organization is one that meets the following criteria:
  - Registered with the State of North Dakota as a non-profit for a minimum of five years and in good standing with the North Dakota Secretary of State's Office
  - Will name a successor at the time of any change in organizational status (for example, dissolution). A qualified successor is any party that meets the eligibility criteria to apply for RTP funds and can comply with all RTP responsibilities. NDPRD recommends that a government agency be sought as a successor whenever possible. A successor organization must agree, in writing, to complete all RTP project responsibilities should the original organization's status change.

- Federally Recognized Tribal Governments
- Municipal agencies (examples include cities, towns, counties, school districts, park districts, public housing agencies, etc.)
- State agencies (examples include the North Dakota Parks and Recreation Department, North Dakota Forest Service, and North Dakota Game and Fish).
- Federal agencies (Examples include: Bureau of Land Management, U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, etc.)

Potential project sponsors with active or previously awarded grants through NDPRD must fully comply with federal and state programs to be eligible for additional RTP grant opportunities.

Project sponsors approved for an RTP grant in the previous two (2) years may receive less priority in additional project funding and/or new project funding.

### **“40-30-30” Requirement**

RTP Legislation (23 U.S.C. 206) requires that States use 40 percent of their funds in a fiscal year for diverse recreational trail use, 30 percent for motorized recreation, and 30 percent for non-motorized recreation. The diverse, motorized, and non-motorized percentages are minimum requirements that must be met. A project for diverse motorized use (such as snowmobile and off-road motorcycle use) may simultaneously satisfy the 40 percent diverse use requirement and the 30 percent motorized use requirement. A project for diverse non-motorized use (such as pedestrian and bicycle use) may simultaneously satisfy the 40 percent diverse and 30 percent non-motorized use requirements.

To provide more flexibility in RTP project selection, FHWA established five categories to account for the 40-30-30 requirements:

- 1) Non-motorized project for single use: A project primarily intended to benefit only one mode of non-motorized recreational trail use, such as pedestrian use only, water trails (canoe/kayak), or equestrian use only. RTP projects serving various pedestrian uses (such as walking, hiking, wheelchair use, running, birdwatching, nature interpretation, backpacking, etc.) constitute a single use for the purposes of this category. A project serving various non-motorized human-powered snow uses (such as skiing, snowshoeing, etc.) constitutes a single use for this category.
- 2) Non-motorized diverse use project: A project primarily intended to benefit more than one mode of non-motorized recreational use such as walking, bicycling, and skating; both pedestrian and equestrian use; and pedestrian use in summer and cross-country ski use in winter.
- 3) Diverse use project including both motorized and non-motorized uses: A project intended to benefit both non-motorized recreational trail use and motorized recreational trail use. This category includes projects where motorized use is permitted but is not the predominant beneficiary. This category contains RTP projects where motorized and non-motorized uses are separated by season, such as equestrian use in summer and snowmobile use in winter.
- 4) Motorized single-use project: A project primarily intended to benefit only one mode of motorized recreational use, such as snowmobile trail grooming. A project may be classified in this category if the project also benefits some non-motorized uses (it is not necessary to exclude non-motorized uses), but the primary intent must be for the benefit of motorized use.

- 5) Motorized diverse use project: A project primarily intended to benefit more than one mode of motorized recreational use, such as motorcycle and ATV use or ATV use in summer and snowmobile use in winter. A project may be classified in this category if the project also benefits some non-motorized uses (it is not necessary to exclude non-motorized uses), but the primary intent must be for the benefit of motorized use.

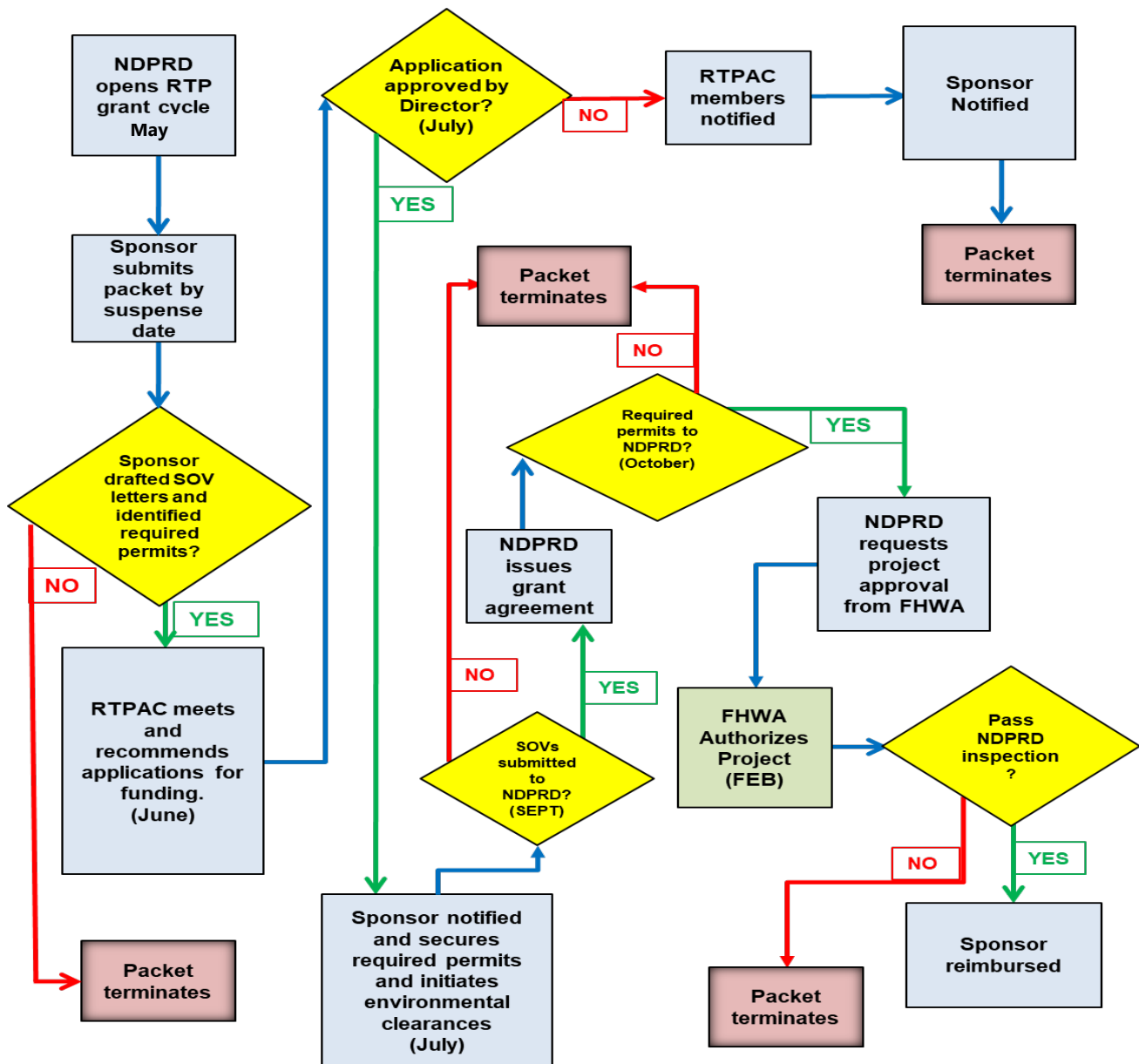
Projects in categories 1 and 2 apply towards the 30 percent non-motorized use requirement. Category 2, 3, and 5 projects apply toward the 40 percent diverse trail use requirement. Projects in categories 4 and 5 apply towards the 30 percent motorized use requirement. The NDPRD administrative and education apportionments will not be used to qualify for the 30 percent motorized use requirement if a motorized application that meets the 30 percent requirement is submitted.

## Project Timeline

When applying for project funding, the project sponsor must demonstrate preparedness to begin construction upon grant packet submission. This requirement includes having all local matches available, final estimates completed, describing required permits, drafting environment clearance requests, and completing all project planning.

Once the project sponsors are notified of their project approval and funding level, they have 18 months to complete the project. NDPRD reserves the right to suspend reimbursements for projects that do not meet the completion timeline

The below flowchart is the approved timeline of the RTP cycle for North Dakota.





## Eligible Projects/Expenses

Projects will be ranked based on the categories below.

1. Construction of new recreation trails: This category may include the construction of new trails, trail bridges, or providing appropriate signage along a trail.
2. Restoration of existing trails: Restoration may broadly include any non-deferred trail maintenance, restoration, rehabilitation, or relocation. This category may include maintenance and restoration of trail bridges or providing appropriate signage along a trail.
3. Development and rehabilitation of trailside and trailhead facilities and trail linkages: This may be interpreted broadly to include the development or rehabilitation of any trailside and trailhead facility. The definition of "rehabilitation" means extensive trail repair needed to bring a facility up to standards suitable for public use due to natural disasters or acts of nature. Trailside and trailhead facilities must have a **direct relationship** with a recreational trail.
4. Purchase and lease of recreational trail construction and maintenance equipment: Purchase and lease of any trail construction and maintenance equipment, provided the equipment is used primarily to construct and maintain recreational trails. This provision does not include purchasing equipment that may be used for purposes unrelated to recreational trails. For example, a lawn mower purchased under this program must be used primarily for trail and trailside maintenance, not to maintain open lawn areas or sports fields. **(Please note non-profits cannot apply for equipment purchases).**
5. Land acquisition/easements: See the Land Acquisitions and Easements section below; please note that RTP legislation prohibits condemnation of any interest in property. Therefore, any interest in the property must be acquired from a willing landowner or seller.
6. Trail accessibility assessment: assessment of trail conditions for accessibility and maintenance.

For projects on federal land, the most essential requirement is that the federal agency land manager must approve the project in accordance with other applicable federal laws and regulations.

## Ineligible Projects/Expenses

- Condemned Land as Matching Value: RTP legislation prohibits using RTP funds to condemn any interest in property. An RTP project may be located on land condemned with funds from other sources. However, using the value of condemned land toward the match requirement for an RTP project is not permissible.
- Feasibility Studies: Trail feasibility studies are not permitted in RTP legislation. The permissible uses relate to actual on-the-ground trail projects.
- Environmental Evaluation and Documentation: Projects intended solely to cover environmental evaluation and documentation expenses are not permissible.
  - Reasonable environmental evaluation and documentation expenses, including costs associated with environmental permits and approvals, may be included in an approved project's engineering costs. Expenses incurred developing the environmental evaluation, necessary permits, and engineering costs may not exceed 20% of the total funded grant amount.
  - Project expenses, in which a project sponsor will seek reimbursement via the grant, may not occur before the project start date. The project start date will be provided once the FHWA approves the project. The project start date will be provided to the project sponsor by the NDPRD.
- Law Enforcement: Routine law enforcement is not permitted in the RTP legislation.
- Planning: Trail planning is not a permissible use of RTP funds. However, construction engineering costs (including allowable costs for environmental evaluation and documentation, permits, or approvals) may be reimbursed. However, reimbursement will not be permitted for construction costs incurred

before the date of program authorization by FHWA. Construction engineering costs cannot be a stand-alone reimbursement and must be accompanied by a construction phase funded under this program.

- Sidewalks: RTP funds will not usually be used to provide paths or sidewalks along or adjacent to public roads or streets unless the path or sidewalk is needed to complete a missing link between other recreational trails. Refer to the Transportation Alternatives Program through NDDOT.
- Roads: RTP funds may not be used to improve roads for general passenger vehicle use.
- Overhead: The regular operating expenses such as rent, building upkeep, utilities, and all fixed costs associated with a business, agency, or group.
- Indirect Costs: Only direct costs that can be explicitly identified with a particular final cost objective directly related to the trail project are eligible.

### **Land Acquisitions and Easements**

Acquisition Costs: The following land acquisition costs are allowable and eligible for reimbursement under the Recreational Trails Program:

- The appraised fair market value of fee simple title or an easement for the use of real property acquired by negotiated purchase.
- The purchase price for an easement or fee title to real property acquired below-appraised value.
- The donated land value (the difference between the purchase price and appraised value) may be used as a match for federal funds to purchase that parcel of land, purchase other pieces of property, or develop facilities.
- Similarly, lands for which 100% of the value is donated may only be used as the organization's share of a project to purchase other land or build facilities.
- Appraisal fees.
- Boundary surveys, title search, legal filing fees.

Ineligible Costs: Costs ineligible for reimbursement in an acquisition project include:

- The purchase of real property to which the project sponsor became committed before federal approval.
- Legal fees other than for filing and fines and penalties paid by the project sponsor.
- Incidental costs relating to real property acquisition and interests in real property unless allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.
- Taxes for which the local sponsor would not have been liable to pay.
- Damage judgments arising out of acquisition, whether determined by judicial decision, arbitration, or otherwise.
- Any construction or material costs associated before the grant award.

Easements: In some instances, the applicant cannot purchase the property but can acquire an easement. An easement must be for a period of at least 25 years. During this period, the easement cannot be revoked at will by the landowner unless the applicant or state is guilty of an infraction of the easement. The land must still be retained in public trail use for the duration of the easement period even though the easement has been revoked. Provisions stated in the easement cannot be detrimental to the proposed recreational development.

A draft copy of the easement must accompany the application for acquisition and development projects. If an easement has been or is to be executed before submitting a development project application, a draft copy of the easement should be sent to the NDPRD for review. Advance approval of such agreements may

help ensure the site's eligibility for funding. Negotiations for easements must follow general negotiated land purchase regulations, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act requirements.

### **Control and Tenure**

An applicant must establish adequate control over any land (public or private) to be improved/developed with RTP grant funds, including documentation of the fee title, lease, easement, or use agreement. Lease, easement, and use agreement terms must be for a term no less than 25 years.

The application must identify all outstanding rights or interests others hold on the land upon which the project is proposed. A signed letter explaining control and tenure must be submitted for all projects not located on Federal Lands. The applicant will be required to submit a signed approval letter from the official responsible for the control and tenure of the property that demonstrates concurrence with the project specifications and describes the need for the project on their property.

### **Metropolitan Planning Organizations (MPOs)**

MPOs are mandated by 23 USC 134 and 49 USC 5303 for metropolitan areas with a population over 50,000. Project sponsors in one of the Metropolitan Planning Organizations' jurisdictions must have and provide approval that their project complies with the MPO Metropolitan Transportation Plan. These areas include Bismarck-Mandan, Grand Forks, Minot, and Fargo. For those projects located within an MPO, the project must be included in the MPO's Transportation Improvement Program (TIP) before FHWA authorization.

The NDPRD will provide the MPO's executive directors with a listing all awarded RTP projects.

### **Technical Review**

Once a potential sponsor submits an application, NDPRD staff will review the application for completeness, eligibility, the sponsor's current grant status, match, property ownership, local/regional/federal approval, etc. NDPRD will forward eligible applications to the Recreational Trails Program Advisory Committee (RTPAC) for further consideration and then to the Director of NDPRD for final award approval.

### **ND Main Street Initiative**

For a project to be considered eligible and passed on to the RTPAC for review and recommendation, the project sponsor must identify and describe how the proposed project supports one or more of the four pillars of the ND Main Street Initiative. More information on the ND Mainstreet Initiative can be found at [Main Street North Dakota \(nd.gov\)](https://www.nd.gov/mainstreet).

### **The Last Mile**

The last mile follows a philosophy on what trails connect to across North Dakota. Trails should serve as a connection between people and places and other recreation assets within our local communities. Applications that demonstrate a "last mile" connection will receive priority in funding.

### **Application Process and Review**

All sponsors will submit their RTP packets utilizing <https://grants.nd.gov/index.do>. Sponsors having difficulty submitting applications to the website may contact the NDPRD grant coordinator for additional assistance. The following information outlines the review process for each submitted application.

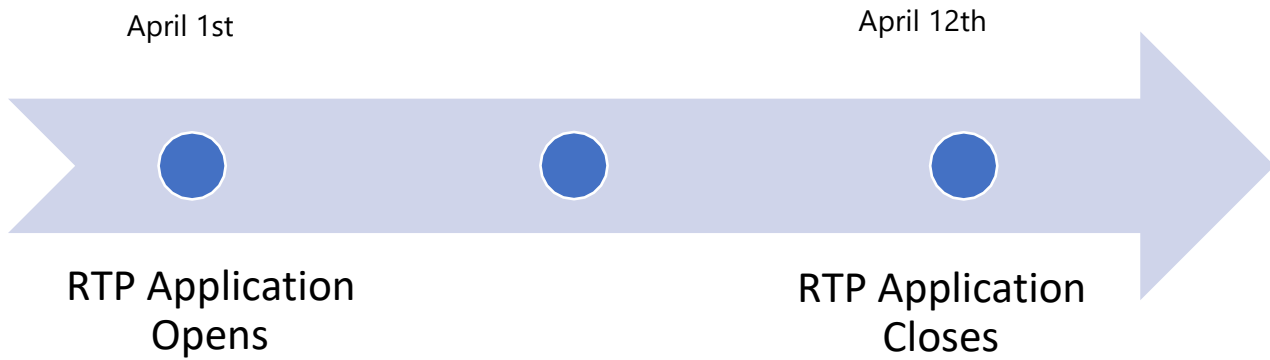
**Recreation Trails Program Timeline**

Sponsors must be aware during project planning that there is a 9-12 month waiting period from application submission in April to actual authorization for cost accrual. See the timeline on the next page.

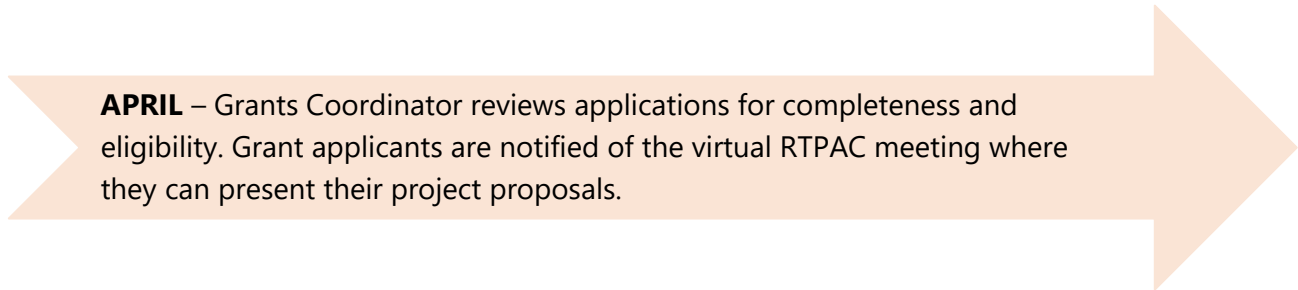
## FY25 Recreation Trails Program Timeline

\*There is a 9 to 12 month waiting period from application to awarded grant due to federal application processing requirements. Applicants are notified in June on the status of application and funding.

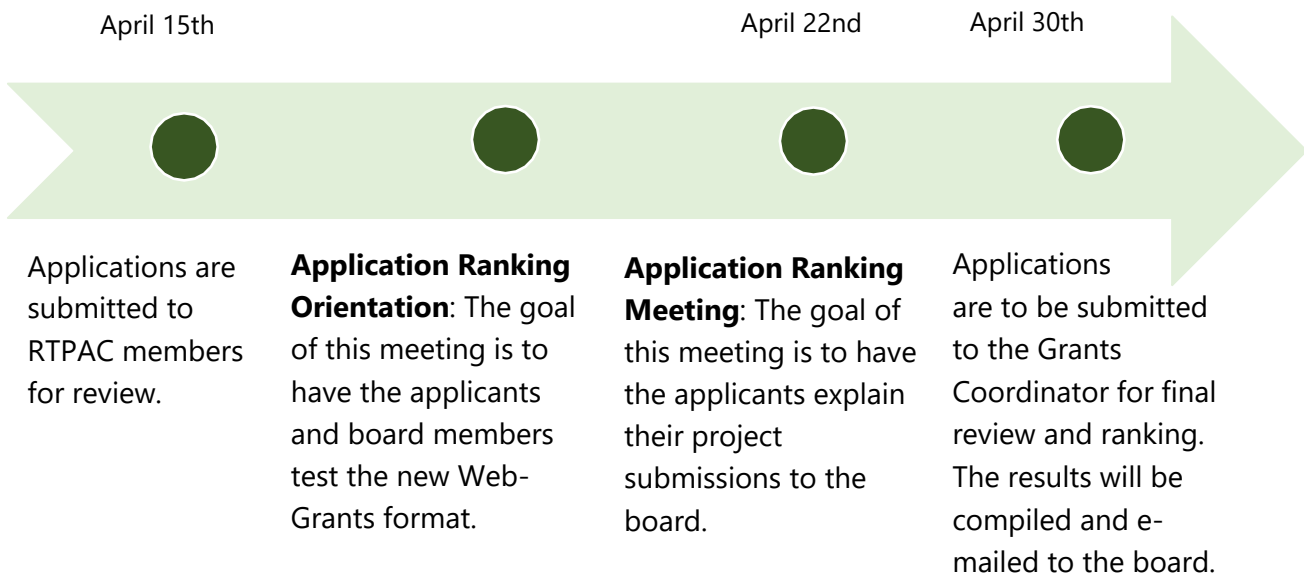
### APRIL 2024



**\*Please note:** Environmental review responses submitted **MUST** be submitted for an application to be eligible.



### APRIL



## Continuation of Recreation Trails Program Timeline

**MAY** - Submit the committee's recommendations to NDPRD Director for approval. The notification letter of pre-award status will tentatively sent.

**JUNE/JULY** – Review any environmental issues and follow up on Solicitation of Views (SOV) responses. Obtain appropriate permits, as needed. RTP and Title VI Compliance trainings are offered.

**AUGUST/SEPTEMBER/OCTOBER** – It is the start of the Federal Fiscal Year 2024. Depending on federal legislation and appropriations, this is when grant appropriation authority is obtained.

**FEBRUARY - APRIL** – Prepare grant award agreements and issue notices to proceed when projects are approved and authorized by FHWA.

## **Recreational Trail Program Advisory Committee (RTPAC)**

The NDPRD determines committee membership (including voting and nonvoting members), roles, protocols and procedures, and authorities. NDPRD, due to significant trail use on Federal lands, will include representation or participation from appropriate Federal agencies as non-voting members.

RTPAC membership represents a broad range of motorized and non-motorized trail users and associations. The Director of the NDPRD appoints committee members who must be recreational trail users of both off-road motorized recreational trail users and nonmotorized recreational trail users. The NDPRD will make every attempt to ensure a wide variety of trail interests are represented on the RTPAC, including hiking, biking, equestrian, OHV, snowmobile, and other outdoor winter recreational trail use.

### **Federally described Duties of the Advisory Committee**

The Federal legislation lists the duties of the State Recreational Trail Advisory Committee:

- §206(c)(2) - Represent both motorized and nonmotorized recreational trail users. Meet not less often than once per fiscal year.
- §206(d)(4) - A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section [206].

Under §206(d)(4), appropriate guidance would include:

- Developing project sponsor criteria (which kinds of project sponsors may receive grants).
- Developing project eligibility criteria (which kinds of projects the State would consider for funding).
- Developing project evaluation and selection criteria.
- Providing guidance to determine compliance with the diverse trail use requirement.
- Determining appropriate State policy to determine matching share criteria.
- States may assign other duties to their advisory committees, such as:
  - Issue guidance to the State to meet the environmental mitigation or benefit requirement in §206(e).
  - Recommend projects or select projects for funding.
  - Discuss statewide trail management issues and offer recommendations for improvements.
  - Provide a forum to discuss statewide trail user issues.
  - Assist in statewide recreational trail outreach and public involvement programs.
  - Assist the State in other trail policy issues.

Although the RTP legislation does not require a State to use its advisory committee to approve projects for funding, the legislation requires the State to receive guidance from the committee on how it solicits and selects trail projects for funding. This guidance would include procedures for on-the-ground trail projects and for trail education projects.

In North Dakota, the committee serves as the evaluation committee that reviews and prioritizes grant applications and recommends projects for funding to the Director of the NDPRD. The project evaluation allows committee members to bring their knowledge of statewide and local recreation patterns, resources and needs into consideration. Reviewers may rank a project based on site suitability assessment, fiscal consideration, commitment to long-term operation and maintenance, superior design, superior leverage of funding and partnership, ADA compliance, project presentation, heritage and legacy context, and regional issues. Committee members are appointed to 3-year terms. After a 3-year term, NDPRD will coordinate with a specific association or department to replace their member. If no replacement is found, the existing committee member may be allowed to renew their term.

The **North Dakota RTPAC** shall consist of the following members, and a quorum will be five board members:

- The NDPRD State Trail Coordinator – Permanent assignment
- (A) Equestrian – Member from the Back Country Horsemen of North Dakota (selected by the association and approved by the Director of NDPRD)
- (A) Snowmobile – Member from Snowmobile North Dakota (selected by the association and approved by the Director of NDPRD)
- (B) Hiking/Biking – selected by the North Dakota Recreation and Park Association (NDRPA) and approved by the Director of the NDPRD
- (B) At Large Member – selected by the Director of the NDPRD
- (B) Government Land Manager – selected by the Director of the NDPRD
- (C) Off-Highway Vehicle – Member appointed by the Director of the NDPRD
- (C) ND Tribal Tourism Alliance – Selected by the Alliance and approved by the Director of NDPRD
- (C) At Large Member – selected by the Director of the NDPRD
- Ex-Officio members
  - (1) from the Federal Highways Administration
  - (1) from the United States Forest Service
  - (1) from the North Dakota Department of Transportation

#### **Committee Terms**

The following committee terms are established:

- (A) 3-year terms beginning FY2020
- (B) 3-year terms beginning FY2021
- (C) 3-year terms beginning FY2022

#### **Project Scoring – Open Project Selection Process (OPSP)**

NDPRD has established a priority rating system for selecting eligible projects for funding based primarily on outdoor recreation needs identified in the SCORP Recreational Trail Needs. The scoresheet used by the selection panel provides each applicant with a fair and equitable assessment during competition to qualify for project funding.

The priority rating scoresheet evaluates each project using a 100-point scale. Projects are assessed based on the application received by the NDPRD and then scored individually by the RTPAC. The project scores are averaged, and projects are then ranked from highest to lowest for award recommendation based on authorized federal obligation limits.

Points are awarded based on grant management, project details, and serving priority needs identified by regions in the current SCORP. Other considerations for awarding RTP funds to projects include the seasonal duration of the outdoor activity, meeting multiple types of trail user needs, demonstrating the use of trails as connections to people and places, and supporting the four pillars of the ND Main Street Initiative. A complete listing criterion weighed during the OPSP can be found at Recreation Trails Program | ND Parks and Recreation - Business and Grants



## Environmental and Historical Requirements and Project

The project sponsor must complete documentation of compliance with the National Environmental Policy Act (NEPA) and other Federal environmental laws, regulations, and Executive Orders as part of an authorized project under the RTP. Project sponsors are required to submit the draft Solicitation of Views (SOVs) with their application. Applications that do not have a **complete** draft submission of SOVs will not be processed for RTPAC review. Project sponsors selected for funding must complete their clearances within 90 days of their grant award letter, or their grant will not be funded.

The list below and contact information are the required submissions for SOVs (please check with the NDPRD Grant Coordinator for the most up-to-date list). If a sponsor needs assistance or an exception to the timeline, they must coordinate with the NDPRD grant coordinator.

### North Dakota Solicitation of Views (SOVs)

Agency	Contact Name	Address	City	State	Zip
ND Department of Environmental Quality	Mr. David Glatt	4201 Normandy Street	Bismarck	ND	58503-1324
U.S. Department of Agriculture - NRCS	Ms. Mary E. Podoll	P.O. Box 1458	Bismarck	ND	58502-1458
ND Game and Fish	Mr. Steve Dyke	100 N. Bismarck Expressway	Bismarck	ND	58501-5095
North Dakota SPOC	Ms. Rikki Roehrich	PO Box 2057	Bismarck	ND	58502-2057
NDDOT - Department of Transportation	Ms. Joyce Schmidt	608 E. Boulevard Ave.	Bismarck	ND	58505-0700
ND Parks and Recreation Department	Ms. Kathy Duttonhefner	604 East Boulevard Ave	Bismarck	ND	58505
ND Historical Society	Mr. Bill Peterson	612 East Boulevard Avenue	Bismarck	ND	58505-0830
U.S. Army Corps of Engineers	Mr. Jeremy Nygard	3319 University Drive	Bismarck	ND	58504
U.S. Fish and Wildlife Service	Attn. Ecological Services	3425 Miriam Avenue	Bismarck	ND	58501-7926
ND Dept. of Water Resources	Mr. Garland Erberle	1200 Memorial Hwy, Dept 770	Bismarck	ND	58504

FHWA procedures in 23 CFR 771 apply to the RTP. Each project must be evaluated to determine the environmental impacts; however, most RTP projects will qualify as Categorical Exclusions (CE) under NEPA (23 CFR 771.117) if they meet the following requirements:

- Does not significantly impact planned growth or land use for the area.
- Does not require the relocation of a significant number of people.
- Do not significantly impact any natural, cultural, recreational, historic, or other resource.
- Does not involve significant air, noise, or water quality impacts.
- Does not have significant impacts on travel patterns.

- Does not otherwise have any significant environmental impacts

The following project types are Categorical Exclusions by definition and do not require further review:

- Rehabilitation contained within the footprints of existing trails and trailhead facilities.
- Re-grading within the footprints of existing trails or trail parking areas.
- Striping and/or re-striping of existing facilities.
- Replacement, renovate, or rehabilitate existing signs, kiosks, or markers.
- Alter existing facilities to make them accessible to the elderly and disabled.
- Repair or replacement of existing fencing, guardrails, retaining walls, or berms within existing facilities, including areas needed for construction and staging.
- Equipment purchases that abide by the Buy America policy.

Completing an SFN 61951 (Categorical Exclusion Form) by the project sponsor and approved by the NDPRD grant coordinator is required to submit to the FHWA before the final categorical exclusion determination.

### **State Historic Preservation Office (SHPO) Requirements**

The SHPO will be contacted to ensure that the project proposal complies with State and Federal laws regarding archaeology on lands or historic properties.

- Any project element calling for alteration, rehabilitation, renovation, or demolition of a building or structure 45 years or older must be reviewed by the SHPO on a case-by-case basis.
- Photographs of properties that would be affected 45 years of age or older need to be submitted along with a narrative describing the project, including plans and specifications, as appropriate. Any available historical information on the property should also be submitted.
- It is illegal to disturb an archaeological site, remove artifacts, or remove an archaeological object on public or private lands unless authorized under a permit and requisite permissions have been obtained.
- If human remains are found during an excavation on private or state lands, the local law enforcement office must be contacted pursuant to N.D.C.C. §23-06-27 to determine if they are Native American or are evidence of a crime scene.
- NDPRD will ensure SHPO distinguishes between state and federal projects during submission.

If other archaeological materials are found during a ground-disturbing activity, contact the SHPO at 701- 328-2682. The SHPO can check to see if your project area has been surveyed and give you a current list of archaeological consultants. Only professional archaeologists or persons working for recognized scientific organizations may apply for an archaeological permit.

If an awarded project introduces ground-disturbing activities, they must implement the NDPRD inadvertent discovery plan that will be a part of their final contract.

Projects on Native American reservations must be approved by the Tribal Historic Preservation Office (THPO) and not SHPO.

### **Other Environmental Considerations**

- Aquatic Resources: Impacts on aquatic resources (wetlands, streams, etc.) must be considered and may result in trail route or structure changes. All applications will be reviewed by NDPRD Grant's staff for wetland impacts using the U.S. Fish and Wildlife's Wetland Mapper, available at <https://www.fws.gov/wetlands/Data/Mapper.html>
- Threatened and Endangered Species: The occurrence of a protected species or critical habitat could be an essential issue to consider during the development of an RTP project. The U.S. Fish and Wildlife Service

and the North Dakota National Heritage Inventory Program will review projects. Several resources are available for project sponsors to make a preliminary determination of potential effects on threatened and endangered species. This initial determination/ recommendation should be summarized in the SOV letters to USFWS for consideration. Due to the potential Northern Long long-eared bat habitat in the state, any possible removal of trees must not occur during the specified timing restrictions.

- Hazardous Wastes and Contaminated Properties: Contaminated sites may be encountered during the development of RTP projects. Abandoned railroad lines being converted into trails are of particular concern. Site assessments and appropriate steps for remediation may be necessary.
- Noxious Weeds: Project sponsors are responsible for preventing the spread of noxious weeds in conjunction with the trail project.
- Conservation Measures: Careful planning and best management practices should be implemented during the construction phase and after the trail is built to help decrease impact and reduce cumulative effects on plant and wildlife communities. Avoiding habitat fragmentation should be considered and implemented when possible.
- Aquatic Nuisance Species (ANS): Special attention needs to be implemented during planning to avoid the spread of aquatic nuisance species, whether they are animals such as the zebra mussel or plants such as curly-leaf pondweed. Sponsors should be familiar with and adhere to North Dakota Administrative Code §30-03-06

The following conservation measures are suggested:

- Start and finish the project outside the migratory bird nesting period of February 1<sup>st</sup> through July 15<sup>th</sup>.
- Design trails that avoid sensitive areas such as wetlands or other habitats that are rare in the area.
- Reduce the invasion of invasive species by controlling weeds before construction and include a weed management plan after construction.
- Maintain clean trail-building equipment to limit the spread of noxious weeds and invasive species.
- Avoid practices that cause erosion.
- Identify any off-trail use immediately and have a plan to eliminate the problem.
- ND Parks and Recreation Department recommends using the Best Management Practices when implementing this project.
- Tree mitigation should be completed on a 2:1 basis and completed in the area of disturbance.

## **Procurement**

Please note *this section is only applicable to project sponsors that are Title VI compliant*. If the sponsor is not Title VI compliant, the NDPRD will conduct Title VI compliance training before the project award. The NDPRD will not perform any form of procurement for an applicant.

If a government entity has an approved locally produced procurement process, they must use local procurement procedures.

If a project sponsor does not have an approved procurement process, they must use the State of North Dakota Procurement processes found at [Procurement Laws, Rules, Guidelines | Office of Management and Budget North Dakota](#)

## **Public Improvement Projects**

Public improvement means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding. It is

constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by titles 11, 24, or 38.

The threshold for bidding on constructing a public improvement is one hundred fifty thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for public improvement construction is one hundred fifty thousand dollars.

If the estimated cost of constructing a public improvement exceeds the threshold, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids.

Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

\*Please refer to <http://www.legis.nd.gov/cencode/t48c01-2.pdf> for more detail and specific guidelines regarding Public Improvement Project Bids and Contracts.

- Required Contract Language: Attached to this manual are FHWA Form 1273 and Title VI nondiscrimination assurances, which are required to be included in their entirety in every RTP contract between a project sponsor and any organization, group, agency, or individual they do business with. Failure to include this form will result in forfeiture of RTP funds for the project portion covered by the contract. While this form is a federal requirement, only certain portions may apply depending on the contracted dollar amount or the project's location (federal road right of way). Please direct any questions relating to this form to NDPRD grant staff.
- Disadvantaged Business Enterprise Program: Project sponsors are encouraged to work with disadvantaged businesses when practical and applicable to the State's procurement guidelines. For more information on the ND Department of Transportation's Disadvantaged Business Enterprise Program, please visit <http://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>.

## Project Expenditure and Reimbursement Process

### Contributions and Expenses

Project costs must be incurred after the federal project approval start date to be eligible for reimbursement funds. Donations of equipment, labor, and materials must be contributed after the federal project approval start date as well. Cash contributions may be received at any time.

The bidding and procurement process must also begin after the federal project approval start date, which will be indicated on your project agreement from NDPRD. Please note that a pre-approval award letter will be sent out to all projects ranked high enough to be funded; final approval will be contingent upon Solicitation of View (SOV) letters and responses. Upon successful completion of reviews, a project agreement, including the project start/completion date, will be provided to the sponsor. This does not prevent a potential applicant from receiving project cost quotes before SOV responses.

### Local Share

Local matches may include donated/volunteer labor, donated equipment and/or material, and force accounts. No local share for labor will include payroll additives (insurance, taxes, retirement, etc.) or other overhead costs. Any projected donated labor, equipment, material, or force account will be documented in the RTP application and included in the grant agreement. Once the grant agreement is signed, the NDPRD grant coordinator must approve any deviations in labor, equipment, or material rates. Local share cannot be a carry-over from a previous reimbursement pay period unless pre-approval from NDPRD has been granted.

- Donated Labor: The time of a person donating services/labor will be valued at a rate paid on an average of like skills rounded to the nearest higher dollar as determined by the US Bureau of Labor Statistics for North Dakota. Any donated labor match requests must be formatted to account for each individual's hours, day, or donation description, signed by the donor for each entry, and a certification memorandum from the project sponsor validating all donated labor. Only forms produced by NDPRD are allowed for reimbursement requests. Donated labor will not be an eligible match for administrative duties such as emails, billing, telephone calls, paperwork, or other general administrative duties. Only labor performed on the physical project site will be accepted as a matching share.

Donated labor may only be used as a match and **is never a reimbursable item**. Youth ages are established mirroring the criteria used from [www.volunteer.gov](http://www.volunteer.gov). The categories below are the set donated labor rates and the only authorized reimbursement request rates. Requests for Category 2 or Category 3 reimbursements must be accompanied by documentation certifying claimed skill. Sponsors must submit SFN 59170 to the NDPRD Grants Coordinator to receive match credit. Personnel utilizing category 2 or category 3 labor match must be actively working in that capacity for hours logged. Certified Category 2 or 3 personnel performing Category 1 duties will only receive Category 1 credit.

**Youths ages 15 to 18** - must be residents of North Dakota and authorized to donate labor.

However, youth will only be matched at the current ND minimum wage rate. Youth under age 18 can volunteer provided that the work does not threaten their health or safety or violate Federal or State child labor laws or the policies of the agency's volunteer program. A parent or legal guardian must give written consent and sign a release from liability waiver before a person under 18 years of age may volunteer.

**Category 1 – General Laborer** - \$20.00

- Examples: Construction Laborers, Roofer, Painter, Cement Finisher

**Category 2 – Skilled Laborer** - \$28.00

- Examples: Brickmason, Carpenter, Skidsteer Operator, Supervisor

### Category 3 – Professional Services - \$40.00

- Examples: Engineer, Architect, Lawyer, Mechanic, Heavy Equipment Operator
- Donated Equipment and Materials: Donated equipment and materials may be used as a match and are not reimbursable items. The value of the donated materials must be documented through an invoice with the ability for NDPRD to verify prices from an online source or an official letter from the donor/vendor. Equipment rates for rentals or donated use will only be matched at the rate specified by the Federal Emergency Management Agency (FEMA) [Schedule of Equipment Rates | FEMA.gov](#) unless NDPRD approves a local quote for equipment rates.

Any donated material from a previously purchased stockpile can be accepted if approved by the NDPRD before submission of a reimbursement request. The project sponsor must provide documentation of the original cost of the material, which will only be matched at the original price. The project sponsor must complete and submit an SFN 59169 (Donated Equipment) and/or an SFN 59172 (Donated Materials) to the NDPRD Grant Coordinator for match credit.

- Force Account: Force account differs from volunteer labor or donated equipment and supplies. Force account refers to using a project sponsor's staff, equipment, and/or materials. All or part of the project sponsor's share may be provided through a force account. Documentation must be verifiable from the project sponsor's records and reasonable and necessary for efficient project completion. Force account labor submissions must be from a payroll system of record and contain a supervisor memorandum of record validating submission. **Force account costs can only be used as a match or a reimbursable cost, never both.** Sponsors must also submit an SFN 59171 to the NDPRD Grant Coordinator to receive match credit. Only labor performed on the physical project site will be accepted as a matching share.

### Federal Matching Share

The federal share through the RTP for projects is limited to 80 percent except under the following circumstances:

- A Federal agency project sponsor may provide its own funds toward RTP projects as an additional Federal share of up to 95 percent of the project cost. The limitation is intended to ensure commitment to the project from State, local, or private co-sponsors. Under this provision, a Federal agency project sponsor may provide any amount of funds, provided the total Federal share does not exceed 95 percent.
- Funds from Federal Programs: RTP funds may be matched with funds available under other Federal funding programs if the project is also eligible for funding under the other Federal program. Federal funds received by any project sponsor from another Federal program may be credited as if they were the non-Federal share and may be used to match RTP project funds up to 100 percent of the project cost.

### Reimbursement

The project sponsor will not receive upfront funding at the time of project approval. Instead, the sponsor must pay the bills and be reimbursed for a maximum of 80% of the expenses incurred for the project. **To avoid the risk of losing funding, reimbursement requests must be submitted approximately every six months during the project period.** Land donations will be credited towards the match of the sponsor's share of the project.

All costs during a submitted reimbursement period are final. Suppose a sponsor submits a reimbursement from June 1, 2020 – October 1, 2020. In that case, any costs incurred or sponsor matches that are not submitted within that period of performance will not be reimbursed or matched at a later date unless pre-approval has

been coordinated and approved by NDPRD.

As in any program where a reimbursement is requested for a portion of the project costs, adequate documentation and records are essential. There must be definite supporting documentation (i.e., invoices) for each item of cost claimed- estimates are insufficient. NDPRD may request additional support documentation to process billing. Sponsors must use SFN 59174 to process reimbursement requests with the NDPRD Grant Coordinator.

**Reimbursement Requests:** The following is a list of documentation NDPRD will need to process reimbursement requests:

- Grant Program Reimbursement Request Form.
- Affidavit of publication, supplied by the newspaper when you advertise for bids.
- For purchases over \$2,500.01, include any required approvals, solicitation documents used, list of bidders solicited, and responses received. In addition, a bid tab or summary must be included, which includes the name, address, and phone number of all bidders, evaluation worksheets, reasons for rejecting a particular bid, and method of award (i.e., purchasing card or purchase order). Forms should be dated and signed by a responsible official.
- Contractor invoices (or final payment, if countersigned by the contractor acknowledging payment of all prior charges and if the cost of each major work item is shown)
- Copies of invoices. Not monthly statements.
- Individual earnings records for the calendar year or payroll journals. Should show gross wages, withholdings, and net pay for each pay period – See Force Account Form.
- Equipment rental time records.
- Detailed schedule showing how you computed owned-equipment rental rates. You must use hourly rates for donated equipment time via a quote from a local rental establishment or a published equipment billing chart for a municipality.

**Partial Billings:** A partial billing along with supporting documentation may be submitted to NDPRD after portions of the work have been completed. Submit the completed "Reimbursement Request Form." The state will retain 5% of the grant amount until the project and final inspection are completed. Supporting documentation needed includes the following:

- Expenditure Records indicated above
- Volunteer Logs

**Final Billings:** For a project to be considered completed and ready for final billing, it should be submitted within thirty days of the completion of the project or grant expiration date, whichever comes first. Final project billings must be submitted to NDPRD utilizing the process outlined above. Final project billing and grant closeout will not be completed until NDPRD has conducted the final inspection and certified the project is indeed complete, meeting the project description outlined in the grant application and/or project amendment.

**Reimbursement Request Form:** A separate file should be established and maintained for each RTP project. The project sponsor is responsible for tracking costs according to the categories on the Grant Programs Reimbursement Request Form and maintaining an auditable record for a period of not less than three years from the date of the final reimbursement. A grant reimbursement form must be submitted for all payment requests and reimbursements. Only the form provided by NDPRD will be accepted.

- Project Completed Under Budget: If a project is completed under budget, the remaining unspent funds will be de-obligated from the sponsor and re-obligated to other eligible RTP projects at the State's discretion.

Projects that have not shown progress for six months risk potential termination of RTP funding. If no reimbursement requests are received, NDPRD will assume no progress has been made.

## **Amendments**

The NDPRD reserves the right to deny any amendment request without further processing.

Various situations may result in changes or deviations from the Project description during the project period. An amendment is necessary to add to or alter the approved project. Changes that may necessitate an amendment are increases or decreases in the grant amount, project scope changes, or an extension of the project period. The NDPRD requires 90 days to process and approve/deny amendments.

**Changes in Project Scope:** Only those items approved for the project are eligible for federal assistance. Similarly, facilities must be constructed in the exact location designated on the application's plans. Due to unforeseen changes in project costs or revisions in the plans for the facility, certain items may have to be added or deleted from the project after approval. These changes may require submission to the Federal Government for approval. In the case of adding an item to the project, construction on that item cannot begin until the amendment is approved. The amount of federal assistance specified on the award letter is the maximum amount reserved for that particular project. The applicant must pay costs over this amount. All changes in project scope should be in accordance with the intent of the original application and must be justifiable. The need for the change must be documented by a letter to the NDPRD, accompanied by revised cost estimates, construction plans, and maps.

**Project Period Extensions:** All acquisition and development must occur within the project period, as identified in the award letter. The award letter is sent to the project sponsor after receiving Federal approval. The target date for project completion will be based on an 18-month project period. The project sponsor is encouraged to complete the project as soon as possible, as inflation can add a 5% cost increase each year.

If the project cannot be completed during the period identified in the project agreement, contact NDPRD.

**Submission of an Amendment Request:** The sponsoring agency initiates the amendment by submitting a request for the changes to NDPRD. This request should include all project revisions desired, including cost estimates, maps or design plans, and justification of the need for the changes. It is recommended the NDPRD be contacted before the submission of the amendment request. Department staff will be able to provide advice on the feasibility of an amendment approval. An amendment for a change in project scope can be requested at any time before the construction of the added item or acquisition of the added tract. An amendment for an extension of time should be submitted forty-five days before the project expires.

Amendment requests must be kept to a minimum. Amendments cover items that could not be anticipated in the original project. Significant deviations from the original project will not be accepted. It is the project sponsor's responsibility to thoroughly determine the type of project prior to submission and, upon approval, carry through with that project.

## **Project Termination**

A project sponsor may request withdrawal of the project at any time before the first payment or expenditure of grant funds. After the initial payment, the project may be rescinded, modified, or amended only by written mutual agreement between the project sponsor and NDPRD.

NDPRD may terminate the project in whole or in part at any time before the completion date if it is determined



the project sponsor has failed to comply with the terms of the project proposal or the program's intent. Failure by the project sponsor to comply with the terms of the grant may cause suspension of all obligations and a return of any monies received. If a project is terminated, the project sponsor will be notified in writing of the determination, the reasons for the termination, and the effective date. Payments made to the project sponsor or recovery of funds by the NDPRD under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

NDPRD may terminate the grants in whole or in part at any time before the completion date when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

The project sponsor shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. Termination, either for cause or for convenience, requires the project in question to be brought to a state of recreational usefulness agreed upon by the project sponsor and NDPRD, or all funds must be returned.

### **Project Site Retention & Future Responsibilities**

At the time of project approval, the project sponsor, through the acceptance of funds, commits that the facilities developed with federal assistance must remain open for general public use and will be operated and maintained. If RTP monies are used for land acquisition, the land must remain in public trail use for perpetuity. If RTP monies are used for development, the site and facility must remain in public trail use until the facilities become obsolete or end their useable life.

### **Signage Requirement**

Project sites funded through the Recreational Trails Program must display language and/or a sign stating the funding assistance for the site came through a partnership between the FHWA and NDPRD.

### **FHWA Buy America Act**

FHWA abides by the *Buy America Act*, which applies to all steel and iron purchases permanently incorporated in a project funded under Title 23 using the funds of the RTP, FHWA, of Transportation. This certifies that all steel and iron supplied to the Recreational Trails Program (RTP) projects are manufactured domestically in the United States in compliance with the Federal Highways Administration (FHWA) Buy America requirements as outlined in 23 CFR §635.410. An overview of the program can be found here:

<https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>.

***If the total amount of the project is below \$500,000, the Buy America requirements for iron, steel, manufactured product, and construction materials is waived. If the total amount of the project is over \$500,000, the allowable threshold for noncompliant products is the lesser of \$1,000,000 or 5% of total applicable costs for the project. However, if the noncompliant products include iron, steel, manufactured products, the FHWA's threshold amount of 0.1% of the total contract amount or \$2,500 applies.***