

CULTURAL RESOURCE PROCEDURES OUTLINE

Each project that is proposed should be reviewed to determine if there will be any impacts to significant cultural resources. This is required by Federal Law (specifically and primarily the National Historic Preservation Act (NHPA), Section 106, which is commonly referred to as the 106 process). The 106 process is undertaken to identify sites, buildings, structures, or objects 50 years old or older; fairly unaltered, with important information potential, or associated with historically significant persons or events; which may be affected by the project. If the resource is evaluated as eligible to the National Register of Historic Places, then we try to avoid, minimize, or mitigate the effects of the project. The 106 process is done in consultation with the ND State Historic Preservation Office (SHPO) [or Tribal Historic Preservation Office (THPO)], Native American tribes which may attach religious or cultural significance to the sites or aspects of the area, and any other government entity or individual who requests (or is identified through other means as being eligible for) consulting party status.

A. Highway Construction Projects

The Cultural Resource Section (CRS) of the Design Division gets involved when the proposed project is placed on the Milestone Schedule. CRS has the responsibility for conducting (or contracting) cultural resource surveys. The location and type of project plays a role in determining the level of survey needed.

1. Class I Survey

This involves a literature review and files search to determine what sites have previously been identified in and near the project area and what type of sites we might expect to find in the project area. NDDOT cultural resource reports and site forms become part of this records collection housed at the SHPO.

2. Class II Survey

This type of inventory is typically undertaken by CRS on some of our projects with minimal potential to affect cultural resources (e.g., resurfacing projects with safety work), or as part of the inventory effort for a major projects (e.g., new highway route). The inventory identifies (by looking at maps and driving the route) locations with a high potential for cultural resources. These high potential locations are then looked at more closely to see if there are any cultural resources present. If we are unable to determine the presence or absence of cultural resources in these high potential areas we recommend avoiding impact to them.

3. Class III Survey

This is an intensive inventory which includes a pedestrian visual survey and, if needed, subsurface shovel probing to identify all cultural resources within the project area. Reports offer recommendations on impacts and further work. Generally, Class III surveys are needed for projects with greater potential to impact cultural resources. These surveys are typically done through contracts with cultural resource firms.

CRS is responsible for the following:

- f* Developing a Scope of Work
- f* Developing a Request for Proposal (RFP)
- f* Reviewing proposals
- f* Interviewing consultants
- f* Selecting a consultant
- f* Writing the contract
- f* Coordinating activities with the consultant
- f* Monitor and review work completed by the consultant
- f* Review and approve request for payment
- f* Evaluate the overall performance of the consultant

4. Consultation with American Indian Tribes

NHPA requires that the Tribes be consulted concerning projects that have potential to affect cultural resources which may be of religious or cultural value to the tribe. This is carried out as follows:

- f* CRS carries out FHWA responsibilities for consulting with the Tribes.
- f* CRS meets with the Tribal Historic Preservation Office (THPO) or Tribal Cultural Resource Program personnel on every project that has a potential to affect cultural resources valued by the tribe.
- f* CRS staff attend Tribal Council Meetings and participate in Tribal ceremonies at a Tribes invitation. Consultation requires working to develop a relationship with people.

5. State Historical Preservation Office (SHPO)

CRS consults with SHPO (or THPO on a reservation which has established this office) on projects that have the potential to affect cultural resources. NDDOT discusses with SHPO/THPO the level of inventory and evaluative efforts, send them a copy of the appropriate reports, request determination concurrence, and consult with them on resolution of adverse effects.

6. Evaluative Testing

Evaluative Testing is performed for the purpose of determining if an archaeological site is eligible to the National Register of Historic Places. If eligible it is a Δ Historic Property. $\text{\textcircled{c}}$

CRS is responsible for informing FHWA, SHPO, and the Tribes of the findings of the evaluative testing.

The CRS occasionally does this testing itself, but the majority of testing projects are contracted. The procedures are as follows:

CRS Testing

CRS is responsible for:

- f* Writing Scope of Work and sending it to SHPO for review.
- f* Consulting with Tribes.
- f* Conducting field and lab work.
- f* Writing a testing report and sending copies to SHPO and other consulting parties for their review.

Consultant Testing

The Archeological Consultant or CRS will develop a Scope of Work. In addition CRS will do the following:

- f* Write the RFP.
- f* Consult with the Tribes.
- f* Review proposals.
- f* Write and monitor the contract.
- f* Conduct field reviews.
- f* Determine the eligibility of the site in consultation with SHPO, the Tribes, and other Consulting Parties.

- If the site is ineligible, no further work is needed.
- If the site is eligible and there are effects from the project, CRS will develop a plan to minimize and/or mitigate the effects. If the site is impacted, a Memorandum Of Agreement (MOA) is prepared and signed by, NDDOT, SHPO, and FHWA. The Advisory Council on Historic Preservation (ACHP) is offered the opportunity to consult during resolution of adverse effects.

f Review reports.

f Coordinate consulting party reviews.

7. Material Source Locations

Nearly every project requires Materials Sources either for soil borrow or aggregate. NDDOT locates borrow and aggregate sites and makes them available to the Contractor. Each of these locations are reviewed under Section 106. Requests for CRS review come from the Right of Way Section, Materials and Research Division, Districts, and Contractors.

For State-Owned or Optioned Material, CRS should do the following:

f Check their files to see if the location has been previously surveyed.

f If not, conduct a Class III cultural resource inventory.

f If cultural resources are identified on the location, CRS may recommend avoiding the cultural resource site, doing further work to determine the eligibility of the site for the National Historic Register and then make appropriate recommendations, or abandon the location.

f Coordinate all necessary SHPO/THPO or Tribal consultation.

f Notify requesting group that Section 106 process has been completed.

For contractor sites, the following steps should be followed:

f CRS checks their files to see if the location has been previously surveyed.

f The contractor hires an Archeological firm to survey the material source location if it has not been previously surveyed.

f If there are no cultural resources on the site, CRS recommends no further cultural resource work and notifies the contractor that it is acceptable to use the source. The cultural resource contractor prepares a report that is submitted to CRS who reviews and forwards to SHPO with recommendations. SHPO reviews and typically concurs with the report and CRS recommendations.

f If cultural resources are found, the contractor can abandon the pit, or test the site to determine if it is eligible for the National Register. If the site is eligible, and the contractor still would like to use the source, they would have to work with the NDDOT, FHWA, SHPO/THPO, interested Tribes and possibly the ACHP to resolve adverse effects.

CRS maintains a file on Material Source locations.

8. Miscellaneous Responsibilities of CRS

f Request permit from the State or Federal land managing agencies to do cultural resource surveys, evaluative testing, and data recovery.

f Provide technical assistance to the Divisions and Districts in addressing cultural resource issues.

B. Local Government Projects

There are numerous projects that are done by Local Governments such as Cities and Counties. CRS facilitates the cultural resource (106) process with local governments as follows:

f Provides technical assistance to Local Governments and interprets regulations regarding cultural resource issues.

f Reviews inventory reports and coordinates necessary SHPO consultation for NHPA and NEPA compliance.

f Keeps a file of all cultural resource reports on local government projects.

f Works with the Local Government, if Historic Properties are affected, to resolve adverse effects.

f Coordinates and facilitates consultation with the Tribes, when necessary.

C. Transportation Enhancement Projects

These are projects which increase the value, beauty, or the reputation of the transportation network. Typical projects would be, pedestrian or bicycle facilities, scenic beautification, historic preservation, rehabilitation of historic transportation buildings, etc.

Design coordinates, conducts or contracts for cultural resource inventories on potential projects and conducts necessary consultation.

D. Historic Bridge Inventory

A Historic Bridge Inventory was completed in 1991 and is used as a tool in identifying bridges eligible for the National Register. An updated Historic Bridge Inventory from 2005 is available.

CRS :

- f* Should review files to see that all historic bridge properties on a project are taken into consideration.
- f* Participates in review of treatment proposals, contracts, and MOAs on historic bridge management issues. Coordinates consultation.
- f* Facilitates the AAdopt a Bridge Program,@ reviews the MOAs for this program, and coordinates consultation.

E. Public Participation

Public participation is a part of most NDDOT projects because of NEPA requirements. The NHPA also has public involvement requirements for the 106 process.

- f* CRS works with others in Design to ensure the 106 process outlined in the NHPA is followed through NEPA public involvement measures.
- f* CRS identifies who should be notified regarding cultural resource issues when public involvement is required. They seek out parties that need to be consulted in the 106 process.
- f* Design gives the public the opportunity to provide input and comment on cultural resource issues at project public input meetings and hearings. When the reason for public participation is discussed, both NEPA and the NHPA should be cited.

- f* CRS works with designers to send out Solicitation of Views letters to SHPO.

F. Miscellaneous Tasks and Activities

CRS:

- f* Reviews and interprets Environmental Laws, Rules, and Regulations pertaining to cultural resources.
- f* Maintains project files regarding cultural resource issues.
- f* Updates the 106 activity in Milestone.
- f* Provides technical assistance on any cultural resource issues.

G. Other Agencies

There are a number of agencies involved in the 106 process. They are listed below with a discussion of their role.

1. Federal Highway Administration.

- f* Reviews compliance with Federal Laws and Regulations.
- f* Is responsible for compliance with Federal Laws and Regulations.
- f* Provides environmental clearance when the cultural resource process has been successfully completed.
- f* Forwards documents to the Advisory Council on Historical Preservation during resolution of adverse effects.
- f* Signs MOA necessary to resolve adverse effects.
- f* Requires Bridge Inventory and Management Plans.

2. State Historical Preservation Office

- f* Establishes a file on each project. They review project cultural resource issues and comment on the process the NDDOT uses in addressing cultural resource concerns.
- f* Concurs with NDDOT determination or offers comments.
- f* Issues permits to cultural resource professionals to do cultural resource work in ND.
- f* Reviews and concurs in the inventory methods, results, and determinations of effect.
- f* Reviews and concurs in the Scopes of Work, project reports, and findings related to the evaluative testing process.
- f* Works with NDDOT and others to resolve adverse effects.
- f* Signs resulting MOA.

f Is involved in the AAdopt a Bridge Program@.

3. American Indian Tribes

f Review projects to determine if cultural resources of interest to the Tribe will be impacted.

f May choose to do the cultural resource work if the project is on the Reservation and the Tribe has a Tribal Historic Preservation Office (THPO).

f Based on the contact initiated by CRS, the Tribe participates in the 106 process.

f Review and provide input into the level of work, site evaluations, determination of effect, and resolution of adverse effects.

f Participate in the research and design process of interpretive displays.

4. Consultants

f Consultants are hired to do cultural resource inventories, site evaluations, and site mitigations.

f Consultants have been hired to update the Bridge Inventory and evaluate all bridges constructed prior to 1957. They are to develop a Historical Bridge Management Plan that has a process for handling the ever-changing historic bridge issues.

f Consultants are involved in the AAdopt a Bridge Program@.

5. Advisory Council on Historic Preservation

Reviews and concurs with the decisions regarding adverse effects to cultural resources and comments on the process the NDDOT is using.

6. Keeper of the National Register

Becomes involved if disputes arise as to whether a site is eligible for the National Register, or if there is a sensitive site that needs to be kept confidential.

7. Federal Land Managing Agency

Issues permits to perform cultural resource work on Federal lands.

8. NDDOT

Legal:

Reviews consultant contracts and participates in disputes (at management request).

Materials and Research:

Requests CRS to look at State owned or State optioned material sites.

Local Government:

- f* Works with the Local Governments to ensure Federal Rules and Regulations pertaining to cultural resources are followed.
- f* Reviews the Bridge Inventory to determine the eligibility of Historic Bridges on Local Government projects.
- f* Coordinates project cultural resource issues with CRS.

Districts:

- f* Have requested CRS to review potential material source locations.
- f* Coordinates discussion of the cultural resource impacts in the Project Concept Report with CRS.
- f* Sends letters soliciting views on cultural resource issues to SHPO/THPO and the Tribes.
- f* Arranges for the location of the Public Hearings.