

Nebraska Department of Transportation National Historic Preservation Act Section 106 Guidelines

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NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

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Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
APE	area of potential effects
ARPA	Archaeological Resources Protection Act
Assigned Project	Projects for which the Nebraska Department of Transportation has assumed authority and responsibility under 23 USC § 326 or 23 USC § 327
CFR	Code of Federal Regulations
CLGs	Certified Local Governments
Council	Advisory Council on Historic Preservation
DRP	data recovery plan
FAHP	Federal-aid Highway Program
FHWA	Federal Highway Administration
GIS	geographic information systems
GPS	global positioning system
MM	mile marker
MOA	memorandum of agreement
NAGPRA	Native American Graves Protection and Repatriation Act
NARPA	Nebraska Archaeological Resources Preservation Act
NCIA	Nebraska Commission on Indian Affairs
NCRGIS	Nebraska Cultural Resources Geographic Information System
NDOT	Nebraska Department of Transportation
NEPA	National Environmental Policy Act
NESHPO	Nebraska State Historic Preservation Officer
NHCRP	Nebraska Highway Cultural Resources Program
NHL	national historic landmark
NHPA	National Historic Preservation Act
NHRSI	Nebraska Historic Resources Survey & Inventory
NPS	National Park Service
NRHP	National Register of Historic Places
PA	programmatic agreement
PIP	Public Involvement Procedures
PQS	Professionally Qualified Staff
ROW	right-of-way
SAO	State Archeology Office
Section 106 PA	Section 106 Programmatic Agreement
SHPO	State Historic Preservation Officer
SOP	Standard Operating Procedure
THPO	Tribal Historic Preservation Officer
USC	United States Code
USDOT	United States Department of Transportation

USGS

United States Geological Survey

Chapter 1 Introduction

1.1 Background

1.1.1 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, and its implementing regulations (36 Code of Federal Regulations [CFR] Part 800) set forth the process that federal agencies must follow when planning undertakings that have the potential to affect historic properties: “Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council [Advisory Council on Historic Preservation] a reasonable opportunity to comment on such undertakings” (36 CFR 800.1[a]). Undertakings are defined as “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval” (36 CFR 800.16[y]). A historic property is “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places [NRHP]” (36 CFR 800.16[l][1]).

1.1.2 Federal-aid Highway Program

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 is assuming FHWA’s roles and responsibilities as allowable under the 23 USC § 326 Memorandum of Understanding between FHWA and NDOT. Further description of NDOT’s assumption of authorities and responsibilities is provided in Sections 1.1.3 through 1.1.5 below.

1.1.3 Categorical Exclusion Assignment

23 USC § 326 allows the Secretary of the United States Department of Transportation (USDOT Secretary), to assign, and a state to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations

promulgated by the Council on Environmental Quality under part 1500 of Title 40 CFR (as in effect on October 1, 2003). A Memorandum of Understanding between NDOT and FHWA is the necessary written agreement under which the USDOT Secretary may assign, and NDOT may assume, the responsibilities of the USDOT Secretary for federal environmental laws.

1.1.4 NEPA Assignment

Section 327 of Title 23 USC (23 USC § 327) establishes the Surface Transportation Project Delivery Program, which allows the USDOT Secretary to assign, and a state to assume, the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 USC § 4321, et seq.) (hereinafter "NEPA"), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required under any other federal environmental laws, with respect to highway, public transportation, railroad, and multimodal projects within the state.

1.1.5 Assignment of other Federal Responsibilities

If a state assumes responsibility under 23 USC § 326 or 23 USC § 327 for making determinations under NEPA, the USDOT Secretary also may assign, and the state may assume, all or part of certain federal responsibilities for environmental review, consultation, or other related actions required, including but not limited to the following requirements related to cultural resources:

- Section 106 of the NHPA, as amended, 54 USC § 306108
- Archaeological Resources Protection Act of 1979, 16 USC § 470aa, et seq.
- Section 4(f) of the Department of Transportation Act of 1966, 23 USC § 138, 49 USC § 303, and 23 CFR 774
- Title 54, Chapter 3125-Preservation of Historical and Archaeological Data, 54 USC §§ 312501-312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 USC §§ 3001-3013; 18 USC § 1170

1.2 Purpose and Applicability of NDOT's Section 106 Guidelines

These guidelines apply to all undertakings sponsored, funded, or permitted in whole or in part by FHWA or NDOT, and are intended to instruct consultants and others in the NDOT cultural resource compliance process when working on NDOT projects. While these guidelines contain many procedures considered essential to completing surveys and reports for NDOT, they should not be considered so rigid as to rule out any flexibility. NDOT acknowledges that unique situations occur, and NDOT is open to appropriate, flexible solutions that may not be presented here. This flexibility, as well as open communication with the NDOT Professionally Qualified Staff (PQS) and others within NDOT's Project Development Division, is key to the successful completion of any NDOT project. Project specific exceptions to these guidelines will be documented and will be kept in the project record. Any revisions to this guidance document will be shared with FHWA prior to finalization.

Projects that *do not* involve federal-aid funding or require federal permits are typically exempt from Section 106. However, to comply with the Nebraska Archaeological Resources Preservation Act (NARPA) and improve project efficiency through a singular review process, NDOT has agreed to process state-funded projects under the same criteria and processes as federal-aid projects. NDOT has entered into a cooperative agreement with History Nebraska (formerly the Nebraska State Historical Society) per Nebraska Revised Statute 82-505, ensuring that all NDOT projects meet the requirements of federal historic preservation legislation and regulations (NDOT n.d.). Because federal requirements fulfill or exceed the objectives and standards of NARPA, no separate or subsequent

review under NARPA is required of NDOT as long as the cooperative agreement is in place (Nebraska Revised Statutes 82-505[2]).

1.3 Exemptions from Section 106 Review

The Council approved the *Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System* (Advisory Council on Historic Preservation [ACHP] 2005). This exemption effectively excludes the majority of the 46,700-mile Interstate Highway System from consideration as a historic property under Section 106. Excluded from this exemption are elements of the Interstate Highway System that are exceptional in some way or meet a national level of significance under the criteria for the NRHP. In Nebraska, elements of the Interstate Highway System that are excluded from this exemption are the Overland Trail Ruts at Sutherland Eastbound Rest Area (Interstate 80 mile marker [MM] 159.6), and Nebraska's 500-mile Sculpture Garden with eight significant features at several rest areas throughout the system (Interstate 80 MM 61.37, 132.55, 193.75, 270.94, 314.93, 355.23, 381.29, and 425.08).

The Council also issued a *Program Comment for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges* (ACHP 2012) that eliminated individual Section 106 review for common post-1945 concrete and steel bridges and culverts. Any post-1945 common bridges previously listed or determined eligible for listing in the NRHP, or located in or adjacent to historic districts, will continue to be considered pursuant to Section 106, as will the 12 bridges identified by Nebraska as having some exceptional quality and listed on FHWA's *Bridge Program Comment Excepted Bridges List* (FHWA 2017).

1.4 Nebraska Highway Cultural Resources Program

The Nebraska Highway Cultural Resources Program (NHCRP) is an administrative unit within the State Archeology Office (SAO) whose agency director is also the NESHPO. Since authorization by the Nebraska Legislature in 1959, NDOT has entered into agreements with History Nebraska to preserve archeological and historic items to be disturbed by road construction. This arrangement avoids duplication of effort, provides more flexibility and consistency in work product, streamlines communication, reduces administrative and contractual burdens, and exempts NDOT from the requirements of a state statute requiring a separate review of state-funds-only undertakings by the SAO.

The NHCRP is presently funded through a cooperative agreement between History Nebraska and NDOT that sets out the responsibilities and roles of both agencies (NDOT n.d.). The agreement requires the NHCRP to carry out cultural resource management activities for NDOT (background research, field surveys, report preparation, archeological mitigation, construction monitoring, records management, curation, and interagency coordination). NHCRP, with the assistance of the History Nebraska Collections Division, is the primary repository for all Nebraska archeological site files, collections, photographs, geographic information systems (GIS) data and reports.

1.5 Required Permits and Right of Entry

1.5.1 Access to Federal and Tribal Land

It is the responsibility of the consultant, in coordination with the NDOT PQS and project team members if necessary, to determine land jurisdiction during the initial phase of investigation. Although online research can be efficient in identifying ownership data, the consultant should be cognizant that information may be outdated and should inquire with the NDOT PQS or land managing agency for

clarification if deemed necessary for investigative work. Prior to archeological field work commencing on federal or tribal land, the consultant must obtain an Archaeological Resources Protection Act (ARPA) permit. ARPA permitting procedures are developed by each federal agency and require consultation with agency representatives to ensure that proper paperwork and permit applications are completed. Consultants are advised to coordinate early with agency representatives and the NDOT PQS to identify permit requirements and allow time for review and processing.

1.5.2 Access to State and Private Land

Consultants conducting field investigations may need to obtain verbal or written right of access for state and private land, particularly if the land is not immediately adjacent to existing right-of-way (ROW). If verbal permission is granted, the consultant must document the land manager/landowner's name(s) and date of permission to access the property. If permission is denied, the consultant is advised to coordinate with the NDOT PQS to determine the need for gaining access and procedures for obtaining permission if deemed necessary.

1.6 Professional Qualifications Standards

NDOT commits to FHWA to maintain at least one staff member who meets Secretary of the Interior's Professional Qualifications Standards (36 CFR 61) as a full time PQS in the Environmental Section of the Project Development Division. The NDOT PQS coordinates all cultural resource investigations that occur as a result of FAHP or state-aid transportation related undertakings, and works directly with NHCRP archeologists and architectural historians, as well as other professionally qualified consultants, to provide program oversight and consistency.

Professionals employed by NHCRP, as well as other historic preservation consultants (collectively referred to hereafter as consultants), are an important part of the cultural resource compliance program at NDOT and shall meet the Secretary of the Interior's Professional Qualifications Standards and adhere to these guidelines. The qualifications (36 CFR 61) define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. Illustrative examples include an architectural historian with specialized experience in assessing early plains architecture, a geoarchaeologist with specialized experience in assessing the potential for deeply buried cultural deposits in alluvial settings, or a paleobotanist with specialized experience in assessing floral material recovered from a prehistoric pit feature. If questions arise as to whether additional expertise is warranted, the consultant should contact the NDOT PQS, and the NDOT PQS will make the final determination as to whether specialized expertise or analysis is required.

1.7 Confidentiality of Resource Information

Consistent with the confidentiality provisions in 36 CFR 800.11(c), NDOT acknowledges that information about historic properties, potential historic properties, or properties considered historic for purposes of Section 106 review are, or may be, subject to Nebraska Revised Statute 84-712.05 and the provisions of Section 304 of the 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 archeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. Section 304 of the NHPA 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. The NDOT PQS will determine what information may be subject to these state and federal confidentiality provisions, and will coordinate with FHWA when tribes make a request to FHWA for government-to-government consultation for specific undertakings. If consultants have any questions regarding the handling of confidential information, they should contact the NDOT PQS for direction. Conversely, if the NDOT PQS is made aware of confidentiality concerns of consulting parties or tribes, they shall inform consultants and other project team members and provide instructions on how to proceed.

1.8 Determining which Section 106 Review Process to Follow

Figure 1 at the end of this chapter illustrates the deliberation process for determining whether FHWA or NDOT will be responsible for Section 106 compliance on NDOT projects. Answers to the following questions will determine which Section 106 review process will be followed:

1. Is the project a federal-aid project or a state-funded project?
2. Is the project an Assigned Project, developed with NDOT assuming federal responsibilities in accordance with 23 USC § 326 or 23 USC § 327?
3. Has a tribe requested government-to-government consultation with FHWA?
4. Has FHWA determined that NDOT adequately addressed tribal concerns or issues?

1.8.1 Non-assigned Projects – FHWA retains responsibility for Section 106 compliance

Generally, for non-assigned projects, FHWA will accept NDOT's Section 106 review protocol and documentation as outlined in this manual. Prior to the commencement of Section 106 activities for non-assigned projects, the NDOT PQS will seek FHWA's approval of the proposed area of potential effects (APE) and the proposed level of effort. The NDOT PQS will ensure that FHWA is informed regarding status of the project and any Section 106 activities performed to date. Section 106 documentation and associated consultation materials for non-assigned projects will be forwarded to FHWA by the NDOT PQS regardless of the assessment Tier. FHWA may request that the NDOT PQS provide additional documentation and/or analysis. FHWA is responsible for eligibility and project effects determinations for all non-assigned projects. FHWA will complete Section 106 review and consultation per 36 CFR Part 800 and their Standard Operating Procedures (SOP).

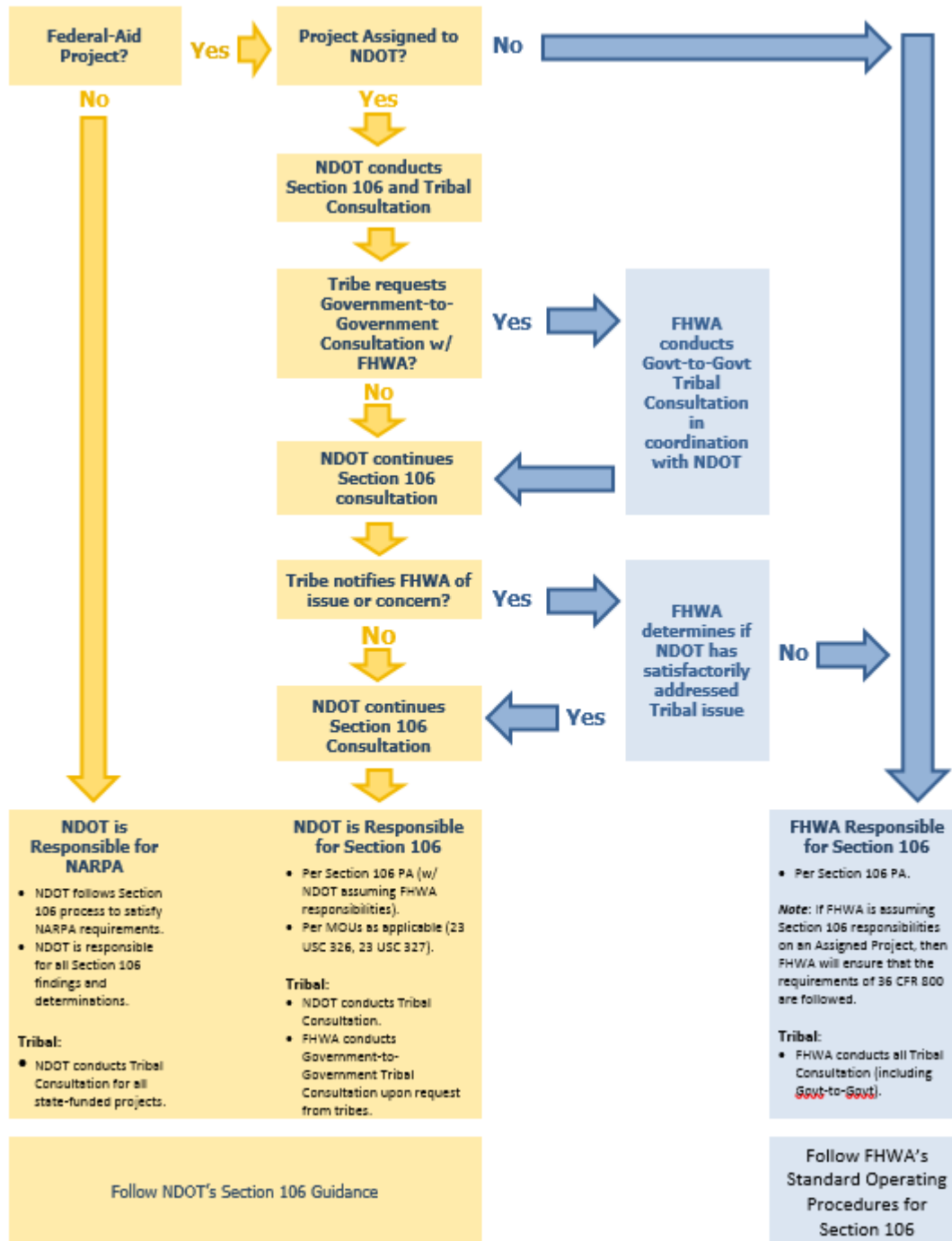
1.8.2 Assigned Projects – NDOT is responsible for Section 106 compliance

The following chapters of this manual outline the Section 106 processes and procedures for Assigned Projects where NDOT is responsible for Section 106 compliance, whether the responsibility is assumed under 23 USC § 326 or 23 USC § 327. Under Assignment, NDOT assumes all federal authorities and responsibilities allowed under the NHPA and other federal historic preservation statutes, with the lone exception of government-to-government tribal consultation.

After NDOT invites/contacts tribes regarding project level consultation, tribes may contact FHWA and request government-to-government consultation with FHWA. FHWA would perform government-to-government consultation in accordance with the MOU and their SOP when any tribe(s) directly contacts FHWA and requests such consultation, and identifies the NDOT highway project(s) in such requests. FHWA would notify NDOT of any tribe requesting government-to-government consultation and provide assistance with discussions between NDOT and the tribe(s). NDOT would be responsible for all the technical research and document preparation in support of government-to-government

tribal consultation, and would carry out all other Section 106 consultation tasks assigned to them per the Section 106 PA and this guidance, and would be the decision maker for Assigned Projects.

Figure 1: Flowchart to Determine Section 106 Responsibilities and Process



Chapter 2 Involving Consulting Parties and the Public

Section 106 consulting parties will be identified by the NDOT PQS pursuant to 36 CFR 800.2(c), and public involvement processes for undertakings will be consistent with agreed-upon stipulations in the Section 106 PA and procedures outlined in NDOT's PIP and any project-specific PIP. The NDOT PQS will plan consultations appropriate to the scale and scope of the undertaking, following NDOT's PIP with regard to outreach methods and timing. The NDOT PQS will consult with the NESHPO as established in the Section 106 PA and PIP, and for situations that do not fit within existing procedures. NDOT will make the 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 tribes.

Consistent with the nature and complexity of the undertaking, NDOT shall seek and consider the views of the public and consulting parties in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses and the relationship of the Federal involvement to the undertaking (36 CFR 800.2). NDOT will notify consulting parties of Section 106 eligibility and effect determinations for Tier II projects (defined in the Section 106 PA and below), 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, NDOT will clearly identify itself as the lead federal agency and make it known that consulting parties and the public should respond to NDOT with concerns regarding the project.

NDOT will notify consulting parties of Section 106 eligibility and effect determinations for Tier III projects that result in an effect determination of *adverse effect*. The NDOT PQS will prepare the Section 106 consultation package notifying the Council of all *adverse effect* determinations, provide supporting documentation as outlined in 36 CFR 800.11(e), and invite the Council to participate in the resolution of adverse effects. NDOT shall continue consultation with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications that could avoid, minimize or mitigate adverse effects on historic properties (36 CFR 800.6).

The following sections discuss specific communication protocol and considerations with parties that have distinct consultative roles in the Section 106 process.

2.1 Nebraska State Historic Preservation Officer

A State Historic Preservation Officer (SHPO) is an official appointed or designated to administer the state historic preservation program [36 CFR 800.16(v)]. In Nebraska, the SHPO also serves as Director of History Nebraska. The deputy SHPO, rather than the Director, is responsible for fulfilling the SHPO Section 106 review role for NDOT projects in response to the possible conflict of interest the Director has because of their oversight of the SAO, who is under contract to provide service to NDOT. The deputy SHPO advises, assists, reviews, consults, and responds to NDOT in carrying out their historic preservation responsibilities and has no oversight of the SAO.

2.2 Indian Tribes

The NDOT PQS will determine whether the undertaking may occur on or has the potential to affect historic properties on tribal lands (as defined in 36 CFR 800.16[x]). FHWA retains the responsibility for government-to-government tribal consultation for all FAHP projects. NDOT will initiate consultation with tribes on all NDOT projects; however, if a tribe requests government-to-government consultation with FHWA on a specific project or projects, then FHWA retains the responsibility for conducting government-to-government consultation with that tribe for the purposes of that project(s). If a tribe expresses an interest in government-to-government consultation with FHWA, the NDOT PQS may engage the tribe to explain the roles and responsibilities of NDOT and FHWA in an assigned project, and request that the tribe contact FHWA directly (via phone, email, or mail) requesting government-to-government consultation and to identify the specific project(s) under which they desire to consult. For NDOT projects on federal or tribal lands without FHWA involvement, NDOT would coordinate with that federal agency or tribal authority to establish Section 106 roles and responsibilities.

Tribal consultation under Section 106 is important to any NDOT-administered project in Nebraska located on or near existing tribal lands, as well as within areas identified by tribes as areas of interest or if archeological investigations identify ancestral associations. The PQS will rely on years of research and consultation completed by the Nebraska State Archeology Office and the Nebraska State Historic Preservation Office regarding general areas of tribal activity in Nebraska (*Nebraska State Historic Preservation Office Archeological Properties Section 106 Guidelines*). This information will be used in conjunction with ongoing discussions with Tribal Historic Preservation Officers with ancestral associations in Nebraska.

The NDOT PQS will ensure that consultation packages for tribes are compiled and are appropriate with regard to 36 CFR 800.4. If FHWA is conducting government-to-government tribal consultation, NDOT will submit the tribal consultation packages to FHWA for their review and approval, and FHWA will submit tribal consultation packages to the appropriate tribe and/or Tribal Historic Preservation Officer (THPO). If NDOT is conducting tribal consultation for a project (not government-to-government consultation), NDOT will submit tribal consultation packages to the appropriate tribe and/or THPO.

The NDOT PQS has developed, and will maintain, a contact list used for tribal consultation. The list shall include all federally-recognized tribes that have been identified as having tribal lands within the boundaries of the State of Nebraska, or tribes that have expressed interest to areas within Nebraska due to ancestral ties and possible affiliation with properties of traditional religious and cultural importance to the tribe. Non-federally-recognized tribes may also request to be considered consulting parties and would be afforded the opportunity to participate as discussed below in Section 7.4. The tribal contact list is a living document that will require updating whenever there is a change in tribal leadership or when tribes make requests for removal or inclusion in the list. In addition to serving as a repository of all tribal contact information, the contact list should document the consultation protocol and preferences of each tribe as provided by the tribe. Preferences may include points of contact for tribal leadership and technical representatives, preferences for correspondence and the level and types of information, meeting format and locations, and comment solicitation.

2.3 Representatives of Local Governments

NDOT will invite representatives of local governments with jurisdiction over the area where effects of an undertaking may occur to be consulting parties, including Certified Local Governments (CLGs), or applicants for federal assistance, permits, licenses and other approvals that are entitled to be consulting parties under 36 CFR 800.2.

2.4 Participation of Additional Consulting Parties

Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties, and their participation in undertakings will be governed by 36 CFR 800.2(c)(5) and 36 CFR 800.3(f). Other parties entitled to be consulting parties, including any land-managing agency (including, but not limited to, National Park Service, United States Fish and Wildlife Service, United States Bureau of Reclamation, United States Army Corps of Engineers) whose land may be affected by an undertaking or non-federally-recognized tribes, will be invited by NDOT to participate in the Section 106 process as a consulting party (participation of federally-recognized tribes is discussed in Section 2.2). NDOT will consider all written requests of individuals and organizations to participate as consulting parties and will determine which should be consulting parties for the undertaking.

2.5 The Public

Council regulations state that the views of the public are essential to informed federal decision making in the Section 106 process (36 CFR 800.2[d]). Public involvement in planning and implementing undertakings covered by the Section 106 PA and these guidelines will be governed by NDOT environmental compliance procedures, the NDOT PIP, and any project-specific PIP. Public involvement and the release of information will be consistent with 36 CFR 800, as well as the public involvement regulations in 23 CFR 771.111 and 23 CFR 450.

To remain consistent with the intent of 36 CFR 800, NDOT will 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. Information gathered and concerns expressed by the public during a project's NEPA process or general project development outreach will be relayed to the NDOT PQS. In turn, if the NDOT PQS is aware of any historic properties that may be affected or issues and concerns expressed by the public, then the PQS will inform the project team of any special outreach requests or materials.

Chapter 3 Tiered Levels of Identification and Review

NDOT, FHWA, and the NESHPO have defined three tiers of Section 106 review to characterize the intensity of identification efforts for historic properties, based on the scope of a project and the likelihood for historic properties to be present and affected (Section 106 PA). All NDOT projects are screened by the NDOT PQS and classified according to three tiers:

- Tier I - Projects with *no potential to affect historic properties* determination.
- Tier II - Projects with the potential to affect historic properties but merit a *no historic properties affected* determination.
- Tier III - Projects that result in either a finding of *no adverse effect* or *adverse effect*.

This chapter outlines NDOT roles and responsibilities for Section 106 consultation according to the three review tiers listed above. Identification of historic properties for Tier II and Tier III projects will be made in accordance with 36 CFR 800.4. The NDOT PQS retains final responsibility for NRHP eligibility determinations and project effects determinations with regard to all Tier II projects per the Section 106 PA. According to the Section 106 PA, NRHP eligibility determinations and project effects determinations for all Tier III projects will be reviewed and concurred upon by NESHPO. Disputes regarding eligibility recommendations or effect determinations will be resolved as stipulated in the Section 106 PA. For all tiers of Section 106 review, NDOT will maintain copies of all Section 106 correspondence, documentation, and communication in the project record. The NDOT PQS will provide quarterly reports on Section 106 activities to the NESHPO and FHWA pursuant to the Section 106 PA.

While NDOT is authorized to conduct Section 106 for projects assigned to them, FHWA may inquire at any point in the Section 106 process as to the status of any undertaking.

3.1 Tier I Projects

Tier I projects have been defined in the Section 106 PA as actions that, by their very nature, have no potential to cause effects to historic properties even if historic properties are present within the project's area of potential effect (APE). No Phase 1 Records Search and Literature Review will be completed for Tier I projects (phases of investigation and level of effort are described further in Chapter 5 and Chapter 6). Tier I projects will be reviewed and approved on an **NDOT PQS Memo Section 106 - Tier I Project** form (hereafter **Tier I PQS Memo**) (Appendix A.1). No individual review by the NESHPO is required, although the NESHPO may review Tier I projects through the quarterly reports provided by NDOT, pursuant to the Section 106 PA.

3.2 Tier II Projects

Tier II projects are those undertakings that have the potential to affect historic properties but that are ultimately judged to merit a determination of *no historic properties affected*. Level of effort and phases of investigation will be documented by the consultant or NDOT PQS for each Tier II project using a **State Archeology Office Project Survey Summary** form (hereafter **Archeology Project Summary**) (Appendix B.1) and an **NDOT Architectural/Structural Investigations Project Summary** form (hereafter **Architectural/Structural Project Summary**) (Appendix B.2). These summaries, along with supporting documentation (such as site forms), will be reviewed, rejected, modified, or approved by the NDOT PQS on a project-by-project basis using a **NDOT PQS Memo Section 106 - Tier II Project** form (hereafter **Tier II PQS Memo**) (Appendix A.2). In limited cases involving projects with very limited scope, the NDOT PQS may use the Tier II PQS Memo only without completing the Archaeology or

Architectural/Structural Project Summary forms because no additional information will be provided over the Tier II PQS Memo.

In addition to the Records and Literature Review (Phase 1 Archeological and Architectural/Structural Investigation), Tier II projects may undergo the following phases of investigation:

1. Identification Survey (Phase 2 Archeological and Architectural/Structural Investigation), including limited archeological shovel testing and/or site testing as determined necessary by the consultant, in consultation with the NDOT PQS as necessary;
2. NRHP Eligibility Evaluations and Recommendations of Effect (Phase 3 Archeological and Architectural/Structural Investigation) if historic properties are identified within the APE. These evaluations are coordinated through the NDOT PQS.

Tier II projects will have one of the following Section 106 effect findings as determined/confirmed by the NDOT PQS:

1. *No Historic Properties Affected*: no cultural resources present; or
2. *No Historic Properties Affected*: no historic properties (i.e., eligible for or listed in the NRHP) present; or
3. *No Historic Properties Affected*: historic properties are present, but are not affected by the undertaking and there is no or negligible potential for adverse indirect effects.

NDOT will complete consultation with CLGs as appropriate, and will conduct tribal consultation, if required. In consultation communications, the NDOT PQS will clearly identify NDOT as the lead federal agency, explain that NDOT is authorized to conduct Section 106 consultation, and make it known that tribes may contact FHWA and request government-to-government consultation regarding the project.

Tier II projects may require avoidance or minimization measures to ensure a recommendation of *no historic properties affected*. All such measures will be documented as commitments in the NEPA documentation and will be carried forward as construction commitments on NDOT's Aerial Plan Sheets.

The Tier II PQS memo is not finalized until all consultation efforts are completed.

Pursuant to the Section 106 PA, Tier II projects do not require case-by-case review by the NESHPO regarding NRHP eligibility and project effect determinations, but these may be reviewed by the NESHPO in a quarterly report as established under the Section 106 PA.

3.3 Tier III Projects

Tier III projects are defined as those with the potential to affect historic properties, when such properties are present within the APE. These are projects that result in a finding of *no adverse effect* or *adverse effect*.

Tier III projects are required to undergo all of the following phases of investigation:

1. Records and Literature Review (Phase 1 Archeological and Architectural/Structural Investigation);
2. Identification Survey (Phase 2 Archeological and Architectural/Structural Investigation), including limited archeological shovel testing and/or site testing as determined necessary by the consultant;

3. NRHP eligibility evaluation and recommendation of project effects (Phase 3 Archeological and Architectural/Structural Investigation).

Tier III projects will be documented by the consultant using an **Archeology Project Summary** form (Appendix B.1) and an **Architectural/Structural Project Summary** form (Appendix B.2). This documentation will be reviewed by the NDOT PQS, whose review will be documented using a **NDOT PQS Memo Section 106 Tier III Project** (hereafter **Tier III PQS Memo**) (Appendix A.3). In some cases, due to the complexity of the project and/or resources, the consultant may choose to prepare a narrative report detailing identification and evaluation efforts, as well as a recommendation of effects. In consultation with the NDOT PQS, this narrative report would be completed in place of the Archeology Project Summary and Architectural/Structural Project Summary forms. This report will adhere to Reporting and Dissemination of Results requirements detailed in Sections 5.5 and 6.5 of this guidance document. The narrative report will be reviewed by the NDOT PQS, and this review will be documented using a Tier III PQS memo. NDOT will request NESHPO/THPO/CLG concurrence upon NRHP eligibility determinations and upon the effects finding. The Tier III PQS memo is not finalized until all consultation efforts are completed.

3.3.1 No Adverse Effect

NDOT will 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 NDOT imposes conditions that will avoid adverse effects to historic properties.

NDOT will submit their finding of *no adverse effect* and supporting documentation to all consulting parties for comment. NDOT will request NESHPO/THPO/CLG concurrence upon NRHP eligibility determinations and upon the effects finding as appropriate. In communications with consulting parties and the public, NDOT will clearly identify itself as the lead federal agency, will explain that NDOT is authorized to conduct Section 106 consultation, and shall make it known that the consulting parties and the public may contact NDOT with concerns regarding the project. NDOT will make it known to tribes that they may contact FHWA and request government-to-government consultation regarding the project.

Tier III projects resulting in a *no adverse effect* determination may require avoidance or minimization measures to ensure the *no adverse effect* determination. All such measures shall be documented as commitments in the NEPA documentation and will be carried forward as construction commitments in NDOT's Green Sheet.

3.3.2 Adverse Effect

Where the NDOT PQS determines that adverse effects, as defined by the Criteria of Adverse Effects set forth in 36 CFR 800.5(a) cannot be avoided, NDOT shall notify the NESHPO, Council, THPOs, tribes, CLGs, and consulting parties, as appropriate, of all *adverse effect* determinations.

When a finding of *adverse effect* has been made by NDOT, NDOT shall, in consultation with the NESHPO/THPO, Council (if participating), tribes, CLGs, and any other consulting parties, evaluate alternatives or modifications to the project that would avoid, minimize or mitigate adverse effects on historic properties. NDOT may conduct formal consultation with any of the parties mentioned above and shall provide technical documentation to any consulting party to facilitate the formal consultation.

The NDOT PQS shall propose measures to resolve adverse effects and document the measures as commitments in a Memorandum of Agreement (MOA) or other appropriate agreement document (such as a project-specific PA). Tier III projects may require mitigation as determined by the NDOT PQS during the Phase 4 Archeological and Architectural/Structural Investigations.

NDOT will request NESHPO/THPO/CLG concurrence upon NRHP eligibility determinations and upon the project effects determination as appropriate. In communications with consulting parties and the public, NDOT will clearly identify itself as the lead federal agency, and will explain that NDOT is authorized to conduct Section 106 consultation. NDOT shall make it known that the consulting parties and the public may contact NDOT with concerns regarding the project. NDOT will also make it known to tribes that they may contact FHWA and request government-to-government consultation regarding the project.

The NDOT PQS is responsible for ensuring the development and execution of an MOA, in consultation with the NESHPO/THPO, Council (if participating), and any consulting parties, as appropriate.

Chapter 4 Area of Potential Effects

As stated in 36 CFR 800.4(a) and (b), it is the federal agency's responsibility to determine and document the APE and the level of identification effort, in consultation with the SHPO and/or THPO as appropriate. The APE is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking" (36 CFR 800.16[d]).

The APE must consider indirect and cumulative effects as well as direct effects. When determining the APE, the following factors should be considered:

1. All alternatives being considered for the undertaking; and
2. All locations proposed for ground disturbance, and the depth of disturbance.

In addition, the following should also be considered relative to the scale and nature of the undertaking:

1. All locations from which the undertaking may be visible or audible, or locations that may be affected by project-associated vibratory impacts;
2. All locations where the undertaking may result in changes in traffic patterns, land use, public access, etc.; and
3. All areas where there may be indirect as well as direct effects.

For NDOT undertakings, the NDOT PQS shall determine the APE and the level of the identification efforts, and may base decisions upon recommendations by the consultant and/or the NESHPO/THPO. Depending on the scope and scale of the undertaking, the APE, the project footprint, and the field survey area may be of different sizes. There may also be different survey intensities in the field survey area. The APE shall be clearly defined and justified in narrative form and shall be illustrated on an APE map, to be included in project documentation.

An APE boundary may be redefined to enlarge or shrink during the course of an undertaking as alternatives are modified, new alternatives are considered, or new impacts to historic properties are identified. The level of the identification effort required within the APE may vary depending on the scope and nature of the undertaking, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the APE. For example, the area of the undertaking subject to direct effects may require a Phase 2 Archeological Identification Survey, while the area of the undertaking subject to indirect effects may only require a Phase I Records Search and Literature Review for Architectural/Structural Resources.

The APE will be further expanded as necessary to incorporate the boundaries of all historic properties impacted by the project. When ROW is being acquired from a historic property, the boundaries of that

historic property shall be defined and taken into account when determining project effects. This will be especially important in determining “use” under Section 4(f) of the U.S. Department of Transportation Act of 1966.

The Section 106 PA requires that the NESHPO be consulted on the APE and level of effort on all projects whose environmental document is an Environmental Assessment, an Environmental Impact Statement, or for a Categorical Exclusion when the NDOT PQS determines coordination with the NESHPO/THPO is prudent. This coordination may be completed for an undertaking that has the potential for no *adverse effect* or *adverse effect*. Any additional conversations between NDOT and the NESHPO/THPO in determining the APE shall be included in the final Section 106 submittal to the NESHPO/THPO, or will be documented on the **Tier II or Tier III PQS Memo** (Appendices A.2 and A.3). The project APE and level of effort shall be included as part of consultation with the NESHPO/THPO and any consulting parties. This consultation shall be completed by the NDOT PQS, with involvement by FHWA if FHWA is conducting government-to-government tribal consultation. The NDOT PQS shall coordinate with the NESHPO/THPO and other consulting parties as appropriate to resolve disagreements in the definition of the APE, level of effort expressed by any consulting party, or determinations of eligibility and effect. NDOT will provide a final determination in these instances, and if necessary, will follow the processes for resolving disagreements established in 36 CFR 800.

Chapter 5 Archeological Investigations

The archeological investigation portion of the Section 106 process is typically conducted in phases. These are not required by state or federal guidelines, but form a convenient structure for the processing of archeological investigations. These phases include:

- Phase 1: Records Search and Literature Review
- Phase 2: Identification Survey
- Phase 3: NRHP Eligibility Evaluation and Recommendation of Effects
- Phase 4: Mitigation

The completion of each successive phase will provide an increasingly detailed understanding of archeological sites present, the integrity and significance of those sites, and whether or not the project would impact those sites. Upon the completion of each phase of investigation, the results shall be shared with the NDOT PQS. The entire project APE will be evaluated for archeological resources through desktop review accompanied by field survey as appropriate. The NDOT PQS will be contacted as necessary to confirm level of effort.

5.1 Phase 1: Records Search and Literature Review for Archeological Resources

The consultant conducts a records search and literature review for the APE of every undertaking that has the potential to cause an effect on cultural resources. The NESHPO's *National Historic Preservation Act Archeological Properties Section 106 Guidelines* (NESHPO 2006), or its most current version, provides instructions for conducting records and literature review, including searching the NRHP, the National Historic Landmark (NHL) Register, the Nebraska Master Archeological Site File, and the Nebraska Cultural Resources Geographic Information System (NCRGIS) for archeological properties (on file, History Nebraska). Depending upon the nature and location of the undertaking, published and unpublished reports are also reviewed by the consultant (on file, History Nebraska). The NCRGIS allows consultants to determine the location of any previously recorded archeological resources and to assess the level of previous archeological survey effort in the APE.

If known sites do exist, the full archeological site file for each site will be reviewed by the consultant to determine the need for additional field evaluation of the known site(s). The NDOT PQS will be consulted as necessary.

5.2 Phase 2: Identification Survey for Archeological Resources

The need for a field survey and the level of effort are based on information derived from the records review, and assessed by the consultant. The NDOT PQS will be consulted as necessary.

Field identification effort may not be required under the following conditions:

1. Previous archeological surveys have already investigated the APE and:
 - a. The level of effort of the previous survey meets the needs of the current project; and
 - b. Ground surface visibility met requirements outlined by the NESHPO Archeology Guidelines (NESHPO 2006); and
 - c. No archeological sites were identified.

2. The project is in a geographic situation with little archeological potential and in reaching this conclusion, the consultant has considered:
 - a. Landform type; and
 - b. Landform slope; and
 - c. Distance from water.
3. Recent activity has disturbed the project area so extensively that any potential archeological sites have been destroyed. Such a determination will be documented by the consultant and shall be confirmed by the NDOT PQS.

The consultant will assess each landform in the APE for archeological sites through examination of topographic maps and visual field reconnaissance. The need for intensive field survey effort is weighted more heavily toward areas with greater archeological potential (for example, stream valleys [especially alluvial terraces and fans], lakesides in the Sand Hills, and upland edges overlooking valleys), while areas with far lower potential receive less survey effort. Such areas of low site potential might include uplands and areas located far from a water source, especially if the area has been long subjected to plowing, erosion, and contour-terracing. Not only are sites less likely to occur in these situations, but the physical integrity of sites in these settings is often compromised, precluding their eligibility for listing in the NRHP. Projects or project segments in developed urban areas, even those with high site potential, have a lower potential for preserved archeological deposits.

5.2.1 Archeological Field Survey

Through field survey, the consultant will determine/confirm the APE tracts with reasonable potential to contain archeological sites and will determine which locations to systematically examine. Field survey techniques are adjusted to the variety of landforms and surface conditions encountered. Much of the surface of eastern Nebraska has been plowed and eroded for over a century, simultaneously providing excellent ground surface visibility, though resulting in compromised archeological integrity. More pasture ground is found in western Nebraska, with lower surface visibility, but potentially better archeological site preservation. The NDOT PQS will be consulted as necessary in the determination of appropriate field survey techniques.

The consultant shall ensure that any survey conducted will comply with the NESHPO Archeology Guidelines (NESHPO 2006), which identify the minimum survey standards to be "not less than 10% surface visibility and pedestrian survey transects "no farther apart than 100 feet (about 30 meters)."

The NDOT PQS will be consulted as necessary. To reach these standards (especially in pasture areas) patches of open surface or rodent-disturbed ground (burrow mouths) can be inspected, though prudence suggests that 3/4-inch soil probing or shovel/auger testing may be necessary to supplement evaluation of these exposures. For many projects, the spacing of survey transects can be significantly tightened by walking in a systematic "zigzag" pattern.

Personnel working in the highway ROW are required to wear ANSI 07-2004 Tier II clothing (or greater), in accordance with FHWA Final Rule Worker Visibility (23 CFR 634). When vehicles are parked in or near the highway ROW, flashing yellow lights are used to further raise worker visibility.

5.2.1.1 Limited Testing during Survey

It is often the case that a field archeologist needs to determine whether a site extends into the APE for direct impacts or whether a site has subsurface physical integrity. This is most efficiently and economically accomplished in a survey situation with a few shovel tests or soil cores/auger tests. In

some cases, especially to assess subsurface integrity, a few excavation units might be necessary. The latter may be used in situations where stratigraphy can help answer questions regarding buried soil horizons. The decision to test an archeological site will be left up to the consultant in the field. The NDOT PQS shall be consulted as necessary.

5.2.2 Documenting Archeological Sites

The consultant shall ensure that all archeological sites identified during field survey are documented using the **History Nebraska Archeological Site Survey Form** (Appendix B.3), with appropriate supplemental documentation such as test excavation forms, plan maps, and photographs. The location of each site is documented using Global Positioning System (GPS) equipment. Minimally, the site perimeter is mapped and obvious surface features (depressions, foundations, middens) are also recorded with GPS equipment. Existing site forms shall be updated using current information and documentation standards. The NDOT PQS will review these site forms during review of the **Archeology Project Summary** or other report submittals.

New archeological site numbers are assigned by the Curator of Archeological Collections housed at History Nebraska with the SAO. Completed site forms and GPS data shall be submitted by the consultant to the History Nebraska Curator of Archeological Collections.

5.3 Phase 3: NRHP Eligibility and Effects for Archeological Resources

If archeological sites are identified in the APE during Phase 1 or Phase 2 investigations, the consultant will evaluate the physical integrity and historical significance (36 CFR 800.4[c]) of the site, consulting National Register Bulletins as appropriate. This process involves evaluating the qualities of a particular site according to NRHP criteria, as defined at 36 CFR 60.4

The general procedure for assessing the NRHP eligibility of a property consists of the following five steps:

1. Categorize the property (building, district, object, site, or structure);
2. Determine which historic context(s) the property represents;
3. Evaluate significance under NRHP criteria A through D;
4. Apply criteria considerations; and
5. Determine if the property retains sufficient integrity to convey its significance.

The consultant shall make recommendations concerning the eligibility status of sites, consulting the NDOT PQS as necessary. The NDOT PQS will review these recommendations during review of the Section 106 submittals or as otherwise appropriate, and will make the final decision as to site eligibility following consultation with the appropriate parties. Per the Section 106 PA, any disagreements regarding the NRHP eligibility of a site shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement, the NDOT PQS shall first consult with the disagreeing party to resolve the disagreement. The NDOT PQS, in consultation with NHCRP archeology staff and NDOT Section 4(f) specialists, will make the final decision as to whether an archeological site has value for preservation in place.

The following types of archeological field investigations are designed to gather the necessary information about an archeological site in order to provide a recommendation regarding NRHP eligibility.

5.3.1 Surface Examination and Soil Coring

Surface examination and soil coring often provides sufficient information to make an NRHP eligibility recommendation. A surface inspection employing a systematic methodology, such as specimen recordation within a gridded area, is useful for determining "concentrations" of artifacts that might reflect location of subsurface features. Such information can be used as a first step in determining areas to target for coring or test excavation. Small diameter soil probes (including post-hole diggers and augers) sample a very small amount of sediment but expose a clear stratigraphic profile of the subsurface. Soil cores are useful in identifying buried features such as firepits and house floors.

5.3.2 Test Excavation of Archeological Resources

According to the NESHPO Archeology Guidelines (NESHPO 2006), the testing of archeological resources is described as limited excavation directed at identifying cultural deposits, determining their vertical and horizontal extent, or defining research potential. Testing should neither be too extensive, nor of a character as to preclude some future excavation strategy. Testing should be terminated once the necessary data are obtained either to recommend the site as eligible, or to address the nature and extent of the deposits. Testing should not diminish or substantially alter the significance or physical integrity of a resource. Testing may include soil probes or cores, augering, shovel holes, or the excavation of units. Testing can occur during the survey phase or as a separate, more involved task.

5.3.3 Intensive Testing

Testing during survey may not be adequate in all cases, especially to obtain sufficient information about properties to evaluate them against integrity and criteria of significance within specific historic contexts. If the consultant recommends more intensive site investigation, such as mechanical topsoil removal, or geomorphological investigation, the consultant will develop these recommendations in written form (e.g., Testing Plan) for review and approval by the NDOT PQS and the NESHPO/THPO. These recommendations would also be subject to review by consulting parties with expertise or land ownership/jurisdiction prior to implementation, as appropriate.

5.4 Phase 4: Mitigation for Archeological Resources

When a finding of *adverse effect* has been made by the NDOT PQS, the PQS shall consult with the NESHPO/THPO, and other consulting parties as appropriate, to evaluate alternatives or modifications to the project that would avoid, minimize, or mitigate the adverse effect. The NDOT PQS will propose measures to resolve the adverse effect, and these measures will be documented in an MOA between NDOT, NESHPO/THPO and other consulting parties as appropriate. In some cases, the MOA will stipulate the need for, and provisions to carry out, a data recovery program (excavation) to mitigate the adverse effect through recovery, interpretation, and preservation of important archeological information. The details of a mitigation program will be outlined in a data recovery plan (DRP) developed in consultation with NDOT PQS, the NESHPO/THPO, and other consulting parties as appropriate.

5.4.1 Data Recovery and Monitoring Plans

The consultant will develop a DRP that will be reviewed and approved by the NDOT PQS. The NDOT PQS will forward the DRP to the NESHPO/THPO and any consulting parties, as appropriate, for their review and concurrence.

A DRP is designed to guide research priorities and field and laboratory strategies and procedures. The DRP focuses on the information contained in or anticipated to be contained in the archeological property that has resulted in its listing or determination of eligibility for listing in the NRHP. Elements of archeological significance shall be contained within the DRP as research themes or research questions and shall guide the identification of data needing to be recovered. The DRP shall describe the excavation methodology, how information will be collected and recorded in the field, the procedures and methods for laboratory analysis, and the nature and content of reports to be prepared. The DRP shall also identify a curation facility, name the specific qualified personnel who will be responsible for directing and undertaking the field and laboratory tasks, propose a budget and a schedule for the work, and establish procedures for addressing unanticipated discoveries or other contingencies. Finally, the DRP must accommodate visits for consulting parties including tribes, as appropriate.

An MOA or other procedural protection measures may also stipulate that archeological sites, project areas that have the potential to contain unrecorded archeological sites, or places of religious or cultural significance to tribes be monitored by qualified archeologists. In some cases, the consultant will draft a monitoring/discovery plan for review and approval by the NDOT PQS. In other cases, the NDOT PQS will draft a monitoring/discovery plan. The NESHPO/THPO will review the monitoring plan through formal Section 106 consultation with NDOT prior to implementation of the plan. The NESHPO/THPO has 30 days to review and comment on a monitoring plan. A monitoring plan contains the following types of information and guidance: where the monitoring is expected to occur; who is responsible for conducting the monitoring; what the monitor is able and not able to do regarding the progress of construction in a particular location should a possible discovery be made; who is informed when a discovery is made; time frames for reporting discoveries; how a discovery is resolved; and when construction may continue. Commitments in the MOA, DRP, and monitoring plans will be included in the contract as part of the plans, specifications, and estimate package provided to the contractor.

5.5 Reporting and Dissemination of Results of Archeological Investigations

NDOT shall follow reporting requirements outlined by the NESHPO Archeology Guidelines (NESHPO 2006), which specify three report categories based upon the scale of the undertaking. NESHPO refers to these report categories as "Large," "Medium," and "Small." The NDOT PQS shall determine/confirm the reporting requirements for each project. Each report prepared for NESHPO review will include all of the information listed below, which is required to meet reporting requirements of the Secretary of the Interior's Standards and Guidelines. The intent is not to dictate report format, but to merely ensure the submittal of certain basic information.

Each report will, at minimum, contain the following information:

1. Name of Federal Agency;
2. NDOT Control Number, Project Number and Project Name;
3. Project Description: A concise statement of the proposed work with any land disturbance activity clearly identified;
4. Legal Description (County, Township, Range, Section, and Quarter Sections);
5. Project Location Map: The project boundaries indicated on a United States Geological Survey Quadrangle (7.5" or 15" series) map whenever possible (with identification of the map used).

- Other maps (e.g., county highway maps, city maps, etc.) are acceptable as long as the scale is sufficient to accurately locate the project;
6. APE defined and justified in narrative form;
 7. Map illustrating the APE and historic property boundaries on USGS Quadrangle (7.5" series) maps. The *National Register Bulletin: Defining Boundaries for National Register Properties* (National Park Service [NPS] 1997) can be reviewed for guidance on defining boundaries;
 8. Results of Investigation: findings of the archeological site records review and the archeological investigation;
 9. Recommendation for Agency Finding: Recommendation for federal agency regarding the project's effect upon archeological historic properties.

Documentation is mandatory, either through use of a form or narrative report. The most common archeological report generated for NDOT projects is the **Archeology Project Summary** form (Appendix B.1). This form and supporting information meet the NESHPO report requirements outlined above. For most projects, this form will be completed, accompanied by all pertinent APE maps, survey area descriptions, site forms, narrative site descriptions, and other information. In place of the Archeology Project Summary form, a narrative report or other format may be used to document the information listed above. As stated in Section 3.3, a more formal narrative report may be needed for larger complex projects that involve multiple alternatives, numerous sites, and test excavations yielding collections. The NDOT PQS shall complete a **Tier II or III PQS Memo** (Appendix A.2 and A.3) that shall document final NRHP eligibility recommendations and project effect determinations regardless of technical report format.

Technical reports resulting from data recovery mitigation are more detailed than the reports summarized above. Mitigation reports usually feature detailed data analysis and address several research-oriented questions pertinent to the recovered remains and goals outlined in the DRP. Drafts of DRPs shall be reviewed by the NDOT PQS prior to submittal for review by the NESHPO and other professional archeologists with demonstrated interests and background in the report subjects. The procedures for report review will be outlined in the MOA developed to resolve the adverse effects.

5.6 Treatment of Human Remains and Funerary Objects

The discovery of unmarked human remains requires special care and respect for such finds. Two primary laws cover such discoveries: 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]) and the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act of 1989. NAGPRA procedures are followed for remains discovered on federal or tribal land, and the Nebraska Act procedures are followed for remains found on all other property. However, if remains are recovered on land that is not federal or tribal land and these remains are determined to be Native American, the process for disposition also follows NAGPRA procedures. The NDOT PQS shall be responsible for ensuring that any discovery of unmarked human remains is reported through appropriate channels to History Nebraska in accordance with NDOT Standard Specifications for Highway Construction and the Section 106 PA. History Nebraska is responsible for complying with all applicable provisions of NAGPRA and the Nebraska Act (Nebraska Revised Statute 12-1203).

If burials are found during any stage of archeological investigations or during construction, procedures outlined below will be implemented. If History Nebraska determines that the discovered skeletal remains or burial goods are of American Indian origin, History Nebraska shall proceed as directed by

Nebraska Revised State Statute 12-1203. In addition, History Nebraska will contact NDOT, and NDOT shall adhere to the Section 106 PA.

All human burials are to be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations. It is encouraged that visual recording of a burial site containing *in situ* human remains be limited to the purposes of documentation for cultural affiliation determination. Publication of such visual recordings must be approved by History Nebraska, or federal land manager or tribal official when remains are found on federal or tribal land.

5.6.1 Native American Graves Protection and Repatriation Act

As noted in Section 5.6, the discovery of human remains or associated burial objects on federal or tribal land is governed by NAGPRA and becomes the responsibility of the federal land manager, or tribal official if on tribal lands. Tribal land is defined as all land within the external boundary of an Indian reservation (36 CFR 800.16[x]). If human remains or funerary objects are encountered during construction on Federal or tribal land:

1. All construction will cease at the location of the discovery;
2. The location of the discovery will be secured by the NDOT Construction Project Manager;
3. The NDOT Construction Project Manager will immediately notify local law enforcement (county sheriff/county coroner) and the NDOT Technical Resources Unit Program Manager;
4. Once law enforcement determines that a crime is not involved, History Nebraska staff will be contacted by the appropriate county attorney's office. History Nebraska staff shall promptly assist in examining the discovered material to attempt to determine its origin and identity pursuant to Nebraska Revised Statute 12-1203. History Nebraska staff is required to conduct an onsite investigation within 48 hours to make a preliminary determination of the origin and identity of the remains and promptly relate the findings in writing to the county attorney and interested parties, who may include: a descendant Indian Tribe, a descendant family, or the Nebraska Commission on Indian Affairs (NCIA). This initial contact often outlines the need for further examination of the remains by a qualified physical anthropologist to assist with cultural affiliation determination;
5. The NDOT Technical Resources Unit Program Manager will notify FHWA within 24 hours of the discovery; and
6. FHWA will contact the head of the federal agency responsible for the property or the tribal authority if on tribal land within 24 hours of the discovery.

If human remains or funerary objects need to be collected from federal or tribal land based on a directive from the federal land manager, it will be done so by History Nebraska or a professionally qualified consultant in coordination with the federal agency responsible for the property, or the appropriate tribal authority if on tribal land.

5.6.2 Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act

The discovery of human remains on non-federally owned or non-tribal land is governed by the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act. However, if remains are recovered on land that is not federal or tribal land and these remains are determined to be Native American, the process for disposition also follows NAGPRA procedures.

If human remains or funerary objects are encountered during construction on non-federally owned or non-tribal land:

1. All construction will cease at the location of the discovery;
2. The location of the discovery will be secured by the NDOT Construction Project Manager;
3. The NDOT Construction Project Manager will immediately contact the NDOT Technical Resources Unit Program Manager;
4. The NDOT Construction Project Manager will immediately notify local law enforcement (county sheriff/county coroner). Once law enforcement determines that a crime is not involved, History Nebraska staff will be contacted by the appropriate county attorney's office. History Nebraska staff shall promptly assist in examining the discovered material to attempt to determine its origin and identity pursuant to Nebraska Revised Statute 12-1203. History Nebraska staff is required to conduct an onsite investigation within 48 hours to make a preliminary determination of the origin and identity of the remains and promptly relate the findings in writing to the county attorney and interested parties, who may include: a descendant Indian Tribe, a descendant family, or the Nebraska Commission on Indian Affairs (NCIA). This initial contact often outlines the need for further examination of the remains by a qualified physical anthropologist to assist with cultural affiliation determination;
5. Field evaluations may consist of inspection of disinterred or *in situ* remains or artifacts. If possible, remains should be covered over and left in place to the maximum extent possible, if construction actions and project specifications will not be adversely impacted. If preservation in place is not possible, and disinterred remains (which include all remains and associated objects of a fully or partially disturbed individual) are non-Native American, the remains may be collected/excavated and turned over to descendent parties or the county attorney for reburial;
6. If FHWA is conducting government-to-government tribal consultation for the undertaking, the NDOT Technical Resources Unit Program Manager will notify FHWA within 24 hours of the discovery;
7. No further work in the area of the discovery will proceed until the NDOT PQS 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. If FHWA is conducting government-to-government tribal consultation for the undertaking, FHWA would consult with the tribe(s), but NDOT would still make this determination.

5.7 Post Review Discoveries of Historic Properties

5.7.1 Planning for Subsequent Discoveries

When NDOT's identification efforts undertaken in accordance with 36 CFR 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, NDOT shall prepare an MOA that establishes a process to resolve any adverse effects upon such properties in accordance with 36 CFR 800.13.

In response to MOA stipulations, a data recovery operation may be implemented and may be ongoing during construction. Construction monitoring in potential archeologically sensitive areas may also be implemented as a construction commitment to ensure avoidance of an adverse effect. The NDOT or project proponent is responsible for coordinating field efforts with the NDOT PQS, the consultant, and the contractor to ensure that field investigations are completed in a timely, efficient, and safe manner,

and that they are designed to avoid any unnecessary construction delays. NDOT (or other project proponent) must ensure adherence to the MOA stipulations.

5.7.2 Discoveries Made Prior to Project Construction

If previously unidentified historic properties or unanticipated effects are discovered after NDOT has completed its Section 106 review under the Section 106 PA, Section 106 consultation will be reinitiated. The Section 106 PA shall then govern how these discoveries will be managed.

5.7.3 Discoveries Made After Project Construction Begins

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 NDOT Standard Specification 107.10. The Section 106 PA shall then govern how post-review discoveries will be managed.

Chapter 6 Architectural/Structural Investigations

Consistent with 36 CFR 800.4, NDOT will make a reasonable and good faith effort to identify architectural/structural resources within the APE. The APE is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking” (36 CFR 800.16(d)). Architectural/structural resources may include any property type (structure, building, object, site, or district), and are evaluated using NRHP criteria set forth in 36 CFR 60.4 and described in *National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation* (NPS 2002) and NESHPO’s *Nebraska Historic Resources Survey & Inventory Manual* (NHRIS) (NESHPO 2010).

The level of effort to identify NRHP properties will take into account the magnitude and nature of the undertaking, past studies, and the nature and extent of potential effects to historic properties. The NDOT PQS will determine the APE and the level of the identification efforts. This decision may be based upon recommendations by the consultant.

The architectural/structural portion of the Section 106 process is typically conducted in phases. These are not required by state or federal guidelines, but form a convenient structure for the processing of architectural/structural investigations. These phases include:

- Phase 1: Records Search and Literature Review
- Phase 2: Identification Survey
- Phase 3: NRHP Eligibility Evaluation and Recommendation of Effects
- Phase 4: Mitigation

The completion of each successive phase will provide an increasingly detailed understanding of architectural/structural resources present, the integrity and significance of those resources, and whether or not the project would affect those resources. The entire project APE will be evaluated for architectural/structural resources through a desktop review accompanied by field survey, as appropriate. The NDOT PQS will be contacted as necessary to confirm level of effort.

6.1 Phase 1: Records Search and Literature Review for Architectural/Structural Resources

A records search and literature review of the APE is conducted by the NDOT PQS or the consultant for every project that has the potential to cause an effect on historic properties. This includes a records search and literature review of all pertinent cultural resource data, preparation of a summary of known resources, and a determination regarding whether architectural/structural resources exist within the APE. The literature review includes the collection of sufficient data to characterize the type and location of previously identified historic properties, as well as predict the type of additional cultural resources that may be present in the APE. This literature review includes consideration of historic context(s).

Existing information on previously identified historic properties to be reviewed includes National Register-listed properties, pending National Register nominations, National Historic Landmarks, and the NHRIS. History Nebraska reconnaissance-level surveys, thematic surveys, and local surveys shall be consulted as appropriate. The consultant shall consult *The Nebraska Historic Bridge Inventory* (FraserDesign and Hess, Roise and Company 1991), *National Register Evaluation of Nebraska Bridges*

1947 – 1965 (including the reassessment of select pre-1947 bridges) (Mead and Hunt 2007), and the *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges* (ACHP 2012). United States Geological Survey (USGS) maps, Google Earth maps and online county assessor information will be consulted, as needed.

The results of this review, along with the nature and scope of the undertaking, have implications for the scope of further historic property identification efforts and identification of consulting parties. The NDOT PQS or the consultant may recommend that a field identification survey is not needed if:

1. No new property rights acquisition (temporary easement, permanent easement or new right-of-way) is programmed for the project; and
2. No buildings, structures, or objects appear on aerial photography (i.e., Google Earth); and/or
3. Aerial photography and results of county assessor records review indicate that the only buildings or structures present are modern residential subdivisions or modern commercial developments; or
4. County assessor and Google Earth images of resources clearly illustrate a loss of physical integrity.

If a project meets these requirements, the results of the records search and literature review will be documented on an **Architectural/Structural Project Summary** form (Appendix B.2). This form may be completed by the NDOT PQS or by the consultant. If prepared by the consultant, the NDOT PQS will review the form and confirm, reject, or modify the recommendations of the consultant. No individual review by FHWA or the NESHPO is required per the Section 106 PA. These forms will be provided at least quarterly to FHWA and NESHPO, or upon request.

6.2 Phase 2: Identification Survey for Architectural/Structural Resources

Following the records search and literature review, a field identification survey may be required to determine if any architectural/structural resources within the APE are NRHP-eligible. The NDOT PQS shall be consulted as necessary for questions regarding level of effort. Architectural resources within the APE that are 50 years old or older will be identified and evaluated. The NDOT PQS and/or the consultant should use professional judgement in determining whether a newer property (i.e., 45 years old) should be identified and evaluated. To this end, the proposed project schedule should be taken into account.

Properties within the APE that retain physical integrity will be depicted on a map and will be photographically documented. This photo documentation could utilize a NESHPO site form (Appendix B.4) or another appropriate photo documentation methodology. This documentation will include:

- At least one photograph that clearly depicts the property. Larger properties with multiple resources may require additional photographs;
- Information regarding those aspects of integrity lost or retained. The physical integrity should be sufficiently described on the site form to fully evaluate the NRHP eligibility of the resource;
- An evaluation of NRHP eligibility, and if NRHP eligible, a brief discussion of applicable NRHP Criteria and historic context or association.

Properties that have been assigned a survey number in the Nebraska Historic Resources Survey & Inventory (NHRSI) will be documented and evaluated.

Properties proposed for total acquisition will be identified and evaluated regardless of construction date and integrity.

Properties that do not retain sufficient integrity to convey NRHP significance will be documented in tabular form.

Sufficient information should be gathered in the field to determine whether or not potential historic districts or designed landscapes are present in the APE. Farmsteads should be surveyed as a complex to include farmhouse, associated outbuildings, acreage, and designed landscaping (such as windbreaks or shelterbelts).

6.2.1 Documenting Architectural/Structural Resources

The consultant shall prepare documentation sufficient to evaluate each architectural/structural resource that was identified and evaluated for NRHP-eligibility, such as a **NESHPO Site Form** (Appendix B.4), during the field survey and will consult with the NDOT PQS if necessary. An **Architectural/Structural Project Summary** form (Appendix B.2) will be completed for each Tier II and Tier III project. The project summary form, accompanied by an APE map, and appropriate photo documentation, contains the information required for the NDOT PQS to evaluate and confirm recommendations regarding definition of the APE and the level of effort, as well as to reject, modify, or confirm NRHP-eligibility for all architectural/structural resources that are 50 years old or older within the APE.

In place of the Architectural/Structural Project Summary, the consultant, after approval by the NDOT PQS, may choose to prepare a narrative report detailing identification and evaluation efforts as well as a recommendation of effects (Phase 3) concurrently. This report shall adhere to the requirements detailed in Section 6.5 of this guidance. The narrative report will be reviewed by the NDOT PQS, on a **Tier II or Tier III PQS Memo** (Appendix A.2 and A.3).

6.2.2 Defining NRHP Boundaries for Architectural/Structural Resources

Sufficient information should be gathered in the field to define the boundary of eligible NRHP properties. The boundary of a NRHP-eligible or listed property will encompass all of the resources that contribute to the property's significance. Farmsteads may include the farmyard and historically-associated acreage, windbreaks, and shelterbelts. Urban properties are expanded beyond the footprint of the building to include the legal parcel(s) historically associated with the property. Historically associated parcels and acreage must contribute to the significance of the historic property and must retain sufficient physical integrity and area to convey that significance, but need not mirror the current parcel boundaries. The boundary of an NRHP-eligible or listed property is determined based on the nature of the property's significance, integrity, and physical setting. Most boundary determinations will take into account the modern legal boundaries, historic boundaries (identified in tax maps, deeds, or plats), natural features, cultural features, and the distribution of resources, as determined by survey. Legal property boundaries often coincide with the proposed historic property boundaries, but not always and, therefore, should be individually reviewed by the NDOT PQS for reasonableness. The *National Register Bulletin: Defining Boundaries for National Register Properties* (NPS 1997) will be consulted as appropriate.

6.3 Phase 3: NRHP Eligibility and Effects for Architectural/Structural Resources

If architectural/structural resources 50 years or older are identified within the APE during Phase 1 and 2 investigations, the consultant will evaluate in writing, the character defining attributes that are present and convey the integrity and historic significance of each property. This process involves evaluating the property according to the NRHP Criteria, as defined at 36 CFR 60.4, and assessing effects according to 36 CFR 800.5. The NDOT PQS shall review, reject, modify, or confirm all evaluations and recommendations (Phase 3). Documentation of effects will most often be done concurrently with the documentation prepared for Phase 2 and outlined in Section 11.2 above.

6.3.1 Assessing NRHP Eligibility

The NRHP recognizes properties that are significant at the national, state, and local levels. According to the NRHP (36 CFR 60), the quality of significance in American history, architecture, archaeology, engineering, and culture exists in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association. Properties that are eligible for listing on the NRHP are properties that retain their integrity and meet one or more of the four criteria listed below. In addition, unless a property possesses exceptional significance, it must also be at least 50 years old.

A building or site can be considered for inclusion on the NRHP if it meets at least one of the following criteria (36 CFR 60):

- Is associated with events that have made a significant contribution to the broad patterns of our history (Criterion A).
- Is associated with the lives of persons significant in our past (Criterion B).
- Embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represents a significant and distinguishable entity whose components might lack individual distinction (Criterion C).
- Has yielded, or might be likely to yield, information important in prehistory or history (Criterion D).

Ordinarily, birthplaces, cemeteries, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations; reconstructed historic buildings; properties primarily commemorative in nature; and properties that have achieved significance within the past 50 years are not considered eligible for the NRHP, unless they satisfy certain conditions.

Individually eligible properties and historic districts must retain key character-defining features, or integrity, to convey the significance of a resource. Integrity specifically refers to the ability of a property to convey its significance. In other words, a historic property must have enough intact physical characteristics or features to communicate its significance under one or more of the NRHP criteria. NRHP guidelines recognize seven aspects, or qualities, that define integrity, as summarized below.

- Location. Is the location/site where the resource was originally constructed?

- Design. Is the design in its original form, plan, and style of the property intact? However, alterations made more than 50 years ago are considered historic changes and do not necessarily result in loss of integrity of design.
- Setting. Have the physical surroundings of a property been compromised?
- Materials. Are the physical components used in construction of the property still present?
- Workmanship. Is there evidence of craftsmanship or notable building techniques?
- Feeling. Is the property able to express a sense of time/time period?
- Association. Does the property retain the ability to convey a direct link between the property and an important historic event or person?

6.3.2 Assessing Effects

Under federal regulations (36 CFR 800.5), a project would have an adverse effect if it would alter, directly or indirectly, any of the characteristics of a historic property that qualifies it for inclusion in the NRHP. These characteristics include the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. All qualifying characteristics of a historic property shall be considered, including those that may have been identified after the original evaluation of the property's NRHP eligibility. Adverse effects could include reasonably foreseeable effects that could occur later in time, be farther removed in distance, or be cumulative. Adverse effects on historic properties include, but are not limited to:

- Physical destruction of or damage to all or part of the property;
- Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68) and applicable guidelines;
- Removal of the property from its historic location;
- Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
- Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features;
- Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- Transfer, lease, or sale of property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance (36 CFR 800.5).

6.4 Phase 4: Mitigation for Architectural/Structural Resources

The nature and type of mitigation for adverse effects to architectural/structural resources will depend upon a number of factors including, but not limited to: the nature of the adverse effect; the nature of

the project; consultation with the NESHPO/THPO, other consulting parties, and the public. If required, the NDOT PQS shall be responsible for ensuring the development and execution of an MOA in consultation with the NESHPO/THPO and consulting parties, as appropriate.

For adverse effects to architectural/structural resources (i.e., buildings, structures, sites, objects, and/or districts), mitigation will generally consider the following:

1. Commitments to design the project to minimize impacts to historic properties; and
2. Scholarly research and/or site recordation to advance the understanding of a property or property type, and/or preserve a record of the property's existence; or
3. A public education component.

The NDOT PQS is responsible for coordinating consultation with the NESHPO/THPO and consulting parties, as appropriate, to resolve adverse effects.

6.5 Reporting and Dissemination of Results of Architectural/Structural Investigations

For Tier II projects, an **Architectural/Structural Project Summary** form (Appendix B.2) shall be completed by the consultant. This form is designed to provide sufficient information regarding the project, as well as any historic properties located within the APE. It also supports the recommendations of NRHP-eligibility and effects for all resources 50 years or older.

The NDOT PQS shall review consultant eligibility and effects recommendations and complete a **Tier II PQS Memo** (Appendix A.2) to document final NDOT PQS recommendations. Under the terms of the Section 106 PA, NDOT is not required to consult with the NESHPO on determinations of eligibility it makes for actions that result in a finding of *no historic properties affected* (Tier II projects). Information regarding undertakings that result in a finding of *no historic properties affected* shall be provided to FHWA and NESHPO on at least a quarterly basis as stipulated in the Section 106 PA, or upon request.

If during quarterly review, the NESHPO disagrees with a determination of NRHP-eligibility or an effect finding made by the NDOT PQS, the NESHPO will contact the NDOT PQS for discussion. This discussion may take place by telephone, email, or in person. Record of this discussion will be prepared by the NDOT PQS and shared with the NESHPO. An in-person meeting may be scheduled at the discretion of the NESHPO or NDOT. In accordance with the Section 106 PA, NDOT shall ensure that one or more meetings will be held to facilitate review of, and comment on, the quarterly report. These meetings will be used to address questions and issues, or resolve adverse comments. Stipulation XIII.C. of the Section 106 PA shall be used if comments and/or objections cannot be satisfactorily addressed.

Tier III projects that result in a finding of *no adverse effect* or *adverse effect*, will be documented following the guidelines established regarding Tier II projects. However, Tier III projects may require an extended report format, as determined in consultation with the NDOT PQS. This report shall include:

1. Name of Federal Agency;
2. NDOT Control Number, Project Number and Project Name;
3. Project Description: A concise statement of the proposed work with any land disturbance activity clearly identified;
4. Legal Description (County, Township, Range, Section, and Quarter Sections);

5. Project Location Map: The project boundaries should be indicated on a USGS Quadrangle (7.5" or 15" series) map whenever possible (with identification of the map used); other maps (e.g., county highway maps, city maps, etc.) are acceptable as long as the scale is sufficient to accurately locate the project;
6. APE defined and justified in narrative form;
7. Map illustrating the APE and historic property boundaries on USGS Quadrangle (7.5" series) maps. The *National Register Bulletin: Defining Boundaries for National Register Properties* (NPS 1997) can be reviewed for guidance on defining boundaries;
8. Methodology;
9. Historic Context/Background;
10. Results of Investigation, including an **NESHPO Site Form** (Appendix B.4) for each identified property;
11. Recommendation for Agency Finding: Recommendation for the federal agency regarding the project's effect upon historic properties; and
12. Bibliography.

Chapter 7 References

- Advisory Council on Historic Preservation. 2005. *Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System*. Federal Register, Vol. 70, No. 46. Thursday, March 10.
- _____. 2012. *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges*. Federal Register, Vol. 77, No. 222. Friday, November 16.
- Federal Highway Administration. 2017. "Bridge Program Comment Excepted Bridges List." Accessed on May 5, 2017. https://www.environment.fhwa.dot.gov/histpres/bridges_list.asp.
- FraserDesign and Hess, Roise and Company. 1991. *Nebraska Historic Bridge Inventory*.
- Mead and Hunt. 2007. National Register Evaluation of Nebraska Bridges 1947 – 1965 (including the reassessment of select pre-1947 bridges).
- National Park Service. 1997. *National Register Bulletin: Defining Boundaries for National Register Properties*. Washington, D.C.: National Register of Historic Places, National Park Service, U.S. Department of the Interior.
- _____. 2002. *National Register Bulletin: How to Apply the National Register Criteria for Evaluation*. Washington, D.C.: National Register of Historic Places, National Park Service, U.S. Department of the Interior.
- Nebraska Department of Roads [Transportation]. n.d. *Agreement, Nebraska Department of Roads, Nebraska State Historical Society, Project No. ST14(5099), Control No. 00703D, Highway Archeology Program*.
- _____. n.d. *Nebraska Public Involvement Procedures*
- Nebraska State Historic Preservation Office. 2006. *National Historic Preservation Act Archeological Properties Section 106 Guidelines*. Nebraska State Historical Society.
- _____. 2010. *Nebraska Historic Resources Survey & Inventory Manual*. Nebraska State Historical Society.

Chapter 8 Useful Links

[Advisory Council on Historic Preservation: 36 CFR 800 Regulations](#)

[Advisory Council on Historic Preservation: Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges](#)

[Advisory Council on Historic Preservation: Section 106 Exemption Regarding Effects to the Interstate Highway System](#)

[Federal Highway Administration: Bridge Program Comment Excepted Bridges List \(Includes bridges identified by Nebraska as having exceptional quality\)](#)

[Federal Highway Administration: Environmental Review Toolkit](#)

[National Historic Preservation Act: As amended 2014 and Codified in Title 54 USC](#)

[National Register Bulletin: Defining Boundaries for National Register Properties](#)

[Native American Graves Protection and Repatriation Act](#)

[Nebraska Archaeological Resources Preservation Act](#)

[Nebraska Department of Roads Standard Specifications for Highway Construction](#)

[Nebraska Public Involvement Procedures](#)

[Nebraska Revised Statute 82-505](#)

[Nebraska Revised Statute 84-712.05](#)

[Nebraska State Historic Preservation Office: National Historic Preservation Act Archeological Properties Section 106 Guidelines](#)

[Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act](#)

[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](#)

[Secretary of the Interior's Professional Qualifications Standards \(36 CFR 61\)](#)

Appendix A: NDOT PQS Tier Project Review Forms



A.1 NDOT PQS Memo Section 106 – Tier I Project (Tier I PQS Memo)

No Potential to Affect Historic Properties

Section 106 Tier I PQS Memo – No Potential to Cause Effects to Historic Properties

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

NDOT PQS Project Effects Determination:			
NDOT PQS Signature:		Date:	

Please Note: For the criteria below to be valid, any and all ground disturbance should be limited to the depth of the existing fill material. Ground disturbance should not exceed the depth of the existing fill material.

1.	Guardrail and bridge rail repair and replacement. Conditions: In kind repair/replacement.
2.	Traffic signals, intersection lighting, pedestrian signals, underpass lighting or railroad lighting within existing Right of Way. Conditions: in kind repair/replacement.
3.	Maintenance and replacement of highway signs on existing poles, new sign installation within existing fill material.
4.	Crack sealing, pothole repair, overlaying, milling, resurfacing, and installation of rumble strips, pavement marking and ADA ramp construction. Conditions: This activity does not include actions on brick streets or brick highways. 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. All staging areas can be limited to existing paved or previously disturbed surfaces only (e.g., surfaces with little to no vegetation due to previous disturbance). Any and all ground disturbance is limited to existing fill material and will not 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 at 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 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 previously purchased with federal funds, provided no properties over 50 years old are located on 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 with any and all ground disturbance limited to existing fill material locations only, not to exceed the depth of existing fill material.
12.	Grants for training, education and research programs which do not involve construction.
13.	Purchase of equipment or materials which do not involve construction.
14.	Visual bridge inspections.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the Memorandum of Understanding dated September 5, 2018, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement 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 meets the requirements to be considered a Tier I Project.

**A.2 NDOT PQS Memo Section 106 – Tier II Project (Tier II PQS
Memo) *No Historic Properties Affected***

Section 106 Tier II PQS Memo – No Historic Properties Affected

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

NDOT PQS Project Effects Determination:			
NDOT PQS Signature:			Date:

Tribal Consultation (leave blank if not applicable):

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

CLG Consultation (leave blank if not applicable):

CLG	Correspondence Sent (date)	CLG Response (date)	Comments

Other Consulting Parties	Correspondence Sent (date)	Response (date)	Comments

Area of Potential Effects (APE)
APE considered is consistent with 36 CFR 800.16(d) – (Y/N):

Summary of Archeological Investigations

Summary of Architectural / Structural Investigations

Historic Properties Identified Within APE (leave blank if none):

	ROW Needed? (Specify Type & Amount)		ROW Needed? (Specify Type & Amount)

Sensitive Areas (leave blank if none):

	MM - MM		MM - MM

This/these Sensitive Area(s) shall be indicated on project plans. No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur within the boundary of the Sensitive Area(s).

Provide narrative to support no historic property affected finding

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the Memorandum of Understanding dated September 5, 2018, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement 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 meets the requirements to be considered a Tier II Project.

A.3 NDOT PQS Memo Section 106 – Tier III Project (Tier III PQS Memo) *No Adverse Effect or Adverse Effect*

Section 106 Tier III PQS Memo
No Adverse Effect / Adverse Effect

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	

NDOT PQS Project Effects Determination:			
SHPO Concurrence:			Date:
NDOT PQS Signature:			Date:

Tribal Consultation (leave blank if not applicable):

THPO/ Tribes	Correspondence Sent (date)	THPO/Tribal Response (date)	Comments

CLG Consultation (leave blank if not applicable):

CLG	Correspondence Sent (date)	CLG Response (date)	Comments

Other Consulting Parties	Correspondence Sent (date)	Response (date)	Comments

Area of Potential Effects (APE)
APE considered is consistent with 36 CFR 800.16(d) – (Y/N):

Summary of Archeological Investigations

Summary of Architectural / Structural Investigations

Historic Properties Identified Within APE (leave blank if none):

	ROW Needed? (Specify Type & Amount)		ROW Needed? (Specify Type & Amount)

Sensitive Areas (leave blank if none):

	MM - MM		MM - MM

This/these Sensitive Area(s) shall be indicated on project plans. No grading or project activities, including but not limited to, working, staging, borrowing, stockpiling, or storing material and/or equipment, shall occur within the boundary of the Sensitive Area(s).

Provide narrative supporting no adverse effect finding, or detail efforts to avoid an adverse effect finding:

If an adverse effect, detail mitigation

Section 4(f): significant archeological site(s) within APE warranting preservation in place:

Archeological Site	Comment

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the Memorandum of Understanding dated September 5, 2018, and executed by FHWA and NDOT.

This undertaking has been reviewed under the programmatic agreement 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 meets the requirements to be considered a Tier III Project.

Appendix B: Project Survey Summary Forms



B.1 State Archeology Office Project Survey Summary (Archeology Project Summary)

Control Number: _____

Project Number: _____ Project Name: _____

County: _____ Nearest Water: _____

Legal Description:

APE Description (Add Maps):

Maps Used:

Project Character (Attach Project Description):

Project Length/Area: _____

Survey Length/Area: _____

Date(s) of Archeological Survey: _____

Detour? No Yes, without Constr. Activities Yes, w/ Constr. Activities

Name(s) of Survey Personnel: _____ Person-Hours of Fieldwork: _____

Ground Cover (%-Visibility)

Survey Interval/Provisions:

Rationale for Non-surveyed Areas:

Results of Survey:

- No Archeological Resources Discovered
- Site(s) Discovered Site Numbers: _____
- Other (explain) _____

Project Effect Determination for Archeology

- No Historic Properties Affected: None Present Present but Not Affected
- No Adverse Effect
- Adverse Effect

Are Further Archeological Investigations Warranted? Yes No

Is THPO Consultation Recommended by Sponsor Agency? Yes No List Tribes: _____

Stipulations/Exceptions to Survey Results: Evaluate Buried Cultural Remains if Encountered.

Comments:

Prepared by: _____ Date: _____

Control Number: _____

Project Number: _____

Control Number: _____

Project Number: _____



B.2 NDOT Architectural/Structural Investigations Project Summary (Architectural/Structural Project Summary)

Architectural / Structural Investigations – Project Summary

Control No:		Project No:		Project Name:	
Date of Project Description:				Project Location:	
Investigator:				Survey Date:	

Architectural / Structural Area of Potential Effects (APE)

Are architectural/structural resources present in the APE? No Yes

Background Resources Consulted: Place check mark in front of those consulted:

<input type="checkbox"/>	NHRSI/NRHP Files	<input type="checkbox"/>	Post-1945 Exceptional Bridges	<input type="checkbox"/>	Historic Maps
<input type="checkbox"/>	Historic Bridge Inventory	<input type="checkbox"/>	Local/State Historical Society	<input type="checkbox"/>	Other:
List Maps, etc.:					

File Search: List NRHP listed or previously recommended NRHP eligible properties

NHRSI #	NHRSI #	NHRSI #	NHRSI #

List applicable historic context(s)

Context	Context	Context	Context

Summary of Architectural / Structural Investigations

As a result of these investigations, NRHP listed and NRHP eligible properties (insert pages as necessary)

Resource Name – Address (Map ID)

Description (insert description of property, evaluation of integrity, NRHP significance (criteria(ion) and association), level of significance and description of property boundary)

Insert photo(s), photographer, photo date (insert as many photos as necessary to support recommendation. Include photographer and photo date)

Will new property rights be acquired from this property? Yes/No (If known, include type of new property rights acquisition, TE/PE/ROW)

Historic or Post-1945 Exceptional Bridges within APE (if none, add 'N/A')

Structure No	Structure No	Structure No	Structure No

Project Effects Recommendation

Basis for Effect Recommendation

Sensitive Area	Address	MM – MM (include which side of the highway)

Attachments (APE map, resource map, table of resources identified and evaluated. Resource table should include photos of properties identified and evaluated)

B.3 History Nebraska Archeological Site Survey Form

Archeological Site Form

1. Site Number: _____ 2. Site Name: _____

3. Project: _____

4. Survey Agency/Co.: _____ 5. Field Number: _____

6. Sponsor/Contract Agency: _____ 7. County: _____

8. New Site Previously Known Site

9. USGS Quad. Map: _____ NAD: 1927 1983

10. Legal Description: QUARTER/HALF SECTIONS SECTION TOWNSHIP RANGE

See Comments/Continuation Sheet for more legal description.

11. Site Size (m²): _____ 12. Min. Elevation (ft.): _____ 13. Max. Elevation (ft.): _____

- | | |
|---|---|
| <p>14. Descriptive Site Type:</p> <p><input type="checkbox"/> Surface</p> <p><input type="checkbox"/> Buried Features/Cultural Layers</p> <p><input type="checkbox"/> Cave/Rock Shelter</p> <p><input type="checkbox"/> Unknown</p> <p><input type="checkbox"/> Other _____</p> | <p>15. Functional Site Type:</p> <p><input type="checkbox"/> Burial(s) <input type="checkbox"/> Ceremonial/Religious</p> <p><input type="checkbox"/> Habitation <input type="checkbox"/> Extraction/Processing</p> <p><input type="checkbox"/> Transport <input type="checkbox"/> Defensive</p> <p><input type="checkbox"/> Unknown</p> <p><input type="checkbox"/> Other _____</p> |
|---|---|

16. Cultural Context. Choose general context(s) and specific affiliation(s) from pull-down menus; if more than one selection is needed from a pull-down menu, type additional specific cultural affiliations in the space provided below.

- | | |
|---|--|
| <p><input type="checkbox"/> Paleoindian _____</p> <p><input type="checkbox"/> Archaic _____</p> <p><input type="checkbox"/> Woodland _____</p> <p><input type="checkbox"/> Central Plains _____</p> <p><input type="checkbox"/> Coalescent _____</p> <p><input type="checkbox"/> Oneota _____</p> <p><input type="checkbox"/> Western NE Protohistoric _____</p> <p><input type="checkbox"/> Caddoan Villagers _____</p> <p><input type="checkbox"/> Sedentary Siouan Villagers _____</p> | <p><input type="checkbox"/> Equestrian Nomads _____</p> <p><input type="checkbox"/> Reservation Native American _____</p> <p><input type="checkbox"/> Euro-American _____</p> <p><input type="checkbox"/> Non-specific Ceramic _____</p> <p><input type="checkbox"/> Non-specific Late Prehist./Protohistoric _____</p> <p><input type="checkbox"/> Unknown Prehistoric _____</p> <p><input type="checkbox"/> Other Ethnic Historic _____</p> <p><input type="checkbox"/> Unknown Historic _____</p> <p><input type="checkbox"/> Unknown _____</p> |
|---|--|

additional cultural affiliation(s): _____

- | | |
|---|---|
| <p>17. Features:</p> <p><input type="checkbox"/> Mounds _____ <u>No.</u></p> <p><input type="checkbox"/> Depressions _____</p> <p><input type="checkbox"/> Stains _____</p> <p><input type="checkbox"/> Petroglyphs _____</p> <p><input type="checkbox"/> Petrographs _____</p> <p><input type="checkbox"/> Middens _____</p> | <p><input type="checkbox"/> Rock Outlines/Concentrations _____ <u>No.</u></p> <p><input type="checkbox"/> Historic Standing/Collapsed Buildings, Structures or Objects _____</p> <p><input type="checkbox"/> Historic Foundations _____</p> <p><input type="checkbox"/> Transport _____</p> <p><input type="checkbox"/> Unknown _____</p> <p><input type="checkbox"/> Other _____</p> |
|---|---|

Site Number: _____

18. Artifacts:

<u>Observed</u>	<u>Collected*</u>		<u>Observed</u>	<u>Collected*</u>	
<input type="checkbox"/>	<input type="checkbox"/>	Chipped Stone Tools	<input type="checkbox"/>	<input type="checkbox"/>	Worked Shell
<input type="checkbox"/>	<input type="checkbox"/>	Chipped Stone Debris	<input type="checkbox"/>	<input type="checkbox"/>	Historic Artifacts
<input type="checkbox"/>	<input type="checkbox"/>	Ground Stone	<input type="checkbox"/>	<input type="checkbox"/>	Faunal Remains
<input type="checkbox"/>	<input type="checkbox"/>	Natural Stone Tools	<input type="checkbox"/>	<input type="checkbox"/>	Floral Remains
<input type="checkbox"/>	<input type="checkbox"/>	Fire-Cracked Rock	<input type="checkbox"/>	<input type="checkbox"/>	Human Bone
<input type="checkbox"/>	<input type="checkbox"/>	Other Lithic Debris	<input type="checkbox"/>	<input type="checkbox"/>	Burned Earth
<input type="checkbox"/>	<input type="checkbox"/>	Rim Sherds	<input type="checkbox"/>	<input type="checkbox"/>	Daub
<input type="checkbox"/>	<input type="checkbox"/>	Body Sherds	<input type="checkbox"/>	<input type="checkbox"/>	Other
<input type="checkbox"/>	<input type="checkbox"/>	Worked Bone	<input type="checkbox"/>	<input type="checkbox"/>	Isolated Item

* The NSHS does not automatically curate artifacts collected in Nebraska.

19. Site Work Status (check all that apply):

<input type="checkbox"/> Reported	<input type="checkbox"/> Soil Cored/Probed
<input type="checkbox"/> Surveyed	<input type="checkbox"/> Tested (pits/posthole/backhoe)
<input type="checkbox"/> Photographed	<input type="checkbox"/> Remote Sensing _____
<input type="checkbox"/> Sketch Mapped	<input type="checkbox"/> Excavated Partially
<input type="checkbox"/> Instrument Mapped	<input type="checkbox"/> Excavated Completely
<input type="checkbox"/> Mapped with GPS	<input type="checkbox"/> Surface Collected (uncontrolled)
Make/Model _____	<input type="checkbox"/> Surface Collected (controlled)
Differentially Corrected? <input type="radio"/> yes <input type="radio"/> no	<input type="checkbox"/> Other

20. Present Condition: Undisturbed Disturbed Destroyed

21. Site Impacts:

<u>Past</u>	<u>Present</u>	<u>Future</u>		<u>Past</u>	<u>Present</u>	<u>Future</u>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Water Erosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Recreation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wind Erosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Construction
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Animal Activity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Agriculture
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Vandalism	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other

22. Investigator's Impression of National Register Status: Potentially Eligible Not Eligible Unevaluated/Unknown

23. SHPO Determination of National Register Status: On Register Eligible Not Eligible

24. Informant:

Address: _____

25. Owner of Site:

Private (Name/Address if known) _____

State (Agency) _____

Federal (Agency) _____

Other _____

Site Number: _____

26. Information Collected and Stored:

- A digital copy of this site form (including a map of the site location and a shapefile if created) will be sent to: trisha.nelson@nebraska.gov.
- It is understood that the History Nebraska does not automatically accept artifacts collected nor all records generated from archeological investigations in Nebraska.
- Reports in need of SHPO review have been or will be submitted to NESHPO.
- Artifacts were collected and are currently stored: _____
- Photos/digital images were created and are currently stored: _____
- Additional maps were created and are currently stored: _____
- Additional written records were created and are currently stored: _____

27. Report Reference(s):

28. Comments:

See Comments/Continuation Sheet for more comments.

29. Survey Conducted by:

Survey Date:

30. Form Completed by:

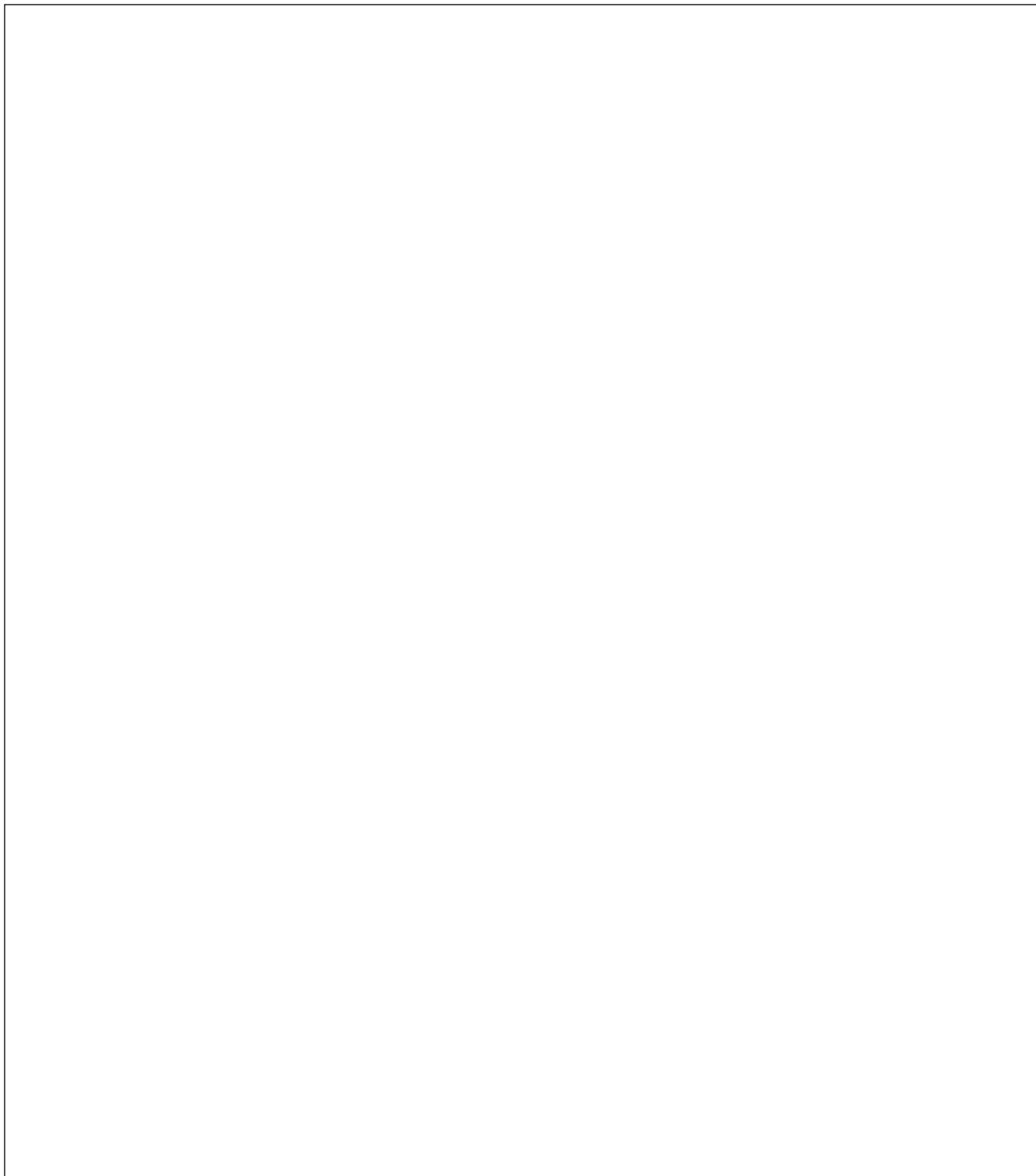
Date:

Site Number: _____

31. A map of the site location, preferably on a 7.5 minute U.S.G.S topographic map, must be included. Use the space provided below to insert an image file or attach a separate map sheet.

Additional images and/or detailed site maps can also be attached.

If the site location was mapped with a GPS, please send the resulting shapefile(s) to trisha.nelson@nebraska.gov.



**Print with a .pdf creator and/or Save As site number.pdf
and submit to: trisha.nelson@nebraska.gov**

Phone: 402-471-4760

History Nebraska
1500 R. St.
Lincoln, NE
68508
history.nebraska.gov

B.4 NESHPO Site Form

Control No.	Property	County	Address, Town
NHRSI No.	Direction of View	Photo by, Date	Map Ref.
Description			

Control No.	Property	County	Address, Town
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