

Environmental Programmatic Agreements (and MOUs) in Indiana

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Categorical Exclusion Programmatic Agreement

Ron Bales

Programmatic Agreement between INDOT and FHWA

Programmatic Agreement between INDOT and FHWA became effective on July 1, 2017.

Programmatic is allowed under Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21).

Programmatic Agreement between INDOT and FHWA

Categorical Exclusion Level Thresholds

	PCE	Level 1	Level 2	Level 3	Level 4 ¹
Section 106	Falls within guidelines of Minor Projects PA	"No Historic Properties Affected"	"No Adverse Effect"	-	"Adverse Effect" Or Historic Bridge involvement ²
Stream Impacts	No construction in waterways or water bodies	< 300 linear feet of stream impacts	≥ 300 linear feet of stream impacts	-	Individual 404 Permit
Wetland Impacts	No adverse impacts to wetlands	< 0.1 acre	-	< 1 acre	≥ 1 acre
Right-of-way ³	Property acquisition for preservation only or none	< 0.5 acre	≥ 0.5 acre	-	-
Relocations	None	-	-	< 5	≥ 5
Threatened/Endangered Species (Species Specific Programmatic for Indiana bat & northern long eared bat)	"No Effect", "Not likely to Adversely Affect" (Without AMMs ⁴ or with AMMs required for all projects ⁵)	"Not likely to Adversely Affect" (With any other AMMs)	-	"Likely to Adversely Affect"	Project does not fall under Species Specific Programmatic
Threatened/Endangered Species (Any other species)	Falls within guidelines of USFWS 2013 Interim Policy	"No Effect", "Not likely to Adversely Affect"	-	-	"Likely to Adversely Affect"

Programmatic Agreement between INDOT and FHWA

Purpose of Agreement

- Authorizes INDOT to determine on behalf of FHWA whether a project qualifies for a CE specifically listed in 23 CFR 771.117.

What the PA allows

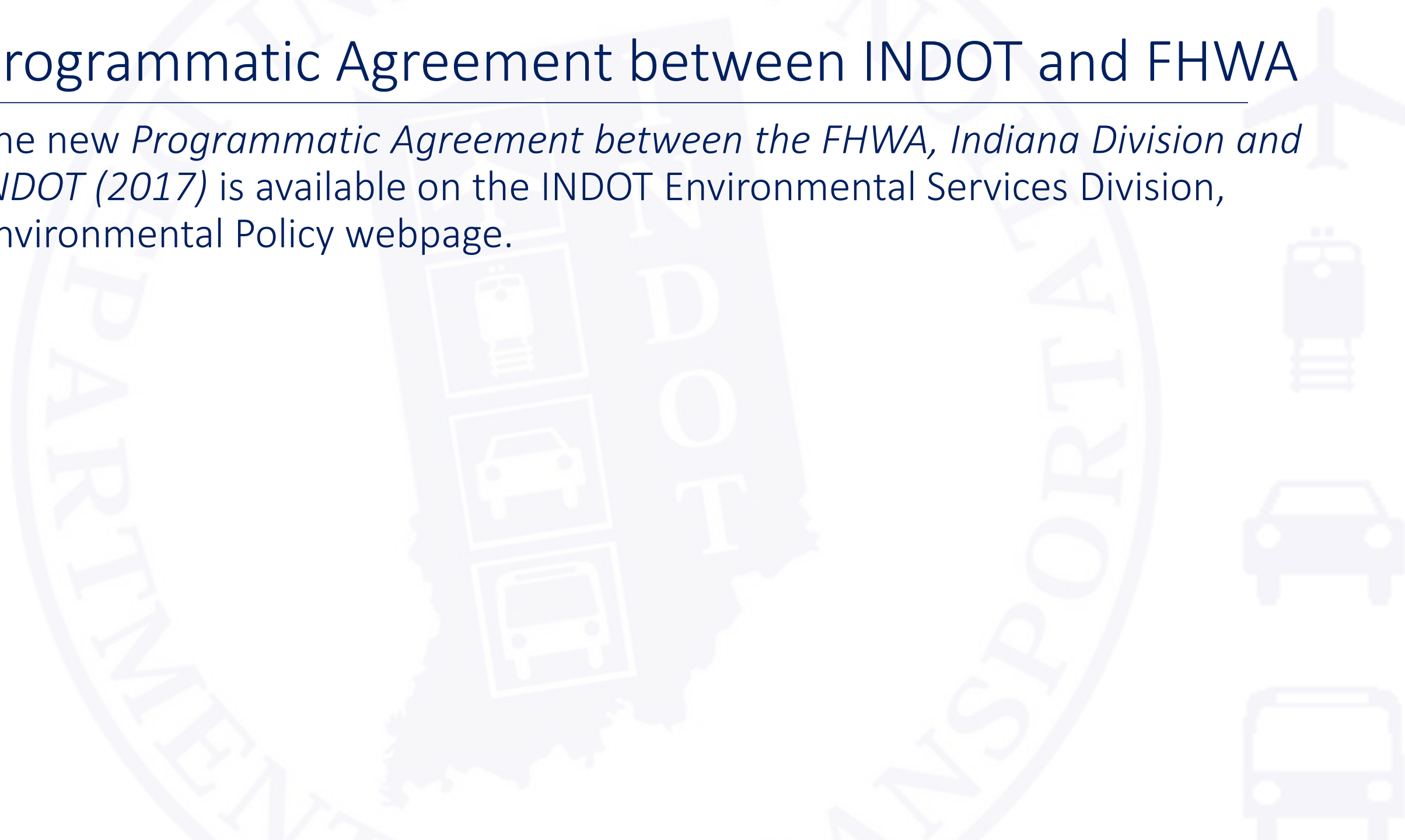
- Allows for INDOT to approve certain levels of categorical exclusions (PCE, CE Level 1-3) on behalf of FHWA.

When is the PA used?

- Most projects are processed as Categorical Exclusions and the CE threshold chart is used to assist with determining the CE level
- * Please note, substantial public controversy, natural resource, and socio-economic impacts may elevate the NEPA level.

Programmatic Agreement between INDOT and FHWA

The new *Programmatic Agreement between the FHWA, Indiana Division and INDOT (2017)* is available on the INDOT Environmental Services Division, Environmental Policy webpage.



Karst Memorandum of Understanding

Ron Bales

Karst Memorandum of Understanding

Established guidelines for the construction of transportation projects in an area designated as "Potential Karst Features Area of Indiana."

Karst MOU signed October 13th, 1993 between the INDOT, IDNR, IDEM, and the USFWS.



 Potential Karst Features Region

Karst Memorandum of Understanding (MOU)

Purpose of MOU

- Provides guidance on the identification, study, and treatment of drainage within the Karst Features Region.
- Streamlines the approach to Karst within this area and establishes set guidelines.
- Allows for a consistent approach for INDOT for their road projects within the Karst Features Region.

When is the MOU Used

- State construction projects within the Karst Features Region.
- During NEPA development

More Information

Karst MOU and Karst guidance can be found at the INDOT Environmental Service Division website site within the Environmental Policy and Ecology and Waterway Permitting pages.

Programmatic Rangelwide Consultation for Indiana Bats and Northern Long-eared Bats

Laura Hilden

Purpose

- Indiana bats, *Myotis sodalis* are endangered statewide.
- Northern long-eared bats, *Myotis septentrionalis* are threatened statewide.



Not really a PA or an MOU...

- It's regional programmatic *consultation* for transportation projects
- Parties to the programmatic consultation:
 - US Fish and Wildlife Service
 - Federal Highway Administration
 - Federal Rail Administration
- Based on a programmatic biological opinion about impacts from common transportation project types on these two species throughout their range.
- Implemented with a concurrence letter from USFWS to FRA and FHWA.
- Applies ONLY to Federal-aid road and rail projects.

Programmatic consultation for projects

- The project proponent performs guided analysis of project impacts
 - Are there bats in the project area?
 - Will the project's activities bother bats?
- Outcomes
 - No effect: many projects qualify, including work on unoccupied bridges
 - May Affect-Not Likely to Adversely Affect (Informal consultation): habitat impacts out of active season and close to existing roadway.
 - May Affect-Likely to Adversely Affect (Formal consultation): habitat impacts in active season, away from roadway.
 - Not Applicable: new terrain, near hibernacula, really far from existing roadway, really large impacts.
- Imposes specific avoidance and minimization measures as firm project commitments
- Allows in lieu fee mitigation

Guidance and Tools

- USFWS's RPA implementation web page.
- Guidance for FHWA projects is on INDOT's Environmental Policy web page.
- USFWS's IPaC System:
 - Species lists
 - Determination key
 - Documentation generator
- In Lieu Fee Mitigation: The Conservation Fund
 - For impacts to suitable summer habitat under formal consultation
 - Payments to TCF will replace acres of trees impacted within state.

**Programmatic Agreement Regarding
Implementation of Federal Aid Highway
Program in the State of Indiana**

Also known as the

Minor Projects PA (MPPA)

Anuradha V. Kumar

What does the Minor Projects PA do?

The Minor Projects PA, executed in 2006, outlines the procedures through which Section 106 and 110 of the National Historic Preservation Act (NHPA) are administered by FHWA in Indiana.

Signatories

- FHWA
- SHPO
- ACHP
- INDOT

Responsibilities

FHWA – Ensures INDOT carries out the requirements of the PA

INDOT - Ensures all cultural resources work is undertaken by Qualified Professionals in the fields of archaeology, history and architectural history.

- ❖ The Cultural Resources Manual details the procedures for implementing this agreement.
- ❖ The Minor Projects PA is posted on the INDOT Cultural Resources Office website and included in the Cultural Resources Manual.

Key Aspects of the Minor Projects PA

Projects requiring full Section 106 review

- Allows INDOT to independently make a finding of “No Historic Properties Affected” and “No Adverse Effect” on behalf of FHWA
- FHWA responsible for making “Adverse Effect” findings.

Projects with little or no potential to effect historic properties

- Exempts from full Section 106 review.
- Eligible projects listed in Appendices so that they can be easily modified by the mutual written agreement of FHWA, INDOT, and the SHPO.
- Appendices amended multiple times. Most recent and most extensive amendments made in August 2017 in consultation with the Tribes per the stipulations of the Tribal MOU.

Projects exempt from full Section 106 review

Category A (Appendix A)

- Small in scope
- All work occurs in previously disturbed soils
- Has no effect on historic resources
- Do not require review by INDOT Cultural Resources Office



Category B (Appendix B)

- Could have a larger scope
- Work may occur in disturbed or undisturbed soils
- Requires documentation and review by INDOT Cultural Resources Office to assess if historic resources may be impacted



Benefits of the Minor Projects PA

- Streamlines Section 106 review processes
 - Delegates INDOT CRO to oversee much of its Section 106 program.
 - Allows FHWA staff focus more on complex and higher priority and/or controversial projects.
 - Standardizes coordination and compliance procedures.
 - Makes project timelines more predictable.
- Provides time and cost savings
 - Eliminates review by FHWA, SHPO and consulting for several minor projects.
 - Eliminates need for a Qualified Professional review or extensive documentation for Category A projects.



Indiana Historic Bridge Programmatic Agreement (Historic Bridge PA)

Anuradha V. Kumar



What does the Historic Bridge PA do?

The Historic Bridge PA, executed in August 2006, outlines the process by which historic bridges are managed in Indiana.

Signatories

- FHWA
- SHPO
- ACHP

Invited Signatory

- INDOT

Concurring Parties

- Historic Spans Task Force
- Historic Landmarks Foundation of Indiana (now known as Indiana Landmarks)

Other participants:

- Indiana Local Technical Assistance Program (LTAP)
- Indiana Association of County Highway Engineers and Supervisors
- Indiana Association of County Commissioners
- Senator Richard Lugar's office

- ❖ The Historic Bridge PA is posted on the Cultural Resources website and also included in the Cultural Resources Manual.

Key Aspects of the Historic Bridge PA

- Completion of a statewide bridge survey and identification of historic bridges
- Classification of historic bridges as either “Select” or “Non-Select”
 - ❖ *All documents related to the bridge inventory are available on the Cultural Resources website*
- Development of “Standards for Rehabilitation of Bridges on Low-Volume Roads”
- Establishment of the Project Development Process for “Select” and “Non-Select” bridges
 - ❖ Completion of a Section 4(f) Historic Bridge Alternatives Analysis (HBAA) is required for all historic bridge projects.
 - ❖ The HBAA will now serve as the bridge scoping report.



Project Development Process for Select Bridges

Select Bridges - *Must be Preserved*

- Implement rehabilitation for vehicular use if “Standards for Rehabilitation of Bridges on Low-Volume Roads” can be met.
- Evaluate by-pass alternative if rehabilitation for vehicular use is determined not feasible and/or prudent.
- Preserve bridge at an alternate location if the by-pass alternative is determined not feasible and/or prudent.



Anticipatory Demolition

If a bridge owner intentionally demolishes or otherwise diminishes the historic integrity of a Select Bridge with non-Federal-aid funds, then they cannot utilize the Historic Bridge PA on any future federal-aid bridge project proposed.



Project Development Process for Non Select Bridges

Non-Select Bridges - *May be replaced only after all other alternatives have been evaluated carefully*

- Implement rehabilitation for vehicular use if “Standards for Rehabilitation of Bridges on Low-Volume Roads” can be met.
- Market historic bridge for at least 6 months prior to replacement.
- Demolish only if no responsible party steps forward to own/preserve the bridge.



Benefits of the Historic Bridge PA

For Bridge Owners

- Streamlines Section 106 and Section 4(f) review processes
- Time and cost savings as the following is known prior to project start:
 - Bridge's National Register eligibility
 - Historic Bridge's designation as "Select" or "Non-Select"
 - Project development process for both "Select" and "Non Select bridges
 - Required mitigation measures for bridges being replaced

For Preservation Community

- A firm preservation commitment for "Select" Bridges
- A genuine effort to preserve "Non Select" bridges



Tribal Consultation

Michelle Allen, FHWA

Why did we start this process?

- FHWA is required to consult with Tribes under Section 106 of the National Historic Preservation Act for transportation projects.
- FHWA and INDOT did not have a consistent approach to consultation with the Tribes.
- Several projects were delayed or involved tribes without coordination processes in place.
- Section 106 allows Tribes to co-develop agreements with FHWA that specify consultation procedures. (36 CFR Part 800)

Final MOU

- Features

- FHWA delegates routine Tribal consultation to INDOT.
- INDOT maintains staff who are qualified professionals.
- All parties maintain primary and secondary contacts,
- Tribes provide INDOT with the counties they're interested in; INDOT provides early coordination information to Tribes on projects in those counties.
- INDOT also provides early coordination for transportation planning activities.
- Provides a notification and consultation procedure for accidental discoveries.

- Executed by FHWA February 2017

- Over 10 Tribes have signed MOU

- Positive Response from Tribes.

Questions?