



U.S. Department
of Transportation
**Federal Highway
Administration**

NEBRASKA DIVISION

June 17, 2010

100 Centennial Mall North
Room 220
Lincoln, NE 68508
(402)742-8460

In Reply Refer To:
HDA-NE

Monty W. Fredrickson, P.E.
Director – State Engineer
Nebraska Department of Roads
Lincoln, NE

Dear Mr. Fredrickson:

As part of the Federal Highway Administration's (FHWA) ongoing efforts to find environmental compliance process efficiencies within the delivery of the Federal-aid program, I am pleased to provide the Nebraska Department of Roads (NDOR) our "no potential to affect historic properties" determinations under Section 106 of the National Historic Preservation Act for specific activity types. The use of this up-front determination and implementation tool (enclosed) will expedite the delivery of specific project types by eliminating the need to consult with parties typically involved with Section 106 reviews for those projects.

With the implementation of this process, FHWA does hereby provide the 30 day notice to terminate the "*Projects with No Potential to Cause Effects: NDOR Maintenance and Minor Highway Projects; and Highway Project Review Process*" Memorandum of Understanding (exempt MOU), dated May 1, 2003. Per the terms of this MOU, it was due to expire December 31, 2005 with an option to extend for an additional 3 years. The MOU was never extended and, therefore, technically expired some time ago even though the signatories have been operating as if it were still in effect.

To ensure a smooth transition, FHWA will recognize the following:

1. All affect determinations made under the exempt MOU for projects with a previously approved NEPA document will remain valid, provided a reevaluation or supplemental EIS is not required.
2. For currently active but unapproved NEPA documents, reevaluations, or supplemental EIS's that have an FHWA approved NEPA Determination Form dated prior to the date of this letter, FHWA will continue to recognize determinations made under the exempt



MOU until November 1, 2010 (approximately 6 months from the issuance of this letter). After this date, FHWA will not approve any NEPA documents, including reevaluations and supplementals that rely on the exempt MOU for their Section 106 consultation documentation.

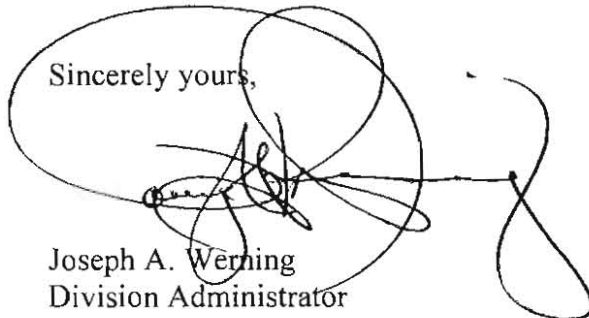
3. For all active but unapproved NEPA documents, reevaluations, or supplemental EIS's that do not have an approved NEPA Determination form by the date of this letter, the exempt MOU will not be valid for Section 106 project documentation.

For all projects that the exempt MOU no longer applies to (see 2 and 3, above), and which also do not meet the criteria in the attached "no potential to affect historic properties" implementation tool, consultations with the State Historic Preservation Office (SHPO), tribes, and any consulting parties will be completed through FHWA. Except for the "no potential to affect historic properties" projects defined in the attachment, all consulting materials for eligibility, affect determinations, agreement documents, and recordation documents must be provided by NDOR (or their Historical Society liaison) to FHWA to use for consultation purposes. As with other environmental document submittals, these Section 106 submittals will be sent to the official FHWA electronic mailbox. Within the next month FHWA would like to meet with NDOR Environmental, the Historical Societies' Highway Archaeology Program, and the SHPO's office to discuss the transition.

As the Section 106 program develops within Nebraska, FHWA will be looking for further opportunities to streamline the program, while staying within compliance of the regulations. Such efficiencies may be realized through the creation of a Section 106 procedure document and the creation of additional Program Programmatic Agreements. FHWA would consider allowing additional authorizations to NDOR in the future, contingent on NDOR acquiring a staff member housed at NDOR which meets the Secretary of Interior Standards. In order to maintain the integrity of the Section 106 Process and its resulting decisions, this staff member could not be an employee of the Historical Society.

Please do not hesitate to call me or Ms. Melissa Maiefski of my staff should you have any questions.

Sincerely yours,



Joseph A. Werning
Division Administrator

Enclosure

Activities that are Undertakings with No Potential to Cause Effects to Historic Properties Pursuant to 36 CFR 800.3(a)(1)

In accordance with 36 CFR Part 800.3(a)(1), implementing regulations of Section 106 of the National Historic Preservation Act of 1966 as amended, the Nebraska Division of the Federal Highway Administration (FHWA) has determined that some federal-aid highway funded actions administered by the Nebraska Department of Roads (NDOR) would have no potential to affect historic properties in Nebraska. Furthermore, FHWA has identified specific project types, listed below in Part I, that qualify as projects with no potential to affect historic properties. As such, the project types listed in Part I do not require further obligations under the Section 106 process of the National Historic Preservation Act. The purpose of this memo is to (1) identify a list of those actions and to (2) identify a process that satisfies any National Historic Preservation Act obligations of FHWA.

General Conditions:

This list of activities does not include actions or activities on roadways or properties identified as register eligible in the *Nebraska Historic Highway Survey* (2002) or National Register eligible or listed bridges identified in the bridge database. Also, the actions listed herein cannot be combined with other actions or larger undertakings.

Part I: Actions or Activities (Undertakings) that have "No Potential to Affect Historic Properties"

1. Guardrail and bridge rail repair and replacement. Conditions: New guardrail material is limited to in-kind replacement/repair (using similar materials) with any and all ground disturbance limited to fill material locations only, not to exceed the depth of the fill material.
2. Traffic signals, intersection lighting, pedestrian signals, underpass lighting, or railroad lighting within existing right-of-way. Conditions: New material utilized is limited to in-kind replacement/repair (using similar materials) on existing traffic devices. Any and all ground disturbance is limited to fill material locations only, not to exceed the depth of the fill material.
3. Maintenance and replacement of highway signs on existing poles, and new sign installation within existing fill material locations, with any fill material disturbances not to exceed the depth of fill material.
4. Crack-sealing, pothole repair, overlaying, milling, resurfacing, installation of rumble strips, and pavement marking. Conditions: This activity does not include actions on brick streets. 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, and all staging areas can be limited to existing paved or previously disturbed surfaces only (i.e., surfaces with little to no vegetation).

- due to previous disturbance). Any and all ground disturbance is limited to previous fill material locations only, not to exceed the depth of the fill material.
5. Repair/Maintenance of right-of-way fencing, limited to repair/replacing fence wire and fence posts only on 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 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 for right-of-way previously purchased with Federal funds, provided no properties over 50 years old are located within 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 fill material.
 11. Repair/replacement of at-grade railroad crossing gates, light, signs and the rail crossing driving surface. Condition: work is limited to in-kind replacement/repair (signs to signs, gates to gates, etc) with any and all ground disturbance limited to fill material locations only, not to exceed the depth of the fill material.
 12. Grants for training, education and research programs which do not involve construction.
 13. Purchase of equipment or materials that do not lead to, or are a part of, a construction activity.
 14. Visual Bridge inspections.

Part II: Procedures for Evaluating and Documenting a Finding of "No Potential to Affect Historic Properties"

1. On a project by project basis, NDOR shall review the project scope to determine if it is an action listed in Part I.
2. This evaluation may be conducted by any NDOR Environmental Section staff member. This review of project scope may only be completed by NDOR staff or by the Highway Archaeology Program staff of the Nebraska Historical Society. The individual conducting the evaluation does not have to meet the Secretary of the Interior Qualifications Standards (published in 48 FR 44738-44739)
3. This review shall include a consideration of whether or not unusual circumstances are present which may invalidate the no potential to affect determination. If an unusual circumstance exists, coordination with FHWA is required.

4. Both the finding of "no potential to affect" and the evaluation of whether or not unusual circumstances may apply shall be documented as part of the project file and retained by NDOR.
 - a. The finding documentation shall include:
 - i. Identification of the activity from the list in Part I;
 - ii. the name of the individual;
 - iii. and the date the finding was made.
5. FHWA shall monitor these procedures on an annual basis.
 - a. On a quarterly basis, NDOR shall send a list of projects determined to have no potential to affect historic properties under this authority to the FHWA Environmental Specialist.
 - b. FHWA shall schedule a meeting to occur on or before September 30 of each year, to discuss with NDOR its performance of these procedures and contemplate any changes in procedures or modifications of the list of actions in Part I.
 - c. FHWA may review documentation related to these procedures at any time.
6. FHWA reserves the right to amend the list of actions listed in Part I or modify the procedures in Part II at any time.
 - a. FHWA shall notify NDOR in writing of any amendment and the date of that amendment.
 - b. FHWA reserves the right revoke the contents of this memo. .



Joseph A. Werning
Division Administrator
Nebraska Division

6-17-2010
Date