

NDOT – Section 106 Programmatic Agreement FY2020 Report

January 6, 2021

The Federal Highway Administration (FHWA) implements the Federal-aid Highway Program (FAHP) in the State of Nebraska by funding and approving state and locally sponsored transportation projects that are administered by the Nebraska Department of Transportation (NDOT) (formerly Nebraska Department of Roads [NDOR]). FHWA is responsible for ensuring that the FAHP in the State of Nebraska complies with Section 106.

FHWA has authorized NDOT to initiate, and in most cases conclude, consultation with the Nebraska State Historic Preservation Officer (NESHPO) and other consulting parties (except for tribal authorities when they expressly request government-to-government consultation) for the purposes of compliance with Section 106. This authorization is established through agreement among FHWA, NDOT, NESHPO and the Council entitled *Programmatic Agreement Among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, The Advisory Council on Historic Preservation And The Nebraska Department of Roads to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program In The State of Nebraska*, July 2015 (Section 106 PA).

Upon NDOT's assumption of additional authorities and responsibilities allowable under Section 326 of Title 23 United States Code (23 USC § 326) in September of 2018, NDOT notified the other signatories to the Section 106 PA of its intent to continue following the processes and stipulations outlined in the Section 106 PA, with the difference being that NDOT assumed FHWA's roles and responsibilities as allowable under the 23 USC § 326 Memorandum of Understanding between FHWA and NDOT. To reflect this change, the Section 106 PA was formally amended on 10/31/2018.

This interim report has been completed in compliance with Stipulation XIII.B(4) of the PA. There have been no public objections, no inadvertent effects or foreclosures during the period of reporting, October 1, 2019 through September 30, 2020. As detailed later in this report, in response to a statewide disaster declaration in March 2019, NDOT effectively and efficiently processed over one hundred emergency projects during this reporting period.

October 1, 2019 – September 30, 2020

During the period beginning on October 1, 2019 and ending on September 30, 2020, NDOT Section 106 Professionally Qualified Staff (PQS) processed a total of 211 undertakings. Of these, 22 qualified as Tier I projects, *no potential to cause effects to historic properties*, 71 were processed as Tier II projects, *no historic properties affected*, and 118 were processed as Tier III projects. Below, Chart 1 illustrates the program by assigned Tier level.

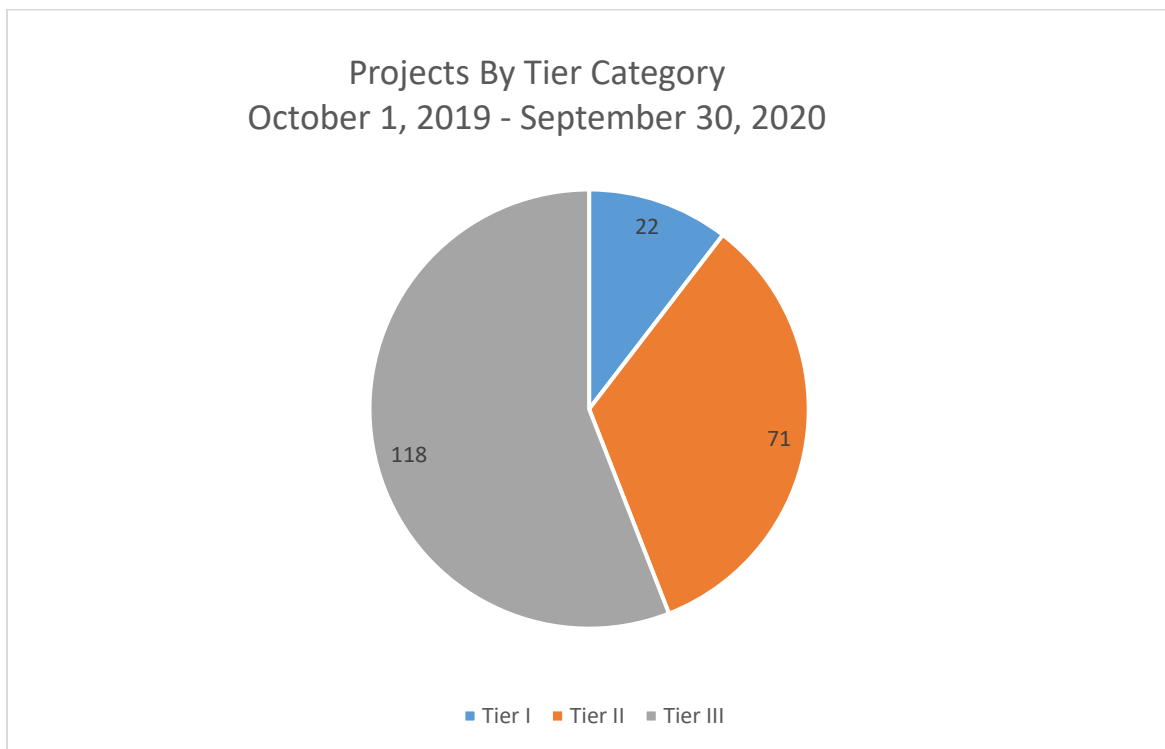


Chart 1

By definition within the Section 106 PA, Tier III projects are those projects that result in a project effects determination of *no adverse effect* or *adverse effect*. This classification functions as a category for those projects that require review and concurrence by NESHPO. Prior to amendment on July 8, 2020, Stipulation X, Emergency Situations required that all emergency repair projects (ER projects) be processed as Tier III projects, regardless of the project effects determination. Following the amendment, ER projects are processed by their Tier designation (and corresponding project effects determination).

During the period of reporting, NDOT processed 112 ER projects. One of these ER projects was processed as a Tier II project (*no historic properties affected*) following the amendment in July 2020. The ER projects were processed in response to a major disaster that the State of Nebraska

experienced in the spring of 2019. During this disaster, the state highway system and the local system suffered severe damage and a presidential declaration of disaster under the Stafford Act was issued on March 21, 2019.

Of the 118 Tier III undertakings processed, 111 were emergency repair projects which resulted in a project effects determination of *no historic properties affected*. When the ER projects are assigned to their corresponding project effects determination category rather than the Tier system, the program looks dramatically different. Chart 2 illustrates undertakings categorized by project effects determination rather than by Tier classification.

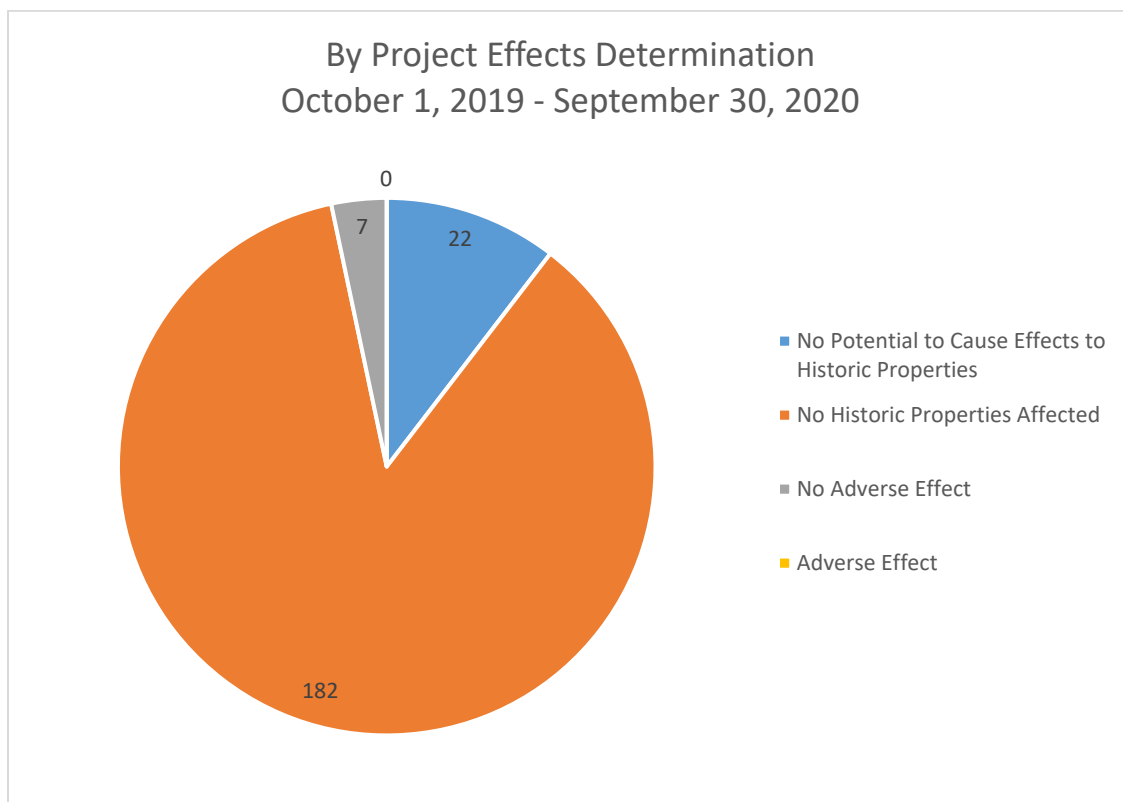


Chart 2

Overall, the Federal-aid Highway Program in Nebraska is characterized by undertakings that rehabilitate or repair existing infrastructure. This is borne out by the overall number of undertakings resulting in a project effects determination of either *no potential to cause effects to historic properties* or *no historic properties affected* (Chart 2), which taken together equal 97% of the entire program.

No Adverse Effect Determinations

During the time frame covered under this interim report, NDOT processed seven undertakings which resulted in *no adverse effect* determinations.

Undertakings resulting in *no adverse effect* determinations include acquisition of new Right of Way (ROW) from a historic house to facilitate construction of an ADA compliant curb ramp, construction of a new bridge across a historic canal, repair of a bridge spanning a second historic canal, and grading within the boundaries of a historic railroad depot. See Table 1 for a list of undertakings resulting in *no adverse effect* determinations.

Table 1. Undertakings Resulting No Adverse Effect Determinations

| Control Number | Project Number | Project Name | Project Description | Date Processed | Consultation | Response |
|----------------|----------------|--|--|----------------|---|---|
| 13276 | STP-50-1(115) | Syracuse South | Roadway repair and resurfacing, bridge repair and concrete box culvert replacement | 10/11/19 | 1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Ponca Tribe of Nebraska | 1) Concurrence 2) No response received 3) No response received |
| 32287 | NH-30-5(135) | Columbus East and West | Roadway repair and resurfacing, bridge repair | 12/09/19 | 1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Affected Property Owner 4) Affected Property Owner | 1) Concurrence 2) No response received 3) No response received 4) No response received |
| 80864 | NH-281-4(124) | E. Jct. US-20 South In O'Neill | Roadway reconstruction, new sidewalk construction and ADA ramps | 01/07/2020 | 1) NESHPO 2) Santee Sioux Nation 3) Nebraska Game and Parks Commission | 1) Concurrence 2) No response received 3) Agreed with effects determination |
| 70587 | STP-47-1(101) | Cambridge South | Roadway repair, resurfacing and bridge repair | 03/27/2020 | 1) NESHPO 2) Bureau of Reclamation | 1) Concurrence 2) Concurrence |
| 13391 | HSIP-5280(2) | Saltillo Rd – S 27 th St to S 68 th St | New construction - roundabout | 05/12/2020 | 1) NESHPO 2) Ponca Tribe of Nebraska 3) Lincoln CLG 4) Lancaster County | 1) Concurrence 2) Project may proceed 3) Concurrence 4) No response received |
| 42817 | STP-14-1(123) | Superior North and South | Roadway repair, resurfacing and bridge repair | 08/18/2020 | 1) NESHPO 2) Kansas DOT 3) Affected Property Owner | 1) Concurrence 2) Project is exempt of consultation requirements 3) No response received |
| 61645 | BRO-7024(25) | Cozad Southwest | Bridge replacement | 09/22/2020 | 1) NESHPO 2) Dawson County 3) Central Nebraska Public Power and Irrigation (CNPPID) | 1) Concurrence 2) Agrees that bridge is not historically significant 3) Agrees with review and has no further comment |

Adverse Effect Determinations

During the time frame covered under this interim report, there were no undertakings which resulted in a project effects determination of *adverse effect*.

Project Specific - Programmatic Agreement (180th Street, Douglas County)

FHWA, NESHPO, the Advisory Council on Historic Preservation (ACHP) entered into a project specific Programmatic Agreement (PA) regarding 180th Street, N SWH Cleveland Blvd to West Maple Rd in Douglas County (Phase 1 and Phase 2) on June 28, 2016 to prevent adverse effects to the historic Lincoln Highway in Douglas County. Douglas County and NDOT were invited signatories, and the Lincoln Highway Association, Nebraska Chapter was invited to be a concurring party. Stipulation VII of this PA requires Douglas County to provide a summary report detailing work pursuant to the PA. Douglas County has supplied all reports in a timely manner and are current in their reporting efforts. NDOT has maintained contact with the Lincoln Highway Association, Nebraska Chapter and has shared the Douglas County reports.

Consultation Efforts

FHWA or NDOT completed formal, project specific consultation with outside agencies and/or property owners other than NESHPO in 15 instances and tribal consultation was completed on 60 projects (Chart 3). Consultation was completed with NESHPO on 118 projects, or all Tier III projects. Instances of informal consultation are not reflected in these numbers.

Consultation with entities other than tribes is generally characterized as occurring among project proponents, federal agencies, Certified Local Governments (CLGs), local historical societies or groups and affected property owners.

Please note that Chart 3 records presence or absence regarding consultation efforts. For example, though consultation may have been initiated with more than one tribe on an undertaking, this chart records each undertaking as presence/absence for tribal consultation. Similarly, consultation may have been initiated with more than one outside agency on a given undertaking, this chart records each undertaking as presence/absence for consultation other than NESHPO. Consultation efforts with NESHPO may overlap each of these categories.

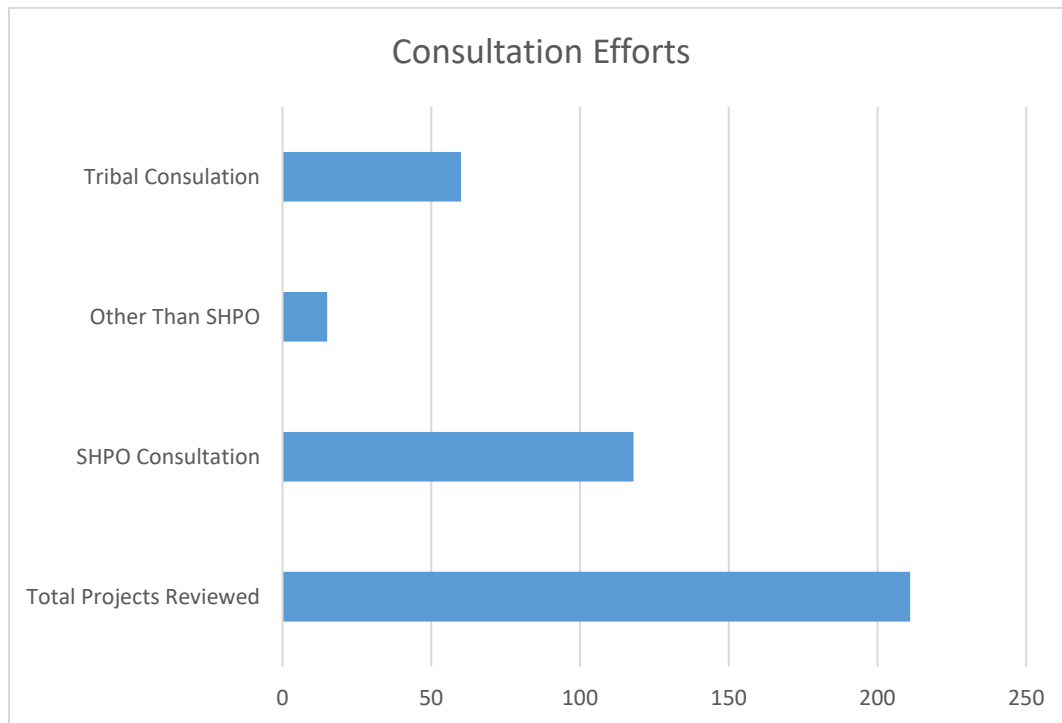


Chart 3

Six Native American Indian tribes, the Santee Sioux Nation, the Winnebago Tribe of Nebraska, the Omaha Tribe of Nebraska and Iowa, the Iowa Tribe of Kansas and Nebraska, the Sac and Fox Nation of Missouri and the Oglala Sioux, have reservation land within the boundaries of Nebraska. In Nebraska, federal highway miles are present within the reservations associated with the Santee Sioux Nation, the Winnebago Tribe of Nebraska and the Omaha Tribe of Nebraska and Iowa. The Ponca Tribe of Nebraska is not associated with a reservation in Nebraska, but does own land within the state, some of which is held in trust by the Bureau of Indian Affairs (BIA).

The Ponca Tribe of Nebraska, the Iowa Tribe of Kansas and Nebraska and the Santee Sioux Nation have all identified areas of interest and consultation is completed with the Tribal Historic Preservation Officer (THPO) or their designee, for each tribe. Consultation is completed with THPO or their designee for undertakings which fall in whole or in part, within the boundaries of a reservation. The Pawnee Nation of Oklahoma identifies projects about which they wish to complete consultation based upon NDOT's 5-year plan. For other non-residential tribes, NDOT completes consultation on a case by case basis.

NDOT's tribal consultation program during the reporting period was most active with the Iowa Tribe of Kansas and Nebraska and the Pawnee Nation of Oklahoma (Chart 4). This is a result of large areas of interest that overlay the eastern portion of Nebraska which traditionally programs the most projects in the state overall. In addition, there were numerous emergency repair projects in and around Nance County, an area of demonstrated interest for the Pawnee Nation of Oklahoma.

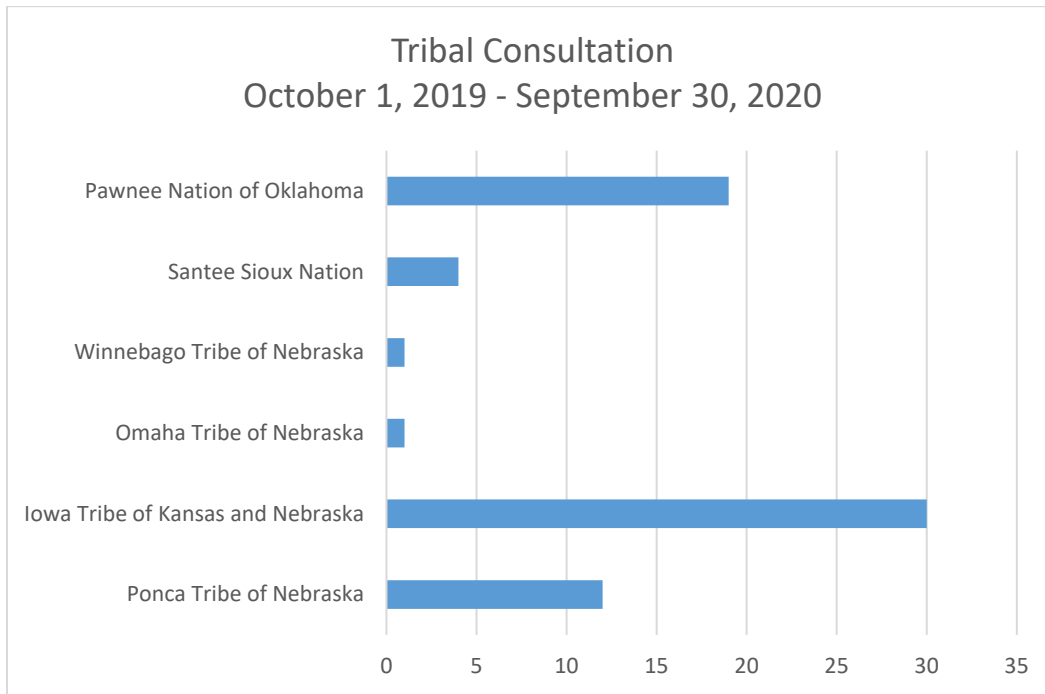


Chart 4

Letter Agreement with the Ponca Tribe of Nebraska

FHWA, the Ponca Tribe of Nebraska and NDOT entered into a letter agreement to streamline Section 106 consultation in May 2016. This letter agreement allows NDOT to process projects without further consultation if they do not disturb ground beneath the roadway fill or do not disturb ground beneath or outside existing roadway slopes. FHWA and NDOT continue to consult with the Ponca Tribe of Nebraska on any project in any location that may affect known sites which may have prehistoric or historic associations with the Ponca Tribe of Nebraska.

Opportunities for Engagement

Archeological Site Testing – July 2020

In July 2020 NDOT staff joined colleagues from History Nebraska and the Ponca Tribe of Nebraska to complete archeological investigations at an archeological site near Niobrara, Nebraska (Figures 1 and 2). These investigations were associated with the emergency repair project Niobrara West Bridges (Project No. ER-12-5(122); CN 32320) and were conducted as a result of consultation NDOT completed with the Ponca Tribe of Nebraska. The archeological site consists of a light scatter of lithic material and some bison bone eroding out of a nearby creek bank. Tribal Historic Preservation Officer (THPO) Stacy Laravie indicated that the Tribe has records of village sites in the vicinity and wanted to better understand the nature of the recently

identified archeological site. The archeological investigations consisted of numerous shovel tests placed across the area of potential effects (APE) as well as across an area just outside the APE. The investigations concluded that there was no evidence of archeological materials within the APE and that the archeological material outside the APE was sparse and was widely spaced. Based upon these results, archeologists with NDOT and History Nebraska concluded that the archeological site does not represent a long-term occupation, such as a village site, but rather likely represents a onetime use by a few or even a single individual. Beyond locational information already recorded, this archeological site does not have the information potential to answer important questions about past human activity and was not determined eligible for listing in the National Register of Historic Places. The Ponca Tribe of Nebraska agreed with these conclusions and with the determination.

These archeological investigations allowed us to help answer questions posed by the Ponca Tribe of Nebraska regarding village locations in the vicinity while providing an excellent opportunity for all involved to learn from one another and to further strengthen relationships.



Figure 1. History Nebraska archeologist Brian Goodrich (L) and Ponca Tribe of Nebraska THPO Stacy Laravie screen excavated soil.



Figure 2. History Nebraska archeologists Courtney Ziska (L) and MaKenzie Coufal (R) complete excavation of a shovel test.

Tribal Transportation Conference

In addition to project specific consultation, NDOT and FHWA participate and provide presentations during NDOT's Tribal Transportation Conference. This conference is held annually in northeast Nebraska and tribes located within NDOT's District 3 region are invited to attend.

Conclusion

The intent of the Section 106 PA was to provide streamlining opportunities in the Federal-aid Highway Program in Nebraska. At its most basic level, this streamlining is realized in fewer Section 106 reviews sent to NESHPO for concurrence, saving staff time across three state and federal agencies.

What is more difficult to quantify is the amount of staff time saved with the ability of this program to conduct consultation, including all tribal consultation that is not government-to-government tribal consultation, and complete Section 106 evaluations with a certain level of autonomy.

NDOT believes that the Section 106 PA is operating effectively and is being implemented as intended. Areas for improvement include more consistent consultation with project proponents on undertakings managed by NDOT's Local Assistance Division and compilation of quarterly and annual reports that are made available to the public. NDOT is working with Information Technology (IT) specialists to build a robust, but nimble data collection and management system.