

Threatened & Endangered Species In LPA Context



<https://nature.mdc.mo.gov/>

TEAM Conference

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Four “C’s” to Remember for Completing Threatened and Endangered Species requirements

Communication

Compliance

Commitment

Clearance

Communication is Essential

- Complete exchange of information with sponsor (consultant for the sponsor)

INCLUDING UPDATES!

- Communication lines within MoDOT between Environmental, District LPA, CO LPA, Construction (PS&E documents)

Environmental Compliance

Compliance is the legal obligation to follow through on commitments.

Track the completion of commitments through Design and Construction with DOCUMENTATION.

Examples: NEPA document, impact assessment, consultation, Job special provisions, construction plan notes, construction diary

Role of MoDOT NEPA Environmental Staff

Act on behalf of FHWA

Compliance with state and federal laws
through all phases of project development
to maintain eligibility for federal funding.

National Environmental Policy Act (NEPA)

NEPA requires consideration of the physical environment for any project using federal funding OR requiring federal permits.

- Reminder: NEPA is a Decision making process
- If you don't document it, it didn't happen
- FHWA is watching –catching it on CAP reviews

Important to Note

The RER is a master document

it IS Sponsor's & FHWA's document

it IS an official record

it IS part of compliance

it DOES need to be updated

it IS required to be accurate by FHWA

it MUST reference commitments

it IS the NEPA document below a CE2

What is 'T&E Clearance'?

MoDOT verifies all T&E requirements have been met-
this does not END the T&E process, just verifies that the
project can move forward

- Completeness of T&E assessment
- Correct and document determination of effect for EACH federally listed species
- Environmental commitments
- Consultation for any species with a May Affect determination
- USFWS concurrence, verification, and clearance date

Milestones Tied to T&E Clearance

NEPA classification approval dependent on:

- Section 106 National Historic Preservation Act*
- Section 4(f) / Section 6(f)*
- Section 7 Endangered Species Act (T&E)
- Noise for anticipated CE2 level document

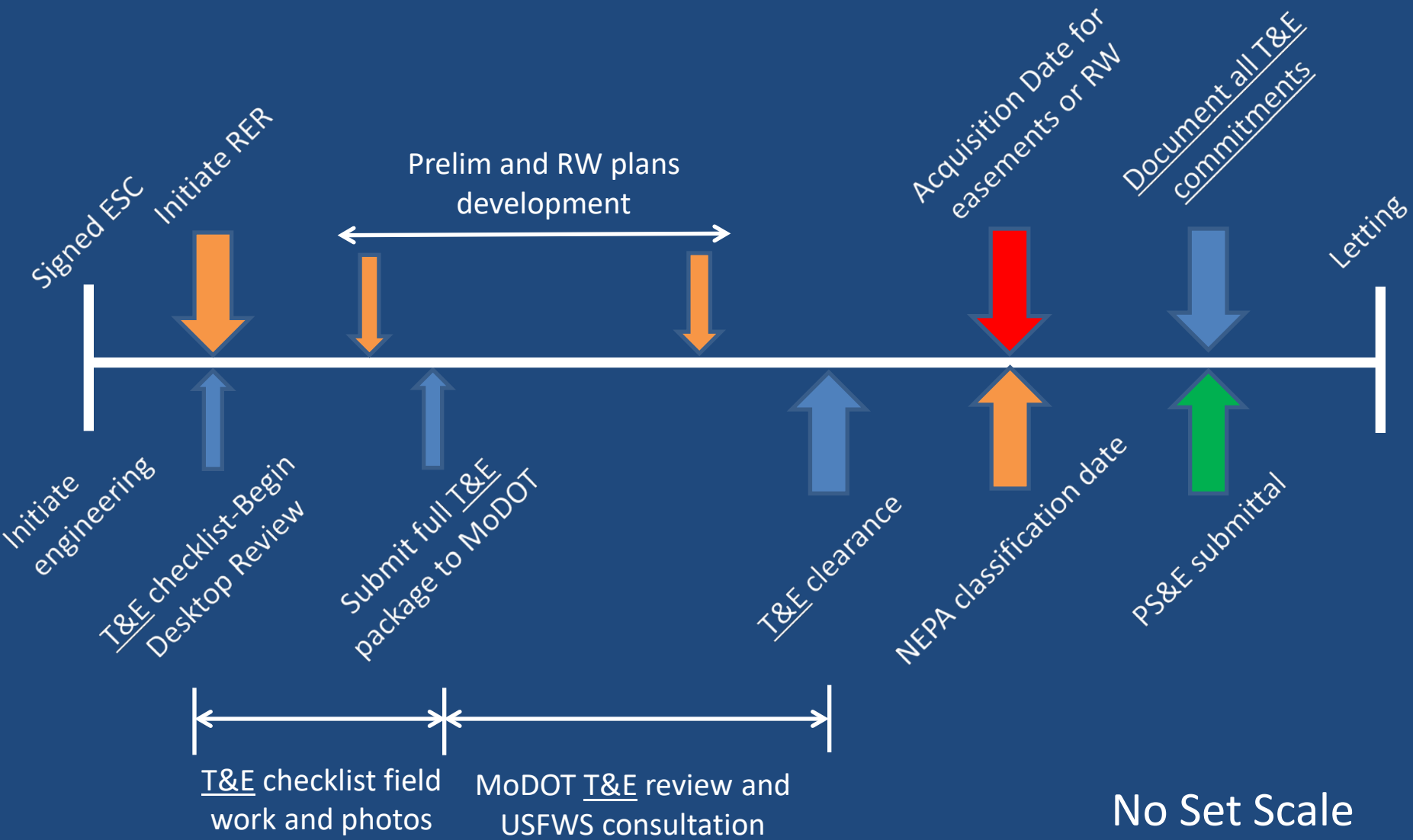
Request for R/W Acquisition Authority AFTER NEPA
Classification Approval

USACE 404 permit authorization dependent on:

- Section 106 National Historic Preservation Act
- Section 7 Endangered Species Act (T&E)

*separate training available for this topic

Generic T&E milestones within project timeline



No Set Scale

ESC=Engineering Services Contract

High Level Basic Steps

Sponsor Responsibilities

Award and/or ESC* executed > Checklist Review > Desktop Review
Plan and conduct field work > Checklist as Guide > Collect Information
Assess and justify impacts
Submit complete T&E assessment to MoDOT (starts T&E clock)
Commitments

MoDOT T&E Responsibilities

Review & evaluate assessment
Review additional resources for cave/karst/other protected resources
Document Effect determination
No Effect and clearance or consultation with commitments
Communicate commitments-verify approval-clearance

*Engineering Services Contract

Purpose of the ESA

Endangered Species Act
administered by the US Fish and Wildlife Service

Miller Co. Rt 54



- Prevent species from becoming extinct
- Prohibits “Take” = harm, harass, kill,
- Protect habitats essential to species survival, federal critical habitat
- Promotes the recovery of imperiled fish, wildlife, and plants

Critical habitat is not the same as suitable habitat.

Federal Agency Responsibilities Under Section 7 of the ESA

- Conservation Obligation under Section 7(a)(1)
- Consultation Obligation under Section 7(a)(2)
 - Federal agencies are required to consult with the USFWS before taking any action that has the potential to affect listed species or designated critical habitat.

WHY???

Does MoDOT Need All the T&E Info From Sponsors

- ESA Sect 7 required of Federal Agencies (FHWA)
- FHWA has made MoDOT its designated non-federal representative for Sect 7 requirements*
- MoDOT cannot further delegate that authority to sponsors or consultants
- MoDOT responsible for documenting Effect Determinations and any necessary consultation

*EPG 136.6.4.5.2

Completing T&E Assessments

Sponsors have the responsibility for RER and all clearances, including T&E assessments and submittals to MoDOT.

Suggestions for using resources wisely

Options:

- Sponsor prepares and submits T&E
- Sponsor hires consulting firm which has qualified staff to carry out T&E
- Consultant to the sponsor hires a sub-consultant qualified to complete T&E

Links and reference materials

136.6.4.5 Threatened and Endangered Species

Threatened and endangered (T&E) species considerations for FHWA funded projects include potential impacts to rare plants, animals, critical habitat and natural communities (e.g., caves, prairies, karst). To comply with federal laws, project sponsors are required to thoroughly address any impacts their projects might have on federally listed T&E species.

The state of Missouri also tracks the status of over 1,000 plant and animal species that are considered rare in the state. Of these, 64 are listed as state endangered (current as of the 2016 Missouri Species of Conservation Concern publication). The state Endangered Species Law and the Missouri Wildlife Code protect state listed species. All FHWA funded projects in Missouri must also address potential impacts to state listed species.

Threatened and Endangered Species Program Guidance Videos

[Chap. 1, Overview and Background Information](#)

[Chap. 2, Common Field Assessments: Bats and Birds](#)

[MDC Tutorial: Natural Heritage Review](#)

Developed and waiting for EPG publication:
**T&E checklist and
listed species habitats references**

Refer to T&E SUBMITTAL CHECKLIST

Threatened and Endangered Species Federal Aid Transportation Submittal Checklist for MoDOT/FHWA

Date: _____ County and Route: _____ Federal Aid Transportation ID: _____

Section 1

Complete all items. Refer to Section 2 for reference photos and examples. This form does **NOT** take the place of the T&E assessment and **MUST** accompany the assessment submittal, with **ALL** supporting documentation attached.

If plans are available, indicate Plan Stage at T&E assessment submittal: plans attached

Preliminary Plans Right of Way Plans Final Plans for PS&E

1. Obtain official species list: IPaC Online tool at <http://ecos.fws.gov/ipac/>

2. Obtain MDC MO Natural Heritage Review : online <https://naturalheritagereview.mdc.mo.gov/>

Level 1? No known Issues, submit to MoDOT Environmental with assessment

Level 2 or 3? Must contact MDC directly following directions on report. Must address any issues on MDC Review Report in T&E assessment. Submit all to MoDOT with assessment for noted state resources

checklist

Desktop Information, Website submittals

Tree Clearing

3. Tree clearing (**anything over 3 inches in diameter**)

“Unknown” or leaving blank are not acceptable [note: Update any changes as the design progresses]

NO, indicate ‘none’ in appropriate box on RER AND in assessment, go to item #5

YES, Amount, location, time of year for tree removal must be indicated in assessment; amount in appropriate box on RER, complete item #4

If you are uncertain at the time of submittal, please indicate your best guess for example “possible, under 0.5 ac”, “probable, 1-2 ac” on the RER and in assessment

checklist

Submit location of all tree clearing either on plan strip map, aerial, other drawing

Should match RER information

Land Disturbance: **RER**

Will project involve 1 acre but less than 5 acres of land disturbance: Yes

Will project involve 5 acres or more of land disturbance: Unknown

Acres of Tree Clearing: 0.2 acres

Step 4 moves to actually conducting the habitat assessment of trees in the project area.

T&E CHECKLIST cont.

Tree Clearing

4. Tree Habitat Assessment

All trees three inches in diameter and above should be assessed for these characteristics. Suitable bat roost trees consist of live or dead hardwood trees which have **shingle-like or loose bark** providing space for bats to roost underneath the bark or trees with cavities, splits, crevices, hollow sections, and other damage.

checklist

- photograph trees to be removed, obtain close-up photos of suitable parts of tree, specifically any area with damage, cavities, excessively rough or flaky bark, gaps under bark, bark peeling away or falling in sheets from branches and tree trunks (refer to sample photos)

Tree Habitat Assessment: Compare photos and descriptions of trees to be removed with definition of suitable summer bat roost habitat.

suitable not suitable unsure

- Sponsor will commit to clear suitable bat roost trees only during the non-breeding season, between November 1 and March 31.



Bridge and Box Culvert Projects

Important assessment for Migratory Bird Treaty Act

(evidence of birds nesting on the structure)

AND

Reports on evidence of bat use of the bridge

(for federal listed species AND state wildlife concerns)

AND

Habitat assessment for aquatic species (Step #7)

5. Existing bridge, low water crossing, or box culvert?

NO, Go to Item #7

standard bridge project photos: stream under the bridge, view across the stream (left and right abutments, piers, and left and right banks), banks and vegetation upstream and downstream, view of both road approaches

YES, evaluate for nesting birds and bat staining/guano

Date evaluated: _____

Bridge and Box Culvert Projects

6. Migratory Bird and bat assessment

If the project involves bridgework, photograph the undersides of bridges illustrating the presence/absence of any bird nests or unusual staining on the substructure or underside of the deck. Take note of 90-degree angles on the outside of the bridge, between girders, at pier caps, expansion joints, and abutment walls, if applicable.

photograph underside of bridge in all areas including pier caps, abutment walls, under expansion joints or underside of box culvert, specifically any areas with:

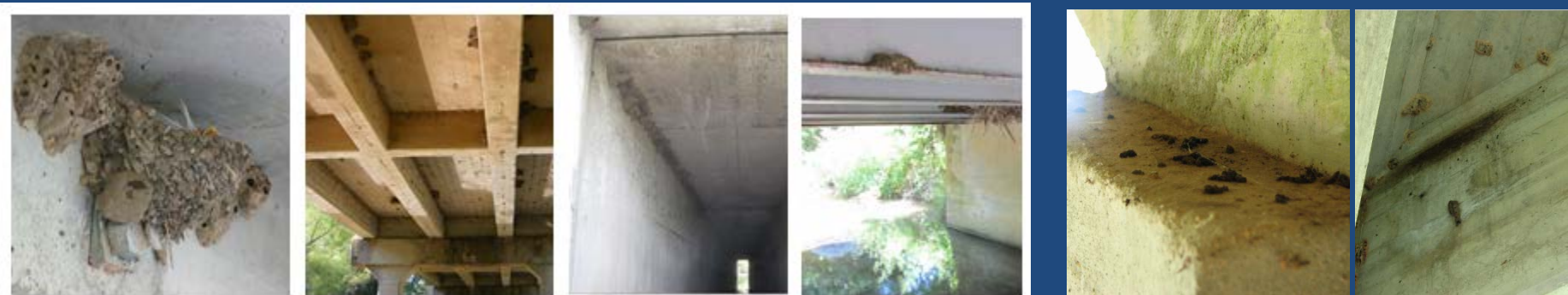
A. Nests of birds Y/N

B. Brown staining or smears (oily spots) Y/N

C. Droppings (guano) Y/N

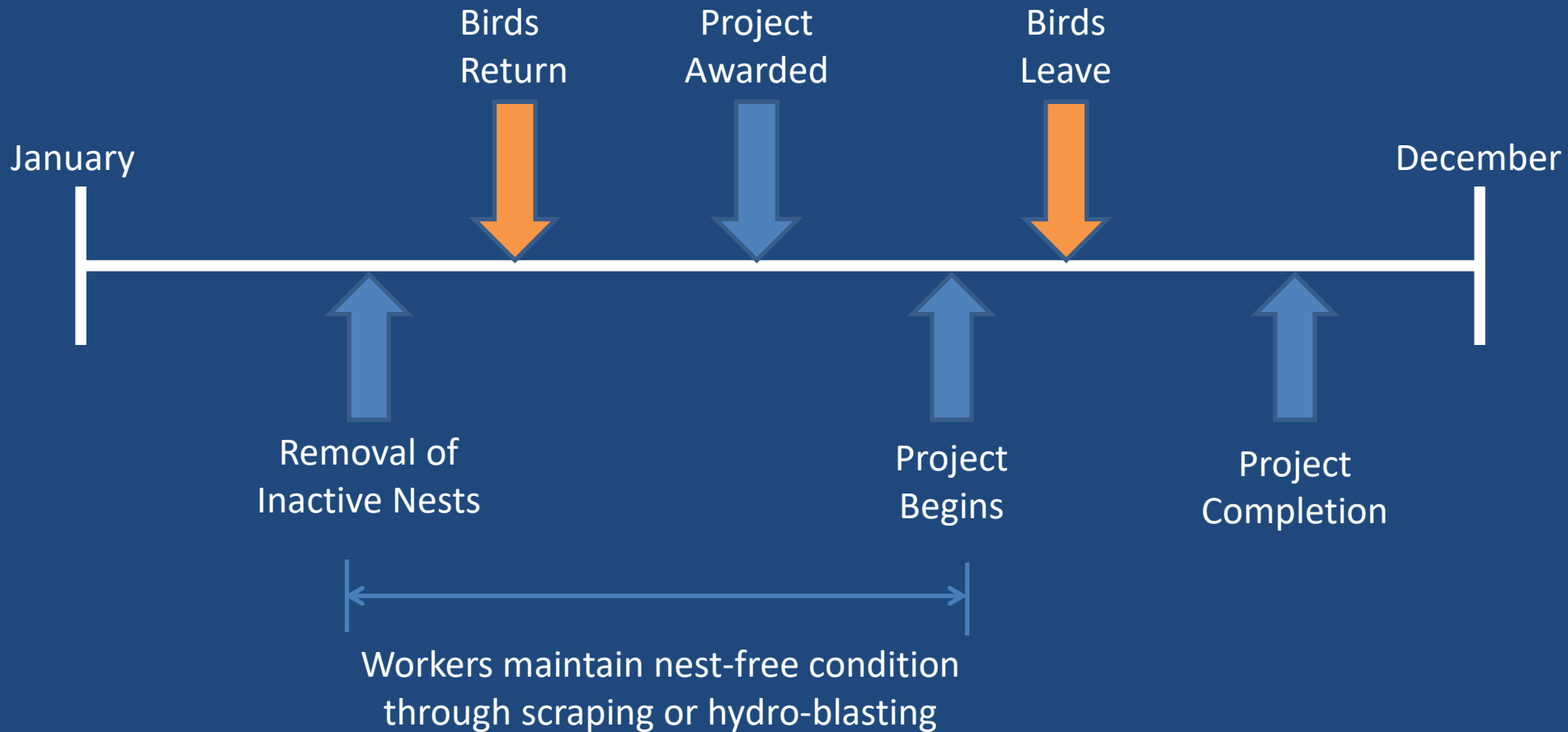
Note: if YES for B or C, check all crevices on the bridge for bat sign and send memo of findings with checklist.

Bridge memorandum completed? Y/N



Migratory Birds on Bridges/Culverts

Typical Timeline for Bridge Projects Awarded Mid-Summer



Written Habitat Assessments

7. Complete assessments for all species on IPaC official species list.

It is the responsibility of the LPA to make a written evaluation of their project impacts on each federal species listed on the IPaC List AND on MDC state endangered or species or communities of conservation concern from the Heritage Review. Make an impact assessment and justify that conclusion based on the habitat needs compared to habitat present in the project impact area.

You can only use Checklist #4 for impacts to Indiana and northern long-eared bats, other species must also be addressed in writing

ALL IPaC USFWS Listed Species

Make an impact assessment and justify that conclusion based on the habitat needs compared to habitat present in the project impact area.

Basic Section 7 Effect Determinations

- No Effect on T&E species or CH
- May Affect, but Not Likely to Adversely Affect T&E species or CH (informal)
- May Affect, and Likely to Adversely Affect T&E species (formal-take-mitigation)

These effect determinations are part of the FHWA permanent decision-making record.

Any May Affect determination requires USFWS consultation

Basics of Section 7 Consultation

- Only MoDOT can submit on behalf of FHWA
- Based on project information, field work, and assessment from the sponsor
- Any conservation commitments (e.g. tree clearing restrictions, stream restrictions) included
- Concurrence documented as part of the RER
- Communicate completion to sponsor
- Follow through on commitments becomes compliance

List of Working Solutions to Improve T&E assessments

Continue to update LPA EPG references to T&E

- Round 1 under review by FHWA
- Round 2 to be submitted soon

T&E Training for non-experts

- Ongoing- CO-May 2018, KC/NW July 2018, NE/STL/SE Sept 2018, SW/CD/overflow Oct 2018, STL Sponsors Nov 2018, TEAM Mar 2019

Continue to offer one-on-one Assistance

- Field visits with consultants and sponsors
- Remote assistance –email and phone

Summary for T&E in an LPA Context

- FHWA is the lead Federal Agency
- Sponsor is responsible for all RER information
- Open communication will improve quality
- Improving quality will in turn improve efficiency
- Current innovation focus- training for non-experts
- Push for LPA On-call Environmental Consultants