

NDOT – Section 106 Programmatic Agreement FY2024 Report

April 1, 2025

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

FHWA has authorized NDOT to initiate, and in most cases conclude, consultation with the Nebraska State Historic Preservation Officer (SHPO) and other consulting parties (except for tribal authorities when they expressly request government-to-government consultation) for the purposes of compliance with Section 106. This authorization is established through an agreement among FHWA, NDOT, SHPO and the Council entitled *Programmatic Agreement Among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, The Advisory Council on Historic Preservation And The Nebraska Department of Transportation to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program In The State of Nebraska*, February executed in February 2023 (Section 106 PA).

NDOT assumed FHWA's roles and responsibilities as allowable under the 23 USC § 326 Memorandum of Understanding entitled *First Renewed Memorandum of Understanding* executed by FHWA and NDOT. Under NEPA Assignment, NDOT initiates and conducts tribal consultation. Tribes may request formal government-to-government consultation with FHWA via formal written or oral communication, identifying one or more state transportation projects in the request for government-to-government consultation.

This annual report has been completed in compliance with Stipulation XII.B(2) of the Section 106 PA. There have been no public objections, no inadvertent effects or foreclosures during the period of reporting, October 1, 2023 through September 30, 2024.

October 1, 2023 – September 30, 2024

During the period beginning on October 1, 2023 and ending on September 30, 2024, NDOT Section 106 Professionally Qualified Staff (PQS) processed a total of 216 undertakings. Of these, 34 qualified as Tier I projects, *no potential to cause effects to historic properties*, 174 were processed as Tier II projects, *no historic properties affected*, seven were processed as Tier III projects, resulting in a *no adverse effect* determination and one project resulted in an *adverse effect* determination. Below, Chart 1 illustrates the program by assigned project effects determination.

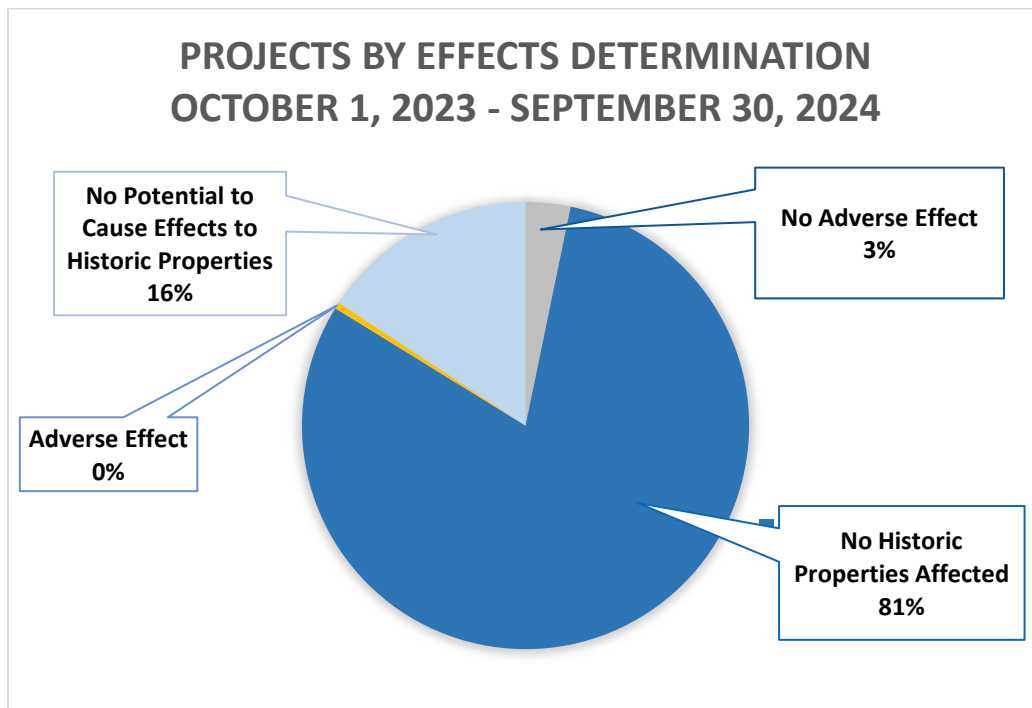


Chart 1

Overall, the Federal-aid Highway Program in Nebraska is characterized by undertakings that rehabilitate or repair existing infrastructure. This is borne out by the overall number of undertakings resulting in a project effects determination of either *no potential to cause effects to historic properties* or *no historic properties affected* (Chart 1), which taken together equal 97% of the entire program.

Tier II Projects: Minimal Potential to Cause Effects

A subcategory of Tier II projects entitled “Tier II – Undertakings with Minimal Potential to Cause Effects” was created for the FAHP in Nebraska in 2023 (Section 106 PA). Projects classified as Minimal Potential are those projects, that based upon our experience with the program, pose very little potential to affect historic properties. Of the 173 projects processed as Tier II projects referenced above, 89 projects were processed as Minimal Potential projects (Chart 2). These

numbers further reinforce that the FAHP in Nebraska is characterized by projects which repair or rehabilitate existing infrastructure.

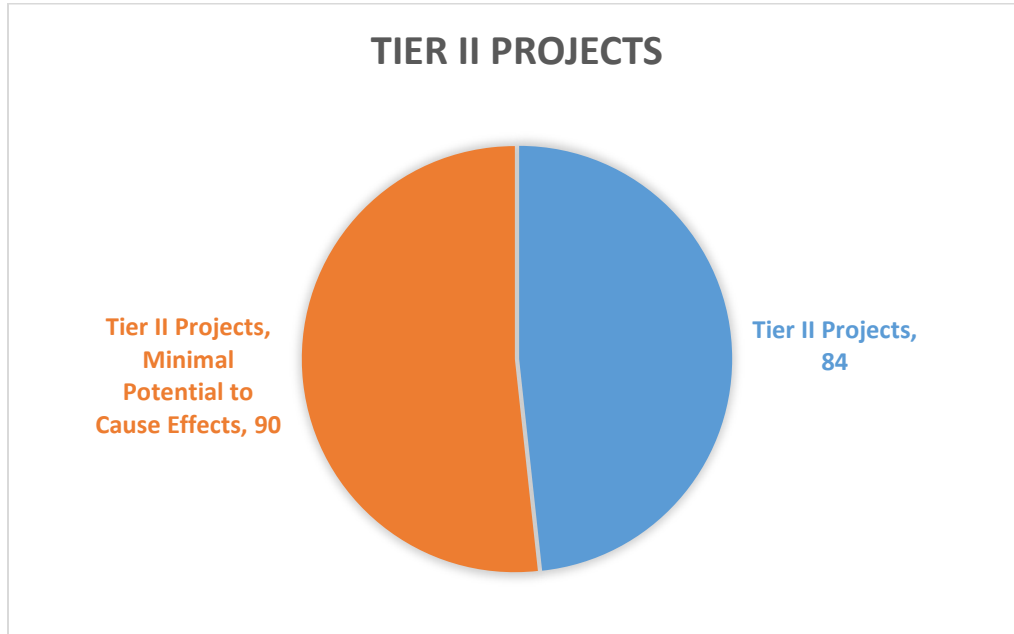


Chart 2

No Adverse Effect Determinations

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

Undertakings resulting in *no adverse effect* determinations include Sutherland South, a 3R project (resurfacing, restoration, and rehabilitation) with bridge repairs; In Broken Bow, a 3R project with concrete repairs; E Jct N-44 – Minden, a resurfacing project that also installed turn lanes; Halsey Spur Bridge, a bridge replacement project; York – Columbus and Minatare – US-385, both “2+2” projects which adds 2 lanes to an existing highway; and In Tryon and In Stapleton a resurfacing project that also included construction on Americans with Disabilities (ADA) ramps.

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
61666	STP-25-2(110)	Sutherland South	3R with bridge repairs	10/03/2023
61685	NH-STP-2(125)	In Broken Bow	3R with concrete repairs	10/30/2023
71239	NH-6-4(131)	E Jct N-44 – Minden	Resurfacing, installation of turn lanes	03/05/2024
61472	STP-FL-S86B(102)	Halsey Spur Bridge	Bridge replacement	05/15/2024
42967	S-81-2(1051)	York – Columbus	Adding 2 lanes to existing alignment (2+2)	06/20/2024
51521	NH-25-1(172)	Minatare – US-385	Adding 2 lanes to existing alignment (2+2)	06/28/2024
61675	STP-92-2(113)	In Tryon and In Stapleton	Resurfacing with ADA ramps	08/12/2024

Adverse Effect Determination

During the time frame covered under this interim report, NDOT processed one undertaking which resulted in an *adverse effect* determination, the Bassett Northeast project.

The Bassett Northeast project is an Emergency Repair project that was born out of the catastrophic flooding which Nebraska experienced in 2019 and involved replacing the Carns State Aid bridge over the Niobrara River in Rock and Keya Paha Counties. Listed in the National Register of Historic Places (NRHP) in 1992, this bridge structure originally consisted of six 54-foot closed concrete spandrel deck arches. After flood damage to an existing span in 1962, two through truss bridges from other locations were added to the Carns State Aid bridge in place of the missing span. The bridge was listed on the NRHP under Criterion C for a significant association with bridge engineering.



Figure 1. View of NRHP listed Carns State Aid Bridge, pre-2019 flood event.

Consultation regarding this undertaking was robust and included the Ponca Tribe of Nebraska, Santee Sioux Nation, Rock County Board of Commissioners, Keya Paha County Board of Commissioners, National Park Service, Keya Paha County Historical Society, Rock County Historical Society, Cheyenne and Arapaho Tribes, Oklahoma, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South

Dakota, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, Pawnee Nation of Oklahoma, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota, Yankton Sioux Tribe of South Dakota, Oglala Sioux Tribe, Otoe-Missouria Tribe of Indians, Oklahoma, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, U.S. Army Corps of Engineers, State Historic Preservation Office, Advisory Council on Historic Preservation. FHWA and NDOT worked with the State Historic Preservation Office (SHPO), the Rock County and Keya Paha County Boards of Commissioners, and the National Park Service to devise a mitigation strategy that included recordation of the historic bridge.

Table 2. Undertaking resulting in adverse effect determination

Control Number	Project Number	Project Name	Project Description	Date Processed
81050	ER-1895(2)	Bassett Northeast	Bridge replacement	10/23/2023

Project Specific - Programmatic Agreement: Pioneer Village Sign Relocation

NDOT, SHPO, and Harold Warp Pioneer Village Foundation (the Foundation) entered into a project



Figure 2. Original location of Pioneer Village Sign. Nebraska Highway 10 is in background, view is west.

specific Programmatic Agreement (PA) regarding E Jct N-44 - Minden in Kearney County on February 28, 2024 to prevent adverse effects to the historic Harold Warp Pioneer Village.

After consultation and in accordance with the project specific PA, the Foundation completed relocation of a car-topped roadside sign (Figure 2). Project plans required modification to the northeast corner of US-6 and N-10 to accommodate truck turning movements. This activity had the potential to cause an adverse

effect on the historic property. The Foundation worked with

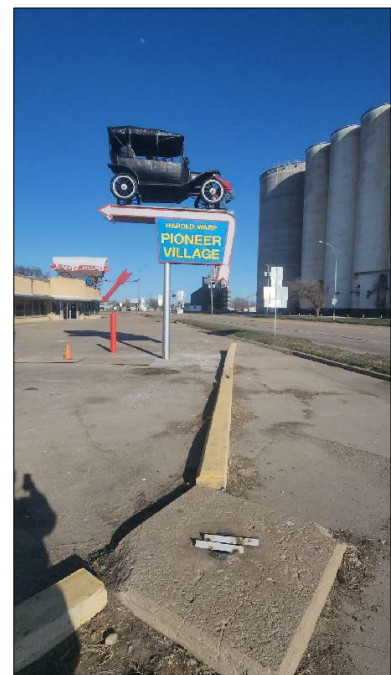


Figure 3. View of relocated sign, concrete foundation in foreground depicts former location. US Highway 6 is to right, view is east.

District 7 and a local company to move away from the edge of the property to a location that remains prominent to highway travelers (Figure 3).

NDOT determined that the project effects determination remained *no adverse effect* and notified SHPO and the Foundation in April 2024 that the terms of the PA had been met.

Consultation Efforts

NDOT completed formal, project specific consultation with outside agencies and/or property owners other than SHPO on 79 occasions and tribal consultation was completed on 78 occasions (Chart 3, tribal consultation was not completed on one undertaking due to the minor scope of the project.) FHWA completed consultation, including tribal consultation, on five projects that were not assigned to NDOT at the time consultation was completed. Consultation was completed with SHPO on the eight 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, counties, cities, towns and villages, federal agencies, Certified Local Governments (CLGs), local historical societies or groups and affected property owners.

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

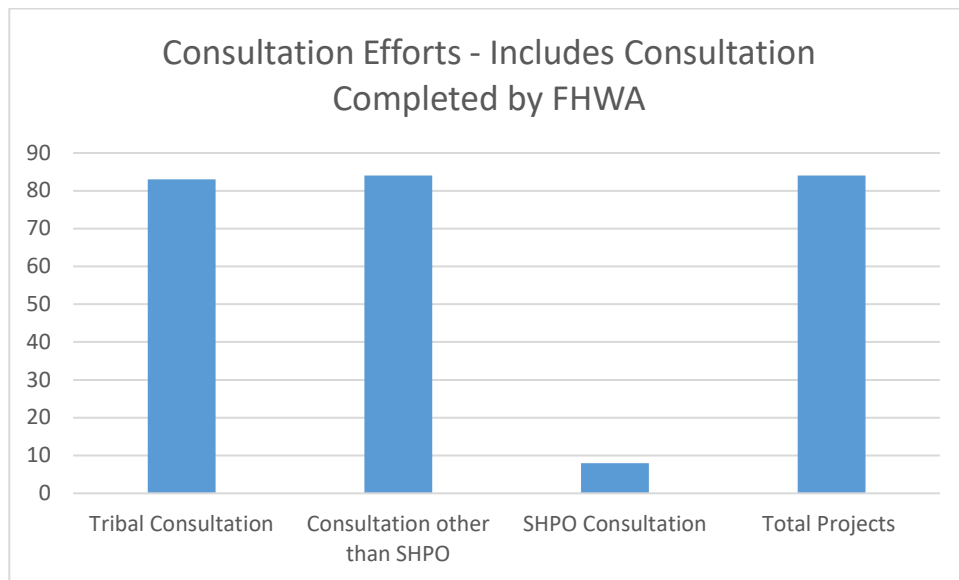


Chart 3

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

During the period of reporting, and under the 2023 statewide programmatic agreement, 18 tribes have declared an interest in Nebraska's FAHP. These tribes include, Apache Tribe of Oklahoma, Arapaho Tribe of the Wind River Reservation, WY, Cheyenne and Arapaho Tribes, OK, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, SD, Comanche Nation, OK, Iowa Tribe of Kansas and Nebraska, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, MT, Oglala Sioux Tribe, Omaha Tribe of Nebraska, Otoe-Missouria Tribe of OK, Pawnee Nation of Oklahoma, Ponca Tribe of Nebraska, Rosebud Sioux Tribe of the Rosebud Indian Reservation, SD, Sac & Fox Nation of Missouri in Kansas and Nebraska, Santee Sioux Nation, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, Winnebago Tribe of Nebraska and the Yankton Sioux Tribe of South Dakota. Consultation with these tribes was completed with the Tribal Historic Preservation Officer (THPO) or their designee, for each tribe according to identified areas of interest. If no area of interest has been identified, the area of interest is considered to be statewide. Consultation is also completed with THPO or their designee for undertakings which fall in whole or in part, within the boundaries of a reservation.

NDOT's tribal consultation program has become more active during the reporting period was most active in number of projects consulted upon with the Northern Cheyenne, the Oglala Sioux Tribe, the Otoe-Missouria, and the Yankton Sioux Tribe. (Chart 4). This is a result of large areas of interest that overlay the entire State of Nebraska and largely correspond to areas of interest that have not been specifically defined.

Opportunities for Engagement

In Person Meetings with Tribal Staff

NDOT participates in meetings with tribal staff throughout the year, and these meetings are held in person whenever possible. The meetings allow us to revisit our processes, to make sure that we are engaging with appropriate staff members and to discuss specific projects and resources.

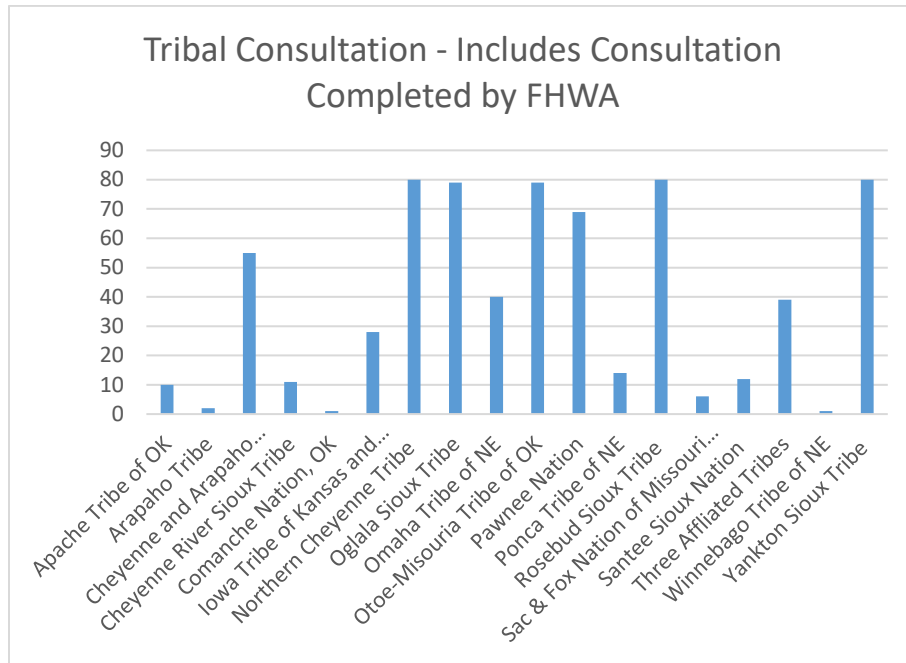


Chart 4

Tribal Transportation Conference

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

Conclusion

The intent of the Section 106 PA was to provide streamlining opportunities in the Federal-aid Highway Program in Nebraska. At its most basic level, this streamlining is realized in fewer Section 106 reviews sent to SHPO for concurrence, saving staff time across three state and federal agencies. During this reporting period, with the implementation of the Tier II subcategory “Minimal Potential to Cause Effects” NDOT was able to process 90 projects as Minimal Potential projects. This equates to 42% of NDOT’s overall program and is proving to be an effective streamlining tool.

During this reporting period, our consultation efforts have increased from consultation completed on 85% of Tier II and Tier III projects to 100% of Tier II* and Tier III projects (*please note that this does not include Tier II Minimal Potential projects). Staff time to complete this consultation has increased, and NDOT continues to work to identify strategies to further streamline these efforts without sacrificing quality and while still maintaining relationships with consulting parties, especially tribal nations.



DEPARTMENT OF TRANSPORTATION

NDOT believes that the Section 106 PA is operating effectively and is being implemented as intended.