

## NDOT – Section 106 Programmatic Agreement FY2023 Report

January 30, 2024

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 agreements among FHWA, NDOT, SHPO and the Council entitled *Programmatic Agreement Among The Federal Highway Administration, The Nebraska State Historic Preservation Officer, The Advisory Council on Historic Preservation And The Nebraska Department of Roads to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program In The State of Nebraska*, July 2015, as amended and a new statewide programmatic agreement executed in February 2023 (Section 106 PA). Undertakings reported upon for fiscal year 2023 were processed under the older, amended programmatic agreement until the new agreement was executed in late February 2023.

NDOT assumed FHWA's roles and responsibilities as allowable under the 23 USC § 326 Memorandum of Understanding entitled *First Renewed Memorandum of Understanding dated September 17, 2021*, and 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 PA. There have been no public objections, no inadvertent effects or foreclosures during the period of reporting, October 1, 2022 through September 30, 2023.

## October 1, 2022 – September 30, 2023

During the period beginning on October 1, 2022 and ending on September 30, 2023, NDOT Section 106 Professionally Qualified Staff (PQS) processed a total of 120 undertakings. Of these, 26 qualified as Tier I projects, *no potential to cause effects to historic properties*, 87 were processed as Tier II projects, *no historic properties affected*, five were processed as Tier III projects, resulting in a *no adverse effect* determination and two projects resulted in *adverse effect* determinations. Below, Chart 1 illustrates the program by assigned project effects determination.

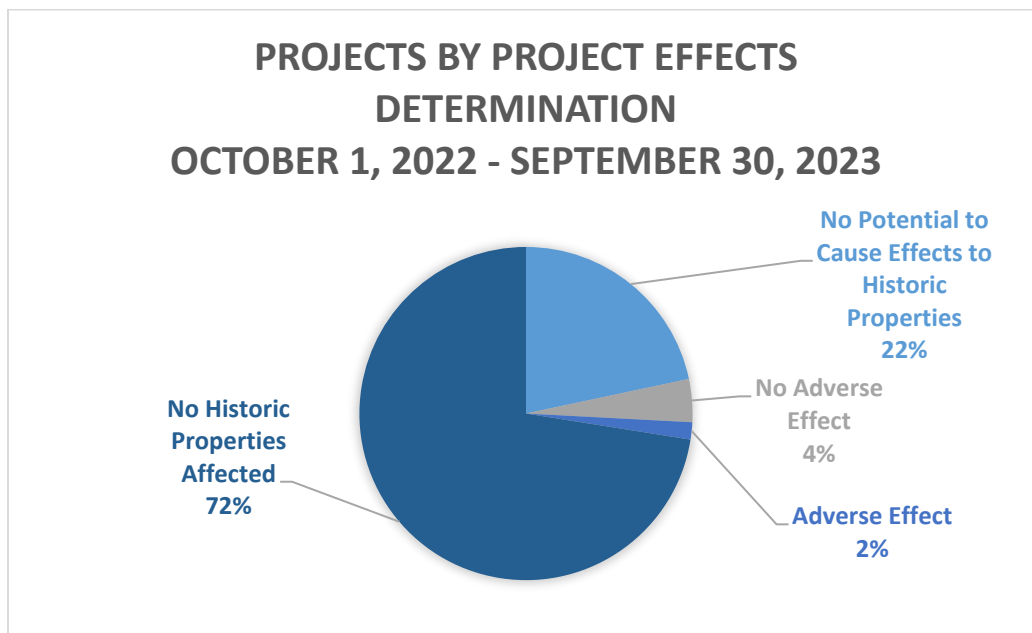


Chart 1

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 94% of the entire program.

### Tier II Projects: Minimal Potential to Cause Effects

New to the FAHP in Nebraska is a subcategory of Tier II projects entitled “Tier II – Undertakings with Minimal Potential to Cause Effects”. This subcategory was established by the new statewide programmatic agreement executed in February 2023 and NDOT began applying the new subcategory that same month. 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 87 projects processed as Tier II projects referenced above, 47 projects were

processed under the new subcategory (Chart 2). These numbers further reinforce that the FAHP in Nebraska is characterized by projects which repair or rehabilitate existing infrastructure.

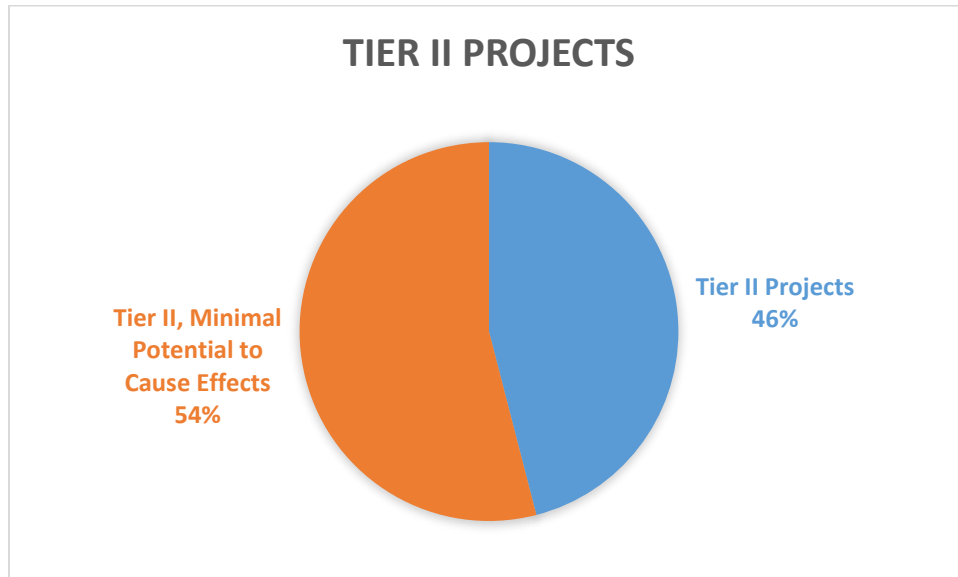


Chart 2

## No Adverse Effect Determinations

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

Undertakings resulting in *no adverse effect* determinations include Tecumseh Historic Square Preservation, a preservation project designed to replace brick streets within a historic downtown square; Monroe East and West, a 3R project (resurfacing, restoration, and rehabilitation) with a bridge replacement project; US-34 North and South, Seward an urban reconstruction project; N-105 North, a 3R project; and Ogallala WB Rest Area, reconstruction of an existing interstate rest area. 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
13214	ENH-48(46)	Tecumseh Historic Square Preservation	Brick street replacement	10/03/2022
32292	STP-22-5(119)	Monroe East and West	3R project with bridge replacement	03/10/2023
61371a	NH-80-3(155)	Ogallala WB Rest Area	Rest area reconstruction	04/17/2023
12080	STP-15-2(117)	US-34 North and South, Seward	Urban reconstruction	07/31/2023
13104	STP-67-1(122)	N-105 North	3R project	09/05/2023

## Adverse Effect Determinations

During the time frame covered under this interim report, NDOT processed two undertakings which resulted in *adverse effect* determinations, Columbus South Bridges project and the Norfolk – Wisner project.

The Columbus South Bridges project proposes to replace the historic Parker through truss bridge over the Loup River at Columbus. NDOT consulted with SHPO, the City of Columbus, the Lower Loup Natural Resources District, United States Army Corps of Engineers, and the Platte County Historical Society to devise a mitigation strategy that includes creation of a new installation in the adjacent city park with interpretation regarding the historic bridge.

The Norfolk – Wisner project proposes to add two lanes to an existing 2 lane highway. The project could not avoid an adverse effect to archeological site 25ST16, the Sharpe Homestead site. This archeological site is a homestead site settled by the Sharpe family in the mid-1860’s. Geophysical investigations confirm the presence of subsurface features. Mitigation in the form of a data recovery plan will be completed.

**Table 2. Undertakings resulting in adverse effect determinations**

Control Number	Project Number	Project Name	Project Description	Date Processed
31983	NH-30-5(131)	Columbus South Bridges	Bridge replacement	08/07/2023
32319	275-6(1052)	Norfolk – Wisner	Adding 2 lanes to existing 2 lane highway	08/18/2023

## Post-Review Discovery

During the reporting period, there was one instance of a post-review discovery. NDOT Environmental was notified on 08/29/2023 of a post-review discovery on the federal aid project Northwest of Seward (Project No. BRO-7080(54), CN 13362). Construction stopped in the area of the discovery as required by Stipulation X.C(3).

This project was processed under the 2015 Section 106 PA as a Tier II project, *no historic properties affected*. No consulting parties were identified in 2018. It was an assigned project under 326 NEPA CE Assignment (Memorandum of Understanding, 2018).

The discovery consisted of several used and unused rifle cartridges. NDOT staff, accompanied by Highway Archeologist Nolan Johnson completed a site visit and evaluation on 08/31/2023. The ammunition, mixed among other recent trash, such as glass, metal and concrete, was related to dumping trash into the creek. This material was secondarily deposited and as such, did not retain physical integrity and was not related to a significant historic context identified under National Register of Historic Places guidelines. This location does not qualify as a historic archeological property.

NDOT notified FHWA of this post-review discovery per Stipulation X.C of the statewide Section 106 programmatic agreement (PA) on 08/31/2023.

NDOT recommended that the project effects determination of *no historic properties affected* remained appropriate, and given the nature of the post-review discovery, that no further consultation or action under Section 106 was required. FHWA Environmental Protection Specialist Dillon Dittmer indicated that FHWA had no objections.

Therefore, according to Stipulation X.C(4) of our statewide Section 106 PA, NDOT notified SHPO of this post-review discovery. SHPO expressed no objections and NDOT considers this matter closed.

## Consultation Efforts

NDOT completed formal, project specific consultation with outside agencies and/or property owners other than SHPO on 38 occasions and tribal consultation was completed on the same number (Chart 3). FHWA completed consultation on four projects that were not assigned to NDOT at the time consultation was completed. Consultation was completed with SHPO on seven Tier III projects and two Tier II 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.

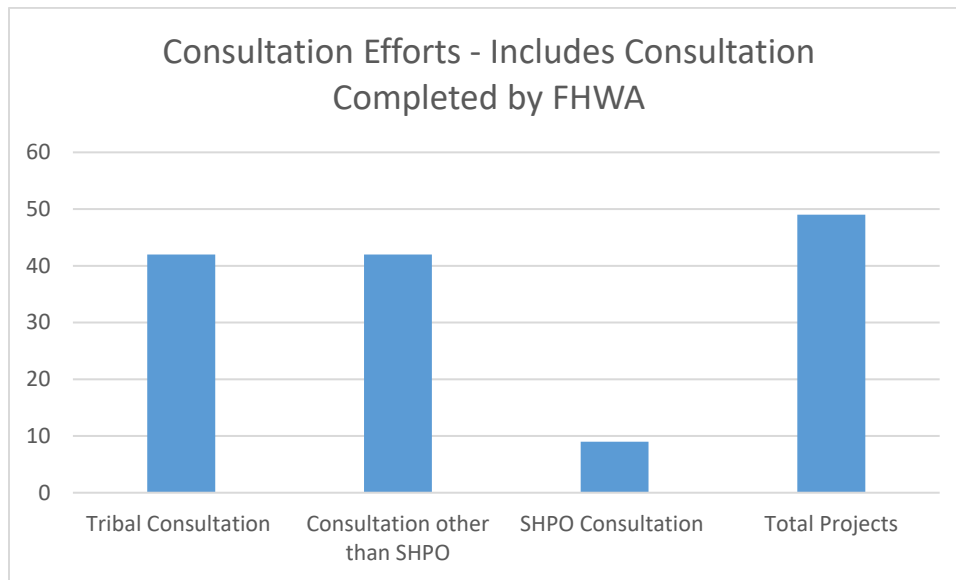


Chart 3

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.

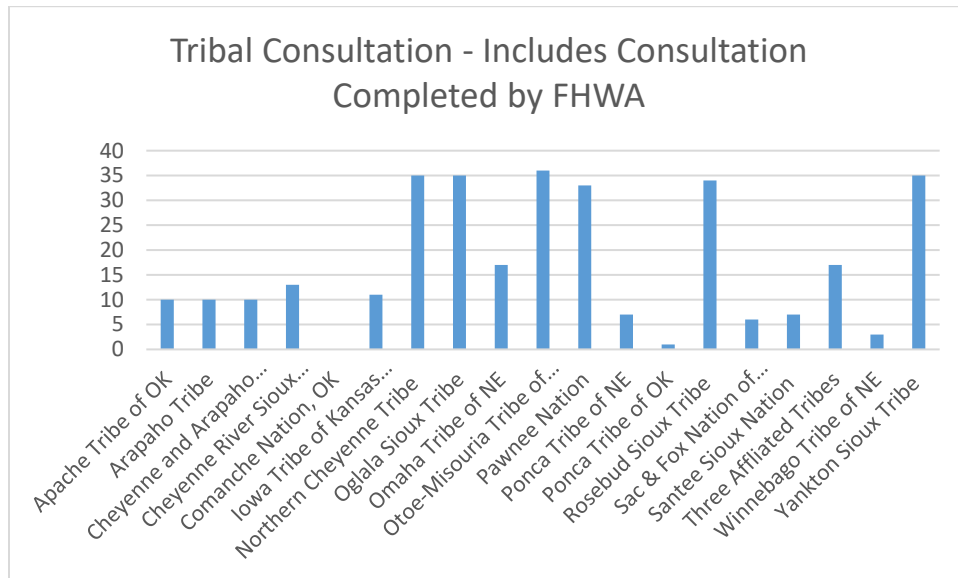


Chart 4

## 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.

### 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 47 projects as Minimal Potential projects. This equates to 39% 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 35% of Tier II and Tier III projects to 85% 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.

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