

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Pete Ricketts, Governor

April 20, 2020

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Subject: Interim Report for the 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, as amended (the Section 106 PA) and proposed amendment

Dear Signatories:

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

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Memorandum of Understanding between FHWA and NDOT. To reflect this change, the Section 106 PA was formally amended on 10/31/2018.

Interim Report

Per Stipulation X.D(1)(b), please find enclosed an interim review of the Section 106 PA for the initial five year period (Enclosure 1). In summary, during the period of reporting, July 31, 2015 through February 24, 2020, NDOT Section 106 Professionally Qualified Staff (PQS) have processed a total of 767 federal undertakings. Of these, 125 qualified as Tier I projects, *no potential to cause effects to historic properties*, 392 were processed as Tier II projects, *no historic properties affected*, and 250 were processed as Tier III projects with a project effects determination of no adverse effect or adverse effect. An electronic spreadsheet attached to the transmittal email provides detail regarding each undertaking, offered by quarter and in total.

There have been no public objections, no inadvertent effects or foreclosures during the period of reporting, July 31, 2015 through February 24, 2020.

Consultation Efforts

FHWA or NDOT completed formal, project specific consultation with outside agencies other than NESHPO in 88 instances and tribal consultation was completed on 223 projects. Consultation was completed with NESHPO on 250 projects, or all Tier III projects.

Tier III Projects

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. Stipulation X, Emergency Situations requires that all emergency repair projects (ER projects) be processed as Tier III projects, regardless of the project effects determination.

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.

This bears mentioning in this summary because of the effect upon the number of Tier III projects NDOT processed in the last half of 2019 and in the first quarter of 2020. Of the 250 Tier III undertakings processed during the reporting period, 215 are emergency repair projects processed in response to the 2019 disaster event. For each of these 215 projects, a project effects determination of *no historic properties affected* was reached. When these projects are categorized by project effects determination, the program looks dramatically different. During the reporting period, NDOT processed 25 projects resulting in a project effects determination of *no adverse effect*, and six as *adverse effect* determinations.

Proposed Amendments

NDOT proposes to amend the existing Section 106 PA within two Stipulations relative to Tier I and Tier III projects.

Per Stipulation XIII.D(2), NDOT proposes to make the following changes by amendment:

- 1) Stipulation X.A(3) indicates that emergency actions will be processed as a Tier III project as described under the PA. NDOT proposes that emergency actions would no longer be processed as a Tier III project regardless of project effects determination, rather that they would be processed according to Stipulations VIII & IX, or by the Tier system defined by the PA. Proposed language (see also pdf page 24 of Enclosure 2):

X.A(3) Written notification or electronic mail (when appropriate) of an emergency action shall be provided to NESHPO, to FHWA and to THPOs and/or tribes as appropriate. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein and shall ~~be processed as a Tier III project as described under~~ **comply with the procedures outlined in Stipulations VIII and IX** of this Agreement (new language in bold).

- 2) Stipulation VIII.A(1) indicates that Tier I projects are those undertakings that have no potential to affect historic properties, per 36 CFR 800.16(y), and refers to a list of actions identified in Appendix C. NDOT proposes to add a more general category that allows the NDOT Section 106 Professionally Qualified Staff (PQS) to make a determination of *no potential to cause affects to historic properties* for those programmed undertakings that are not currently listed in Appendix C, but yet adhere to 36 CFR 800.16(y). Some examples of project activities not currently listed in Appendix C, but have no potential to cause affects to historic properties include, mowing, bridge deck overlay, grooving or joint repair, and installation of ITS and fiber optic insulation within existing fill material. Proposed text:

Project activities with no ground disturbance or with ground disturbance limited to existing fill material. Examples include, but are not limited to, mowing, bridge deck overlay, grooving or joint repair and installation of ITS and fiber optic insulation within existing fill material.

Conclusion

The intent of the Section 106 PA was to provide streamlining measures in the Federal-aid Highway Program in Nebraska. This goal has been realized through the implementation of the Section 106 PA.

Although Proposal 2 of the amendment regarding expansion of the Tier I category has the potential to change the level of effort on a small number of undertakings each year, the intent is only to allow the Section 106 PQS additional flexibility when undertakings include project activities that have not been specifically defined by Appendix C, but that clearly do not have the potential to affect historic properties.

While Proposal 1 of this amendment would reduce the number of reviews sent to NESHPO, it will not affect consultation with tribes and entitled consulting parties as they are not signatories to the Section 106 PA. NDOT would continue to solicit public comment and involvement per Stipulation III.C(4) and would continue to identify, as appropriate, any consulting parties as described in 36 CFR 800.2, and would invite those consulting parties to participate in the undertakings as described in 36 CFR 800.3 (Stipulation III.C(5)).

NDOT believes that proposed amendment described above falls entirely within the spirit and intent of the Section 106 PA as originally approved by all signatories. Each proposal within this amendment continues to offer, and even improves upon, streamlining measures already in effect.

We look forward to the opportunity to discuss this proposed amendment with the signatories.

Sincerely,

Jason Jurgens
Highway Environmental Section Manager
NDOT Project Development Division

Enclosures

**Please note that per Nebraska Statute, the Nebraska Department of Roads (NDOR) was officially renamed to the Nebraska Department of Transportation (NDOT), effective July 1, 2017 and any responsibilities previously assigned to "NDOR" pursuant to the Section 106 PA continued to "NDOT" under its new title by operation of law.*

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NDOT – Section 106 Programmatic Agreement Interim Report

April 2020

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.G(1)(b) of the PA. There have been no public objections, no inadvertent effects or foreclosures during the period of reporting, July 31, 2015 through February 24, 2020.

July 2015 – February 2020

During the period beginning on July 31, 2015 and ending on February 24, 2020, NDOT Section 106 Professionally Qualified Staff (PQS) have processed a total of 767 undertakings. Of these, 125 qualified as Tier I projects, *no potential to cause effects to historic properties*, 392 were processed as Tier II projects, *no historic properties affected*, and 250 were processed as Tier III projects with a project effects determination of no adverse effect or adverse effect. Below, Chart 1 illustrates the program by assigned Tier level.

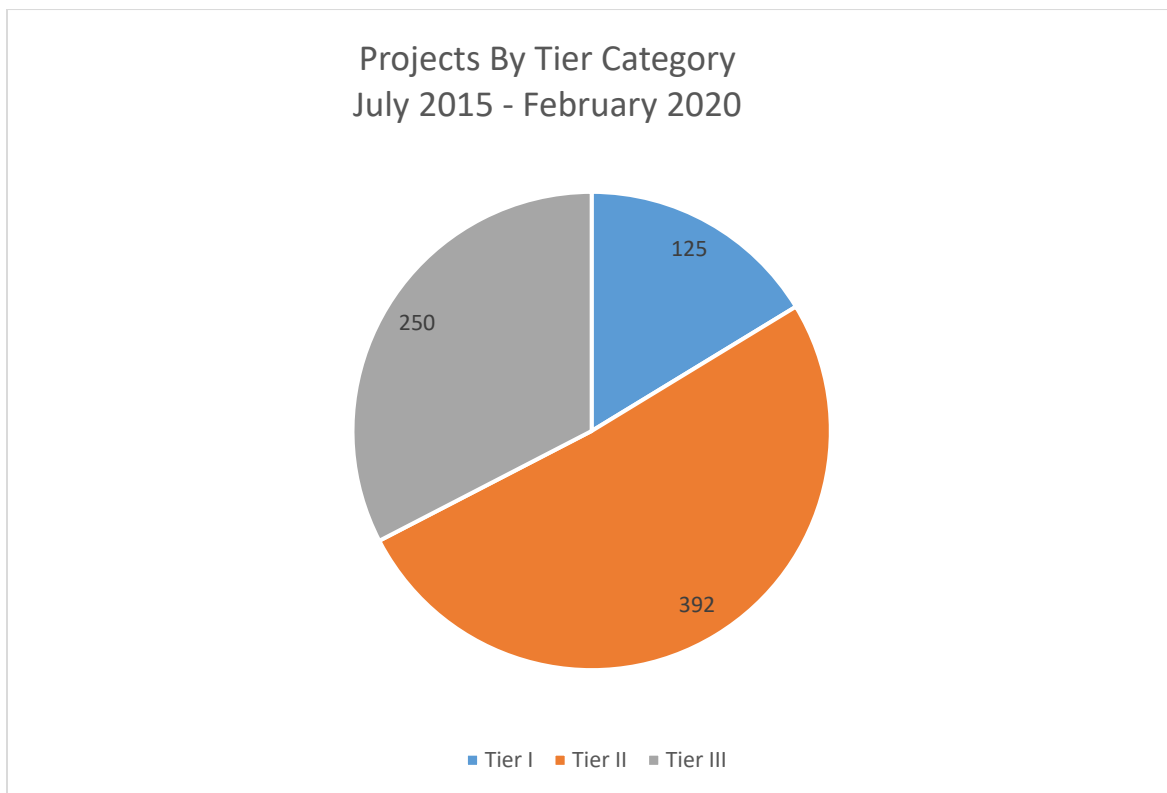


Chart 1

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. Stipulation X, Emergency Situations requires that all emergency repair projects (ER projects) be processed as Tier III projects, regardless of the project effects determination.

Throughout the life of the Section 106 PA, NDOT has processed 215 ER projects. Most of these 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. Chart 2 illustrates all reviews by quarter; Quarters 3 and 4 of 2019 and Quarter 1 of 2020 demonstrate a large increase in Tier III projects processed by NDOT.

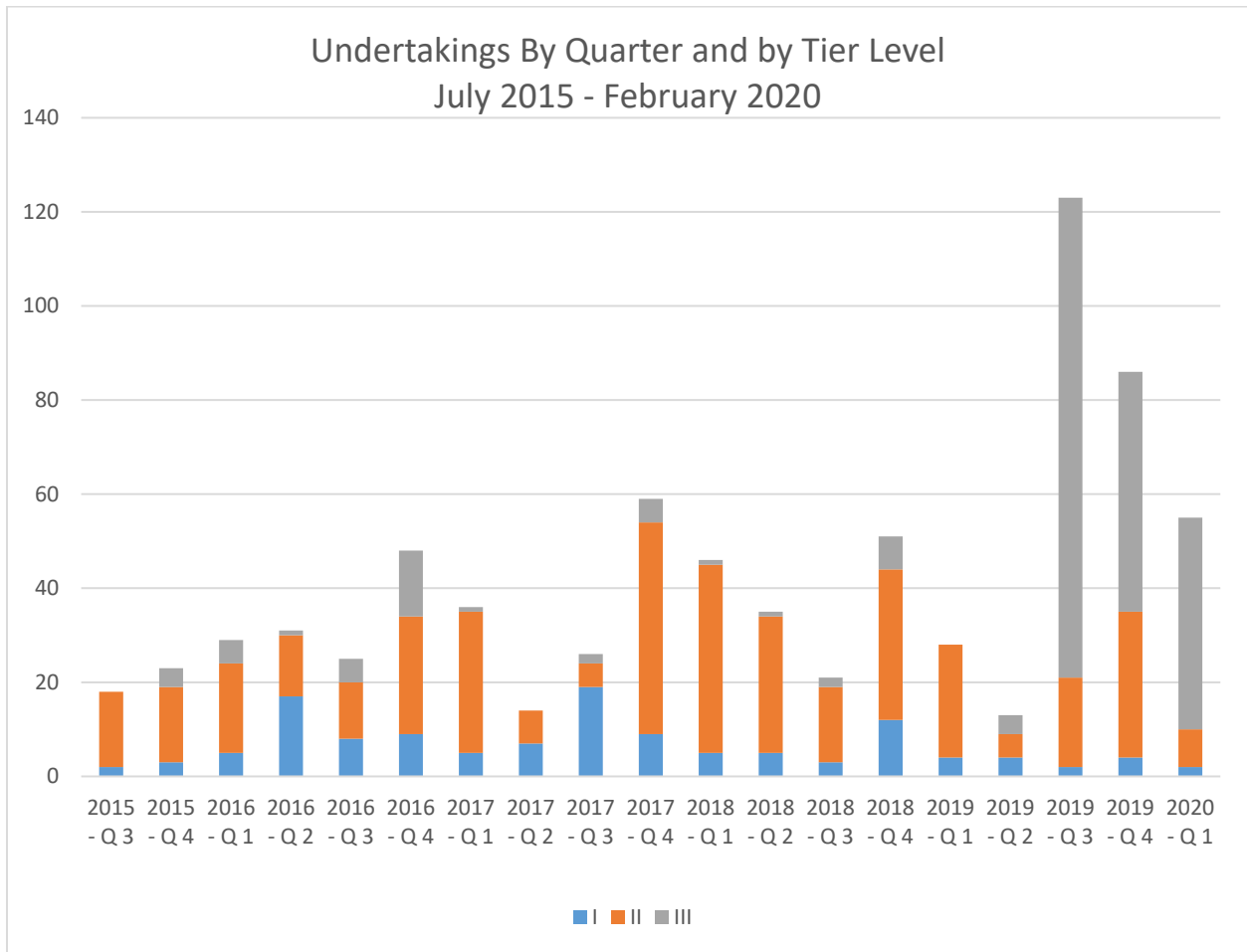


Chart 2

Of the 250 Tier III undertakings processed, 215 are 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 3 illustrates undertakings categorized by project effects determination rather than by Tier classification.

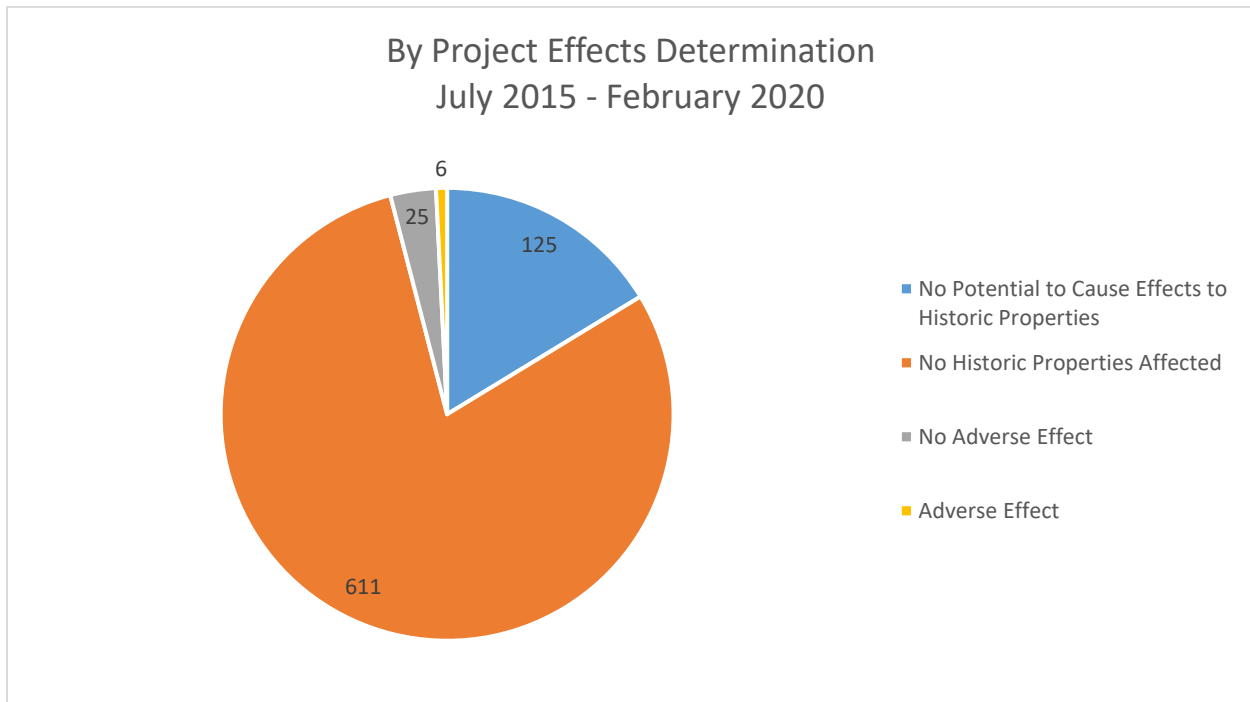


Chart 3

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 3), which taken together equal 96% of the entire program.

No Adverse Effect Determinations

During the time frame covered under this interim report, NDOT has processed 25 undertakings which resulted in *no adverse effect* determinations.

Undertakings resulting in no adverse effect determinations include re-habilitation of sandstone slopes associated with an overpass, such as the Kimball Underpass project, reconstruction of a local road adjacent to the historic Oft-Gordon House, construction of bridge structures over the historic Lincoln Highway in Douglas County, grading within the boundaries of the National Register of Historic Places (NRHP) listed W.H. Faling Mansion to create a smooth transition between the property and the ADA ramp, and in-kind repairs to a girder on one of Nebraska’s 12 exceptional bridges. 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
42691	STP-14-2(126)	In Central City and South	Roadway resurfacing and reconstruction	10/12/15	1) NESHPO	1) Concurrence
22233	STPC-3805(5)	156 th St in Bennington	Roadway reconstruction	10/19/15	1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Affected Property Owner (supplemental evaluation)	1) Concurrence 2) No response received 3) Resolution reached; property owner satisfied
21973A	DPS-28(109)	Omaha Riverfront Trail, Phase 4	Trail construction	11/10/15	1) NESHPO 2) Omaha CLG 3) Iowa Tribe of Kansas and Nebraska 4) Ponca Tribe of Nebraska 5) Iowa DOT	1) Concurrence 2) No response received 3) No response received 4) No response received 5) No comment
13261	LCLC-5227(8)	17 th St Signals	Signal replacement	11/20/15	1) NESHPO 2) Lincoln CLG	1) Concurrence 2) Concurrence
61587A	NH-80-5(78)	Lexington – Overton Crossovers	Crossovers	01/22/16	1) NESHPO 2) Pawnee Nation of OK	1) Concurrence 2) Project may proceed
61587	NH-80-5(75)	Lexington - Overton	Interstate reconstruction	01/22/16	1) NESHPO 2) Pawnee Nation of OK	1) Concurrence 2) Project may proceed
22224	MAPA-5147(1)	180 th Street, N HSW Cleveland Blvd to West Maple Rd, Phase 1	Bridge construction, roadway improvements	02/10/16	1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Ponca Tribe of Nebraska 4) Douglas County Historical Society 5) Lincoln Highway Association, National Organization 6) Lincoln Highway Association, Nebraska Chapter	1) Concurrence 2) No response 3) No response 4) No response 5) No response 6) Supportive response

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Control Number	Project Number	Project Name	Project Description	Date Processed	Consultation	Response
22224A	MAPA-5147(2)	180 th Street, N HSW Cleveland Blvd to West Maple Rd, Phase 2	Bridge construction, roadway improvements	02/10/16	<ol style="list-style-type: none"> 1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Ponca Tribe of Nebraska 4) Douglas County Historical Society 5) Lincoln Highway Association, National Organization 6) Lincoln Highway Association, Nebraska Chapter 	<ol style="list-style-type: none"> 1) Concurrence 2) No response 3) No response 4) No response 5) No response 6) Supportive response
51242	STPB-71-2(110)	Kimball Underpass	Reconstruction of Rock Slope	03/14/16	<ol style="list-style-type: none"> 1) NESHPO 2) Plains Historical Society 3) Union Pacific Railroad 4) Kimball-Banner County Chamber of Commerce 5) City of Kimball 6) Public Meeting (x2) 	<ol style="list-style-type: none"> 1) Concurrence 2) Requested additional consultation; 2 mtgs held with consulting parties and the public; agreed with Option 1 3) No response received 4) No response received 5) Voted to recommend Option 1 6) City of Kimball received 17 comments upon design options; decided to move forward with the option most favored by citizens, Option 1.
13208	NH-73-1(118)	In Falls City and North	Resurfacing and ADA ramps	09/15/16	<ol style="list-style-type: none"> 1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Ponca Tribe of Nebraska 	<ol style="list-style-type: none"> 1) Concurrence 2) No response received 3) No response received
70885	NH-6-2(125)	Indianola - Cambridge	Resurfacing and ADA ramps	02/14/17	<ol style="list-style-type: none"> 1) NESHPO 2) Property Owner 	<ol style="list-style-type: none"> 1) Concurrence 2) Requested change in grading; NDOT made the accommodation
42674	IM-80-6(108)	Platte River - Phillips	Resurfacing and bridge repairs	08/01/17	<ol style="list-style-type: none"> 1) NESHPO 	<ol style="list-style-type: none"> 1) Concurrence

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Control Number	Project Number	Project Name	Project Description	Date Processed	Consultation	Response
22723	S-75-2(1077)	Creighton University Pedestrian Bridge	Construction of Ped Bridge over I-480	09/18/17	1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Omaha CLG 4) Creighton University	1) Concurrence 2) No response received 3) Concurrence 4) Concurrence
80883	STP-137-4(106)	Keya Paha River – NE/SD Line	Resurfacing and bridge repairs	11/01/17	1) NESHPO	1) Concurrence
42694	STP-92-5(109)	W Jct N-14 West	Resurfacing and bridge repairs	11/20/17	1) NESHPO	1) Concurrence
42599	STP-34-5(116)	Aurora East	Resurfacing and bridge repairs	3/16/18	1) NESHPO	1) Concurrence
22706	HSIP-MAPA-5073(1)	30 th Street Road Diet	Re-striping / reconfiguring lanes and traffic signal updates	6/12/18	1) NESHPO 2) Omaha CLG 3) Omaha Public Works 4) Omaha Public Schools 5) Iowa Tribe of Kansas and Nebraska	1) Concurrence 2) Concurrence 3) No response received 4) No response received 5) No response received
42572	STP-70-4(108)	Ord Northeast	Resurfacing and box culvert construction	08/27/18	1) NESHPO 2) North Loup River Public Power and Irrigation District	1) Concurrence 2) No concerns, verbal response
31883	BRO-7071(9)	Monroe Southwest	Bridge replacement	8/29/18	1) NESHPO 2) North Loup River Public Power and Irrigation District 3) Pawnee Nation of Oklahoma 4) Otoe-Missouri Tribe of Oklahoma 5) Iowa Tribe of Kansas and Nebraska	1) Concurrence 2) No objections 3) Project may proceed 4) No Response Received 5) This project is a little far west for THPO comment; deferred to Otoe-Missouria
42617	STP-136-4(115)	Red Cloud West	Resurfacing, bridge replacements and ADA ramps	10/01/18	1) NESHPO 2) Red Cloud CLG 3) Webster County Museum 4) Pawnee Nation of Oklahoma	1) Concurrence 2) Concurrence 3) No concerns; did not believe there would be adverse effects to historic properties 4) Project will not adversely affect any known sites
42781	STP-30-4(161)	Gibbon – Shelton	Resurfacing and bridge repairs	10/29/18	1) NESHPO 2) Wood River Valley Historical Society	1) Concurrence 2) No comments or concerns, verbal response

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Control Number	Project Number	Project Name	Project Description	Date Processed	Consultation	Response
13371	NH-2-7(119)	Nebraska City East Missouri River Bridge	Bridge repairs	11/5/18	1) NESHPO 2) Iowa DOT 3) Iowa Tribe of Kansas and Nebraska	1) Concurrence 2) Agreed with effects determination 3) No response received
13276	STP-50-1(115)	Syracuse South	Resurfacing and bridge repairs	10/11/19	1) NESHPO 2) Ponca Tribe of Nebraska 3) Iowa Tribe of Kansas and Nebraska	1) Concurrence 2) No response received 3) No response received
32287	NH-30-5(135)	Columbus East and North	Resurfacing and bridge repairs	12/09/19	1) NESHPO 2) Iowa Tribe of Kansas and Nebraska 3) Kosch Company 4) Loup River Public Power and Irrigation District	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	Urban Reconstruction	01/07/2020	1) NESHPO 2) Nebraska Game and Parks Commission 3) Santee Sioux Nation	1) Concurrence 2) Proposed project is unlikely to impact historic property 3) No response received

Adverse Effect Determinations

During the time frame covered under this interim report, there were six undertakings which resulted in a project effects determination of *adverse effect*. Four of these determinations were associated with the replacement of historic bridges and one undertaking involved a bridge replacement that adversely affected a significant archeological site associated with a historic mill. One of these six undertakings, Alexandria South, was processed as one federal action with Alexandria South Bridges. Other than the historic bridge identified on the Alexandria South Bridges project, there were no historic properties identified within the APE associated with Alexandria South.

In each instance of adverse effect, after efforts to avoid and minimize the adverse effect, a Memorandum of Agreement (MOA) was entered into to record each historic bridge and to complete data recovery at the mill site. All stipulations in these MOAs have been met, and there are no outstanding MOAs.

Table 2. Undertakings Resulting in Adverse Effect Determinations

Control Number	Project Number	Project Name	Project Description	Date Processed	Consultation	Response
12974A	STP-67-2(109)	Talmage North Bridges	Bridge Replacement	5/19/16	1) NESHPO 2) Nebraska City Historical Society 3) Ponca Tribe of Nebraska 4) Iowa Tribe of Kansas and Nebraska 5) ACHP	1) Concurrence 2) Declined to participate 3) No Comment 4) No response received 5) Criteria for Council involvement not met
12347	BRO-7066(29)	Nebraska City NW	Bridge Replacement	07/25/16	1) NESHPO 2) Ponca Tribe of Nebraska 3) Iowa Tribe of Kansas and Nebraska 4) Otoe County 5) ACHP	1) Concurrence 2) No response received 3) No response received 4) No response received 5) Criteria for Council involvement not met
32131	STP-12-6(117)	Wynot East and West	Bridge Replacement	08/09/16	1) NESHPO 2) Cedar County Historical Society 3) Ponca Tribe of Nebraska 4) ACHP	1) Concurrence 2) No response received 3) No response received 4) No response received
42533	STP-53-1(104)	Alexandria South*	Resurfacing and rehabilitation	12/15/17	1) NESHPO 2) General public during public meeting	1) Concurrence 2) No concerns expressed
42474	BR-STP-53-1(103)	Alexandria South Bridges	Bridge Replacement	12/15/17	1) General public during public meeting 2) NESHPO 3) ACHP	3) No concerns expressed 4) Concurrence 5) Criteria for Council involvement not met
<p>*Alexandria South - no historic properties, other than the historic bridge replaced with the Alexandria South Bridges project, were identified within the APE, however, it was one federal action with Alexandria South Bridges, which replaced a historic bridge.</p>						

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Control Number	Project Number	Project Name	Project Description	Date Processed	Consultation	Response
31821	BRO-7054(19)	Verdigre North Bridge	Bridge Replacement	10/24/18	1) NESHPO 2) Ponca Tribe of Nebraska 3) NPS – Missouri River National Rec River 4) Knox County 5) Verdigre Heritage Museum 6) Village of Verdigre 7) ACHP	1) Concurrence 2) Noted Ponca Removal Trail would have passed nearby; no concerns re: significant archeological site 3) Positive response to invitation to be a consulting party; no response received to subsequent request for comment 4) No response received 5) No response received 6) No concerns; NDOT explored the possibility of moving the historic bridge to a village park; village board declined to take action based on costs and liability 7) No response received

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 other than NESHPO in 88 instances and tribal consultation was completed on 223 projects (Chart 4). Consultation was completed with NESHPO on 250 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 4 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.

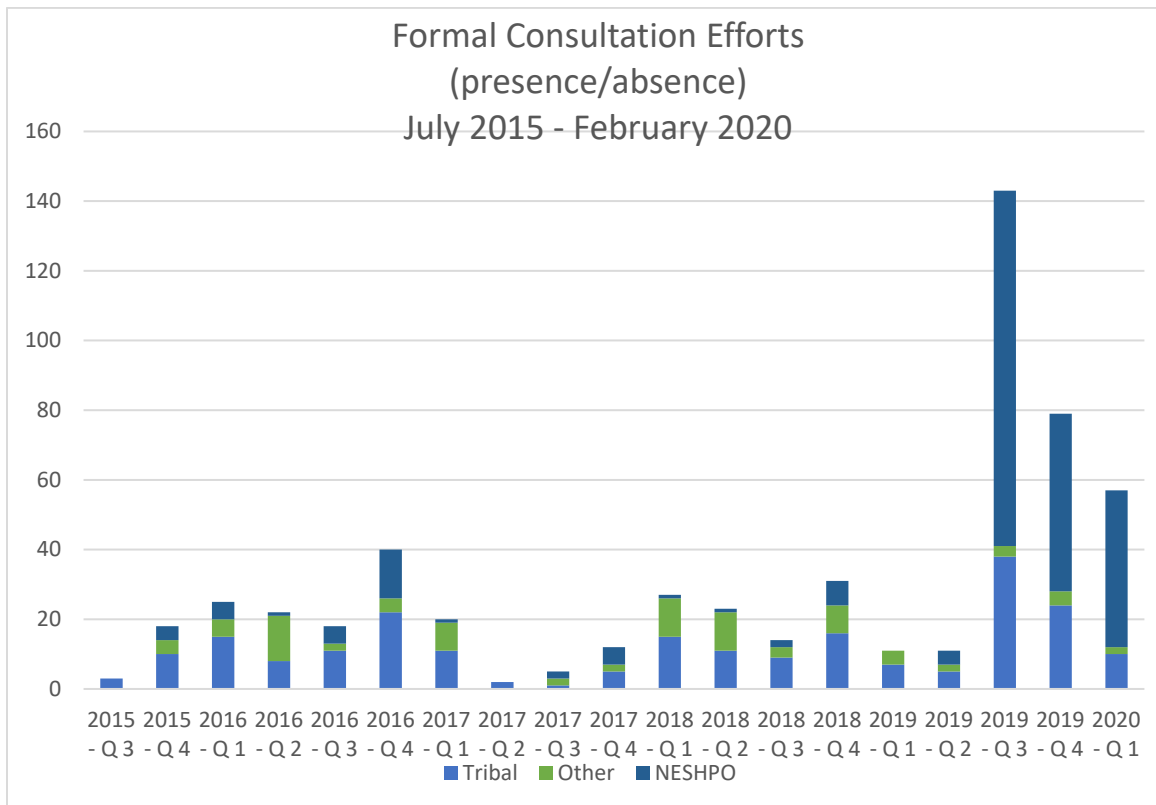


Chart 4

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 is most active with the Iowa Tribe of Kansas and Nebraska and the Ponca Tribe of Nebraska (Chart 5). 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.

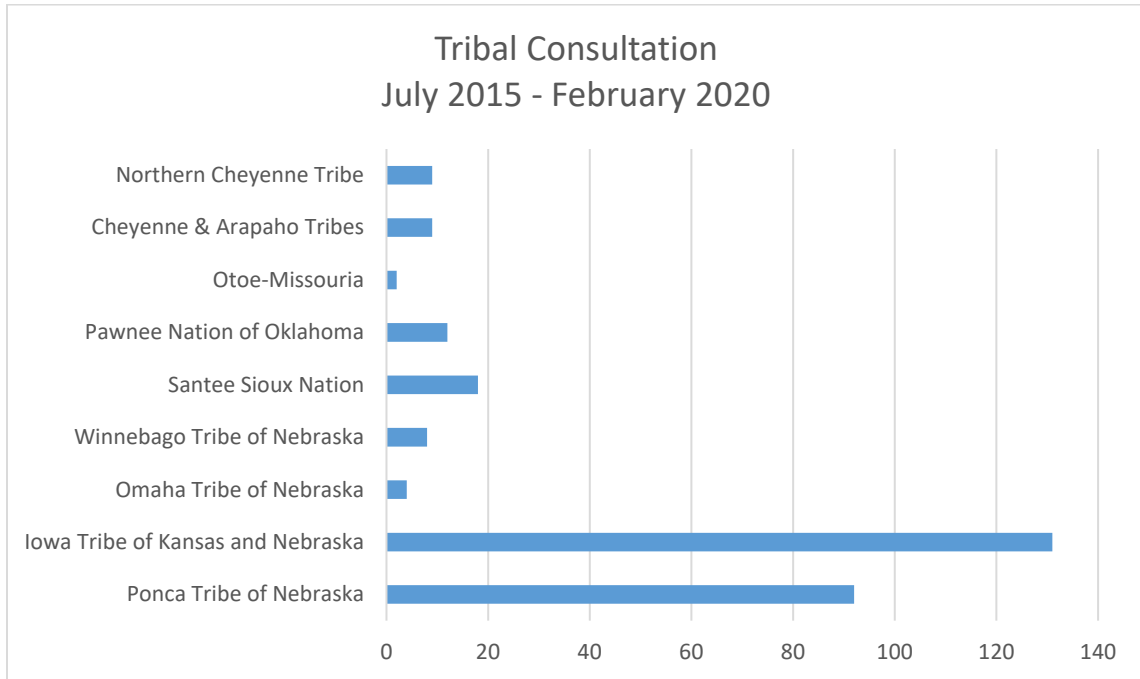


Chart 5

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.

Other Opportunities for Engagement

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.

326 Assignment

In preparation for 326 Assignment, NDOT and FHWA met with the Santee Sioux Nation, the Ponca Tribe of Nebraska, the Winnebago Tribe of Nebraska, the Omaha Tribe of Nebraska and Iowa and the Iowa Tribe of Kansas and Nebraska individually to make them aware of NDOT's intention to assume responsibility for classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations. This is commonly referred to as "CE Assignment".

During these meetings NDOT staff took the opportunity to discuss the Section 106 program and to give the tribes an opportunity to share information regarding their programs.

Section 106 Training – August 2019

In August 2019, NDOT collaborated with Jacobs Engineering to design a Section 106 training course that was tailored to NDOT's Section 106 program. This 2 day course was highly interactive and featured Nebraska examples during many spirited conversations. The course was designed for Section 106 and NEPA practitioners and in addition to internal staff, NDOT invited FHWA, NESHPO, Tribal Historic Preservation Officers (THPOs) and our partners in the History Nebraska Highway Cultural Resources Program to attend. THPOs representing the Iowa Tribe of Kansas and Nebraska, the Winnebago Tribe of Nebraska and the Pawnee Nation of Oklahoma were able to attend and provided their perspective.

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.

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DEPARTMENT OF TRANSPORTATION

September 4, 2018

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1500 R Street
Lincoln, NE 68501-2554

Subject: Proposed Amendment to the *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* (the Section 106 PA); Substitution of NDOT for FHWA through NEPA Assignment

Dear Signatory:

Title 23 United States Code (U.S.C.) Section 326 allows the U.S. Department of Transportation (USDOT) Secretary, acting through FHWA, to assign responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal Environmental laws to a State DOT through a Memorandum of Understanding (MOU). FHWA and the Nebraska Department of *Transportation (NDOT) will execute such an agreement on September 5, 2018, entitled: *Memorandum of Understanding between Federal Highway Administration, Nebraska Division and the Nebraska Department of Transportation, State Assumption of Responsibility for Categorical Exclusions, 23 USC §326* (the Section 326 MOU). Specifically, the Section 326 MOU assigns to NDOT the USDOT's responsibility for determining whether certain designated activities are included within classes of action that are classified as Categorical Exclusions (CEs). NDOT will assume the responsibilities of FHWA in accordance with the Section 326 MOU in a process referred to as NEPA Assignment, **effective September 5, 2018**.

*Please note, that per Nebraska Statute, the Nebraska Department of Roads (NDOR) was officially renamed to the Nebraska Department of Transportation (NDOT), effective July 1, 2017, and any responsibilities previously assigned to "NDOR" pursuant to the Section 106 PA continued to "NDOT" under its new title by operation of law.

Pursuant to Section IV.A.6 of the Section 326 MOU, if interagency agreements exist which involve signatories other than FHWA and the State, then FHWA and the State "will work to obtain any necessary consents or amendments. Such actions include:

1. "Consulting with the other parties to obtain written consent to the continuation of the interagency agreement in its existing form, but with the substitution through assignment of the State for FHWA with respect to interagency agreement provisions applicable to CE projects;
2. Negotiating with the other parties to amend the interagency agreement as needed so that the interagency agreement continues but that the State assumes FHWA's responsibilities with respect to CE projects."

Kyle Schneeweis, P.E., Director
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NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

In order to comply with this section of the MOU, NDOT intends to pursue Option 1 above, and to continue under the terms of the existing Section 106, substituting NDOT as the "agency official" for FHWA with respect to CE Projects. NDOT would continue under the Amended Section 106 PA until it is otherwise revised by the parties or until its expiration, whichever occurs first. This letter will constitute written consent from all signatories of the substitution of NDOT for FHWA in accordance with the following statements:

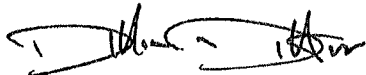
1. Pursuant to the Section 326 MOU, NDOT has been assigned and assumes all of the US DOT Secretary's (FHWA's) responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of Federal-Aid highway projects classified as Categorical Exclusions that it has assumed. In that capacity, NDOT has been assigned the role of "agency official" for the purpose of compliance with 36 CFR Part 800.
2. FHWA, as a Federal agency, has a unique legal relationship with Indian tribes as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions, and while an Indian tribe may agree to work directly with NDOT as part of the 36 CFR 800 compliance process, the FHWA remains legally responsible for government-to-government consultation with Indian tribes.
3. The FHWA Nebraska Division Administrator retains responsibility as "agency official" for environmental review, consultation, and decision-making for all other projects not assigned by the MOU.
4. NDOT will clearly identify in its consultations when it is serving as the "agency official" under the Section 326 MOU.

In summary, this letter constitutes written consent to substitute, through NEPA Assignment, NDOT for FHWA in the Section 106 PA as stated in the bullet points above. This letter containing your signed acknowledgement will serve as an Amendment to the Section 106 PA (per Stipulation XIII.D.2 therein) until such time that the Section 106 PA is revised by the parties or expires.

To effectuate the above-referenced amendment to the Section 106 PA, I request that you sign the acknowledgement page of this letter and return it by 09/24/2018. You may send it to my attention to the email address noted below. Once all signatories to the Section 106 PA have signed the acknowledgement page, we will provide copies for your records and use. The effective date of this letter amendment will be the date of the last signature applied, or September 5, 2018 (the date of the CE Assignment MOU), whichever is later.

If you have any questions, please feel free to contact me.

Respectfully,



Dillon Dittmer
Environmental Program Manager
Project Development Division
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**ACKNOWLEDGEMENT OF AMENDMENT 1
TO THE SECTION 106 PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)**

By signing below, I hereby consent to Amendment 1 of the *Programmatic Agreement among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Nebraska Department of [Transportation] to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program in the State of Nebraska*, as described in this letter.

NEBRASKA DEPARTMENT OF TRANSPORTATION (formerly NEBRASKA DEPARTMENT OF ROADS)



Kyle Schreweis, P.E. Director
Nebraska Department of Transportation

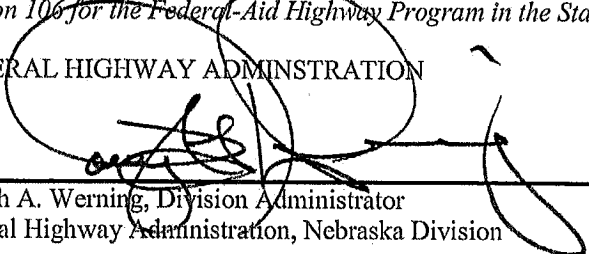
9/7/18

DATE

**ACKNOWLEDGEMENT OF AMENDMENT 1
TO THE SECTION 106 PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)**

By signing below, I hereby consent to Amendment 1 of the *Programmatic Agreement among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Nebraska Department of [Transportation] to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program in the State of Nebraska*, as described in this letter.

FEDERAL HIGHWAY ADMINISTRATION



Joseph A. Werning, Division Administrator
Federal Highway Administration, Nebraska Division

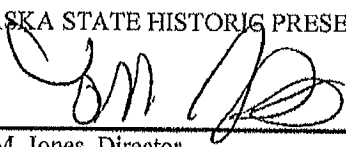
9-5-2018

DATE

**ACKNOWLEDGEMENT OF AMENDMENT 1
TO THE SECTION 106 PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)**

By signing below, I hereby consent to Amendment 1 of the *Programmatic Agreement among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Nebraska Department of [Transportation] to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program in the State of Nebraska*, as described in this letter.

NEBRASKA STATE HISTORIC PRESERVATION OFFICER



9/5/18

Trevor M. Jones, Director
Nebraska State Historical Society


DATE

**ACKNOWLEDGEMENT OF AMENDMENT 1
TO THE SECTION 106 PROGRAMMATIC AGREEMENT
FOR PURPOSES OF CE ASSIGNMENT (23 U.S.C. 326)**

By signing below, I hereby consent to Amendment 1 of the *Programmatic Agreement among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Nebraska Department of [Transportation] to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program in the State of Nebraska*, as described in this letter.

ADVISORY COUNCIL ON HISTORIC PRESERVATION



 John M. Fowler, Executive Director
Advisory Council on Historic Preservation

10/31/18
DATE

**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**

WHEREAS, the Federal Highway Administration (FHWA), under the **authority of 23 U.S.C. 101 et seq., implements the Federal-aid Highway Program (Highway Program)** in the state of Nebraska by funding and approving state and locally sponsored transportation projects that are administered by the Nebraska Department of Roads (NDOR); and

WHEREAS, the Nebraska FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Highway Program in the State of Nebraska complies with Section 106 of the National Historic Preservation Act (NHPA), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004) and is a signatory to this Agreement; and

WHEREAS, NDOR administers Federal-aid projects throughout the State of Nebraska as authorized by Title 23 U.S.C. 302 and Nebraska Revised Statute §39-1305 et al., has participated in this consultation and in development of this Agreement, and is an invited signatory to this Agreement; and

WHEREAS, the responsibilities of the Nebraska State Historic Preservation Officer (NESHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies’ requests within a specified period of time, has participated in the development of this Agreement and has been invited to be a signatory to this Agreement; and

WHEREAS, FHWA has invited the Advisory Council on Historic Preservation (Council) to participate in development of this Agreement and the Council accepted this invitation in a letter dated March 25, 2015; and

WHEREAS, the Council is a signatory to this Agreement; and

WHEREAS, FHWA has determined that implementation of the Highway Program in Nebraska may have an effect upon properties included in, or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the NESHPO and the Council pursuant to 36 CFR 800.14(b); and

WHEREAS, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Programmatic Agreement (Agreement) in order to establish an efficient and effective program alternative for taking into account the effects of the Highway Program on historic properties in Nebraska and for affording the Council a reasonable opportunity to comment on undertakings covered by this Agreement; and

WHEREAS, FHWA has notified the public (Nebraska Association of Professional Archeologists, the Nebraska Archeology Society, Restoration Exchange Omaha and Preservation Association of Lincoln) Federal and State agencies, Certified Local Governments (CLG's) and;

WHEREAS, FHWA has notified any federally recognized Indian tribes (Tribes) that attach religious and cultural significance to historic properties that may be affected by an undertaking in Nebraska about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Pawnee Nation of Oklahoma, Ponca Tribe of Nebraska, the Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Omaha Tribe of Nebraska, Otoe-Missouria Tribe, Kaw Nation, Apache Tribe of Oklahoma, Kiowa Tribe, Winnebago Tribe of Nebraska, Santee Sioux Tribe of Nebraska, Oglala Sioux Tribe, Rosebud Sioux Tribe, Cheyenne and Arapaho Tribes, Comanche Nation, Sac and Fox Nation of Missouri in Kansas and Nebraska; and

WHEREAS, this Agreement shall supersede the previous letter agreement between FHWA, and NDOR (June 17, 2010); and

WHEREAS, FHWA, NESHPO, the Council and NDOR are collectively referred to herein as the "signatories" or individually as "signatory"; and

NOW, THEREFORE, FHWA, NESHPO, Council, and NDOR agree that the Highway Program in Nebraska shall be carried out in accordance with the following stipulations in order to take into account the effects of the Highway Program on historic properties in Nebraska and that these stipulations shall govern compliance of the Highway Program with Section 106 of the NHPA until this Agreement expires or is terminated.

STIPULATIONS

FHWA, with the assistance of NDOR, shall ensure that the following measures are carried out. To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Consultation with Representatives of Local Governments
- VII. Participation of Additional Consulting Parties and the Public
- VIII. Project Review
- IX. The Section 106 Process
- X. Emergency Situations
- XI. Post-Review Discoveries
- XII. Treatment of Human Remains
- XIII. Administrative Stipulations

I. APPLICABILITY AND SCOPE

A. This Agreement sets forth the process whereby FHWA, with the assistance of NDOR, will meet its Section 106 responsibilities of the NHPA [(54 U.S.C. 306108 and 54 U.S.C. 306101(a) and 306102)].

B. The objective of this Agreement is to make more efficient the methods by which FHWA and NDOR review individual undertakings processed under Section 106 that may affect historic properties and to establish the process by which FHWA, NESHPO, Council, and interested parties will be involved in any such review.

C. Through this Agreement, FHWA authorizes NDOR to initiate and, in most cases, conclude without FHWA's direct involvement, consultation with NESHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.

D. FHWA and NDOR establish through this agreement three tiers of project review, dependent upon the type of effects to historic properties.

1. Tier I Project Review: Tier I projects are defined as having no potential to affect historic properties and must meet the criteria outlined in Stipulation VIII.

2. Tier II Project Review: Tier II projects are defined as having the potential to affect historic properties, but following screening by the NDOR Professionally Qualified Staff (NDOR PQS, defined below) will be determined not to require case-by-case review or consultation with NESHPO. NDOR will support a finding of no historic properties affected. Tier II undertakings must meet the criteria outlined in Stipulation VIII.B.4.

3. Tier III Project Review: Tier III projects are defined as actions that NDOR may support a finding of no adverse effect or adverse effect.

E. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation. For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800 and shall not delegate government-to-government consultation to NDOR.

F. Cooperating Federal agencies that recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA by having FHWA and NDOR follow the requirements of this Agreement so long as the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and NDOR.

1. FHWA and NDOR will consult with other agencies involved in the undertaking to reach an agreement that FHWA is the lead Federal agency for the undertaking.
2. These agencies will be considered consulting parties in the undertaking.
3. All consultation with an agency regarding lead Federal agency status and compliance with Section 106 will be documented.

G. Other Federal agencies providing financial assistance for undertakings related to the Federal Aid Program activities covered under this Agreement may, with the concurrence of ACHP, FHWA, and SHPO, satisfy their Section 106 responsibilities by accepting and complying with the terms of this PA on a per-project basis. In such situations, the Federal agency shall notify the ACHP, FHWA, and SHPO and other consulting parties to the PA, including participating Indian Tribes, in writing of their intent to use the PA to achieve compliance with Section 106 requirements, and consult with those agencies and consulting parties in accordance with the terms of this PA.

II. DEFINITIONS

A. For purposes of this Agreement, the definitions provided in 36 CFR 800.16 (a) through (z) inclusive shall apply whenever applicable.

III. PROFESSIONAL QUALIFICATION STANDARDS

A. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (36 CFR 61). However, nothing in this stipulation may be interpreted to preclude FHWA or NDOR or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

B. NDOR shall employ a minimum of one (1) person trained, experienced, and qualified in one or more of the fields of archeology, history, architectural history and historic architecture (as defined in 36 CFR 61). They are designated as professionally qualified staff (NDOR PQS).

1. If the NDOR PQS position becomes vacant, the Agreement will become invalid until the position is filled by NDOR.

C. All Section 106 actions will be performed by either a NDOR PQS or performed by a NDOR consultant who meets the Secretary of the Interior's Professional Qualifications Standards. All NDOR consultants Section 106 actions shall be overseen and reviewed by the NDOR PQS.

IV. RESPONSIBILITIES

A. The following section identifies the responsibilities of FHWA and NDOR in complying with the terms of this Agreement.

B. FHWA Shall

1. Remain legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by NDOR under the authority of FHWA as defined in 36 CFR 800.2(a) and 800.2(c)(4).
2. May inquire at any point in the Section 106 process as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
3. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). NDOR may assist FHWA in consultation provided the individual Tribes agree to alternate procedures.
4. FHWA will submit, as appropriate, notice of adverse effects to the Council, NESHPO, and Consulting Parties.

C. NDOR PQS Shall

1. Determine whether the proposed federal action is an undertaking as defined in 36 CFR 800.16(y).
2. Determine under 36 CFR 800.3(a) (1) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
3. Determine under 36 CFR 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as they are defined in 36 CFR 800.16(x).
4. Solicit public comment and involvement, in accordance with 36 CFR 800.3(e) and NDOR's public involvement procedures.
5. Identify, as appropriate, any consulting parties, as described in 36 CFR 800.2, and invite them to participate in the undertakings as described in 36 CFR 800.3 and covered by this Agreement.

6. Determine and document the scope of identification efforts and level of effort, as described in 36 CFR 800.4 (a) and (b), including the undertaking's area of potential effects (APE). The APE will be defined according to procedures outlined in the NDOR Section 106 Guidelines. The NESHPO agrees that NDOR shall define but need not conduct consultation on the definition of the APE based on the NDOR Section 106 Guidelines. If unusual circumstances arise, NDOR will coordinate with the NESHPO in defining the APE.
7. Determine and document boundaries for historic properties as defined by National Register Bulletins (<http://www.nps.gov/nr/publications>) and as detailed in the NDOR Section 106 Guidelines.
8. Determine and document the NRHP eligibility of properties within the APE.
9. Determine and document whether historic properties may be affected by the undertaking.
10. Assess effects by applying the criteria of adverse effects as described in 36 CFR 800.5(a) (1) and document the finding of effects.
11. In consultation with FHWA, NESHPO and Council (if Council has chosen to participate), resolve adverse effects through the development and execution of a Memorandum of Agreement (MOA), if appropriate.
12. Ensure conformance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; Council's Section 106 Archaeology Guidance; NDOR Section 106 Guidelines (2015), and any successors to those guidelines; and applicable guidelines and procedures of land-managing agencies whose lands may be affected by the undertaking.
13. Submit at least quarterly to the NESHPO and FHWA copies of all fieldwork reports, site forms, Reconnaissance Level Survey forms and any other relevant documents.
14. Submit a quarterly list of Tier I and II projects to NESHPO and FHWA.
15. Ensure curation of archeological materials recovered under this Agreement at a facility meeting the standards of 36 CFR 79.

V. CONSULTATION WITH TRIBES

- A. Notwithstanding any other provision of this Agreement, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement; FHWA is responsible for the outcome of any tribal consultation, including any consultations that include NDOR.

- B. In accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by NDOR and invited by FHWA to be consulting parties (See Appendix A).
- C. NDOR shall provide information to FHWA so that it has adequate information to initiate consultation with Tribes early in the project planning process to identify cultural, confidentiality or other concerns and to allow adequate time for consideration of those concerns.
- D. NDOR shall provide information to FHWA so that it has adequate information to continue consultation with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- E. NDOR may assist FHWA in consultation provided the respective Tribe or Tribes agree to alternate procedures. Tribal consultation shall be done in accordance with 36 CFR Part 800, except where separate agreements have been executed with Tribes.
- F. Projects determined to have a finding of adverse effect shall be handled in accordance with Stipulation IX.D (3) (b) of this Agreement.
- G. Emergency situations shall be handled in accordance with Stipulation X of this Agreement.
- H. FHWA may enter into a separate agreement with any tribe or tribes to specify how FHWA shall carry out responsibilities under Section 106 in accordance with 36 CFR 800.14(a)(1).

VI. CONSULTATION WITH REPRESENTATIVES OF LOCAL GOVERNMENTS

- A. NDOR shall invite representatives of local governments with jurisdiction over the area where effects of an undertaking may occur to be consulting parties. These representatives are entitled to be consulting parties under 36 CFR 800.2.
- B. NDOR shall invite, as appropriate, applicants for federal assistance, permits, licenses and other approvals to be consulting parties if they are participating in a related Federal aid Highway Program undertaking. These applicants are entitled to be consulting parties under 36 CFR 800.2.

VII. PARTICIPATION OF ADDITIONAL CONSULTING PARTIES

A. Additional consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR 800.2(c) (5) and 800.3(f).

1. Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties. Other parties entitled to be consulting parties shall be invited by NDOR to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by NDOR to participate in the Section 106 process.

2. NDOR shall consider all written requests of individuals and organizations to participate as consulting parties and determine, in consultation with FHWA, which should be consulting parties for the undertaking.

B. NDOR shall notify consulting parties of effect determinations for Tier II projects, as defined in Section VIII of this Agreement, as well as any Tier III projects that result in an effect determination of no adverse effect. In communications with consulting parties and the public, NDOR shall clearly identify FHWA as the lead federal agency and shall make it known that consulting parties and the public may contact FHWA with concerns regarding the project.

1. FHWA shall notify consulting parties of effect determinations for Tier III projects, which as defined in Stipulation VIII of this Agreement, result in an effect determination of adverse effect.

C. Public Involvement

1. Section 800.2(d) states that the views of the Public are essential to informed Federal decision making in the Section 106 process. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by the FHWA's and NDOR's environmental compliance procedures. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d) (1-2), 800.3(e), and 800.11(c) (1 and 3) as well as public involvement regulations in 23 CFR 771.111 and 23 CFR 450.

2. To remain consistent with the intent of 36 CFR Part 800, as amended, NDOR shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties through public involvement tools (e.g. Targeted Mail, Public Meeting, and Public Hearing) and the likely interest of the public in the effects on historic properties.

3. For those actions that do not routinely require public review and comment (e.g. activities classified as a Categorical Exclusion under the National Environmental Policy Act (NEPA)), appropriate involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential effects on them.

4. NDOR shall make FHWA and NESHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and cultural significance to the Tribes.

VIII. PROJECT REVIEW

A. Tier I Project Review

1. Tier I projects are those undertakings that have no potential to affect historic properties. Tier I undertakings must correspond to conditions and meet the actions identified in Appendix C. Tier I projects are processed by the NDOR PQS.

B. Tier II Project Review

1. Tier II undertakings are those determined by the NDOR PQS to have the potential to affect historic properties, but following appropriate screening, will be determined to require no further review or consultation under this Agreement because no historic properties will be affected. The undertakings classified by NDOR as Tier II undertakings will be processed by NDOR. NDOR shall make and document all required Section 106 findings and complete consultation with consulting parties. Tier II undertakings shall not require case-by-case review by NESHPO prior to NDOR determining that all Section 106 requirements have been satisfied. A list of Tier II projects processed by NDOR shall be provided to the NESHPO and FHWA in a quarterly report under this Agreement.

2. The NDOR PQS is responsible for screening undertakings to determine if those individual undertakings require further consideration, or if they may be determined not to require further review or consultation under the terms of this Agreement. The NDOR PQS may consult at any time, either formally or informally, with NESHPO on any undertaking.

3. The NDOR PQS shall include the identification of all project proponent designated storage, disposal, borrow, and staging areas for individual projects, prior to the screening process. If additional project areas are added to a screened undertaking, the undertaking must be re-screened by the NDOR PQS.

4. NDOR shall apply the following criteria for determining if an undertaking requires no further review and consultation beyond the screening assessment and documentation of decision making:

a) The project has no known public controversy based on historic preservation issues; and

b) NDOR has determined one of the following effect findings apply:

(1) No Historic Properties Affected: No cultural resources present, as determined by NDOR PQS; or

(2) No Historic Properties Affected: No historic properties (i.e., eligible for or listed in the NRHP) present, as determined by NDOR PQS; or

(3) No Historic Properties Affected: Historic Properties are present, but are completely avoided by the undertaking and there is no potential for adverse indirect effects, as determined by NDOR PQS.

5. If NDOR determines that a cultural resource inventory must be conducted for a project processed under this Stipulation (VIII (B.4.b)), any cultural resource reports generated from the survey shall be submitted to NESHPO at least quarterly for filing.

6. NDOR shall ensure that the NDOR Standard Specification 107.10, Archeological and Paleontological Discoveries (Appendix D) applies to all Federal-aid projects and will be referenced in all NEPA documentation unless project specific measures are developed and agreed upon through the consultation process.

7. The requirements for reporting on the projects that qualify and are processed as Tier II undertakings will be in accordance with 36 CFR 800.11(d) and NDOR Section 106 Guidelines (2015).

8. The NDOR PQS shall ensure that the documentation supporting the Section 106 finding is included in the project file and summarized in the NEPA documentation as appropriate, and with consideration of confidentiality concerns.

C. Tier III Project Review

1. Tier III projects are all undertakings that the NDOR PQS determines cannot be processed as Tier I or Tier II projects (i.e., projects that result in a finding of no adverse effect or adverse effect). NDOR shall administratively complete Section 106 activities for these projects. NDOR shall compile and submit the Section 106 documentation to FHWA for review and approval. This documentation shall be prepared in accordance with 36 CFR 800.11(e). FHWA shall then submit the Section 106 documentation to NESHPO, and as appropriate, to other consulting parties in accordance with 36 CFR 800.11(e).

D. Reporting

1. NDOR PQS shall compile a complete list of Tier I, II, and III projects and submit that list to FHWA and NESHPO quarterly.

2. NDOR shall ensure that this list includes the county, project name and number, type of Tier, level of effort (i.e. desktop review, field survey) consultation measures, description of any NRHP Listed, eligible listed, or newly recommended eligible properties identified during Section 106 evaluations.

3. All cultural resource reports, site forms, and other documentation for undertakings completed during the quarter will be submitted to NESHPO by NDOR.

4. NDOR will provide the list to FHWA and to NESHPO who will review it for compliance with this Agreement. If there are objections regarding the manner in which the terms of this Agreement are being carried out, the parties to this Agreement will proceed with Stipulation XIII(C).

IX. THE SECTION 106 PROCESS

For all undertakings reviewed in pursuant to this Agreement, the NDOR PQS shall use the following process

A. Initiation of the Section 106 Process

1. NDOR shall establish the undertaking, determine if the undertaking is a type of activity that has the potential to cause effects on historic properties, and determine if the undertaking will occur on Tribal lands.

2. If NDOR determines that the undertaking is one with no potential to cause effects (Tier I), NDOR will document this decision in the NEPA documentation. Section 106 is complete, and NDOR shall continue to the next step in the project development process.

3. NDOR shall identify consulting parties, as defined in 36 CFR 800.2, during the early stages of Section 106 review. If NDOR initiates consultation with the NESHPO on the identification of consulting parties, the NESHPO shall have 15 days to comment or concur. NDOR shall inform FHWA regarding this consultation. If NESHPO does not respond within that time period, NDOR may assume that NESHPO has no objections and may proceed to the next step in the 106 process.

4. NDOR shall develop plans to involve the public, Tribes, and other consulting parties as appropriate.

5. NDOR shall begin consultation with consulting parties.

B. Identification of Historic Properties

1. Pursuant to 36 CFR 800.4(a), NDOR shall determine the scope of identification efforts, including determining and documenting the undertaking's area of potential effect (APE), as defined at 36 CFR 800.16(d). If NDOR initiates consultation with the NESHPO on the scope of the identification efforts and the definition of the APE, NESHPO shall have 15 days to comment or concur. NDOR shall inform FHWA regarding this consultation. If NESHPO does not respond within that time period, NDOR may assume that NESHPO has no objections and may proceed to the next step in the 106 process.

2. Pursuant to 36 CFR 800.4(b), NDOR shall ensure the identification of cultural resources that may be affected by an undertaking and gather information to evaluate the integrity and eligibility of these properties for listing in the NRHP.

3. NDOR shall obtain information through cultural resource surveys or other appropriate methods.

4. NDOR's identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and should be consistent with guidance issued by NESHPO, FHWA, NDOR, and any other guidance, methodologies, agreements, or protocols that FHWA, NDOR, and NESHPO agree should be used to identify properties, including those of other land-managing agencies.

5. If NDOR determines no historic properties are found to be present in the APE or that there are historic properties present within the APE but they will not be affected, the project will be processed as a Tier II project, in accordance with Stipulation VIII.B.

C. Evaluating Historic Significance

1. NDOR shall evaluate the historic significance of identified properties in accordance with 36 CFR 800.4(c), and shall make appropriate findings regarding eligibility. The NDOR PQS will identify boundaries, following standards set forth in National Register Bulletin 21, Defining Boundaries for National Register Properties. NDOR shall consult with NESHPO on the outcome of identification and evaluation of historic resources, as appropriate.

2. For undertakings that have properties that are determined by the NDOR PQS to be not eligible for inclusion in the NRHP, NDOR shall process the project as a Tier II project, in accordance with Stipulation VIII.B.

3. NDOR may simultaneously request NESHPO consultation review on findings of inventory, eligibility, and effect covered by 36 CFR 800.3 through 800.6, provided other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR 800.2(d).

a) If NESHPO fails to comment on any findings contained in a NDOR consultation submission within 30 calendar days of receipt, NDOR may assume they have no objection and proceed to the next step in the consultation process pursuant to 36 CFR 800.3(c)(4).

4. Agreements regarding the NRHP eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement, NDOR shall first consult with the disagreeing party to resolve the disagreement.

a) If the disagreement cannot be resolved through informal consultation, NDOR shall notify FHWA, whereupon NDOR, FHWA, NESHPO; and any consulting party shall consult to resolve the disagreement in accordance with a time frame specified by FHWA.

b) If the disagreement is not resolved, FHWA shall refer the issue to the Keeper of the National Register to obtain a determination of eligibility.

D. Finding of Effect

1. No Historic Properties Affected

a) If the NDOR PQS determines that either there are no historic properties present or there are historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), NDOR shall make and document a finding of no historic properties affected (36 CFR 800.4(d)(1)).

b) For projects NDOR processed as Tier II undertakings, NDOR shall document the findings in the reports that will be submitted at least quarterly to FHWA and NESHPO.

c) NDOR shall notify all consulting parties of the findings it makes for individual Tier II projects, consistent with the confidentiality provisions of 36 CFR 800.11 (c), prior to approving the undertaking.

2. No Adverse Effect

a) NDOR shall recommend a finding of no adverse effect if none of the undertaking's anticipated effects meet the Criteria of Adverse Effect under 36 CFR 800.5(a)(1), or if NDOR modifies the undertaking or imposes conditions that will avoid adverse effects to historic properties.

b) NDOR shall submit recommendation of effects and supporting documentation to FHWA for review and approval.

c) NDOR shall submit FHWA's finding of effect (FOE) and supporting documentation to all consulting parties for comment, and will request NESHPO concurrence on the finding.

d) NDOR may consult at any time, either formally or informally, with NESHPO regarding application of the Criteria of Adverse Effect. NDOR shall inform FHWA regarding this consultation.

e) If NESHPO, or another consulting party, objects within 30 days of receipt of a NDOR finding of no adverse effect, NDOR will notify FHWA, who will either consult to resolve the objection or request the Council to review the finding pursuant to 36 CFR 800.5(c)(2).

f) NDOR shall maintain a record of the finding and provide information on the finding to all consulting parties and the public on request, consistent with the confidentiality provisions of 36 CFR 800.11(c), prior to approving the undertaking.

3. Adverse Effect

a) Where the NDOR PQS determines adverse effects, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), cannot be avoided, NDOR shall make and document a finding of adverse effect for review by FHWA.

b) Prior to any finding of adverse effect, FHWA and/or NDOR may consult either formally or informally with NESHPO regarding application of the criteria of adverse effect.

c) Prior to any finding of adverse effect, FHWA or NDOR shall have informal discussion with Tribes or THPOs that ascribe traditional cultural and religious significance to affected historic properties. These discussions would not occur if Tribes or THPOs have advised FHWA that they are not interested in consultation due to geographic location or resource type.

4. Resolution of Adverse Effect

a) When a finding of adverse effect has been made by FHWA, NDOR shall, in consultation with FHWA, NESHPO, and other consulting parties evaluate alternatives or modifications to the project that would avoid, minimize, or mitigate adverse effects on historic properties. NDOR shall propose measures to resolve adverse effects, to be documented in a Memorandum of Agreement (MOA) or Programmatic Agreement.

b) NDOR shall make information available to the public, including the documentation specified in 36 CFR 800.11(e), subject to the confidentiality provisions of 36 CFR 800.11(c).

c) NDOR shall provide an opportunity for members of the public to express their views on resolving adverse effects of the project through a public meeting. FHWA, NDOR PQS, and NESHPO shall be invited to any public meeting. If appropriate, another public outreach method may be used through concurrence with FHWA. NDOR shall document those views and provide copy to FHWA and NESHPO.

d) For locally administered projects, NDOR PQS shall coordinate with the Project Proponent and the NDOR Public Involvement Coordinator to develop appropriate public outreach. NDOR shall provide an opportunity for members of the public to express their views on resolving adverse effects of the project. FHWA, NDOR PQS, and NESHPO shall be invited to any public meeting. If appropriate, another public outreach method may be used through concurrence with FHWA. NDOR shall document those views and provide copy to FHWA and NESHPO.

e) FHWA will notify the Council of the finding, pursuant to 36 CFR 800.6(a) (1), and that NDOR will be preparing a MOA to resolve adverse effects. NDOR will provide supporting documentation in accordance with 36 CFR 800.11(e), and determine Council participation pursuant to 36 CFR 800.6(a) (1).

(1) The Council shall advise the agency and the consulting parties whether it will participate within 15 days of receipt of notice.

f) After consideration of the views of all consulting parties and the public, if NDOR, FHWA, NESHPO and Council (if it has chosen to participate pursuant to 36 CFR 800 Appendix A) agree on how the adverse effects will be resolved, they shall execute an MOA, pursuant to 36 CFR 800.6(c).

g) A copy of the MOA shall be provided to each signatory, invited signatory, and concurring parties, as well as the Council (if they are not a signatory).

h) Once finalized, NDOR shall incorporate the measures to resolve adverse effects into the undertaking, and NDOR shall implement the undertaking.

i) If NDOR determines that an undertaking may adversely affect a National Historic Landmark, NDOR will notify FHWA, who shall request NESHPO, Council, and Secretary of the Interior, as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR 800.10

5. Resolving Objections

a) If FHWA, NESHPO, and NDOR are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, they shall invite the Council to participate in the resolution process pursuant to 36 CFR 800.6(b)(2).

b) If the parties fail to agree to measures to resolve the adverse effects, FHWA, NESHPO, or the Council may terminate consultation pursuant to 36 CFR 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR 800.7.

X. EMERGENCY SITUATIONS

As defined by 36 CFR 800.12, emergencies are separated into two categories:

A. Disasters or emergencies declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. These occurrences can require emergency highway system/facility repairs that are necessary to 1) protect the life, safety, or health of the public, 2) minimize the extent of damage to the highway system/facilities, 3) protect remaining highway facilities, or 4) restore essential traffic. In situations where this definition applies:

1. Repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies. These emergency repairs, including temporary traffic operations, are typically undertaken during or immediately following the occurrence that necessitated the action.
 2. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, NDOR will comply with the procedures in Stipulations VIII and IX of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed. For projects taking longer than 30 days for repair, NDOR will comply with the procedures outlined in Stipulations VIII and IX of this Agreement.
 3. Written notification or electronic mail (when appropriate) of an emergency action shall be provided to NESHPO, to FHWA and to THPOs and/or tribes as appropriate. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein and shall ~~be processed as a Tier III project as described under~~ this Agreement.
 4. Tribal consultation shall proceed pursuant to 36 CFR 800.12.
 5. Work required to restore the damaged resource or facility to its original condition that is beyond the scope of emergency repair will comply with the procedures in Stipulations VIII to IX of this Agreement. In these situations, NDOR may request an expedited review by NESHPO and consulting parties.
- B. In accordance with 36 CFR 800.12(d), emergencies that are defined by immediate rescue and salvage operations conducted to preserve life or property such as necessitated by natural disaster or other catastrophic events, are exempt from the provisions of Section 106 and this Agreement.

XI. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

1. When NDOR's identification efforts in accordance with Stipulation IX.B and NDOR Section 106 Guidelines indicate that historic properties are likely to be discovered during implementation of an undertaking, NDOR shall include in any environmental document a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6.

B. Discoveries Made Prior to Project Construction

1. If previously unidentified archeological or historic properties or unanticipated effects are discovered after NDOR has completed its review under this Agreement and prior to commencement of project construction, NDOR, in consultation with NESHPO, shall carry out the applicable requirements of this Agreement. Specifically, NDOR shall make project effect recommendations as stipulated under this Agreement. If the effect finding is no adverse effect or adverse effect the project will be processed as a Tier III project under this Agreement.

C. Discoveries Made After Project Construction Begins

1. If previously unidentified historic properties, or unanticipated effects, are discovered after project construction begins, that portion of the project will stop immediately, in accordance with NDOR Standard Specification 107.10 (Appendix D).

2. The NDOR Construction Project Manager will immediately contact the NDOR Technical Documents Unit Program Manager who will notify FHWA within 24 hours of the discovery.

3. No further work in the area of discovery will proceed until FHWA determines that the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional religious and cultural significance to the discovered property.

4. NDOR will consult with FHWA, and NESHPO, as appropriate, to record, document and evaluate NRHP eligibility of the property and to determine project effect. The unanticipated discovery shall be processed pursuant to this Agreement as a Tier II or Tier III project. If the project's effect on the historic property will be no adverse or adverse, it will be processed as a Tier III project under this Agreement. FHWA will initiate consultation with Tribes as appropriate.

5. If the project's effect is determined to be adverse, NDOR shall design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. FHWA shall consult with NESHPO, the Council and Tribes as a Tier III project under this Agreement.

6. If NESHPO, the Council, or a Tribe does not file an objection within 48 hours to NDOR's plan for addressing the discovery or resolving adverse effects, NDOR shall implement actions stipulated in the plan.

7. NDOR shall provide FHWA, a report of the actions when they are completed. FHWA shall provide NESHPO/THPO, the Tribe and the Council this report, as appropriate.

XII. TREATMENT OF HUMAN REMAINS

A. Depending on land ownership, Native American remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found on federal or tribal land within the APE shall be treated pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 3001 et seq. and its implementing regulations (43 CFR 10, as amended) or the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act of 1989 if remains are found on non-federal or non-tribal land. If human remains are encountered during construction, all construction would cease at the location, the location would be secured by the NDOR Construction Project Manager, who would then proceed in a manner consistent with Stipulation XI.C.2 above.

XIII. ADMINISTRATIVE STIPULATIONS

A. Documentation

1. All documentation that NDOR develops to supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11 and shall be in accordance with NDOR Section 106 Guidelines (2015), and its subsequent revisions or editions, as appendices to this Agreement, and with applicable guidelines and procedures of land-managing agencies that have jurisdiction over the land involved in the undertaking.
2. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to NDOR for review and approval by the NDOR PQS. NDOR shall transmit all documentation cited herein to NESHPO as stipulated by this Agreement. NDOR shall not transmit to FHWA or NESHPO any documentation that has not been reviewed and approved by the NDOR PQS.
3. All documentation prepared in support of this Agreement shall be kept on file at NDOR and made available to consulting parties and the public as stipulated by the Agreement, consistent with applicable confidentiality requirements [as described in 36 CFR 800.11(c)].
4. The NDOR PQS shall submit to NESHPO copies of all fieldwork reports, site forms, Reconnaissance Level Survey forms and any other relevant documents, at least quarterly.
5. For projects processed as Tier I and II projects, reports and forms will be submitted on a quarterly basis, in accordance with Stipulation VIII.D.

B. Monitoring Implementation of this Agreement

1. Compliance with this Agreement will be determined through a process review to be jointly conducted by FHWA and NDOR Environmental Staff with an invitation to NESHPO. Prior to any such meetings, the Council shall be notified at least 30 days in advance, and may participate at its discretion. The results of such reviews will be used to determine what agreement modifications, if any, may appropriately be made and to ensure compliance with the terms of the agreement. At the request of any other signatory party to this Agreement, FHWA shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments.

2. The first process review will occur within two (2) months of the initial report submittal, and the second review to occur within two (2) months after the first full fiscal year report submittal. For subsequent years, reviews will occur annually, within two (2) months of the annual report being issued, unless the FHWA, NDOR, and NESHPO all agree in writing that a review that year would be unnecessary. If all parties agree that a review of a fiscal year is not necessary, a review will be held the following year (not to surpass 2 full years without a review).

3. FHWA, NESHPO, and Council may review activities carried out pursuant to this Agreement. NDOR shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, NESHPO, and Council in the form of a written report. Categories of information shall include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, public objections, and inadvertent effects or foreclosures. In the event of inadvertent effects of foreclosures, NDOR shall notify FHWA and NESHPO of the occurrence. The range and type of information included by NDOR in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

4. NDOR shall prepare the written report of these findings annually following execution of the Agreement. NDOR shall submit all annual reports to FHWA, NESHPO, and Council within 3 months of the end of the federal fiscal year (September 30), recognizing that the initial report will cover a partial fiscal year (from date of Agreement approval through to the end of that fiscal year) and insuring the first report under this Agreement would be submitted after the end of the federal fiscal year in which the Agreement is authorized.

5. NDOR shall provide notice to the public that the annual report herein prescribed is available for public inspection and ensure that potentially interested members of the public are made aware of its availability and that the public may comment to signatory parties on the report. FHWA and NDOR, in consultation with NESHPO shall identify the specific recipients of the public notice and outreach methodology.

6. In conjunction with the review of the reports prepared by NDOR pursuant to this Stipulation, the signatory parties shall consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Highway Program on historic properties in Nebraska.

7. If any signatory party determines that NDOR is not meeting its responsibilities under this Agreement, measures will be taken to resolve the concerns with FHWA and the NDOR PQS, if appropriate. FHWA retains the authority to determine federal-aid eligibility for any project(s) which may have been processed in noncompliance of this Agreement, and retains the authority to rescind this Agreement.

C. Resolving Objections to Implementation of this Agreement

1. Should any signatory party object in writing to NDOR or FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.

2. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.

3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA, with the cooperation of NDOR, shall forward all documentation relevant to the objection to the Council and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, Council shall exercise one of the following options:

- a) Advise FHWA that Council concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly;
- or

b) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or

c) Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a) (4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).

4. Should Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may proceed with the proposed response to the objection.

5. FHWA shall take into account any Council recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subject of the objection shall remain unchanged.

6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.

7. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.

8. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other signatory parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other signatory parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

D. Amendment

1. The Section 106 process also includes procedures for compliance with other applicable resources, which will be outlined in appendices to this Agreement by addendum. Such appendices shall include procedures and or Programmatic Agreements for Tribal Coordination, Certified Local Governments, and the Historic Bridge Inventory. Appendices shall be developed in coordination with the appropriate resource agencies. In addition, FHWA will facilitate discussions between NDOR, CLG's, and the Tribes.

2. Any signatory party to this Agreement may at any time propose amendments to the Agreement, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.

3. Appendices to this Agreement may be individually amended through written agreement of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

E. Termination

1. Any signatory party may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XIII. D, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.

2. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.

3. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

F. Confidentiality

1. All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to Nebraska Revised Statute 84-712.05 and the provisions of Section 304 of NHPA. Nebraska Revised Statute 84-712.05 stipulates that records or portions of records may be withheld from the public if these records would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. Section 304 allows the head of a Federal agency or other public official receiving grant assistance, after consultation with the Secretary of the Interior to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Federal agency determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

G. Duration of Agreement

1. This Agreement shall remain in effect for a period of five years after the date it takes effect, unless it is terminated prior to that time.

a) Six months prior to the end of the first year, NDOR shall notify all signatories in writing and shall facilitate a review of this Agreement. If there are no written objections from the signatories, the Agreement shall remain in effect for the remaining four year period.

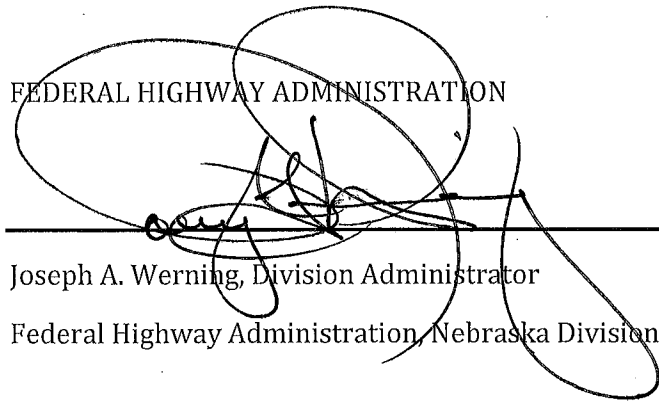
b) Six months prior to the conclusion of the initial five year period, NDOR shall notify all signatories in writing and will facilitate an interim review. All signatories must agree in writing that the Agreement shall remain in effect for another five years. If any party objects in writing to extending the Agreement, or proposes amendments, NDOR and FHWA will consult with the parties to consider amendments or other actions to avoid termination.

c) Nine months prior to the end of the ten year period, consultation shall begin with the signatories to negotiate a new agreement.

2. Execution of this Agreement by the FHWA, NESHPO, Council, and NDOR, and implementation of its terms evidence that FHWA and have taken into account the effects of the Highway Program and its individual undertakings on historic properties, afforded the Council an opportunity to comment, and has complied with Section 106 of the NHPA and 36 CFR 800 for the Highway Program and its individual undertakings.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

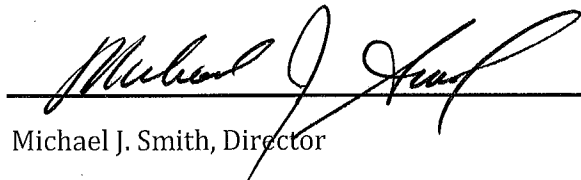


7-1-15

Joseph A. Werning, Division Administrator
Federal Highway Administration, Nebraska Division

Date

NEBRASKA STATE HISTORIC PRESERVATION OFFICER



06-30-15

Michael J. Smith, Director
Nebraska State Historical Society

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

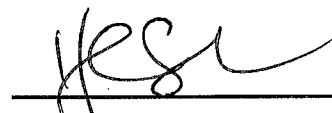


7/31/15

John M. Fowler, Executive Director
Advisory Council on Historic Preservation

Date

INVITED SIGNATORY



6/30/15

Kyle Schneweis, P.E. Director
Nebraska Department of Roads

Date

Appendix A: List of Tribes

FHWA and NDOR identified and invited the following Tribes to be consulting parties to the Agreement and any joint FHWA and NDOR undertakings.

Apache Tribe of Oklahoma
PO Box 1330
Anadarko, OK 73005

PO Box 368
Macy, NE 68039
Mr. Thomas Parker
Tribal Historic Preservation Deputy
Omaha Tribe of Nebraska
P.O. Box 368
Macy, NE 68039

Cheyenne and Arapaho Tribes
100 Red Moon Circle
Concho, OK 73022

Mr. Calvin Harlan
Tribal Historic Preservation Officer
Omaha Tribe of Nebraska
P.O. Box 368
Macy, NE 68039

Ms. Lynette Gray
Tribal Historic Preservation Officer
Cheyenne & Arapaho Tribes
100 Redmoon Circle
P.O. Box 38
Concho, OK 73022

Oglala Sioux Tribe
PO Box 2070
Pine Ridge, SD 57770

Comanche Nation of Oklahoma
584 NW Bingo Rd
Lawton, OK 73507

Mr. Wilmer Mesteth
Tribal Historic Preservation Officer
Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge SD 57770

Iowa Tribe of Kansas and Nebraska
3345 B. Thrasher Rd.
White Cloud, KS 66094

Otoe-Missouria Tribe
8151 Hwy 177
Red Rock, OK 74651

Mr. Lance Foster
Tribal Historic Preservation Officer
Iowa Tribe of Kansas & Nebraska
3345 B, Thrasher Rd
White Cloud KS 66094

Pawnee Nation of Oklahoma
PO Box 470
Pawnee, OK 74058

Iowa Tribe of Oklahoma
335588 E. 750 Road
Perkins, OK 74059

Kellie J. Poolaw
Tribal Historic Preservation Office Director
Pawnee Nation of Oklahoma
P.O. Box 470
Pawnee, OK 74058

Kaw Nation
PO Box 50
Kaw City, OK 74641

Kiowa Tribe
100 Kiowa Way
PO Box 369
Carnegie OK 73015

Ponca Tribe of Nebraska
PO Box 288
Niobrara, NE 68760

Omaha Tribe of Nebraska

Mr. Randy Teboe

Tribal Historic Preservation Officer
Ponca Tribe of Nebraska
P.O. Box 288
Niobrara, NE 68760
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 57570

Mr. Russell Eagle Bear
Tribal Historic Preservation Officer
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 57570-0430

Sac and Fox Nation of Missouri in Kansas and
Nebraska
305 North Main ST
Reserve, KS 66434

Santee Sioux Nation
Council Headquarters/Museum
108 Spirit Lake Avenue, West
Niobrara, NE 68760-7219

Mr. Richard Thomas
Tribal Historic Preservation Officer
Santee Sioux Nation
52948 Highway 12
Niobrara NE 68760

Winnebago Tribe of Nebraska
PO Box 687
Winnebago, NE 68071

Ms. Emily Smith-Deleon
Tribal Historic Preservation Officer
Winnebago Tribe
P.O. Box 687
Winnebago, NE 68071

Ms. Judi M. gaiashkibos,
Executive Director
Nebraska Commission on Indian Affairs
P.O. Box 94981
Lincoln, NE 68509

Appendix B: List of Certified Local Governments (2/23/2015)

FHWA and NDOR identified and invited the following Certified Local Governments to be consulting parties to the Agreement and any joint FHWA and NDOR undertakings.

City of Auburn
Kim Berger
1101 J St
Auburn, NE 68305

City of Fairbury
Laura Bedlan
612 D ST
Fairbury, NE 68352

City of Lincoln
Dr. Edward Zimmer
Historic Preservation Planner
555 S 10th ST, Ste 213
Lincoln, NE 68508

City of North Platte
Judy Clark
211 West 3rd ST
North Platte, NE 69101

City of Omaha
Trina Westman
Historic Preservation Administrator
1819 Farnam, Ste 1100
Omaha, NE 68183-1100

City of Plattsmouth
Irv Portis
136 N 5th ST
Plattsmouth, NE 68048

City of Red Cloud
Sue Meline
540 North Webster ST
Red Cloud, NE 68970

City of Sidney
Megan McGown
PO Box 79
Sidney, NE 69162

Appendix C

Activities that are Undertakings with No Potential to Cause Effects to Historic Properties Pursuant to 36 CFR 800.3(a) (1) as identified by FHWA, Nebraska Division, June 17, 2010.

Actions or Activities (Undertakings) that have “No Potential to Affect Historic Properties”

1. Guardrail and bridge rail repair and replacement. Conditions: New guardrail material is limited to in-kind replacement/repair (using similar materials) with any and all ground disturbance limited to existing fill material locations only, not to exceed the depth of the existing fill material.
2. Traffic signals, intersection lighting, pedestrian signals, underpass lighting, or railroad lighting within existing right-of-way. Conditions: New material utilized is limited to in-kind replacement/repair (using similar materials) on existing traffic devices. Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the fill material.
3. Maintenance and replacement of highway signs on existing poles, and new sign installation within existing fill material locations, with any fill material disturbances not to exceed the depth of the existing fill material.
4. Crack-sealing, pothole repair, overlaying, milling, resurfacing, installation of rumble strips, and pavement marking. Conditions: This activity does not include actions on brick streets. The maintenance or rehabilitation is limited to the existing surfaced areas with only minimal surface expansion, is the same as the existing vertical and horizontal alignments of the roadway, no ditching or drainage work is included, and all staging areas can be limited to existing paved or previously disturbed surfaces only (i.e., surfaces with little to no vegetation due to previous disturbance). Any and all ground disturbance is limited to previous fill material locations only, not to exceed the depth of the existing fill material.
5. Repair/Maintenance of right-of-way fencing, limited to repair/replacing fence wire and fence posts only on existing fence post locations. Condition: If any grading is required for access or installation of fencing, this authority does not apply.
6. Improving existing bicycle and pedestrian lanes and paths on their existing alignments. Conditions: Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the existing fill material.
7. Acquisition of scenic easements.
8. Approvals for disposal of excess right-of-way or for joint or limited use of the right-of-way for right-of-way previously purchased with Federal funds, provided no properties over 50 years old are located within the property.
9. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels, as long as those parcels do not contain properties over 50 years old.
10. Improvements to existing maintenance facilities, rest areas (excluding I-80 rest areas), and truck weigh stations less than 50 years old. Condition: Any and all ground disturbance is limited to existing fill material locations only, not to exceed the depth of the existing fill material.

11. Repair/replacement of at-grade railroad crossing gates, lights, signs, and the rail crossing driving surface. Condition: work is limited to in-kind replacement/repair (signs to signs, gates to gates, etc.) with any and all ground disturbance limited to existing fill material locations only, not to exceed the depth of the existing fill material.
12. Grants for training, education, and research programs which do not involve construction.
13. Purchase of equipment or materials that do not lead to, or are a part of, a construction activity.
14. Visual bridge inspections.

Appendix D

NDOR Standard Specification 107.10 – Archaeological and Paleontological Discoveries (2007)

Should the contractor encounter any fossils, meteorites, Native American relics, or other articles of historical or geological interest, such articles shall become the property of the State. The Engineer shall be promptly notified when any such articles are uncovered, and the Contractor shall suspend operations in the area involved until such time that arrangements are made for their removal and preservation.