

# EMINENT DOMAIN (CONDEMNATION)

## **Environmental and Transportation Services**

Mike Knox, ROW Program Manager

Mary Fahlsing, ROW Title Officer

If condemnation is necessary, the laws provide that the state may take possession upon making an offer to purchase and by depositing the amount of offer with the Clerk of District Court of the county wherein the ROW is located. This is accomplished through Section 16 of the State Constitution and Section 21-01-22.1 of the NDCC.



# IMPASSE IN NEGOTIATIONS

Assuming these steps have already taken place...

- A telephone introduction scheduling a face-to-face interview with the landowner outlining the scope and benefits of the project
- An Introductory letter in-lieu of a face-to-face meeting, with the offer package included, if the landowner is out of state. This will also include at least two fully documented, follow-up phone conversations reviewing and explaining the details of the project and the impact to the landowner.



## IMPASSE CONTINUED

- Chance are, prior to the offer being presented to the landowner, early discussions centering around the scope of the project and it's potential impacts have already occurred
- An offer package should be presented to the landowner at the first opportunity that values are discussed
- A ***minimum*** of two meetings should occur between the landowner and the negotiator. If an impasse or negotiations breakdown, contact your NDDOT ROW project liaison for explicit direction and next steps

# THE WHOLE STORY...

Make sure we understand All the landowner's concerns or issues

- Usually it's not just about the money...
- You will need to list out all the issues in detail...
  - Pay extra attention to access and drainage concerns
  - We don't want to spend a tremendous amount of time and resources to address an issue a landowner has identified, and later come to find out that they have "... a couple more issues..." that the landowner also wants us to address
  - Try to find out what it will take from the landowner to get a firm commitment
  - Gain a thorough understanding as to what is reasonable and what is not
  - Our goal is to make the landowner "whole" which does not necessarily mean "betterment"
    - Pave my driveway...
    - Build me another approach...
    - Replace existing fence post with steel posts...



# REVIEW OF ALL OPTIONS

We want to make sure that all options have been explored:

- Is the parcel(s) absolutely needed?
- Can the acquisition type be modified or changed?
  - i.e. Instead of a fee acquisition, is it possible to consider a Temporary Construction Easement (TCE) or Permanent Easement instead
- Can the size of the parcels be modified or changed in order to avoid condemnation, still meet the project's requirements and appease the landowner?
- Can the alignment be modified in any way to avoid or minimize the impact or acquisition?

# MUST HAVE ITEMS...

## Aerial map with ROW overlay for the entire project

- The map includes:

- Entire project overlay against a Google Earth watermark background
- Landowner names
- Parcels numbers
- Parcel types Fee, TCE, Perm Easements, etc...
- Parcel appraised values = price per acre or a per sq. ft. basis
- Total offered amount

**\* ask your ROW project manager / liaison for an example if needed**



# NEGOTIATOR SUBMITTAL

If all negotiation attempts are exhausted and resolution is not obtainable...

- Prepare and send in **THE COMPLETE FILE** to the NDDOT
  - All contact information including phone numbers, addresses and email addresses of the landowners (is there a snowbird address?)
  - Detailed summary of your Negotiations
  - Copies of all offers (include any items discussed below)
    - Detailed summary of any discussions relating to damages, drainage or access
  - 3 Color coded copies of current plat
  - Current copy of the title certificate

\* Refer to the ROW checklist





## ...NEXT STEP

- Upon submission, the ROW agent will review the file for completeness and accuracy



## ...FINAL NEXT STEP!

- ROW agent will forward the complete condemnation file to the Program Manager for final review ***prior*** to eminent domain proceedings commencing
- No additional communication or counter offers by the negotiators
- All inquiries after submittal shall be directed to the Program Manager and the NDDOT staff
- In the event landowners contact the negotiator, they will direct the landowner to contact the NDDOT project liaison

# MANAGEMENT REVIEW

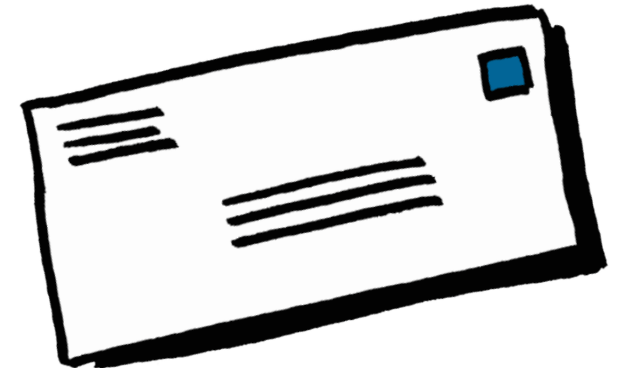
- Program manager reviews package for accuracy, mathematical calculations and plat comparisons
- Review file with Management
  - Analyze and detail potential litigation exposure
- Determine if additional appraisal information is needed.
  - i.e. before and after analysis, damages
- Turn file over for condemnation proceedings



# PRE-CONDEMNATION LETTER

To property owner(s) and all parties that appear to have...  
or may have... expressed an interest in said lands

- This letter is mailed out by the NDDOT by Standard mail
- Mail up to 10 business days prior to the condemnation package being mailed to the Clerk of Court



# NOTIFICATION OF CONDEMNATION LETTER

To property owner(s) and all interested parties

(This is complimentary letter and not a requirement)

- Standard mail
- Mail 5 business days prior to condemnation packet
  - Attorneys
  - Mortgage holders or creditors
  - Judgement or lien holders (IRS, State, etc.)



**CC: Clerk of Court so they are aware of who may be contacting them regarding disbursement of payment**



# OFFER TO PURCHASE LETTER

To property owner(s) and all interested parties

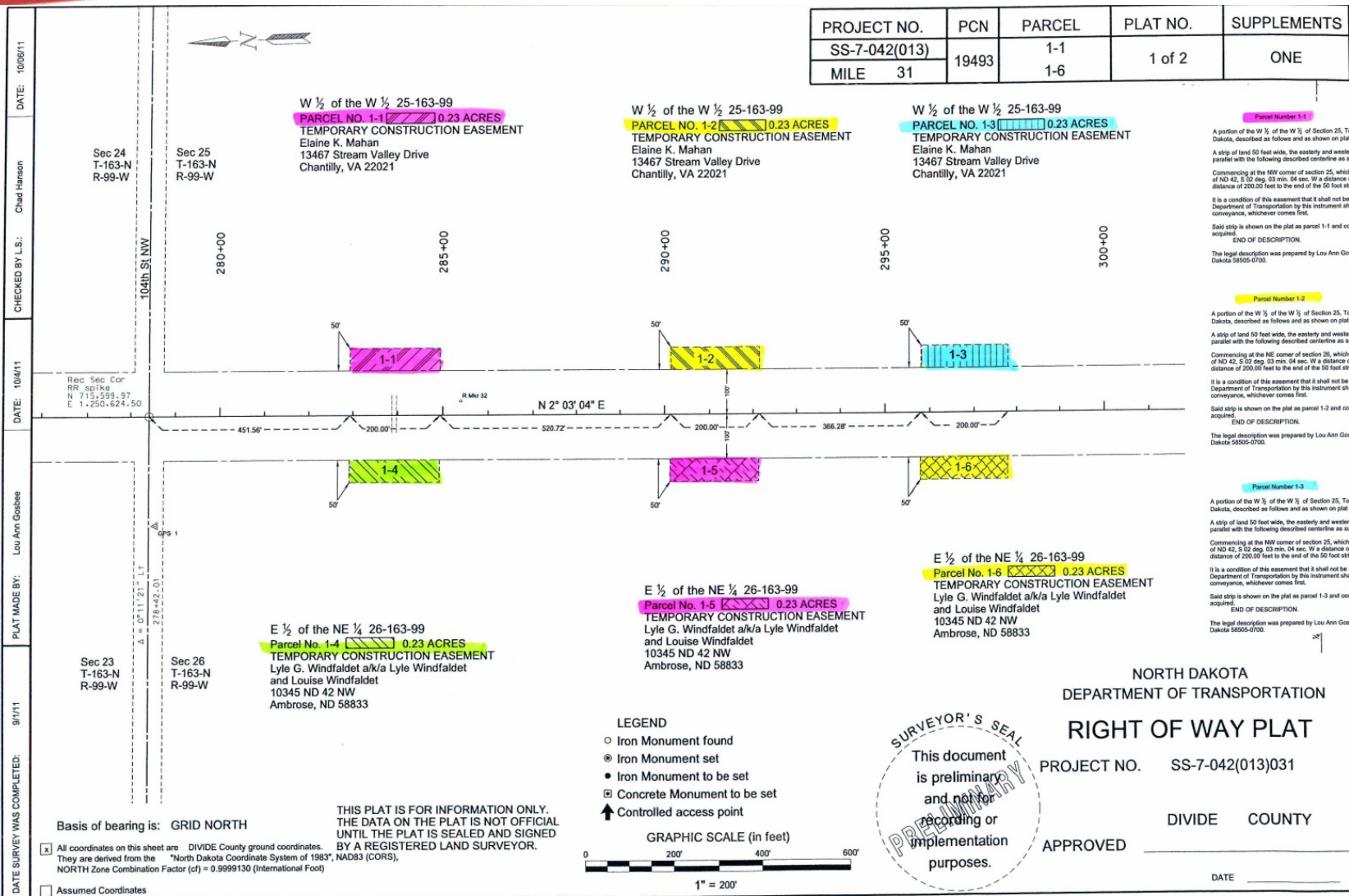
- Certified mail to each owner (original)
- Mail a copy, standard mail, to anyone else indicating, sharing or expressing they have an interest in the property
- Enclosures:
  - Color coded plat and supplement
  - Eminent Domain brochure



<http://www.ag.state.d.us/scroll>

*Rights of Landowners: ND Eminent Domain Law PDE*

# COLOR CODED PLAT EXAMPLE



## Parcel Number 1-1

A portion of the E 1/2 of the NE 1/4 of Section 25, Township 163 N, Range 99 W, of the 5th Principal Meridian, County of Divide, State of North Dakota, described as follows and as shown on plat 1 of 2:

A strip of land 50 feet wide, the easterly and westerly lines of which are parallel. The westerly line of said strip being 100 feet easterly of and parallel with the following described centerline as surveyed.

Commencing at the NW corner of section 25, which is also a point on the survey centerline of ND 42, thence southerly along the survey centerline of ND 42, S 02 deg. 03 min. 04 sec. W a distance of 451.56 feet to the beginning of the 50 foot strip. Thence S 02 deg. 03 min. 04 sec. W a distance of 200.00 feet to the end of the 50 foot strip.

It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said strip is shown on the plat as parcel 1-1 and contains 0.23 Acres more or less, and is subject to any easements or rights of way previously acquired.

## END OF DESCRIPTION

The legal description was prepared by Lou Ann Gossbee, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700.

## Parcel Number 1-2

A portion of the E 1/2 of the NE 1/4 of Section 25, Township 163 N, Range 99 W, of the 5th Principal Meridian, County of Divide, State of North Dakota, described as follows and as shown on plat 1 of 2:

A strip of land 50 feet wide, the easterly and westerly lines of which are parallel. The westerly line of said strip being 100 feet easterly of and parallel with the following described centerline as surveyed.

Commencing at the NE corner of section 25, which is also a point on the survey centerline of ND 42, thence southerly along the survey centerline of ND 42, S 02 deg. 03 min. 04 sec. W a distance of 1172.28 feet to the beginning of the 50 foot strip. Thence S 02 deg. 03 min. 04 sec. W a distance of 200.00 feet to the end of the 50 foot strip.

It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said strip is shown on the plat as parcel 1-2 and contains 0.23 Acres more or less, and is subject to any easements or rights of way previously acquired.

## END OF DESCRIPTION

The legal description was prepared by Lou Ann Gossbee, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700.

## Parcel Number 1-3

A portion of the E 1/2 of the NE 1/4 of Section 25, Township 163 N, Range 99 W, of the 5th Principal Meridian, County of Divide, State of North Dakota, described as follows and as shown on plat 1 of 2:

A strip of land 50 feet wide, the easterly and westerly lines of which are parallel. The westerly line of said strip being 100 feet easterly of and parallel with the following described centerline as surveyed.

Commencing at the NW corner of section 25, which is also a point on the survey centerline of ND 42, thence southerly along the survey centerline of ND 42, S 02 deg. 03 min. 04 sec. W a distance of 1736.56 feet to the beginning of the 50 foot strip. Thence S 02 deg. 03 min. 04 sec. W a distance of 200.00 feet to the end of the 50 foot strip.

It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said strip is shown on the plat as parcel 1-3 and contains 0.23 Acres more or less, and is subject to any easements or rights of way previously acquired.

## END OF DESCRIPTION

The legal description was prepared by Lou Ann Gossbee, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700.

## Parcel Number 1-4

A portion of the E 1/2 of the NE 1/4 of Section 26, Township 163 N, Range 99 W, of the 5th Principal Meridian, County of Divide, State of North Dakota, described as follows and as shown on plat 1 of 2:

A strip of land 50 feet wide, the easterly and westerly lines of which are parallel. The easterly line of said strip being 100 feet westerly of and parallel with the following described centerline as surveyed.

Commencing at the NE corner of section 26, which is also a point on the survey centerline of ND 42, thence southerly along the survey centerline of ND 42, S 02 deg. 03 min. 04 sec. W a distance of 451.56 feet to the beginning of the 50 foot strip. Thence S 02 deg. 03 min. 04 sec. W a distance of 200.00 feet to the end of the 50 foot strip.

It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said strip is shown on the plat as parcel 1-4 and contains 0.23 Acres more or less, and is subject to any easements or rights of way previously acquired.

## END OF DESCRIPTION

The legal description was prepared by Lou Ann Gossbee, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700.

## Parcel Number 1-5

A portion of the E 1/2 of the NE 1/4 of Section 26, Township 163 N, Range 99 W, of the 5th Principal Meridian, County of Divide, State of North Dakota, described as follows and as shown on plat 1 of 2:

A strip of land 50 feet wide, the easterly and westerly lines of which are parallel. The easterly line of said strip being 100 feet westerly of and parallel with the following described centerline as surveyed.

Commencing at the NE corner of section 26, which is also a point on the survey centerline of ND 42, thence southerly along the survey centerline of ND 42, S 02 deg. 03 min. 04 sec. W a distance of 1172.28 feet to the beginning of the 50 foot strip. Thence S 02 deg. 03 min. 04 sec. W a distance of 200.00 feet to the end of the 50 foot strip.

It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said strip is shown on the plat as parcel 1-5 and contains 0.23 Acres more or less, and is subject to any easements or rights of way previously acquired.

## END OF DESCRIPTION

The legal description was prepared by Lou Ann Gossbee, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700.

## Parcel Number 1-6

A portion of the E 1/2 of the NE 1/4 of Section 26, Township 163 N, Range 99 W, of the 5th Principal Meridian, County of Divide, State of North Dakota, described as follows and as shown on plat 1 of 2:

A strip of land 50 feet wide, the easterly and westerly lines of which are parallel. The easterly line of said strip being 100 feet westerly of and parallel with the following described centerline as surveyed.

Commencing at the NE corner of section 26, which is also a point on the survey centerline of ND 42, thence southerly along the survey centerline of ND 42, S 02 deg. 03 min. 04 sec. W a distance of 1736.56 feet to the beginning of the 50 foot strip. Thence S 02 deg. 03 min. 04 sec. W a distance of 200.00 feet to the end of the 50 foot strip.

It is a condition of this easement that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said strip is shown on the plat as parcel 1-6 and contains 0.23 Acres more or less, and is subject to any easements or rights of way previously acquired.

## END OF DESCRIPTION

The legal description was prepared by Lou Ann Gossbee, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700.

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

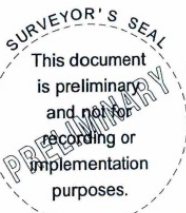
## RIGHT OF WAY PLAT

PROJECT NO. SS-7-042(013)031

DIVIDE COUNTY

APPROVED

DATE



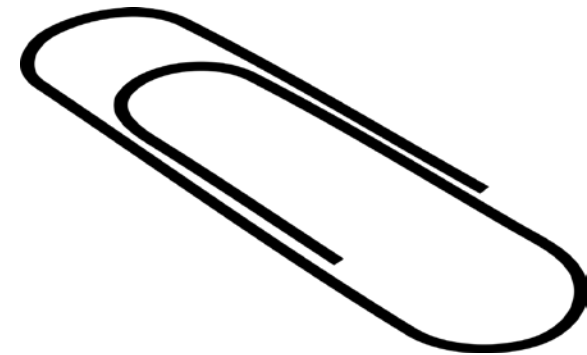
# DEPOSIT FOR CONDEMNATION LETTER

To clerk of court

- Certified mail

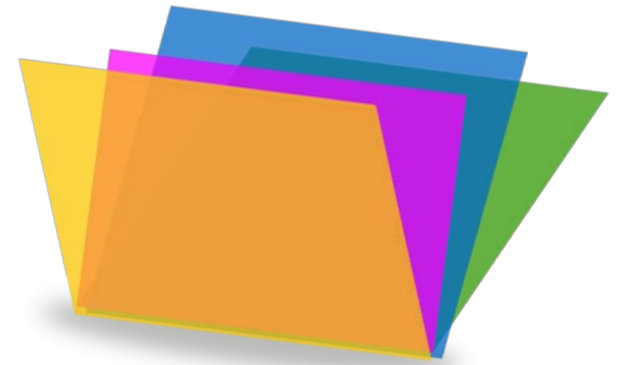
Attachments:

- Complete Eminent Domain Packet
  - Check
  - Instructions to Clerk of Court
  - Receipt from Clerk of Court packet
  - Notice to Property Owner(s) packet
  - Receipt from Property Owner(s) packet



# PACKETS

1. Receipt from clerk of court
2. Notice to property owner(s)
3. Receipt from property owner(s)





## PLEASE NOTE

1. Once submitted to DOT for condemnation proceeding, negotiator is done.  
Direct all inquiries or requests to Program Manager  
Mike Knox 328-4228
2. Once submitted to Clerk of Court, **no additional changes can be made to plat, documents** and etc.
3. Owner provides proof when picking up payment from Clerk of Court
  - a) **Picture ID**
  - b) Copy of Pre-Condemnation Letter or Notice to Property Owner(s) from Clerk of Court
  - c) **Corporate authorization to pick up on behalf of corporation**
  - d) Copy of property tax statement



## CONTINUED....

4. Once the deposit has been received by the Clerk of Court the landowner will receive a letter (Notice to Property Owner) indicating the funds are available
5. The landowner is now able to make arrangements with the Clerk of District Court's office and upon providing sufficient proof of ownership, pick up their proceeds check
6. During the condemnation process, if the landowner wants to contest the value of the offer, they must file an appeal with the Clerk of Court within 30 days of receiving the notice from the Clerk of Court

## CONTINUED....

7. Property owners who withdraw the deposited payment still may appeal, as may others with an interest in the property. By picking up the proceeds check does not in anyway compromise their right or ability to contest or continue on with an appeal.
8. From the time the pre-condemnation letter is mailed to the landowner(s) named, the action to complete this process takes approximately 40 - 45 days

# CONDEMNATION APPEAL PROCESS

- Appeal is for dollar amount, not acquisition of land
- Court hearing is held to decide amount if an appeal is filed
- The non-appeal process takes approximately 35 days
- Receipt from the Clerk of Court replaces the Warranty Deed
- The Receipt from the Clerk of Court is recorded in lieu of the warranty deed to show the transfer of ownership

✓ The NDDOT technically now owns the property

# CONDEMNATION PREVENTION TIPS

- Status reports – updated and reviewed regularly (weekly updates)
- Continuous contact with landowners
  - Follow up with landowners on outstanding questions
  - Follow through on commitments to maintain open communication
- Thorough understand the plats, plan and profile sheets and the valuations
- Identify potential issues early on in the process
- Keep communication open with your ROW project liaison
- Face to face with the landowners is critical

**\*Be NICE, be HONEST and be CONSIDERATE\***





# NOTARY REMINDER

Don't forget:

- Landowner signature(s) and date
- Notary stamp with name
- Notary signature and date



# NDDOT DOCUMENTS

NDDOT Documents are approved by our legal department

- All language must remain “as is” within the body of the document
  - For example:
    - Do not strike out language
    - Do not modify language
    - Do not re-create
    - Any exceptions must be discussed with your ROW program liaison, pre-approved by the NDDOT and outlined on the Memorandum of Agreement

# PLEASE NOTE

Do not modify documents after they have been signed

- Documents cannot be enforced
- Any changes need to be initialed and dated or resigned by landowner
  - For example:
    - Parcel sizes
    - Legal descriptions
    - Misspelled name





## TODAY'S PRESENTERS

**Mike Knox**

Right of Way Program Manager

701-328-4228, [mrknox@nd.gov](mailto:mrknox@nd.gov)

**Mary Fahlsing**

Right of Way Title Officer

701-328-2887, [mfahlsing@nd.gov](mailto:mfahlsing@nd.gov)

# SUGGESTIONS AND TOPICS

Do you have a topic suggestion or have questions?

- Please let us know

- Survey was sent out to DOT employees and Consultants.
  - Thank you to those who have responded!
- Additional suggestions and topics
  - Email Amy – [amfredrickson@nd.gov](mailto:amfredrickson@nd.gov)





MARK YOUR CALENDAR'S

**July 20, 2016**

ROW – Negotiation Tips

June's meeting is postponed to allow us time to analyze survey results and reconfigure our topic schedule