

Center for Environmental Excellence by AASHTO AASHTO/FHWA “Every Day Counts” Programmatic Agreements Project

Introduction

On November 3, 2009, FHWA Administrator Victor Mendez launched the Every Day Counts (EDC) initiative to significantly reduce highway project delivery time. EDC Challenged FHWA to work with AASHTO, State DOTs and stakeholders to accelerate implementation of promising streamlining methods while promoting environmental sustainability and stewardship. Responding to the initiative, FHWA accepted AASHTO’s recommendation to enhance the use of programmatic agreements (PAs) as a strategy for expediting project delivery.

In support of the AASHTO/ FHWA initiative, the Center for Environmental Excellence (Center) gathered and compiled information about the programmatic agreements the State DOTs and their partners are using to expedite transportation project delivery and promote environmental sustainability and stewardship. This includes programmatic agreements for federally-aided and non federally-aided projects. The information will be used to inform the “Every Day Counts” regional meetings FHWA will be conducting in cooperation with AASHTO, and to update the Center’s programmatic agreement library.

This report describes the process used to compile, screen and evaluate PAs to select groups of document which can be used as examples with strong benefits towards achieving EDC streamlining and stewardship goals. General observations on trends, patterns, gaps and opportunities are also provided.

Process

1. Request for Programmatic Agreements

On May 11, 2010, Standing Committee on Environment (SCOE) members were requested to provide copies of PAs for compilation and screening by June 4, 2010. In the interest of obtaining the broadest collection of streamlining measures, and in response to SCOE suggestions, non-PA documents, which facilitate streamlining were also included in the collection effort.

The due date was extended from June 4th to July 31 with extensive Center, SCOE Steering Committee and FHWA follow-up to encourage full participation by States.

2. Catalogue and Chart Documents

Documents received from each State (pdf format) were compiled and organized into electronic folders for each State and organized into three categories: NEPA, Section 106/ Cultural Resources and Endangered Species/ Ecological. A master chart was

prepared, corresponding to the PA catalogue, containing the following information: State; Topic; Contact Information; PA Title; Signatories; PA Date; Number of Pages. The chart serves as an index for future reference. The catalogue and the chart were made available on CD format.

PAs, contained in The Center's PA on-line Library (PAL), which were not duplicates of documents sent by States, were also included in the catalogue.

3. Screen Documents:

Develop Screening Criteria

In collaboration with review groups described in Task 4 below, seven criteria were developed to help AASHTO and FHWA identify PAs which effectively promote streamlining, stewardship, and sustainability. They are:

1. Programmatic Agreement Coverage

- a. Applies to significant program (i.e. 5 Year Transportation Plan; TIP; etc.)*
- b. Applies to a single project*
- c. Applies to broad geographic area*
- d. Applies to extensive list of actions*
- e. Applies to agencies with regulatory compliance/ resource management*
- f. Applies to emergency actions*

2. Performance of Programmatic Agreement

- a. Time frames for actions*
- b. Quality control/assurance procedures*
- c. Monitoring and reporting procedures*
- d. Environmental stewardship and sustainability goals and measures*
- e. Cost saving reporting procedures/ cost of implementation*
- f. Innovation*
- g. Sunset provisions*
- h. How long agreement has been in effect*

3. Administrative Functions

- a. State DOT assumes certain administrative functions of federal and/or State regulatory agency.*

4. Clarity of Programmatic Agreement

- a. Well organized, concise and easy to read*
- b. Table of contents*
- c. Clearly stated PA goals, roles, responsibilities, objectives, procedures, and consultation*
- d. Use of flow diagrams, maps, and/or forms*

5. Implementation of Programmatic Agreement

- a. Mandatory training provisions for participants*

- b. Use of value added technology*
- c. Incentives for use*
- d. Integration into standard operating procedures*
- e. Includes procedures for updates and amendments*
- f. Requires additional qualified professionals*

6. Transferability and Adaptability

- a. Adaptable among states*
- b. Potential for national/ regional application for Programmatic Agreement*

7. Transparency

- a. Public access to agreement*
- b. Public access to products of the agreement*
- c. Other provisions to enhance trust*

The criteria, reflecting characteristics of effective PAs were used to screen documents in the catalogue. In applying the criteria, the following two questions were also posed for response:

- 1. Is this programmatic agreement a good example worthy of including in the AASHTO Programmatic Agreement Library and the Every Day Counts Programmatic Agreement Project?*
- 2. If yes, what are the outstanding characteristics of the programmatic agreement?*

Conduct Initial Screening

Using the review criteria as a guide, each document (289) in the catalogue was reviewed to identify PAs with a high potential for effectiveness and the potential adaptability by another State or region. Approximately a dozen documents under each category (NEPA, 106, Ecology) were identified for further evaluation under Task 4.

4. Review Group Screening of Documents

Three small groups of State DOT and FHWA representatives were organized for each PA category and, using the screening criteria from Task 3, reviewed the list of PAs selected by the initial screening effort. Results were compiled into a master chart and used as a resource to discuss the results of the reviews by each group and to narrow the list of PAs.

5. Collect Performance Information

A list of performance related questions were developed and sent to State DOT individuals designated as the contact for each selected PA in Task 4. The questions were:

- 1. Is the PA active?*

2. *How long did it take to develop the PA?*
3. *How many projects have been processed under the PA?*
4. *Has the PA shortened project delivery time frames? If yes, how much?*
5. *Has the PA improved environmental outcomes and or sustainability? If so, please explain how it has enhanced these outcomes.*
6. *Has the PA improved interagency collaboration?*
7. *Do you plan to renew the PA? If yes, what improvements would you incorporate?*
8. *Please provide any additional thoughts you have on how to improve your PA.*

Results

Documents were compiled into a master file and a master chart for use as a resource in the PA evaluation process. The following is an accounting of the documents received:

States Responded: 48 (includes Washington D.C. & Puerto Rico)

Documents compiled: 289 (20 from the Center's PA Library)

NEPA related: 73

Federal 70

State agencies 3

Sub-Categories:

Program-wide 8

Programmatic CE related 50

4(f) 4

NEPA/ 404 integration 3

Agency Coordination 5

Miscellaneous 4

Cultural/ Section 106 99

Federal 82

State agencies 17

Sub-Categories:

Program-wide 21

Minor Projects Exempt 17

Corridor/ Project Specific 9

Tribal 25

Historic Bridges 12

Transportation Enhancement 3

Miscellaneous 12

Ecology 118

Federal 66

State agencies 42

Sub-Categories:

ESA Section 7 Coordination	17
Programmatic ESA BO/ BA	21
Land/ Resource Management	14
Mitigation Process	11
Mitigation Bank	12
Agency Coordination	28
Maintenance	9
Miscellaneous	7

As a result of Screening Group reviews and conference call discussions, a final list of documents were selected for each of the three categories. They are shown on following three tables, each followed by summary information on the selected documents:

TABLE 1. NEPA Related Documents Selected for EDC Workshops	
California	MOA on NEPA and Section 404 Integration Process for Federal Aid Surface Transportation Projects in California
California	MOA on State Assumption of Responsibility for Categorical Exclusions (Caltrans & FHWA)
Colorado	MOA Related to Activities Affecting the State Transportation System NFS/BLM Public Lands
Georgia	Programmatic Categorical Exclusion Process Agreement
Illinois	Agreement Between IDOT and FHWA for Establishment of Timeframes for EISs and EAs
Indiana	Categorical Exclusion Programmatic Agreement Between FHWA and INDOT
Maine	Agreement for Categorical Exclusions - Maine DOT/ FHWA
Ohio	Programmatic Categorical Exclusion Agreement Between FHWA and ODOT
Oregon	Agreement on Implementation of NEPA for Oregon Transportation Improvement Act III Statewide Bridges Program
Pennsylvania	Programmatic Agreement Between FHWA and PennDOT for the Bridge Preservation Program (NEPA/ CE related)
Texas	Programmatic Agreement for the Review and Approval of NEPA CE Transportation Projects Between TxDOT and FHWA

The following section provides summary information on each NEPA related document listed on Table 1. The information includes observations made during the preliminary screening and by the review teams. Performance information was provided by the respective States responsible for the PAs:

California DOT - MOA on NEPA and Section 404 Integration Process for Federal Aid Surface Transportation Projects in California (2006)

This second generation agreement provides a process for merging NEPA and Section 404 requirements for Federal Aid projects with five or more acres of permanent wetland impacts and those which require a NEPA EIS. It includes Purpose & Need; Alternatives and Preliminary LEDPA/CM as three “checkpoints” for the agreement. The consolidation of the processes is intended to provide more timely decision making, improve quality of decisions and enable the ACE to more efficiently adopt the FHWA EIS.

Valuable characteristics of the Agreement include:

- Recognizes importance of early consideration of environmental concerns and Land Use/ Transportation planning. Supportive of Planning and Environmental Linkage (PEL) initiative.
- Streamlines project development by concurrent processing of NEPA and permitting.
- Includes timeframes for expediting coordination.
- Succinct and uses diagrams to facilitate comprehension.
- Specific dispute resolution measures are included.
- Up to six projects processed per year; makes process more predictable, avoiding delays involving 404 permitting.
- Readily transferrable to other States since NEPA and Section 404 apply nationally. There are several similar PAs in existence nationally.

California DOT- MOA on State Assumption of Responsibility for Categorical Exclusions (Caltrans & FHWA) (2007)

For projects covered by the MOU, FHWA legally assigns responsibilities for environmental review, consultation or other related actions required under Federal laws applicable to CE projects. This agreement is an official delegation under SAFETEA-LU, which was published in the Federal Register and officially adopted. Its primary streamlining feature is elimination of FHWA review by certain categories of CE projects.

Valuable characteristics of the Agreement include:

- Covers all requirements required by FHWA to achieve full delegation. Therefore it can serve as a “fully vetted” model for use by other states.
- Details monitoring and performance requirements.
- Includes training requirements and quality assurance provisions.
- Public notice given for agreement.

- 3,611 projects have been processed through June 30, 2010 and shortened project delivery by about two weeks for each CE.
- The opportunity for any State to assume CE determination/ approval is available.

Colorado DOT - *MOA Related to Activities Affecting the State Transportation System NFS/BLM Public Lands (2003)*

The MOU establishes a procedure for coordinating activities affecting the state transportation system and lands administered by the United State Forest Service (USFS)/ Bureau of Land Management (BLM) in Colorado. It covers activities from Planning through construction and maintenance. It is built on a “One Shared Analysis” model as the common ground for improving the efficiency of NEPA compliance for both agencies.

Valuable characteristics of the Agreement include:

- The comprehensive “One Shared Analysis” meets the intent of NEPA for better decisions and streamlines the process through early cooperation, avoiding last minute delays.
- Clearly defines agency responsibilities.
- Format is clear. Use of charts, maps and form templates can facilitate implementation.
- Includes details not common to such agreements including signage and use of natural resources.
- Potentially adaptable to States/ Regions having BLM administered land.

Georgia DOT - *Programmatic Categorical Exclusion Process Agreement (2008)*

The agreement establishes a procedure that streamlines the environmental process for Categorical Exclusions. It includes streamlining provisions for advance concurrence that the actions described in the Agreement normally are found to have no significant social, environmental or economic impact. Georgia DOT agrees to act on behalf of the FHWA In assuring compliance with all applicable Federal environmental and related requirements.

Valuable characteristics of the Agreement include:

- The agreement allows multiple projects having the same scope (at different locations) to be included under one CE document. The “batch” approach provides enhanced opportunity to reduce paperwork and processing time.
- Includes provisions for reevaluation of proposed actions prior to requesting subsequent Federal Authorizations.
- Includes project action lists as well as impact thresholds.
- Concise CE agreement.
- Approximately 400 projects have been processed under the agreement. In general, shortens time frames by two to three months.
- Readily transferrable to other States as a baseline Agreement.

Illinois DOT - *Agreement Between IDOT and FHWA for Establishment of Timeframes for EISs and EAs (2005)*

The Agreement is based on TEA-21, which established the need for setting/ negotiating time periods for reviews. It is also supportive of the July 1999 USDOT interagency agreement for streamlining reviews. It includes provisions for timeframes agreed to between FHWA and IDOT to streamline EA and EIS development.

Valuable characteristics of the Agreement include:

- An example of a unique agreement that focuses entirely on project delivery timeframes and supportive of EDC and streamlining.
- Provides timeframes and performance goals for specific years.
- Includes measures for tracking performance.
- Includes flow chart for evaluating achievement of key milestones.
- Includes provisions for revisions to timeframes.
- Five EISs and four EAs have been processed under the Agreement, reducing project delivery time by at least two years.
- The agreement is potentially adaptable to other States, and could be structured to meet their individual contexts.

Indiana DOT - *Categorical Exclusion Programmatic Agreement Between FHWA and Indiana DOT.*

The Agreement provides for establishment of four levels of CEs with measurable impact thresholds for projects with minimal environmental impacts. Level four CEs require FHWA approval.

Valuable characteristics of the Agreement include:

- Use of tables for thresholds, approval levels, and list of project actions for the four levels, facilitates interpretation and application.
- Includes EO-11990 wetland finding for impacts of less than one acre.
- Provides for annual quality assurance review to determine what agreement modifications should be made.
- For very minor projects, the project reviews were reduced from one to two months to a day to verify the applicability of the programmatic CE.

Maine DOT - *Agreement for Categorical Exclusions - Maine DOT/ FHWA (2006)*

The Agreement establishes a protocol to enable self-certifying and programmatic approval by Maine DOT of specified actions that qualify as Categorical Exclusions. Maine DOT is administratively responsible for coordinating and processing information on eligible actions.

Valuable characteristics of the Agreement include:

- Applicable to both c and d list projects, as well as a list of 31 actions, when they meet the impact thresholds.

- Environmental impact thresholds include – no effect under 106, no individual 404 permit, no effect to T&E, no displacements, and no Section 4(f) impacts.
- Use of flow chart facilitates implementation.
- Links CE process to Project Management software (ProjEx).
- Clear description of qualifying activities; clear description of responsibility; uses technology to support agreement.
- It is estimated that this, along with other programmatic processes within the agreement, shortens the process by one to three months.
- Transferrable to other states.

Ohio DOT - Programmatic Categorical Exclusion Agreement Between FHWA and ODOT (2010)

The recently approved document establishes a procedure for Categorical Exclusions, to reduce paperwork and streamline development of federal actions which do not have significant impacts on the environment. It places these projects into five groups (exempt and levels one to four, with FHWA approval for Level four). ODOT and the Ohio Rail Development Commission agree to act on behalf of the FHWA in assuring compliance with all applicable federal environmental and related requirements.

Valuable characteristics of the Agreement include:

- Lists exemptions for each level of CE action.
- Separate forms have been developed for each group. A section discusses “signature authority” which pertains to a certification that provisions of the PA have been met for the specific project given its classification.
- Focused on context and intensity to help define a CE.
- Includes “paperless” goal for documentation.
- Includes provisions for environmental commitment compliance.
- Includes provisions for environmental re-evaluation.
- A very comprehensive PA, which addresses most of the screening criteria used for this EDC initiative.

Oregon DOT - Agreement on Implementation of NEPA for Oregon Transportation Improvement Act III Statewide Bridges Program

This agreement involves bridge projects on land administered either by the Forest Service or BLM, which may narrow its applicability to other states. It defines roles and responsibilities of the parties involved and establishes a process for reviewing and commenting on information, and for providing approvals of CE decisions, especially for ones where the project is located within a wild and scenic river corridor.

Valuable characteristics of the Agreement include:

- The agreement clearly identifies roles and responsibilities and defines levels of coordination based on agency levels.

- The agreement facilitates project development by helping to formalize each agencies functions and actions as it pertains to NEPA action. It establishes FHWA as the lead NEPA agency.
- It clearly lays out the goals, roles and the process to coordinate NEPA actions with BLM and the US Fish and Wildlife Service.
- While the document is specific to the Oregon Bridge program, it can be adapted to address similar programs in other states with BLM jurisdiction.

Pennsylvania DOT - Programmatic Agreement Between FHWA and PennDOT for the Bridge Preservation Program (NEPA/ CE related) (2005)

The programmatic agreement involves environmental clearance for bridge preservation projects. The Programmatic agreement serves as the NEPA clearance for all bridge preservation activities defined in the Programmatic Agreement. Its streamlining feature involves PennDOT determining the applicability and certifying that an activity will not result in significant environmental impacts and document accordingly.

Valuable characteristics of the Agreement include:

- Includes nine bridge related actions which are minor in nature.
- Includes an applicability form which helps to clearly define parameters for qualifying actions.
- The agreement is clear and concise (seven pages).
- The agreement is also applicable for environmental clearance on State funded projects which need to address Pennsylvania Act 120.
- The document can be readily adopted to meet other State's bridge programs.

Texas DOT - Programmatic Agreement for the Review and Approval of NEPA CE Transportation Projects Between TxDOT and FHWA (2004)

The agreement provides for expeditious processing of CE level actions by TxDOT under the guidance and with the approval of FHWA, Texas Division. CE actions which exceed Blanket and Programmatic criteria are submitted to FHWA for review and approval. It should be noted that public involvement applies to all types of CEs in Texas.

Valuable characteristics of the Agreement include:

- Includes provisions for FHWA approved exceptions for added flexibility.
- The agreement includes provisions for "Grouped Documentation" for CE actions having the same minimal environmental impact anywhere they occur in Texas. FHWA would allow actions that could be individually processes as PCEs or CEs to be "batch processed" by combining them on an appropriate basis.
- Attachment A includes an extensive four page guidance of potential classification options for the various NEPA classes of action that could apply pending FHWA approval.
- The list of actions provides options and reflect those included in FHWA's regulations as well as additional actions which, by well documented experience in Texas, do not normally cause significant environmental impacts.

- Since all Federal Aid projects must address NEPA, the agreement readily lends itself to transference to other States. The list of exemption thresholds would be established to address the context for each state.
- The total number of projects approved as PCEs since the original document (1990) through August 2010 is 6,373. It saved at least 30 days for each project.

Table 2. Cultural/Section 106 Related Documents Selected for EDC Workshops	
Alaska	Programmatic Agreement Among FHWA/ ACHP/ ADOT/ ASHPO Regarding Alaska's Highway System Roads Affected by the Federal Aid Program
California	Programmatic Agreement Among FHWA/ ACHP/ CalSHPO/ Caltrans/ Regarding Compliance With Section 106 of the NHPA
Indiana	Programmatic Agreement Among FHWA/ INDOT/ INSHPO/ ACHP Regarding Management and Preservation of Indiana's Historic Bridges
Massachusetts	First Amended Programmatic Agreement Among FHWA/ MADOT/ MASHPO/ ACHP on Historic Preservation Regarding Implementation of Minor Highway Projects
Montana	Programmatic Agreement Among FHWA/ MDT/ ACHP/ MSHPO Regarding Historic Roads and Bridges Affected by MDT Undertakings
New Mexico	Programmatic Agreement Among FHWA/ NMDOT/ ACHP and NMSHPO Regarding Implementation of the Federal Aid Highway Program
N. Dakota	Programmatic Agreement Among the FHWA/ NDDOT/ and Fort Peck Assiniboine and Sioux Tribes (and seven other tribes) Regarding the Implementation of Tribal Consultation Requirements of the NHPA for the Federal Transportation Program in North Dakota
Ohio	Programmatic Agreement Among FHWA/ ACHP/ Ohio Historic Society/ OSHPO/ ODOT Regarding Implementation of the FA Program in Ohio
Pennsylvania	Programmatic Agreement Among FHWA/ ACHP/ PaSHPO/ PennDOT Regarding the Implementation of the FA Program in PA.
Utah	Programmatic Agreement Among FHWA/ UDOT and the Cedar Band of Paiute Indians Regarding Coordination and Consultation on FA projects in Utah in Accordance with the NHPA
Washington	First Amended Programmatic Agreement Implementing Section 106 of the NHPA in Washington State Administered by the FHWA

The following section provides summary information on each Cultural/ Section 106 related document listed on Table 2. The information includes observations made during the preliminary screening and by the review teams. Performance information was provided by the respective States responsible for the PAs:

Alaska DOT - Programmatic Agreement Among FHWA/ ACHP/ ADOT/ ASHPO Regarding Alaska's Highway System Roads Affected by the Federal Aid Program (2010)

The objective of the agreement is to allow Alaska DOT to efficiently advance transportation projects while establishing a process for an efficient, systematic approach for evaluating the National Register of Historic Places (NRHP) eligibility of roads. The agreement provides an alternative process and establishes thresholds for Program undertakings with low potential to affect features that may make a road eligible for NRHP listing. The agreement only pertains to effects on roads. When undertakings satisfy the exemption requirements listed in Appendix A the project will not need individual Section 106 review.

Valuable characteristics of the Agreement include:

- “The Professional Qualified Individual” meeting the Secretary of Interior’s Professional Qualifications Standards makes the determination regarding the application of the threshold criteria.
- The agreement establishes a framework for Linear Feature Guidance and Context Development through a workshop approach and includes timeframes for implementation of the Guidance and Context.
- The agreement could be used with appropriate modifications by other States to address historic roads and establishing exempt actions.
- The agreement represents a shortened project delivery time by several months for individual projects.

California DOT - Programmatic Agreement Among FHWA/ ACHP/ CalSHPO/ Caltrans/ Regarding Compliance With Section 106 of the NHPA (2003)

The agreement applies to all FHWA undertakings under its program in California and provides the framework for implementation of Section 106 requirements. It is broad in scope, includes screened undertakings that may be exempt from further review; authorizes Caltrans to carry out tribal consultation; addresses public and consulting party roles up front; concurring parties signing include Caltrans Districts; lays out section by section which actions DOT can carry out.

Valuable characteristics of the Agreement include:

- The agreement requires regularly prepared performance reporting which is available to the public.
- FHWA notified the public and federally recognized Indian tribes about the agreement, requested comments and have taken them into account.

- Attachment 2 includes a list of 29 Screened Undertakings, defined as those undertakings which have the potential to affect historic properties, however following the proscribed screening may be determined exempt from further review/ consultation.
- Includes provisions for Caltrans professionally qualified staff standards.
- Attachment 4 includes an extensive list of properties/ features which are exempt from evaluation.
- Delegates responsibilities to the Caltrans to the maximum extent allowable.
- The document is prepared as a handbook format, with a table of contents making it easy to use.
- Since Section 106 applies on all Federal Aid Projects, the agreement is transferrable to other States.
- Over 7,000 projects have been processed under the PA and it has reduced review times substantially from 90 days to 30 days. The agreement has improved predictability for project scheduling.

Indiana DOT - Programmatic Agreement Among FHWA/ INDOT/ INSHPO/ ACHP Regarding Management and Preservation of Indiana's Historic Bridges (2006)

The agreement defines a process to identify historic bridges that are most suitable for preservation and are good examples of a given bridge type (Select Bridges). A Historic Bridge Task Group of Statewide cultural resource stakeholders was formed to assist in the development of the agreement and to monitor its success. The agreement includes provisions for a bridge survey; prioritization and re-evaluation of historic bridges.

Valuable characteristics of the Agreement include:

- The agreement includes a detailed project development process for select and non-select bridges.
- Includes provision for development of a "Standards for Rehabilitation of Bridges on Low Volume Roads" and inclusion in the INDOT design manual. The Task Group is provided an opportunity for review of the document.
- Includes a Scope of Work for survey/context as well as standard treatments in the Appendix.
- Includes FHWA provision for non-participation on demolition of Select bridges.
- Less than a half dozen projects have been processed to date, since full implementation was dependent on historic bridge inventory completion, which did not occur until March of this year. It is expected to shorten the process by approximately 30-60 days on normal projects.
- The agreement is transferable for use in another state, however the select bridge types may be different, depending on the outcome of the bridge survey.
- Use of a "Historic Bridge Task Group" can also be useful in other states to facilitate relationship building.

Massachusetts DOT - *First Amended Programmatic Agreement Among FHWA/ MADOT/ MASHPO/ ACHP on Historic Preservation Regarding Implementation of Minor Highway Projects (2004)*

The programmatic agreement establishes the process for compliance with Section 106 for minor highway projects. It is a succinct easy to read document (nine pages) which supersedes a 1992 version.

Valuable characteristics of the Agreement include:

- Includes 21 and 30 day SHPO review provisions for No Adverse Effect. Lack of response by the SHPO/ consulting party may be considered as agreement with the finding.
- Appendix 1 includes a list of 29 project types, grouped by categories (Interstate; roadway; bridge/ culvert; etc.), which do not require Massachusetts SHPO review.
- The terms describing the annual review of projects processed under the agreement includes an assessment of the effectiveness of the Agreement.
- The agreement is readily transferable to other states. The specific exemption lists may vary according to each State's historic/ cultural context.

Montana DOT - *Programmatic Agreement Among FHWA/ MDT/ ACHP/ MSHPO Regarding Historic Roads and Bridges Affected by MDT Undertakings (2007)*

The document describes the process and framework for addressing Section 106 with regard to Montana's historic roads and bridges program. The stipulations for Historic Roads establish a minimum of 12 historic road segments. The document also integrates the roadway design effort with principles of Context Sensitive Design. It offers an organized and predictable approach for addressing historic roads and bridges, which is of benefit to efficient project delivery.

Valuable characteristics of the Agreement include:

- As a stewardship measure, it includes an Adopt-A-Bridge Program for historic truss and steel bridges.
- Includes specific goals for preserving 25 historic bridges as well as specific segments of historic roads.
- Includes provisions for establishing a Statewide Bridge Database/ GIS within a specific timeframe. It will be made available to and shared with the public, interested parties and agencies.
- It defines standard treatments for resources on the front-end, saving time and money.
- Education and outreach programs are included.
- The document is transferable to other states, but would require adaptation of context and bridge preservation goals to specific state needs.

New Mexico DOT - Programmatic Agreement Among FHWA/ NMDOT/ ACHP and NMSHPO Regarding Implementation of the Federal Aid Highway Program (2005)

The agreement lays out provisions for implementing Section 106 on a program wide basis and to engage in long term planning for protection of historic properties; develop a comprehensive and efficient process; simplify procedural requirements and eliminate unnecessary paperwork. It also integrates related New Mexico acts and regulations. This agreement relies on a pragmatic approach for encouraging collaboration which includes, joint implementation of innovative activities to benefit all parties (Heritage Initiatives, Cultural Resource Technical Publication Series).

Valuable characteristics of the Agreement include:

- The document was developed in consultation with over 30 Indian tribes.
- Appendix A includes a list of Exempted Activities.
- Provisions for Professional training are included.
- Annual Review Meetings and Annual Evaluations include provisions for making recommendations for improving the implementing the agreement.
- SHPO reviews are 21 days instead of the standard 30 day period. Provisions also include collaboration between NMDOT and the SHPO on developing schedules.
- Approximately 400 projects have been processed under the PA. Since all “no effect” projects can be cleared by NMDOT staff, SHPO review time has been eliminated for those projects.

North Dakota DOT - Programmatic Agreement Among the FHWA/ NDDOT/ and Fort Peck Assiniboine and Sioux Tribes (and seven other tribes) Regarding the Implementation of Tribal Consultation Requirements of the NHPA for the Federal Transportation Program in North Dakota (2006)

The document establishes the process by which FHWA meets its responsibilities with regard to consultation with the Tribes under Section 106 of the NHPA. It is a unique agreement, since most tribal consultation agreements are limited to one tribe. To expedite the tribal project review, a Tribal Consultation Committee was established. Clear goals which benefit project delivery include; development of comprehensive and efficient consultation; streamline the process and procedural requirements; involve the tribes earlier in the planning process.

Valuable characteristics of the Agreement include:

- Integrated consultation with eight tribes into one process.
- Includes provisions for cross training to agreement signatories.
- There are provisions under nine subheadings for projects exempted from consultation. This adds an important streamlining measure to this type of agreement.
- Streamlines project delivery by consolidating the consultation process.

Ohio DOT - Programmatic Agreement Among FHWA/ ACHP/ Ohio Historic Society/ OSHPO/ ODOT Regarding Implementation of the FA Program in Ohio (2006)

The agreement establishes the process for Section 106 implementation on ODOT's Federal Aid program. Some key goals supported in the agreement include: develop a comprehensive and efficient process; simplify procedural requirements; eliminate unnecessary paperwork and reduce SHPO project by project reviews. The agreement is very comprehensive and covers almost every PA screening criterion established for the EDC project.

Valuable characteristics of the Agreement include:

- It links planning with the 106 and NEPA processes and includes well detailed, substantial delegation to the DOT.
- Timeframes for review include shortened 15 day durations.
- It is well organized, clearly written and eliminates unnecessary or redundant references to the regulations, making it easy to comprehend.
- Appendix A includes a list of 20 undertakings which are exempt from review.
- As of August 24, 2010, 1424 projects have been processed under this Section 106 PA. Out of 1424 projects processed, 481 required no consultation with the SHPO pursuant with the agreement; ODOT approved those under the PA authority. The remaining 943 fell under a 15 day review/comment period at the SHPO pursuant with the PA, rather than the 30 day period in the regulations.
- Includes training (with a testing component) requirement for ODOT as well as serving as pre-qualification requirements for consultants.
- To facilitate collaboration on areas of mutual interest, the agreement includes a list of 12 example initiatives.

Pennsylvania DOT- Programmatic Agreement Among FHWA/ ACHP/ PaSHPO/ PennDOT Regarding the Implementation of the FA Program in PA. (2010)

The agreement establishes the process for Section 106 implementation on PennDOT's Federal Aid program. The document updates a 1999 agreement and includes streamlining goals such as: developing comprehensive, transparent and efficient process; integrating project reviews under Federal historic preservation laws; simplifying procedural requirements to the maximum extent possible and reducing paperwork. The agreement is comprehensive and covers almost every PA screening criterion established for the EDC project. It was developed in consultation with over a dozen tribes.

Valuable characteristics of the Agreement include:

- The document requires development of a "Cultural Resources Handbook" to support implementation of the agreement. Provisions for training of participants are also included.

- The application of computer technology, predictive models and GIS is included to enhance efficiency.
- Project review responsibilities with regard to exempted projects (criteria and activities) are provided in Appendix C and linked to either a District Designee or the District Cultural Resource Professional depending on the nature of the undertaking.
- A creative provision using a “Letter of Agreement” is included as an alternative to an MOA for resolving adverse effects. A template is provided in the Appendix section.
- Provisions are included for use of consultants in project review
- Through August 26, 2010; 196 exemptions and 210 other project findings were processed for a total of 406.
- The PA also allows the use of standard treatments without extensive coordination which also relieves staff of work.
- The Agreement supports use of context sensitive solutions.
- With minor adaptation to address different tribes the agreement is transferable to other states, since Section 106 compliance is universally required for Federal Aid projects.

Utah DOT - Programmatic Agreement Among FHWA/ UDOT and the Cedar Band of Paiute Indians Regarding Coordination and Consultation on FA projects in Utah in Accordance with the NHPA (2008)

The document establishes the process by which FHWA meets its responsibilities with regard to consultation with a single tribe under Section 106 of the NHPA. The stated purpose of the agreement is to create a consultation process that allows opportunity for tribal input and to cooperate with FHWA and UDOT in addressing issues of mutual concern.

Valuable characteristics of the Agreement include:

- Includes clear notification process and timeframe for response.
- A list of project types which are unlikely to affect cultural resources are exempt from consultation.
- Strong focus on relationship building, trust and mutual respect.
- Between September 2008 and September 2009, 184 projects were processed under the PA. Of these, 141 were exempted from review in accordance with Attachment 5 of the PA. On CEs and exempted projects, the PA saves 30 days.

Washington DOT - First Amended Programmatic Agreement Implementing Section 106 of the NHPA in Washington State Administered by the FHWA (2007)

The agreement establishes the process for implementation of Section 106 for the Federal aid Highway Program in Washington State. It supersedes a July 2000 Agreement and was prepared in consultation with 19 tribes. The agreement also covers actions involving Washington State Ferries

Valuable characteristics of the Agreement include:

- Activities with minimal potential to cause effects to historic resources are described in Stipulation V and Appendix B. These do not require review by FHWA or the SHPO. Results of these findings are posted on the DOT web site.
- Early planning consideration of cultural resources supports the Planning and Environmental Linkage initiative.
- To facilitate comprehension and implementation of the process, a useful eight page section entitled “Questions and Answers on Preparation of the Determination of the Area of Potential Effects” is provided in Appendix C.
- Includes semi-annual program review meetings with input from tribes.
- Training in cultural resource management and Section 106 is provided.
- To date 1,095 projects have been processed through the agreement and it has streamlined the ability to issue exemptions.

Table 3. Ecological Related Documents Selected for EDC Workshops	
Arizona	MOU Amendment #2 Between ADOT/ FHWA/ BLM
California	MOA - Early Mitigation Planning for Transportation Improvements in California
Colorado	Shortgrass Prairie Initiative MOA among CDOT/ FHWA/ USFWS/ CDNR/ CDOW/ Nature Conservancy
Iowa	Programmatic Agreement - A concurrence Process for Transportation Projects Requiring Compensatory Mitigation
Minnesota	No Effect Determination for Actions Funded Under the FA Program and Occurring in Counties with No Federally Listed or Designated Critical Habitat in the State of Minnesota
North Dakota	Wetland Mitigation Banking In North Dakota - Interagency guidance for Mitigation Bank Sponsors
Ohio	Biological Assessment for the Federally Endangered Indiana Bat - Programmatic Consultation Between USFWS/ FHWA/ ODOT
Ohio	MOA Between ODOT/ FHWA/ ODNR/ USFWS for Interagency Coordination For Highway Projects Which Involve Stream Crossings, Bank Stabilization and/or Minor Wetland Fills
Oregon	Endangered Species Act - Section 7 consultation, Informal Concurrence and Formal biological Opinion and Conference and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation - ODOT Statewide Bridge Delivery Program

The following section provides summary information on each Ecological related document listed on Table 3. The information includes observations made during the preliminary screening and by the review teams. Performance information was provided by the respective States responsible for the PAs:

Arizona DOT - MOU Amendment #2 Between ADOT/ FHWA/ BLM (2006)

The Memorandum of Understanding provides a coordinated approach to accomplish land and resource management in pursuing BLM, ADOT and FHWA goals and objectives. It is designed to streamline work processes and eliminate duplication of work as well as to share available resources. The streamlining feature of this agreement involves detailed coordination provisions and a framework for establishing mutual understanding of respective goals and missions. The agreement addresses the need for timely disposition of issues involving planning, scoping, environmental studies, design and construction of public roads on BLM managed lands.

Valuable characteristics of the Agreement include:

- Includes provisions for coordinating and integrating transportation needs with BLM land use plans.
- Developing a consensus on the environmental review process.
- Holding district level and statewide coordination meetings at least once a year to coordinate short and long range plans and to review priorities.
- It includes a clear organizational structure for conflict resolution.
- The document is transferable to states having land managed by the BLM.

California DOT - MOA - Early Mitigation Planning for Transportation Improvements in California (1991)

The agreement, signed by Caltrans, FHWA, US Army Corps of engineers, USEPA, US Fish and Wildlife Service and California Department of Fish and Game establishes the following: Early coordination of biological impacts in transportation system planning; early and continuous consultation between transportation agencies and resource protection agencies; replacement of unavoidably lost habitat prior to incurring project impacts and the exercise of creativity and mutual respect. The streamlining feature of this agreement is the avoidance of last minute delays involving mitigation development during the permitting process.

Valuable characteristics of the Agreement include:

- Where feasible, implement compensation in advance of project impacts where feasible.
- Provides funding for review agencies to support Caltrans mitigation planning efforts.
- Five steps are provided to implement advance compensation.
- Excess mitigation from one project can be applied to another, which can potentially save time and funds.

- Enables the integration of mitigation into regional environmental goals and preservation objectives.
- While the document is old and superseded by updated Army Corps mitigation rules, the concept supports streamlining and can be adapted.
- Several hundred project teams have adopted the incorporated concepts during the MOA lifespan. Subsequent resource specific agreements have been employed on hundreds of projects. Project delivery time frames benefited from avoidance of delays, however, general timeframe reductions were not observed.

Colorado DOT - *Shortgrass Prairie Initiative MOA among CDOT/ FHWA/ USFWS/ CDNR/ CDOW/ Nature Conservancy*

This agreement, well known in the transportation community, presents a process for shifting from a project by project review/ approval process by contributing to multi species recovery in an integrated and comprehensive fashion to aid the listed species and to improve the predictability of the project development process. The MOA addresses predicted impacts from CDOT's proposed transportation improvement program which covers 20 years. The mitigation plan entails identification and acquisition of priority habitat to help satisfy CDOT and FHWA obligations under the Endangered Species Act.

Valuable characteristics of the Agreement include:

- The process engages local communities as well as private landowners in conservation and management of shortgrass prairie sites.
- Describes the process for identifying potential impacts and mitigation target areas using a GIS analysis.
- Makes use of a Conservation Site Identification Panel consisting government agencies in consultation with Colorado Cattleman's Association, the Farm Bureau and the State Department of Agriculture, to identify target species and develop site specific management plans.
- Includes measures to reduce the need for re-initiation of consultation by including buffer distances for design changes.
- While the document is resource and geographically specific, it is a good example of programmatic mitigation which may be adapted for addressing other biological resource mitigation needs in other states. The overall model involving review of a 20 year list of transportation projects, estimating impacts and programming mitigation to avoid project by project reviews/ approvals can have important streamlining benefits.
- 55 projects have been processed through this agreement, reducing time by approximately three weeks per project.

Iowa DOT - *Programmatic Agreement - A concurrence Process for Transportation Projects Requiring Compensatory Mitigation (2009)*

The agreement approach seeks to integrate multiple natural resource issues and regulatory requirements into a single framework to facilitate permit compliance and

resource management. The approach described provides increased certainty and flexibility for project delivery and provides a streamlined approach easy to implement and enforce. It builds on the Section 404/ NEPA concurrence process established in 2001(included in the appendix) which included four concurrence points. This agreement adds a fifth concurrence point for mitigation.

Valuable characteristics of the Agreement include:

- The mitigation program in the agreement is based on concurrence by agencies that compensatory mitigation is adequate to advance to the next stage of project development, which entails Section 404 permit application.
- The process commits Iowa DOT to locating and planning mitigation earlier in the project development process and commits agencies to earlier review and permitting of projects. This is an important streamlining measure since it agrees on mitigation during NEPA processing and removes it from the permitting time line, making it more predictable.
- A written mitigation plan is used to document mitigation concurrence in accordance with attached technical guidance.
- Approximately ten projects have been processed using this agreement. In addition, many small projects (such as culverts or bridge replacements) have followed the standard approaches prescribed in Appendix 3 of the PA. By facilitating the 404 permitting process the PA has probably reduced the typical Individual Permit process by a month.

Minnesota DOT - No Effect Determination for Actions Funded Under the FA Program and Occurring in Counties with No Federally Listed or Designated Critical Habitat in the State of Minnesota (2008)

This brief two page letter from the US Fish and Wildlife Service satisfies Section 7 Endangered Species Act consultation requirements for actions occurring in counties with no federally listed species or designated critical habitat in the State of Minnesota.

Valuable characteristics of the Agreement include:

- The streamlining value of this approval is significant and eliminates information gathering and consultation on T&E Species during NEPA in areas with no listed federal T&E species.
- It can be readily adapted by other states or at the national level for areas which have no listed species.
- At this time the process is only being applied to Federal Aid Highway Program actions proposed by local units of government. Over a two year period from July 1, 2008 to June 30, 2010 322 federal categorical exclusions were processed. Of the 322 categorical exclusions, 104 (approximately 30 percent) occurred in counties without federally-listed species/listed critical habitat. Removing 30 percent of the total actions from review freed up valuable staff time and resources to focus on actions that need more in depth analysis.

North Dakota DOT - *Wetland Mitigation Banking In North Dakota - Interagency guidance for Mitigation Bank Sponsors (2008)*

While this is not a Programmatic Agreement, the Guidance supports banking, which has intrinsic value to facilitate and streamline project development. The document provides specific procedures, guidance and recommendations for establishing, operating and maintaining wetland banks in North Dakota. The document, based on the consensus of the participating agencies has been written to help resource/ permitting agencies, organizations and the general public to understand and implement mitigation banking.

Valuable characteristics of the Agreement include:

- The document has a user friendly manual format, appropriate for conveying the intended information clearly.
- It provides direction on all aspects of planning, designing, building, maintaining and managing the banking credits.
- It is consistent with the Final Compensatory Mitigation Rule. The document is very well organized, concise and easy to read. It is a great resource for those jurisdictions that are not familiar with wetland banks. The appendices are also very useful.
- The document can be adapted to other states and regions to facilitate greater use of banking.
- This applies to banks developed after July 9, 2008, approximately three potential sites.
- The Guidance has helped streamline the process because it has defined for all agencies mitigation ratios, regional service areas, and credit availability.

Ohio DOT - *Biological Assessment for the Federally Endangered Indiana Bat - Programmatic Consultation Between USFWS/ FHWA/ ODOT (2006)*

The document describes effects of continued implementation of the Ohio DOT highway program on the Indiana Bat Section 7 ESA consultation process and conservation measures proposed to minimize/ mitigate potential adverse effects. The proposed action is the DOTs five year transportation program covering 2006 - 2011. The document streamlines project development by addressing impacts on a major program scale, reducing technical studies and consultation during NEPA development and permitting.

Valuable characteristics of the Agreement include:

- Categories of actions with a range of potential effects are described and appropriate consultation/ management provided for each.
- Very well organized, clearly written and good use of form templates and flow charts to facilitate understanding.
- ODOT and USFWS consult on approximately 150 to 175 projects a year under the Indiana Bat PA however, every project is evaluated by ODOT staff under the PA.

- Prior to the PA there was no predictability on the consultation process. Under the PA, projects with no effect are no longer coordinated; projects with minor “may effect” determination are coordinated and comments are usually returned in 30 days.
- The document can be a good example for other states to adapt to their programs impacts on the bat, or as a template document for use with other species.

Ohio DOT - *MOA Between ODOT/ FHWA/ ODNR/ USFWS for Interagency Coordination For Highway Projects Which Involve Stream Crossings, Bank Stabilization and/or Minor Wetland Fills (2003)*

The Agreement describes the coordination process for Section 7 and the Fish and Wildlife Coordination Act requirements involving highway projects (that qualify as CEs) with stream crossings, bank stabilization and/ or minor wetland fills. The agreement streamlines project specific coordination by committing to agency requirements beforehand.

Valuable characteristics of the Agreement include:

- Expectations for responses from the reviewers are clearly outlined and concurrence is assumed if the reviewer does not respond or indicate that a response is coming within the timeframe.
- Establishes literature review procedures and triggers for project specific coordination.
- It outlines project notification requirements for projects that qualify under the MOA.
- The document is very succinct (four pages) yet effectively communicates the intent of the MOA
- ODOT traditionally process between 400 and 600 construction projects. Of those between 200 and 250 are coordinated with the resource agencies under the MOA.
- A version of the MOA has been used to coordinate projects since the early 1990’s. The MOA is currently in its third updated version.
- Over the last three years 90 percent of projects under the MOA were coordinated within 30 days.
- The process based agreement is readily adaptable nationwide since it does not include geographical limitations.

Oregon DOT - *Endangered Species Act - Section 7 consultation, Informal Concurrence and Formal biological Opinion and Conference and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation - ODOT Statewide Bridge Delivery Program (2004)*

This comprehensive and substantial document (300 pages) is broadly programmatic, supporting the implementation of ODOTs Bridge Delivery Program. To meet the aggressive construction schedule of the Program, a key requirement was the timely completion of environmental permitting. The document’s streamlining element is based

on “Batched Biological Opinions” which comprise multiple similar actions under one document to enhance efficiency. It addresses 37 species.

Valuable characteristics of the Agreement include:

- The proposed action consists of 430 bridges throughout Oregon, making this a significant programmatic solution involving 37 species
- The foundation of the PA is use of Environmental Performance Standards (EPS) through bridge design and construction. The EPS are goal-oriented and focused on environmental outcomes, not necessarily how work activities must be performed.
- Another key element of the program is the use of Context Sensitive Design to avoid and minimize impacts to the natural environment.
- As of August 2010, 204 projects have been successfully permitted using the Bridge Program PA. Another two projects have programmatic permitting currently underway using the PA. These are the last two projects to secure permits under this PA. Only eleven Bridge Program projects have used an alternate permitting process (outside of the PA).
- Standard Section 7 consultations on individual projects can take 135 days or more. The Bridge Program PA involves a 30 day notification and comment period to the Service prior to construction.
- While this agreement has specific regional and biological features, the process used to develop it, its massive scope and the intense schedule for completing the work can be used as a model anywhere to address urgent program delivery requirements on a large scale.

General Observations:

The following are observations gleaned from the screening and evaluation process:

- Most States have developed Programmatic Agreements and other supportive documents to make project development more efficient and collaborative. They range widely in scope, streamlining provisions, age, level of complexity and environmental enhancement potential.
- Some documents are first generation and simple, while others, especially the newer PAs have been updated and enhanced several times.
- Exemptions, or delegated administrative actions involving reviews and findings, for minor projects are the most common streamlining measure in PAs.
- Many programmatic CE agreements incorporate language that a State DOT “approves” a CE action, or that FHWA has provided “advanced approval” or that the State DOT is “acting on FHWA’s behalf.” In each of these cases the actions taken by the State DOT are “administrative” in nature and serve to “certify” or

“ensure” that the specific CE action is one that results in no significant individual or cumulative impact to the environment. Unless the State has formally assumed CE responsibilities under Section 6004 of SAFETEA-LU, FHWA remains responsible for the approval of all CE actions.

- Broad, program-wide PAs often include exemptions or “delegated” provisions for minor projects.
- Some PAs involve evaluation of entire DOT programs (ranging from five to ten years) or a more specific subset such as a bridge program. While these may require substantial resources and time to develop, they can offer very strong benefits to EDC streamlining and sustainability goals.
- Many PAs include annual reporting of results, however, more emphasis on annual performance evaluation and QA/QC measures would benefit process improvements for streamlining.
- Public involvement is included in many PAs as part of the project development process. More access to the PA and reporting on the results of the PA would enhance transparency. Newer vintage PAs generally include more transparency provisions.
- A large number of PAs can be transferrable to other states or within regions since many involve laws, rules and programs that apply in all States (NEPA, Section 106, 4(f), etc.).
- While not common to most PAs, training provisions for participants in implementing the PA are included in newer vintage PAs.
- Many PAs are codified in agency manuals/ procedures, valuable for facilitating implementation of PA goals and objectives.
- PAs are updated, some several times, often resulting in broader streamlining measures and improved quality/ comprehensibility.
- Sunset provisions are very common, ranging from a few years to ten.
- Many PAs include provisions to promote stewardship, preservation and interagency collaboration.
- While many include language on streamlining and efficiency, specific time frames are not commonly included.
- “State to State” PAs which do not include FHWA as signatories can benefit EDC by streamlining State permitting and reviews required to construct Federal Aid Projects.

- GIS and digital databases are the most common technological provisions for streamlining analysis and accessing/ sharing resource information.
- While some PAs have intrinsic Stewardship value (Historic Bridge/ Road Preservation Programs and ESA Programmatic Biological Opinions/ Assessments), the inclusion of more explicit stewardship/ sustainability measures could benefit the environmental effectiveness of PAs and achieve broader agency/ public support for streamlining.
- While many documents received are not PAs, they support interagency coordination, team building and collaboration. These initiatives can motivate participants to enhance streamlining and support EDC goals.
- Many agreements include emergency provisions, or “late discovery” provisions.
- Agreements involving corridors or projects may include useful provisions for use in broader PA applications.
- Simple measures such as tables of contents, inclusion of document embedded “hot links” to access resources quickly, charts, diagrams and maps make PAs easier to comprehend and, easier to implement.
- Use of diagrams, charts and maps improve comprehension and clarity.
- Since the originators of PAs are generally not the implementers, the ability of the document to clearly communicate its intent is important.

Next Steps:

The following is a list of opportunities for improving development and application of Programmatic Agreements for advancing the EDC initiative:

- Programmatic CE and “No-Resource/ No-Effect” PAs for minor projects are common among the states. A compilation of provisions for “threshold criteria” may be useful for developing new Agreements.
- Clarify the term “delegation”, especially involving actions performed by State DOTs on behalf of FHWA or other agencies. Agreements should be careful about specifying any “approvals”
- Identify opportunities for other environmental areas which may benefit from programmatic agreements such as stormwater and hazardous material involvement. Some PA models identified by this project may be adaptable for developing baseline processes.

- Consider developing nationwide or regional PA models for CEs, Section 106 Minor Projects and NEPA/ Section 404 integration. These are already common among states and could represent opportunities by FHWA for developing Nationwide PAs for use by State DOTs if they chose to “opt in”.
- Fine tune the seven screening criteria developed for this project. These characteristics could be useful as criteria to develop more effective PAs.
- Include more provisions for timeframe/ schedule goals for action items involving production and review activities to support EDC goals.
- Use examples of simple agreements, which do not require extensive resources to develop, for introducing the model to states with specific streamlining needs and those wishing to develop a new, “first generation” PA.
- Facilitate transfer of effective PAs to other states as needs are identified. Consider using “transfer teams” composed of individuals involved with an existing PA to work directly with a State or states interested in adapting the PA as their own.
- Identify opportunities to expand the use of “batching” approvals of projects with similar characteristics at various locations under one NEPA or regulatory action.