Kent Leben
Rural Programs
NDDOT-Local Government

NDACE CONFERENCE
2017
Topics

- Federal and State Funding Programs
Funding Programs

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

- **State**
  - SRF – Special Road Fund
  - HB 1358, SB 2103, & HB 1176
Federal Funding Programs

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

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

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

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

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

- HSIP (con’t)
  - Funding scenario (LRSP)
    - Funds will be separate pot of money, not out of your SC account (funds will be available earlier)
    - LPA’s will still have to submit projects for consideration
Federal Funding Programs

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

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

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

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

- **HB 1012 ($142.0M)**
  - Done and complete

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

- **SB 2103 ($352.0M)**
  - Oil Producing remaining is $15.91M
  - Non-oil Producing remaining is $16.42M
  - Keep sending me the final certifications as projects get finished
- **HB 1176 ($104.664M)**
  - Remaining is $38.46M
  - Keep sending me the final certifications as projects get finished
- **Last day for NDDOT to make any payments is the end of June in 2019.** Any funds that were overpaid will need to be repaid even after that date.
Questions?
NEW NEPA PROCESS & PROGRAMMATIC BIOLOGICAL ASSESSMENT 2017
Levels of Environmental Docs

- Environmental Impact Statement
- Environmental Assessment
- Categorical Exclusions (CATEX)
CATEGORICAL EXCLUSIONS

- Old
  - ECL
  - DCE (formerly PCR)

- New
  - CED – Catex by Definition
  - PCE – Programmatic CATEX (new level)
  - DCE - Documented CATEX
Environmental Document Process

Is/are the work type(s) generally confined to the roadway surface, but may include minor safety, structural, pedestrian facilities, or miscellaneous work with no permanent Right of Way required?

Yes

Is/are the work type(s) listed in the Programmatic Categorical Exclusion Agreement Section II, E or Appendix A – NDDOT Categorical Exclusion (CE) Certified Actions?

Yes

Process as a Categorical Exclusion by Definition (CED)

No

Does the project fit within the C-List categories in 23 CFR 771.117 (c) and within the thresholds listed in the Programmatic Categorical Exclusion Agreement?

*Exceptions – Major Rehabilitation, New/Reconstruction, and Bridge Replacement

No

Process as a Documented Categorical Exclusion (DCE)

Yes

Process as a Programmatic Categorical Exclusion (PCE)

*Major Rehabilitation, New/Reconstruction, and Bridge Replacement Projects to be processed as a DCE due to the complexity.
NDDOT & FHWA Programmatic Agreement

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

- Listed in Appendix A
- Work on road top
- Include
  - HMA Overlay
  - Aggregate Surfacing
  - Milling
  - Seal Coat / Micro
  - In kind Pedestrian Replacements
  - Pipe Repair / Pipe Lining
What is required for a CED?

- Determination and Approval Form (SFN18878)
- CATEX by Definition Checklist
- Any corresponding figures/tables/reports required by the checklist.
- Cost Estimate
Determinant and Approval Form (SFN 18878)

<table>
<thead>
<tr>
<th>Project Number</th>
<th>PCN</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Location</td>
<td>Length</td>
<td></td>
</tr>
<tr>
<td>Work Type</td>
<td></td>
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<tr>
<td>Project Comments</td>
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</tbody>
</table>

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

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

- **Categorical Exclusion by Definition (CED)**
  - Work is generally confined to the roadway surface but may include minor safety, structural, pedestrian facility, or miscellaneous work that does not require permanent right of way acquisition. Work types are defined in Appendix A of the Programmatic Categorical Exclusion Agreement. No further NEPA documentation is required, but some consultation, coordination, notifications, or permitting may be required.
  - Requires approval by NDDOT Designer/Tech Support.

- **Programmatic Categorical Exclusion (PCE)**
  - Work is primarily on the roadway surface, but may also include localized areas of earthwork and enhancement or replacement of structural elements. May require permanent acquisition of minor amounts of right of way.
  - Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer.

- **Documented Categorical Exclusion (DCE)**
  - Work involves substantial earthwork, regrading, major rehabilitation, new/reconstruction, or bridge replacements.
  - Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer. If the project exceeds any of the identified thresholds in Section VII of the Programmatic Categorical Exclusion Agreement or is a (d) list project, FHWA approval is also required.
  - FHWA Approval Required

**CatEx Addendum/ CatEx Re-Evaluation:**

- Addendum
- Re-Evaluation

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

- Consultant or Local Public Agency
  - Date
  - NDDOT Designer/Tech Support
  - Required in all cases

- Federal Highway Administration
  - Date
  - Only required if NDDOT Approval thresholds are exceeded

NDDOT
North Dakota Department of Transportation
# CED Checklist

## Categorical Exclusion by Definition Checklist

<table>
<thead>
<tr>
<th>Subject Area</th>
<th>Questions</th>
<th>Yes</th>
<th>No</th>
<th>Documentation added to the Project File</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right of Way</strong></td>
<td>Is permanent right of way required?</td>
<td></td>
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<tr>
<td></td>
<td>If yes, then a Ctx by Definition does not apply.</td>
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<td></td>
<td>Are temporary easements required?</td>
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<td></td>
<td>If yes, then attach a figure showing the location(s) and amount(s) needed at each location</td>
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<tr>
<td><strong>Historic</strong></td>
<td>Does the project involve any of the following:</td>
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<tr>
<td></td>
<td>- Work on a Historic Bridge</td>
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<td></td>
<td>- Work in a Historic District</td>
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<tr>
<td><strong>Archaeological</strong></td>
<td>Does any element of the proposed construction disturb or conduct earthwork outside of the extent of the existing roadway footprint?</td>
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<td></td>
<td>If yes, then a Class III Survey and consultation may be required.</td>
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<td></td>
<td>Contract ETS Division, Cultural Resource Section for further guidance</td>
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<tr>
<td><strong>Section 6(f)</strong></td>
<td>Are there any impacts to Section 6(f) properties such as:</td>
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<td></td>
<td>- Historic Sites</td>
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<td></td>
<td>- Wildlife &amp; waterfowl refuges</td>
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<td></td>
<td>If yes, then the applicable documentation and agency coordination is required.</td>
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<tr>
<td><strong>Section 6(f)</strong></td>
<td>Are there any permanent impacts to Section 6(f) properties:</td>
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<tr>
<td></td>
<td>- Recreational sites that used Land &amp; Water Conservation funds:</td>
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<td></td>
<td><a href="http://www.parks.nd.gov/recreational/properties?locale=ntl&amp;state=n&amp;park=blfnp&amp;park=blfnp">http://www.parks.nd.gov/recreational/properties?locale=ntl&amp;state=n&amp;park=blfnp&amp;park=blfnp</a></td>
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<tr>
<td></td>
<td>If yes, then a Ctx by Definition does not apply and a Documented Ctx will be required to be prepared.</td>
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<tr>
<td><strong>Threatened or Endangered Species</strong></td>
<td>Is the project located within 0.5 miles of critical habitat or does the project involve tree removal, work on structures (bridges/box culverts/attic passas/structural plate pipes), or the adjustment (raising/relocating) or new installation of overhead utility lines in a rural area?</td>
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<td></td>
<td>See link to designated critical habitat map:</td>
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<td></td>
<td><a href="http://parks.nd.gov/land-water/BLFNP/fish/wildlife/recreation/locations/">http://parks.nd.gov/land-water/BLFNP/fish/wildlife/recreation/locations/</a></td>
<td></td>
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<td></td>
<td>If yes, a Section 7 Affect Determination Table needs to be completed and ANR/USFWS coordination may be required.</td>
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<tr>
<td><strong>Floodway and Floodplain</strong></td>
<td>Is the project located in a Floodway or 100 year floodplain? See link for map:</td>
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<td></td>
<td><a href="http://floodplain.bluemoon.com/">http://floodplain.bluemoon.com/</a></td>
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<tr>
<td></td>
<td>If yes, then a floodway authorization or floodplain permit may be required.</td>
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</tbody>
</table>
**PCE & DCE**

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

- **DCE**
  - Executive Summary
  - Environmental Checklist
    - 26 categories
  - SOVs Letters
  - Supporting Documents
  - Approved by NDDOT and/or FHWA if required
If the Yes/No/NA box is shaded with a blue color, and your project requires you to answer "Yes", then the project exceeds the thresholds laid out in the FHWA Programmatic Categorical Exclusion and must be completed as a DCE.

### Environmental Impact Checklist

<p>| | | |</p>
<table>
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</thead>
<tbody>
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</tr>
</tbody>
</table>

#### Right of Way

1.1 Will the action require permanent right of way?
   - If yes:
     - 1.1.1 Number of parcels: [Enter Data] Number of Acres: [Enter Data]
     - 1.1.2 Will the action involve more than the following: 10 acres or more per linear mile (not an average); or more than 3 acres per interchange?

1.2 Will the action include acquisition of land for hardship or protective purposes, or early acquisition pursuant to Federal acquisition project (23 U.S.C. 108(d))?
   - 1.2.1 Will the action require permanent acquisition of Federal fee-title land or trust lands?

1.3 Are there any special property interests such as U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Forest Service, Tribal Lands, Railroad, or State School Lands?
   - 1.3.1 List the type(s): [Enter Type(s)]

1.4 Will the action require relocation of owners or tenants?
   - 1.4.1 Number of Homes to be Relocated: [Enter Number of Homes to be Relocated]
   - 1.4.2 Number of Business to be Relocated: [Enter Number of Businesses to be Relocated]

1.5 Will the action require temporary construction easements?
   - 1.5.1 Number of parcels: [Enter Data] Number of Acres: [Enter Data]

1.6 Will the action require any access changes?
   - 1.7 Will the action require any access changes on Interstate?

### Historical and Archeological Preservation

2.1 Will the action involve disturbance off the roadway surface?

2.2 Will the action involve disturbance to a bridge or bridge rail?

If no to both questions:

The proposed action is the type of actions or activities that have No Potential to Affect Historic Properties; no further Section 106 consideration is required. Skip to Resource Category 4b.

If yes to either of the two questions above:

Please contact the Cultural Resources Section to complete the following information prior to submittal of the checklist and append by reference the Cultural Resources Report and related correspondence; has this been completed?

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PCE & DCE CHECKLIST

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**North Dakota DOT**
Department of Transportation
Mitigation sites proposed onsite or offsite requires a conceptual mitigation plan (aerial photo with site boundary) attached for review and approval by the resource and/or regulatory agencies. If a mitigation plan is required, has it been attached?

<table>
<thead>
<tr>
<th>Temporary Construction</th>
<th>13.1</th>
<th>Will the action include a temporary bridge or roadway (i.e. temporary bypass)?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13.2</td>
<td>Will the action require a detour? <strong>If yes</strong>:</td>
</tr>
<tr>
<td></td>
<td>13.2.1</td>
<td>Distance (miles): [Enter Distance of Detour] Route: [Enter Route of Detour]</td>
</tr>
<tr>
<td>Public Involvement</td>
<td>14.1</td>
<td>Were any Public Meetings conducted or scheduled? <strong>If yes</strong>: Identify which type(s): Public Information Meeting: [Enter Date and Data or NA] Public Input Meeting: [Enter Date and Data or NA] Public Hearing: [Enter Date and Data or NA]</td>
</tr>
<tr>
<td>Early Coordination</td>
<td>15.1</td>
<td>Have the Master SOV List, SOV emails (PCE level) letters, and Responses been attached in an Appendix titled Solicitation of Views?</td>
</tr>
<tr>
<td>Environmental Commitments</td>
<td>16.1</td>
<td>Please list the Environmental Commitments: [Enter Data]</td>
</tr>
</tbody>
</table>

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

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

- **Categorical Exclusion by Definition (CED)**
  Work is generally confined to the roadway surface but may include minor safety, structural, pedestrian facility, or miscellaneous work that does not require permanent right of way acquisition. Work types are defined in Appendix A of the Programmatic Categorical Exclusion Agreement. No further NEPA documentation is required, but some consultation, coordination, notifications, or permitting may be required.
  Requires approval by NDDOT Designer/Tech Support.

- **Programmatic Categorical Exclusion (PCE)**
  Work is primarily on the roadway surface, but may also include localized areas of earthwork and enhancement or replacement of structural elements. May require permanent acquisition of minor amounts of right of way.
  Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer.

- **Documented Categorical Exclusion (DCE)**
  Work involves substantial earthwork, regrading, major rehabilitation, new/reconstruction, or bridge replacements.
  Requires approval by NDDOT Designer/Tech Support and NDDOT Environmental Reviewer. If the project exceeds any of the identified thresholds in Section VII of the Programmatic Categorical Exclusion Agreement or is a (d) list project, FHWA approval is also required.

- **FHWA Approval Required**

---

**CatEx Addendums/ CatEx Re-Evaluation:**

- Addendum
- Re-Evaluation

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

<table>
<thead>
<tr>
<th>Consultant or Local Public Agency</th>
<th>Addendum Date</th>
<th>NDDOT Designer/Tech Support Date</th>
<th>NDDOT Environmental Reviewer Date</th>
<th>Federal Highway Administration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Required in all cases</td>
<td>Only required if NDDOT Approval thresholds are exceeded</td>
<td>Only required if NDDOT Approval thresholds are exceeded</td>
</tr>
<tr>
<td>If applicable</td>
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</tbody>
</table>

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**Every project (CED, PCE & DCE) must have a Determination and Approval Form SFN 18878**
Endangered Species Act and Programmatic Biological Assessment
Threatened and Endangered Species of North Dakota

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

- Three Bee Species (Rusty Patched Bumblebee, Yellow Banded Bumblebee and Western Bumblebee)
- Two Butterfly Species (Regal Fritillary and Monarch Butterfly)
- Moose
- Sturgeon Chub and Sicklefin Chub
- Little Brown Bat
- Golden Winged Warbler
Endangered Species Act – Section 7

Current NDDOT Process

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

- Comprehensive document that analyzes the effects of the NDDOT transportation program on T&E species within North Dakota.

- Describes the implementation process for use of the document to fulfill Section 7 ESA requirements

- Describes NDDOT project types in detail
  - Including new road construction and all types of roadway improvement projects

- Describes life history of all currently listed species (habitat, breeding, threats, current status)

- Identifies stressors and response for each species / critical habitat as a result of roadway projects
  - I.E. Noise, visual, water quality impacts, habitat alteration, lighting, etc and how species respond to those effects

- Provides conservation measures to be implemented to reduce potential effects
  - I.E. Species surveys, avoidance/timing restrictions, general BMP’s. etc.

- Provides effect determination for each species and critical habitat.
How do we use the Programmatic Biological Assessment?

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

- Streamlines the Section 7 ESA process.
  - Preparation of individual biological assessments involve repetitive analysis and consultation procedures on routine projects with predictable impacts

- PBA facilitates a standardized approach to making effect determinations for all Federally involved transportation projects in North Dakota.

- Predictable patterns and timeframes for ESA compliance work
  - Speed up project delivery
  - Reduce individual project review time
  - Eliminate individual project review from FHWA/USFWS
  - Allows staff to focus efforts on more complex projects with greater concerns for T&E species

- Determine project type and all work activities
  - A revised T&E table will be used to screen projects that may need a biological assessment
  - Projects where adverse effects are anticipated, separate biological assessment will be prepared (i.e. new bridge construction within Missouri River).

- If one or more species require review
  - A no effect determination package will be needed – or –
  - A biological assessment will be necessary
    - If scope of work activities fit within the scope of the programmatic biological assessment:
      - Project submittal form will be used