

NDOT – Section 106 Programmatic Agreement FY2021 Report

December 28, 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, as amended (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. Since then, the Section 106 PA has been amended two additional times for duration, in July 2020 and July 2021.

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, 2020 through September 30, 2021.

October 1, 2020 – September 30, 2021

During the period beginning on October 1, 2020 and ending on September 30, 2021, NDOT Section 106 Professionally Qualified Staff (PQS) processed a total of 122 undertakings. Of these, 18 qualified as Tier I projects, *no potential to cause effects to historic properties*, 102 were processed as Tier II projects, *no historic properties affected*, and 2 were processed as Tier III projects, resulting in a *no adverse effect* determination. There were no projects processed during the reporting period which resulted in an *adverse effect* determination. Below, Chart 1 illustrates the program by assigned project effects determination.

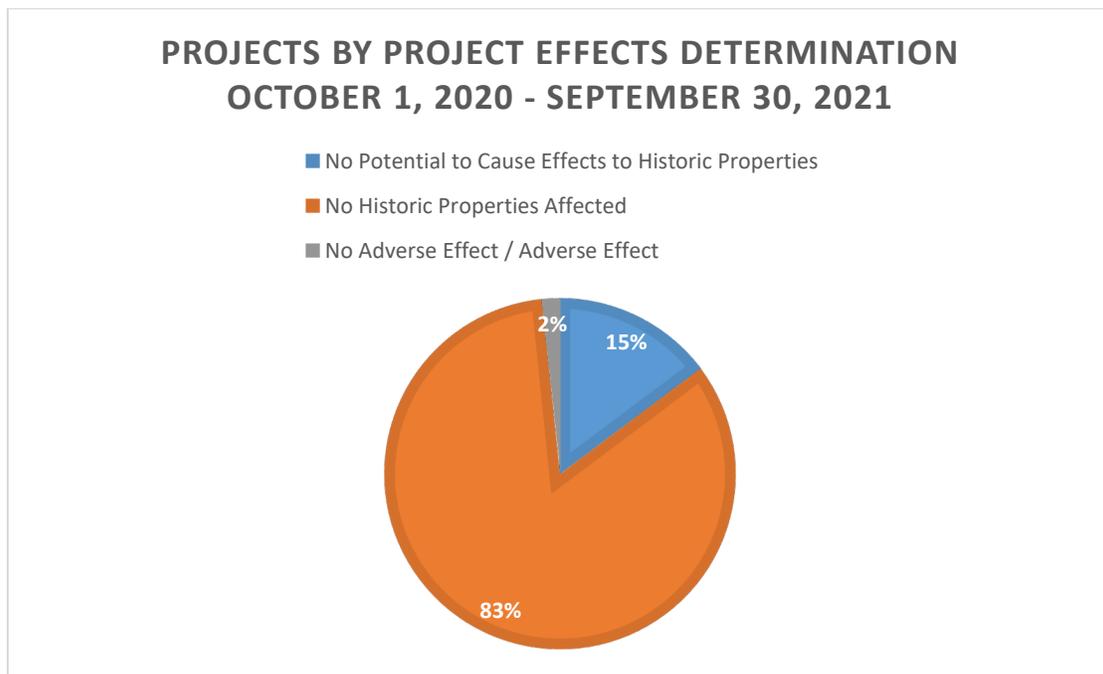


Chart 1

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 1), which taken together equal 98% of the entire program.

No Adverse Effect Determinations

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

Undertakings resulting in *no adverse effect* determinations include In Stromsburg and North, a 3R (resurfacing, restoration, and rehabilitation) project with an urban reconstruction section and Enders South, a 3R project with no new Right of Way (ROW). In the project In Stromsburg and North, construction activities are adjacent to and within the boundaries of historic properties. The Enders South project proposed repairs to contributing structures within a flood and irrigation system historic district owned by the Bureau of Reclamation (BOR). 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
42782	NH-81-2(145)	In Stromsburg and North	Reconstruction of roadway in urban area, roadway repair and resurfacing,	04/22/2021	1) NESHPO 2) City of Stromsburg 3) Affected Property Owner 4) Affected Property Owner	1) Concurrence 2) No response received 3) No response received 4) No response received
71100	STP-61-1(109)	Enders South	Milling and resurfacing roadway, guardrail replacement and bridge repair	05/18/2021	1) NESHPO 2) Bureau of Reclamation (BOR), affected property owner	1) Concurrence 2) Concurrence

Emergency Repair Projects

In the spring of 2019, the State of Nebraska experienced a major disaster. 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. Most of the emergency repair projects associated with the 2019 event were processed in 2019 and early 2020. However, there were 40 emergency repair projects processed in response to this major disaster during the reporting period. Two of these emergency repair projects were processed as Tier I projects (*no potential to cause effects to historic properties*) and 38 were processed as Tier II projects, (no historic properties affected).

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.

Construction on the bridges spanning the historic Lincoln Highway was completed on August 31, 2021. The historic Lincoln Highway remains closed to vehicular traffic as clean-up work continued into Douglas County's annual winter closure of the historic Lincoln Highway. In accordance with the project specific PA, Douglas County is completing post-construction examination and photo documentation in the area of the haul road that was constructed over the Lincoln Highway.

Consultation Efforts

NDOT completed formal, project specific consultation with outside agencies and/or property owners other than NESHPO in 20 instances and tribal consultation was completed on 39 projects (Chart 2). Consultation was completed with NESHPO on 2 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 2 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.

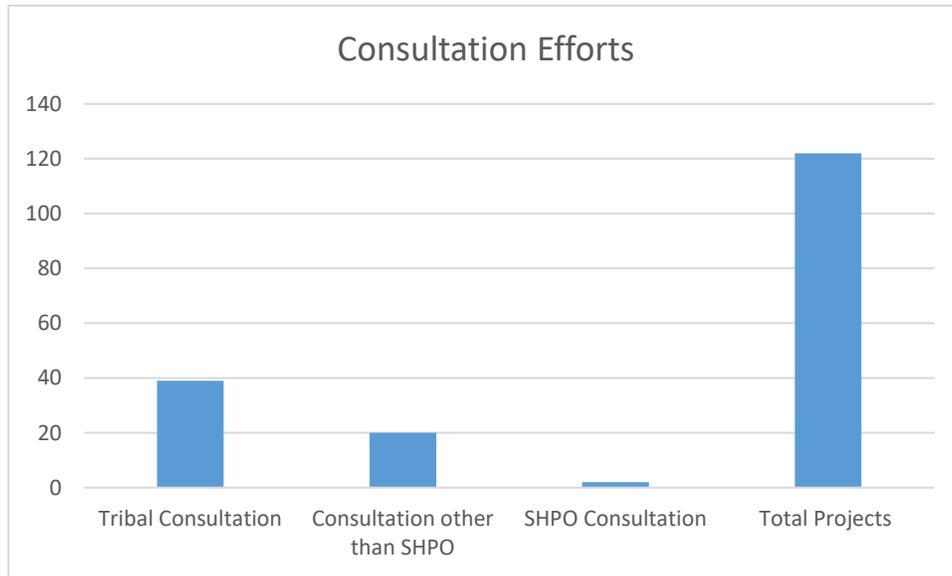


Chart 2

Five 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, and the Sac and Fox Nation of Missouri, 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).

During the period of reporting, the Ponca Tribe of Nebraska, the Iowa Tribe of Kansas and Nebraska and the Santee Sioux Nation identified areas of interest within the state 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. During the period of reporting, the Pawnee Nation of Oklahoma identified projects for which they wished 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 in number of projects consulted upon with the Ponca Tribe of Nebraska and the Santee Sioux Nation, followed by the Iowa Tribe of Nebraska (Chart 3). This is a result of large areas of interest that overlay the eastern and north central portions of Nebraska. Traditionally, these are the areas of the state which program the most projects in the state overall.

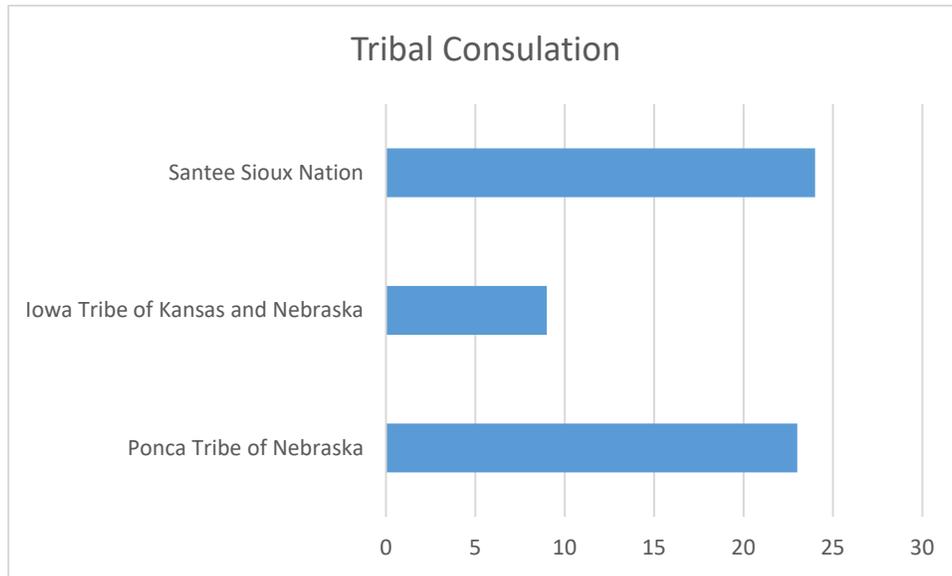


Chart 3

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 – April 2021

In April 2021, NDOT staff joined colleagues from the NESHPO, the Highway Archeology Program and the Pawnee Nation of Oklahoma to complete archeological investigations at an archeological site near Genoa, Nebraska (Figure 1). Also joining us as volunteers were Nancy Carlson, an archeologist based near Genoa and her husband Jerry as well as Korey Hobza. Nancy and Jerry are local landowners and longtime preservationists, and Korey represents the Loup Public Power District, a property owner. These investigations were associated with a proposed undertaking Monroe East and West (Project No. STP-22-5(119); CN 32292) and were initiated as a result of consultation NDOT is completing with the Pawnee Nation of Oklahoma. The archeological site, known as the Larson Site (25PT1), is a Lower Loup site which dates from approximately 1650 to 1750. Lower Loup sites are widely considered to be directly ancestral to the Pawnee Tribe. Tribal Historic Preservation Officer (THPO) Matt Reed participated in these investigations and provided

his perspective. NDOT Environmental staff are still gathering information regarding construction activities and consultation regarding this undertaking is ongoing.

Project Effects Determination – Onsite Discussions with Matt Reed

In support of a second project near Genoa, Matt Reed joined NDOT and History Nebraska staff to discuss the effects of a proposed bridge replacement project on a county road near Genoa known as Genoa West (BRO-7063(8), CN 42892). The bridge proposed for replacement is located within the boundaries of an archeological district listed in the National Register of Historic Places (NRHP) in 1970. The NRHP listed property consists of three earth villages established in 1859 when the Pawnee Nation was relocated to a reservation near Genoa. During intensive archeological investigations completed in 2020, no archeological evidence of the village(s) was identified within the APE. An onsite meeting allowed NDOT to discuss construction activities relative to the listed archeological property with Matt Reed and to seek ways to discuss and minimize project effects to the historic property. NDOT Environmental staff are collecting additional information regarding this project and consultation is ongoing regarding this undertaking.

These archeological investigations and discussions provided an excellent opportunity for all involved to learn from one another and to further strengthen relationships.



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.