

CULTURAL RESOURCES REVIEW

CONTACT

Renee Barnes

Cultural Resources Unit Supervisor, Office of Environmental Stewardship

Minnesota Department of Transportation

395 John Ireland Boulevard, MS 620, St. Paul, Minnesota 55155

Phone: 651-366-4291; renee.barnes@state.mn.us

Web site: [MnDOT Cultural Resources](#)

PURPOSE

Federal and state laws establish programs for the preservation of historic properties that ensure consideration of effects to those properties in the decision-making process for transportation projects. Review of individual projects by MnDOT CRU ensures that early coordination with state and federal agencies will occur, and that projects (including potential alternatives) will be evaluated to avoid, minimize and mitigate effects to historic properties.

Historic properties are defined by federal regulations (36 CFR 800; Section 106 of the National Historic Preservation Act) as any of the following that are eligible for or listed in the National Register of Historic Places: buildings, structures (such as bridges), objects, sites (including archaeological), districts, and properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization. State law govern assessing effects to properties listed on the State and National Register of Historic Places (Minnesota Historic Sites Act); known or suspected significant archaeological sites (Minnesota Field Archaeology Act); or unplatted cemeteries (Minnesota Private Cemeteries Act).

THRESHOLD CRITERIA

FHWA Undertakings

All FHWA undertakings (projects using FHWA funds or requiring an FHWA permit such as an Interstate Access Request [IAR]) require review by MnDOT CRU under Section 106 of the National Historic Preservation Act early in project development. To initiate review, submit a completed Early Notification Memorandum (ENM) or [State Aid for Local Transportation Historical/Archaeological Review Request](#) report form to MnDOT CRU via email at culturalresources.dot@state.mn.us. The project schedule must include time for MnDOT CRU to review the project, up to 45 days for Tribal consultation, and another

30 days for the State Historic Preservation Office (SHPO) to review and respond to MnDOT CRU's finding, when required. More complex projects will require additional time to complete the review process, while less complex projects may require less time. Project proposers should consult with MnDOT CRU as early as possible in their planning process to ensure adequate time, if survey work or extensive consultation is needed.

FHWA is the lead agency in the Section 106 review and retains ultimate responsibility for compliance; however, the FHWA has delegated authority to MnDOT CRU to act on its behalf in conducting the Section 106 review process. The MnDOT CRU determines whether the project has the potential to affect historic properties; defines the area of potential effect (APE) from the project; determines if a property is eligible for listing on the National Register of Historic Places; works with the project proposer to minimize any effects from the undertaking; makes the findings of effects to historic properties; conducts all consultation with the SHPO, American Indian tribes, or other parties as required under federal regulations and applicable agreements.

FHWA Projects Requiring a Corps Permit

The FHWA, Advisory Council on Historic Preservation, SHPO, U.S. Army Corps of Engineers (Corps), and MnDOT have executed a [Programmatic Agreement](#) for the implementation of the Section 106 review process for the Federal-Aid Highway Program in Minnesota. Per the agreement, if a project has both FHWA and Corps involvement, the Corps recognizes the FHWA as the lead federal agency in the Section 106 review, thereby eliminating the need for two separate reviews.

Tribal Consultation

FHWA has developed or is in the process of developing consultation agreements with Tribal Nations who have expressed an interest in Minnesota's historic properties, including groups who lived in Minnesota in the past and those who live here currently. At present, tribes have expressed an interest in projects in all 87 Minnesota counties, but not all tribes wish to consult regarding all areas of the state.

MnDOT CRU conducts tribal consultation on behalf of the FHWA. There is an up to 45-day tribal review and comment period before MnDOT CRU can issue its Section 106 finding. The tribal review period expires when the consultation is completed or when the agreed-upon time period has passed without Tribal comment. Consultation with tribes (and the tribal comment period) comes before the 30-day SHPO response period required for some projects; the two reviews are not concurrent.

Historic Properties and Section 4(f) Involvement

For FHWA undertakings, a Section 4(f) evaluation may be required in addition to Section 106 review if there is a "use or taking" of a historic site or property (i.e., listed, or eligible for listing, in the National Register of Historic Places), whether publicly or privately owned. If there is a use or taking of a property that is not eligible for the National Register, but a local official, such as the mayor or director of the local historical society, provides information that the property is locally significant, FHWA may apply Section 4(f).

MnDOT CRU determines whether historic properties are present under the Section 106 review process; however, it does not determine whether a Section 4(f) evaluation is triggered through the use of a historic site, so further consultation with FHWA and the MnDOT Office of Environmental Stewardship Environmental Assessment Unit is needed when there is a use (See HPDP: Section 4[f]).

Other Federal Undertakings (not FHWA)

MnDOT CRU also occasionally reviews MnDOT or local projects using funds from other federal agencies such as the Federal Transit Administration (FTA) or the Federal Railroad Administration (FRA). For these non-FHWA Section 106 reviews, the lead federal agency determines the scope of MnDOT CRU's involvement and responsibilities on a project-specific basis.

Project with Corps Permit and No FHWA funding

For MnDOT projects that are not FHWA undertakings, but which require a Corps permit, the Corps is responsible for the Section 106 review; however, these projects still require MnDOT CRU review to ensure compliance with applicable state statutes and the project manager should submit an ENM to initiate review. MnDOT CRU review procedures for these projects are the same as those outlined below under Projects with No Federal Involvement.

Projects with State Funding Only

MnDOT projects with no federal involvement (no funding, permitting, or licensing) do not require Section 106 review, but require MnDOT CRU review under the Minnesota Historic Sites Act, the Minnesota Field Archaeology Act, and the Minnesota Private Cemeteries Act.

Tribal Consultation on State-Funded MnDOT Projects

Work proposed within reservation boundaries or tribal trust lands requires MnDOT CRU consultation

with the responsible Tribal Historic Preservation Office (THPO). For state-funded MnDOT projects that are outside reservation boundaries and trust lands, MnDOT CRU conducts consultation with Minnesota's 11 federally recognized Tribal Nations in accordance with the [Governor's Executive Order 13-10](#) and [MnDOT's Tribal Nations Policy](#). Consultation for state-funded MnDOT projects is similar to that conducted for FHWA-funded projects and is based on the same geographic areas of interest. The tribal review and comment period for state-funded projects is up to 45 days and occurs before MnDOT CRU can issue a finding. The tribal review period expires when the consultation is completed or when the agreed-upon timeframe has passed without tribal comment.

EAW Requirement

For state-funded only MnDOT and local projects, an EAW must be completed if a property listed in the National Register of Historic Places or State Register of Historic Places is moved or destroyed, in whole or in part (Minn. Rules 4410.4300 Subp. 31).

Projects Exempted from MnDOT CRU Review

Borrow/Aggregate Sources and Disposal Areas

MnDOT CRU no longer reviews the use of off-site, contractor-selected borrow/aggregate sources and disposal areas that are not owned by MnDOT.

MnDOT CRU does still review:

- off-site borrow/aggregate sources or disposal areas owned by MnDOT
- off-site borrow/aggregate sources or disposal areas specified by MnDOT/FHWA

To initiate review of a borrow/aggregate source or disposal area that falls into one of these categories, a [pit/disposal area review request form](#) must be completed by the contractor or project manager and submitted to the MnDOT CRU via email at culturalresources.dot@state.mn.us. -

Non-Federally Funded/Permitted MnDOT Work Types

MnDOT CRU no longer reviews a number of routinely undertaken MnDOT work types, provided no federal funds are used, no federal permits are needed, no work will occur within Tribal reservation or trust land boundaries, and the work meets certain restrictions or conditions outlined in MnDOT CRU's June 12, 2014, memo ([Appendix A](#)).

Relationship to the National Environmental Policy Act (NEPA)

Class 1 Actions (EIS)

Scoping Documents (SD) & Scoping Decision Documents (SDD)

Submit the ENM or [SALT Historical/Archaeological Review Request form](#) to MnDOT CRU to provide an early assessment of the magnitude of potential impacts to historic properties and to assess the need for further study. Typically, research and fieldwork is done to identify known historic properties during scoping.

The Section 106 regulations encourage agencies to use established public involvement procedures where appropriate to “seek information, as appropriate, from consulting parties and other individuals and organizations likely to have knowledge of, or concerns with historic properties in the area, and identify issues relating to the undertaking’s potential effects on historic properties.” MnDOT CRU can assist project managers in soliciting input from appropriate parties. The notice for the scoping meeting on Class I projects should include the following statement: *“MnDOT requests input from anyone on the identification of historic and archaeological resources in the vicinity of the project.”*

Draft Environmental Impact Statement (DEIS)

The DEIS should include the results of the Phase I identification survey, the results of any Phase II National Register evaluations (intensive research and fieldwork to determine whether a site, building, etc., is eligible for the National Register), and an assessment of effects to historic properties by MnDOT CRU.

Final Environmental Impact Statement (FEIS)

The FEIS should include MnDOT CRU findings letter, concurrence letters from the SHPO/THPO, when appropriate, responses to public comments regarding historic properties in the DEIS, and, when needed, any agreements to resolve any adverse effects to historic properties. When there is a finding of adverse effect to historic properties, the Record of Decision (ROD) cannot be issued until the Section 106 Memorandum of Agreement (MOA) or Programmatic Agreement (PA) has been signed.

Class II Action (EA/EAW)

Environmental Assessment

Submit the ENM or [SALT Historical/Archaeological Review Request form](#) to MnDOT CRU to initiate review. The environmental document should include the results of the Phase I identification survey and any Phase II National Register evaluations, MnDOT CRU findings letter, concurrence letters from the

SHPO/THPO (when required), public comments regarding historic properties and, when needed, any agreements to resolve any adverse effects to historic properties. When there is a finding of “adverse effect to historic properties,” the Finding of No Significant Impact (FONSI) should include a signed Memorandum of Agreement (MOA) or Programmatic Agreement (PA).

Class III Action (Categorical Exclusions)

Submit the ENM or [SALT Review Historical/Archaeological Review Request form](#) to MnDOT CRU to initiate a review. The environmental document should include MnDOT CRU findings letter, concurrence letters from the SHPO/THPO, when appropriate; any public comments regarding historic properties and, when needed, any agreements to resolve adverse effects to historic properties. When there is a finding of adverse effect to historic properties, the Categorical Exclusion cannot be completed until the Section 106 Memorandum of Agreement (MOA) or Programmatic Agreement (PA) has been signed.

Legal Basis

Description	Code
National Historic Preservation Act of 1966, as amended, Section 106	* 54 USC Sect. 306108 (formerly at 16 USC Sect. 106 and still referenced as “Section 106”)
National Environmental Policy Act of 1969, as amended (NEPA)	* 42 USC Chapter 55, Sect. 4321 et seq.; see also 23 CFR 771 (FHWA regulations) and 40 CFR 1500- 1508 (CEQ regulations) - see United States Code Main Page
Protection and Enhancement of the Cultural Environment	Executive Order 11593
DOT Act of 1966, as amended (Section 4[f]) - preservation of all publicly owned public parks, waterfowl and wildlife refuges, and all historic areas	*USC 303, 23 USC 138) ; see also 23 CFR 771.135
Minnesota Field Archaeology Act and Minnesota Historic Sites Acts	Minnesota Statutes §138.31-138.42 and §138.661-138.6691
Minnesota Private Cemeteries Act	Minnesota Statute §307.08

Guidelines/Regulations

Creator (Agency/Author)	Subject of Guideline/Regulation
ACHP	Protection of Historic Properties (36 CFR 800)
MnDOT, FHWA and SHPO	Programmatic Agreement...Regarding the Implementation of the Federal-Aid Highway Program in Minnesota (as amended 2014) (copy of PA)
FHWA	Environmental Review Toolkit, Historical & Archeological Preservation
National Park Service, Department of Interior (NPS)	36 CFR 60 : National Register of Historic Places, and 36 CFR 63 : Determinations of Eligibility for inclusions in the National Register of Historic Places
ACHP	An Introduction to Section 106
FHWA	Technical Advisory T6640.8A
FHWA	Environmental Review Toolkit, Historic Bridges

Helpful Links

MnDOT

[Submitting Transportation Projects for MnDOT CRU Review](#) [MnDOT CRU Streamlining Studies](#)

Advisory Council on Historic Preservation (ACHP)

[Protecting Historic Properties](#)

SHPO

[Minnesota State Historic Preservation Office \(SHPO\)](#)

Glossary

Advisory Council on Historic Preservation (ACHP) – An independent federal agency charged with advising the President and Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act. The various duties of the council are defined by regulations at 36 CFR 800. The ACHP becomes involved in individual Section 106 reviews only under certain circumstances (outlined in Appendix A to 36 CFR 800).

Memorandum of Agreement (MOA) – The agreement resulting from consultation with the SHPO and other appropriate parties that stipulates the measures a federal agency will take to avoid, reduce and mitigate adverse effects on historic properties resulting from a particular project. The MOA is signed by the agency, the SHPO, other appropriate parties (e.g., THPO, Corps of Engineers, etc.), and by the ACHP, if participating.

Minnesota Field Archaeology Act – MN Statutes 138.31-138.42 establish the OSA, and directs state agencies to cooperate with the OSA and the Minnesota Historical Society (MHS) when projects occurring on lands or waters they control will impact known or suspected archaeological sites. The regulations further mandate that only qualified professionals licensed by the OSA are allowed to perform archaeological investigations conducted on such lands or waters.

Minnesota Historic Sites Act – MN Statutes 138.661-138.6691 direct state agencies and departments to cooperate with each other and the MHS when projects they undertake or fund will impact properties listed in the National Register of Historic Places or the State Register of Historic Places. This includes projects conducted by state agencies or departments as well as projects conducted by other parties that the state funds or licenses.

Minnesota Private Cemeteries Act – MN Statute 307.08 protects all human remains and burials older than 50 years, which are located outside of platted, recorded or identified cemeteries. This statute applies to burials on both public and private lands and waters.

The OSA maintains a database of burial sites in Minnesota that have been identified to date. A person who intentionally, willfully, and knowingly destroys, mutilates, injures, disturbs, or removes human skeletal remains or human burial grounds, is guilty of a felony. More information on this statute, the Minnesota Field Archaeology Act, and the OSA is available on the [MN Office of the State Archaeologist Home Page](#).

National Register of Historic Places (National Register) – The nation's master inventory of known historic properties worthy of preservation. The National Register is administered by the National Park Service on behalf of the Secretary of the Interior. National Register listings include buildings, structures, sites, objects, and districts that possess historic, architectural, engineering, archeological or cultural significance. The criteria used in determining whether properties are eligible for listing in the National Register are defined by regulations at 36 CFR 60.4. Under Section 106, properties eligible for and properties listed in the National Register are given equal consideration. Since a significant number historic properties have not yet been identified or evaluated for National Register eligibility, undertakings may require historical investigation (i.e. survey) beyond a review of currently listed or eligible properties.

Office of the State Archaeologist (OSA) – The state agency in the Department of Administration primarily responsible for overseeing the Minnesota Field Archaeology Act and the Minnesota Private Cemeteries Act ([MN Office of the State Archaeologist Home Page](#)).

Programmatic Agreement (PA) – An agreement between a federal agency and the SHPO that streamlines and enhances historic preservation and project delivery by implementing approaches that do not follow the normal Section 106 process (36 CFR 800). PAs are also used for specific undertakings to outline the actions to be taken by the parties to complete the Section 106 review when the adverse effects of an undertaking are not fully known prior to approval of the undertaking.

Section 106 Review – A review process established under Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq., moved to 54 USC 30610 but still referred to as “Section 106”), and administered by the Advisory Council on Historic Preservation (ACHP) under regulations at 36 CFR 800. During this process, federal agencies must determine whether their undertakings will affect historic properties. Agencies may consult with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), and with the ACHP during the review process. As a designated agent of the FHWA, the MnDOT CRU conducts Section 106 reviews of FHWA-funded transportation undertakings in Minnesota

State Historic Preservation Office (SHPO) – The agency in each state or territory who (among other duties) consults with federal agencies during historical review. The SHPO administers the national historic preservation program at the state level, reviews and submits National Register of Historic Places nominations, and maintains file data on historic properties that have been identified but not yet nominated to the National Register. SHPO's are designated by the Governor of their respective state or territory. Federal agencies consult with the appropriate SHPO while identifying historic properties and assessing effects of their undertakings on historic properties. Agencies also consult with the SHPO in developing MOA's and PA's.

Tribal Historic Preservation Officer (THPO) – The tribal official appointed by a Tribal Nation's chief governing authority, or designated by a tribal ordinance or preservation program, who assumes SHPO responsibilities for the purposes of Section 106 review on tribal lands. The term also includes the designated representative of a Tribal Nation that has not formally assumed SHPO responsibilities when a project occurs on or affects historic properties on tribal lands.

Tribal Consultation – As part of their Section 106 responsibilities, federal agencies must consult with Indian tribes that may attach religious and cultural significance to historic properties the agency's undertakings may affect, regardless of the property's location. The FHWA has completed or is in the process of completing consultation agreements with the 11 federally recognized Tribal Nations in Minnesota. In addition, the FHWA has developed consultation agreements with several Tribal Nations outside Minnesota, but who at one time lived within the state's geographic boundaries and who may attach religious and cultural significance to historic resources here. Each tribe has indicated a geographical area of interest where they wish to be consulted regarding FHWA undertakings. The agreements stipulate each tribe's geographic areas of interest and the length of the Tribal review and response periods. All undertakings administered under the Federal-Aid Highway Program, including those sponsored by local agencies, must include tribal consultation in accordance with the FHWA's agreements. Mandatory tribal review periods range from 30 days to 45 days. The tribal response periods must be concluded prior to the mandatory 30-day SHPO response period that is required in some reviews.

In accordance with the Governor's Executive Orders [03-05](#) and [13-10](#) and [MnDOT's Tribal Nations Policy](#), MnDOT CRU conducts Tribal consultation with the 11 federally recognized Minnesota Tribal Nations on state-funded (non federally funded) MnDOT projects. The process is similar to that established for tribal consultation under FHWA agreements, with the same Tribal geographic areas of interest and Tribal review and comment periods. In addition, if a state-funded MnDOT project is proposed within the exterior boundaries of a reservation or within tribal trust lands, the MnDOT CRU consults with the responsible TTHPO.

Undertaking – In the Section 106 process, an undertaking is defined as an action that can result in changes in the character or use of historic properties, if such properties are present. A federal undertaking entails: (1) a project, activity, or program carried out by or on behalf of a federal agency; (2) a project wholly or partially carried out with federal financial assistance; (3) a project requiring a federal permit, license or approval; or (4) a project subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. The term "project" is often used interchangeably with the term "undertaking".

Appendix A

**Memo from MnDOT CRU to MnDOT District Engineers Regarding Type of
State-Funded Projects Exempted from CRU Review**

June 12, 2014



Minnesota Department of Transportation

Office of Environmental Stewardship
Mail Stop 620
395 John Ireland Boulevard
St. Paul, MN 55155-1899

Office Tel: (651) 366-3604
Fax: (651) 366-3603

June 16, 2014

To: District Engineers and District Environmental Coordinators

From: Elizabeth Abel, Cultural Resources Unit

Re: Types of State-Funded MnDOT Projects Exempted from CRU Review

The MnDOT Cultural Resources Unit has determined that the following state-funded work types have little potential to impact significant historic or archaeological resources. When these types of projects are not federally funded and are outside tribal reservation boundaries, we will no longer review them for compliance with Minnesota state statutes regarding historic and archaeological resources. Work types must meet the listed restrictions/conditions to be exempt from CRU review. If state-funded project requires a permit from the Corps of Engineers, that agency has responsibility for reviewing impacts to historic resources under applicable federal regulations.

Type of Work	Restrictions/Conditions
Pavement resurfacing/repair/rehabilitation (including milling; overlays; joint and crack sealing; other surface sealing and treatments)	No work outside shoulder PI; no new right of way or temporary easement required; no realignment
Shoulder work (including grading, paving, repair)	No shoulder widening; no ground disturbance beyond shoulder; no new right of way or temporary easement required
Culvert replacement	No ground disturbance outside footprint of existing culvert; no new right of way or temporary easement required
Noise wall maintenance	No ground disturbance beyond 5 feet from base of wall; replacement of any elements must be in-kind; no change in wall dimensions
Bridge redecking/repairs (including chip sealing)	Non-historic bridges only; no ground disturbance
Bridge maintenance work	Non-historic bridges only; no ground disturbance
Guardrail replacement/repair (including end treatment updates)	Non-historic bridges only; in-place replacement only
Signage replacement/repair/refurbishment	In-kind and in-place replacement only
Lighting replacement/repair	In-kind and in-place replacement only
Signal replacement/repair	In-kind and in-place replacement only
Fence repair/replacement	In-kind and in-place replacement only
Pavement marking	None
Safety edging	None
Loop detector installation/replacement	None
Cable median barrier installation/replacement/repair	None
Culvert cleaning/repair (including relining)	None
Storm sewer pipe and basin cleaning	None
Aggregate, borrow, or disposal areas	MnDOT owned areas only

Cc: Jon Chiglo and Amr Jabr, Engineering Services
Scott Bradley, OES

Lynn Clarkowski, OES Office Director
Kristen Zschomier, Cultural Resources