

NDOT – Section 106 Programmatic Agreement FY2022 Report

September 27, 2023

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 (SHPO) 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, SHPO 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 three additional times for duration, in July 2020, July 2021 and June 2022.

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, 2021 through September 30, 2022.

*The 326 Assignment MOU between FHWA and NDOT was renewed on September 17, 2021.

October 1, 2021 – September 30, 2022

During the period beginning on October 1, 2021 and ending on September 30, 2022, NDOT Section 106 Professionally Qualified Staff (PQS) processed a total of 84 undertakings. Of these, 36 qualified as Tier I projects, *no potential to cause effects to historic properties*, 45 were processed as Tier II projects, *no historic properties affected*, and 3 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.

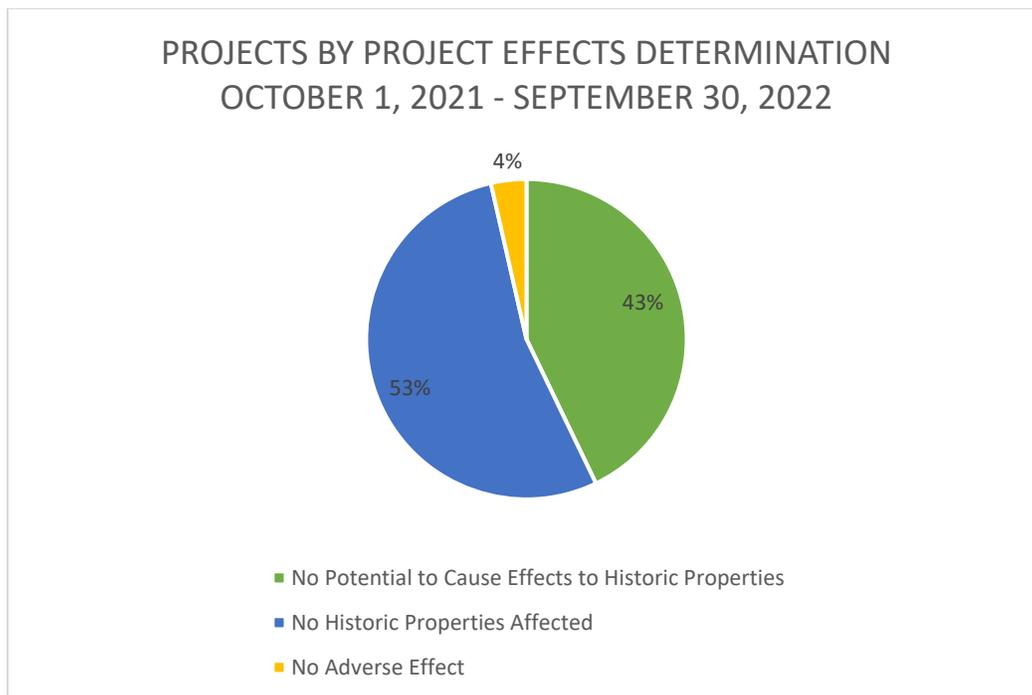


Chart 1

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 96% of the entire program.

No Adverse Effect Determinations

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

Undertakings resulting in *no adverse effect* determinations include Genoa West, a bridge replacement project, Skyline Dr. – 168th St, Omaha, a 3R project (resurfacing, restoration, and rehabilitation) project with no new Right of Way (ROW) with bridge repairs and Cozad South, a bridge replacement project. Construction activities associated with the Genoa West project will occur within the boundaries of a National Register of Historic Places (NRHP) listed archeological district, which includes Pawnee Nation village sites. In the project Skyline Dr. – 168th St, Omaha, construction activities include repairs to two (2) exceptional bridges, as identified in the 2012 Program Comment for Post-1945 Concrete and Steel Bridges. The Cozad South project proposes to replace a non-contributing bridge within the historic Central Nebraska Public Power and Irrigation District. 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 |
|----------------|----------------|---|---|----------------|---|--|
| 42892 | BRO-7063-(8) | Genoa West | Bridge Replacement | 08/12/2022 | 1) SHPO 2) Pawnee Nation of Oklahoma | 1) Concurrence 2) No questions; agreed with tribal monitoring recommendation |
| 22811 | NH-6-7(188) | Skyline Dr. – 168 th St, Omaha | 3R project including ramp and shoulder replacement and bridge repairs | 08/31/2022 | 1) SHPO 2) Omaha CLG 3) Iowa Tribe of Kansas and Nebraska | 1) Concurrence 2) Concurrence 3) Approved, no concerns |
| 61672 | BRO-7296(1) | Cozad South | Bridge Replacement | 09/19/2022 | 1) SHPO 2) Dawson County 3) Central Nebraska Public Power and Irrigation District | 1) Concurrence 2) 30 day comment period expired without receiving a response 3) Agrees with evaluation and concurs with findings |

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 four emergency repair projects processed in response to this major disaster during the reporting period; all 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, SHPO, 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.

In accordance with the project specific PA, Douglas County completed post-construction examination and photo documentation in the area of the haul road that was constructed over the Lincoln Highway. FHWA determined that the project effects determination remained *no adverse effect* and notified ACHP and SHPO in September 2022 that the terms of the PA have been met.

Consultation Efforts

NDOT completed formal, project specific consultation with outside agencies and/or property owners other than SHPO on nine occasions and tribal consultation was completed on 17 projects (Chart 2). FHWA completed tribal consultation on three projects that were not assigned to NDOT. Consultation was completed with SHPO on three 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 SHPO. Consultation efforts with SHPO may overlap each of these categories.

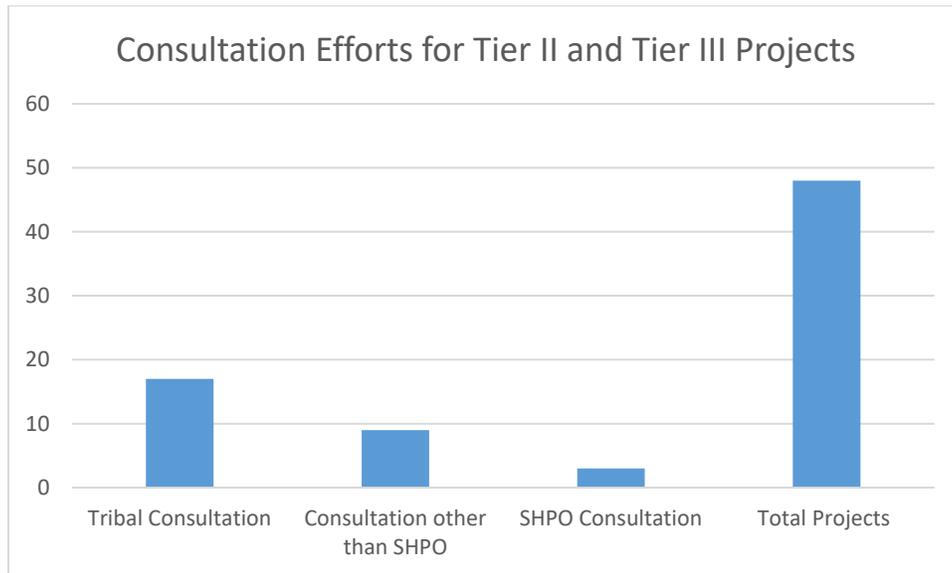


Chart 2

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).

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 was completed with the Tribal Historic Preservation Officer (THPO) or their designee, for each tribe. Consultation is also 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, followed by the Omaha Tribe of Nebraska and 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.

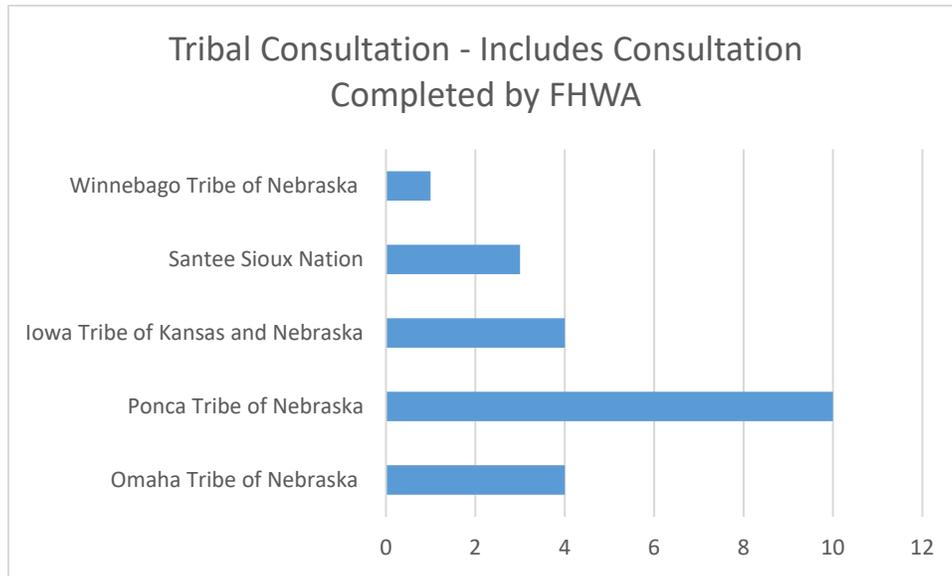


Chart 3

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 Fieldwork

The Omaha Tribe of Nebraska Deputy THPO Jarell Grant joined staff from NDOT and the Highway Archeology Program in November 2021, and again in May 2022 to complete archeological investigations in support of proposed undertakings N-94 – Winnebago (Project No. NH-77-4(127); CN 32295) and N Jct. N-51 – S Jct. N-9 (Project No. STP-16-3(110); CN 32289) (Figure 1). Portions of each of these projects are located within Omaha Tribal boundaries. During intensive pedestrian survey of N Jct. N-51 – S Jct. N-9, Grant discovered a signal atl atl point made of Permian chert. This point closely resembles what are called Table Rock points on the Central Plains and dates to 3000-4000 years before present (BP). Despite concerted survey efforts, no other prehistoric artifacts were discovered, and this is considered an isolated find.

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

In Person Meetings with Tribal Staff

NDOT participates in meetings with tribal staff throughout the year, and these meetings are held in person whenever possible. The meetings allow us to revisit our processes, to make sure that we are engaging with appropriate staff members and to discuss specific projects and resources. During the reporting period, in person meetings were held with the Omaha Tribe of Nebraska on five occasions, the Winnebago Tribe of Nebraska on two occasions and with the Santee Sioux Nation on one occasion.

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 headquartered 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 SHPO 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.