



U.S. Department of Transportation  
**Federal Highway Administration**

**NEBRASKA**

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

August 17, 2022

Ms. Betty Gillespie  
Deputy State Historic Preservation Officer  
History Nebraska  
P.O. Box 82554  
Lincoln, NE 68508

History Nebraska  
RECEIVED

AUG 22 2022

NE State Historic  
Preservation Office

Dear Ms. Gillespie:

The purpose of this letter is to coordinate with the Nebraska State Historic Preservation Office (SHPO) regarding Federal Highway Administration Nebraska Division (FHWA) and the Nebraska Department of Transportation's (NDOT) intent to programmatically address certain Section 4(f) uses and Section 4(f) exceptions in Nebraska. By way of Categorical Exclusion (CE) assignment authority under an executed Memorandum of Understanding (MOU)\* with the FHWA and procedures found at 23 U.S.C. §326, NDOT is considered the lead federal agency for certain CE actions (Assigned CEs). FHWA remains the lead federal agency for CEs not assigned through the referenced MOU.

The Department of Transportation Act of 1966 includes a special provision –Section 4(f) (Pub. L. 89-670, 80 Stat. 931)– which stipulates that FHWA cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless specific conditions apply.

Our agencies have executed the *Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on historic Preservation and the Nebraska Transportation to Satisfy the Requirements of Section 106 for the Federal-Aid highway Program in the State of Nebraska as amended* (Section 106 PA). Per the Section 106 PA, NDOT Section 106 Professionally Qualified Staff (Section 106 PQS) is authorized by FHWA and SHPO to make “no potential to affect historic properties” and “no historic properties affected” determinations on a project-by-project basis. In accordance with the Section 106 PA, projects that will have no adverse effect or that will adversely affect historic properties will continue to be reviewed by NDOT or FHWA (based on CE Assignment status) and the SHPO for Section 106 compliance.

According to 23 CFR 774.5, the Administration must inform the SHPO of the intent to make a Section 4(f) *de minimis* impact determination based on the SHPO's concurrence in the finding of “no adverse effect” or “no historic properties affected” under Section 106.

In addition, there are two Section 4(f) exceptions listed in 23 CFR 774.13 that require consultation with SHPO. These exceptions are:

(a)(3) Maintenance, preservation, rehabilitation, operation, modernization, reconstruction, or replacement of historic transportation facilities, if the Administration concludes, as a result of the consultation under 36 CFR 800.5, that:

- (i) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, or this work achieves compliance with Section 106 through a program alternative under 36 CFR 800.14; and
- (ii) The official(s) with jurisdiction over the Section 4(f) resource have not objected to the Administration conclusion that the proposed work does not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, or the Administration concludes this work achieves compliance with 54 U.S.C. 306108 (Section 106) through a program alternative under 36 CFR 800.14.

(b) Archeological sites that are on or eligible for the National Register when:

- (1) The Administration concludes that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration decides, with agreement of the official(s) with jurisdiction, not to recover the resource; and
- (2) The official(s) with jurisdiction over the Section 4(f) resource have been consulted and have not objected to the Administration finding in paragraph (b)(1) of this section.

This letter requests SHPO concurrence with FHWA's or NDOT's intention on CE projects to:

1. apply a *de minimis* determination under Section 4(f) to activities resulting in a Section 106 determination of "no historic properties affected" or "no adverse effect" as established by the terms of the Section 106 PA for CEs;
2. apply the Section 4(f) exception 23 CFR 774.13(a)(3) for activities related to historic transportation facilities as described above, with a Section 106 determination of "no historic properties affected" or "no adverse effect" as established by the terms of the Section 106 PA;
3. apply a Section 4(f) exception 23 CFR 774.13(b) to activities related to archaeological sites as described above, when the NDOT Section 106 PQS determines that an archaeological site does not warrant preservation in place, and said determination is in compliance with the Section 106 PA.

These determinations would be recorded in the appropriate NDOT Section 106 Tier review form, the NDOT Section 4(f) Exception form, and the CE. Furthermore, for CEs assigned to NDOT, these determinations will also be reported to FHWA through the required MOU reporting process.

If you have any questions or require further information, please feel free to contact Melissa Maiefski (FHWA) 402-742-8473 or Jason Jurgens (NDOT) 402-479-4418. Thank you in advance for your assistance.

\*On September 17, 2021, NDOT and FHWA entered into the First *Renewed Memorandum of Understanding between Federal Highway Administration, Nebraska Division and the Nebraska Department of Transportation State Assumption of Responsibility for Categorical Exclusions* 23 U.S.C. §326). NDOT has formally assumed FHWA's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal Environmental laws with regard to certain Categorical Exclusions (CEs) in a process commonly referred to as CE Assignment.

Respectfully,



Melissa Maiefski  
Program Delivery Team Lead  
Nebraska Division, Federal Highway Administration  
[melissa.maiefski@dot.gov](mailto:melissa.maiefski@dot.gov)




Jason Jurgens  
Environmental Section Manager  
Nebraska Department of Transportation  
[jason.jurgens@nebraska.gov](mailto:jason.jurgens@nebraska.gov)

-----

By the following signature, the SHPO acknowledges it has been notified of the intent of FHWA and/or NDOT to make a *de minimis* finding (23 CFR 774.3 (b)) based on Section 106 determinations of effect as outlined above, and that the SHPO does not object to the application of Section 4(f) exceptions (23 CFR 774.13 (a)(3)&(b)), as outlined above.

**CONCUR:**

  
\_\_\_\_\_  
Nebraska State Historic Preservation Office

8/23/22  
\_\_\_\_\_  
Date

\*On September 17, 2021, NDOT and FHWA entered into the First *Renewed Memorandum of Understanding between Federal Highway Administration, Nebraska Division and the Nebraska Department of Transportation State Assumption of Responsibility for Categorical Exclusions* 23 U.S.C. §326). NDOT has formally assumed FHWA's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal Environmental laws with regard to certain Categorical Exclusions (CEs) in a process commonly referred to as CE Assignment.