

NDDOT Projects Cultural Resources: Requirements and Responsibilities for Archaeological & Engineering Consultants New to Design Manual



New Approach to Cultural Resources in the Design Manual

- ▶ 1) Cultural Resource Section Services
- ▶ 2) NHPA Section 106 Review and Compliance
 - ▶ 2.1 Overview S.106 at NDDOT
 - ▶ 2.2 Types of Projects with Cultural Resource Concerns
 - ▶ New Roadways, Reconstruction, Rehabilitation and Maintenance, Urban, TA Projects, Bridge Replacement, Bridge Adoption Program
 - ▶ 2.3 Archaeological Consultant Inventory Requirements and Procedures
 - ▶ Class III Survey Required, Site Recording Needs, Project Reporting Needs
 - ▶ 2.4 TCS Process for Archaeological Consultants
 - ▶ 2.5 Stone Feature Recording Process for Archaeological Consultants
 - ▶ 2.6 Avoidance of Cultural Resource Sites
 - ▶ 2.7 Discoveries Identified During Construction
- ▶ 3) NEPA and Material Source Cultural Resource Issues



Categorical Exclusion - NEPA

- **Categorical Exclusion by Definition (CED)**
 - Projects where work is generally confined to the roadway surface but may include minor safety, structural, pedestrian facility, or miscellaneous work that does not require permanent right of way acquisition. Work types are defined in Appendix A of the Programmatic Categorical Exclusion Agreement. No further NEPA documentation is required, but some permitting, notifications, coordination, or consultation may be required. NDDOT approves the environmental document.
- **Programmatic Categorical Exclusion (PCE)**
 - Projects where work is primarily on the roadway or roadbed, but may also include areas of earthwork. These projects may also require acquisition of minor amounts of right of way. NDDOT approves the environmental document.
- **Documented Categorical Exclusion (DCE)**
 - Projects that involve substantial earthwork, regrading, reconstruction, structure replacement, or projects that exceed the thresholds in the agreement. FHWA approves the environmental document (unless below the thresholds, then NDDOT will approve)



Categorical Exclusion by Definition and Cultural Resources

- Use the CED checklist to determine whether or not any cultural resource work is required in conjunction with a particular project.
- FHWA and NDDOT are working with SHPO on a programmatic approach to Section 106 that will facilitate this CED process.
- In the interim contact CRS for any project with earth disturbing activities.

SOV to SHPO

Letter 5 – On System

NDDOT Project Information Form SFN 52748 – Local Government

Under Section 106 of the National Historic Preservation Act the NDDOT on behalf of FHWA consults with the ND SHPO/THPO in regard to:

- ▶ The APE (Area of Potential Effects)
- ▶ the level of identification needs (**for on-system projects we have agreed to Class III survey in all cases where a stretch of Highway has not been previously surveyed to an adequate level in the past 20 years – sometimes less than 20 years when Reconstruction planned and no previous tribal involvement**)
- ▶ involvement of consulting parties
- ▶ evaluation of cultural resources
- ▶ effects determination
 - ▶ No Historic Properties Affected
 - ▶ No Adverse Effect
 - ▶ Adverse Effect
 - ▶ Resolution of Adverse Effects

SOV to SHPO – Letter 5

So, to understand the effects of the project on any identified cultural resources SHPO/THPO needs to understand just what the project involves in regard to:

- ▶ proposed **disturbance of the ground**
- ▶ **alteration of any structures** that have potential to be eligible for inclusion on the National Register of Historic Properties
- ▶ consideration of **direct and indirect effects to buildings and related districts.**

We need to know if there will be any **additional ROW or easements** and **what kinds of disturbance might take place in these new areas**, as well as, understanding any **impacts within our ROW.**

SOV to SHPO - Letter 5

On-System Projects (Letter 5):

- ▶ Use **Letter 5** for all NEPA actions on Highway Projects (in the future this may be needed only for the Programmatic and Documented Catex, EA and EIS level NEPA efforts)
- ▶ **If 106 has already been completed in Milestone** and you have a letter from SHPO/THPO concurring in a determination for the project, no formal SOV of SHPO/THPO is necessary unless the project has changed in a way that may affect that determination.
- ▶ The SOV to SHPO/THPO (Letter 5) letter is completed by the Engineer and the Cultural Resource Section.
 - ▶ When you have completed your portion of the letter email it to Jeani Borchert (jborchert@nd.gov for in-house) or your NDDOT Project Manager to forward to the CRS, (for Engineering Consultants).

SOV to SHPO - NDDOT Project Information Form SFN 52748

Local Government Projects (NDDOT Project Information Form SFN 52748):

- ▶ Fill out the form and attach appropriate scale map showing project limits
- ▶ mail or email it to Bob Christensen
- ▶ (NDDOT Cultural Resources, 608 E Boulevard Avenue, Bismarck 58505; rchrste@nd.gov).
- ▶ Bob then drafts a letter to SHPO with all the pertinent information.

NDDOT Project Information Form (SFN:52748)

This information is necessary to initiate consultation. Add attachments as necessary.
 If you have any questions, please call Cultural Resources at 701-328-4539

Engineering Firm	Project Engineer	Telephone Number	
Address	City	State	ZIP Code
NDDOT Project Number	Project Control Number	Project Type	
Brief description of Project, including any potential ground disturbance, widening, new ROW, any buildings or structures affected, etc. <input type="checkbox"/> Attached			
Project purpose and need <input type="checkbox"/> Attached			
Legal Description of the Area of Potential Effect (project area), including county, township, range, section, and quarter-quarter description: County _____ <input type="checkbox"/> Additional legal locations attached			
T _____	N, R _____	W, S. _____	Quarter-quarter _____
T _____	N, R _____	W, S. _____	Quarter-quarter _____
T _____	N, R _____	W, S. _____	Quarter-quarter _____

NDDOT Project Information Form (SFN:52748)

Known Cultural Resources (include any archaeological sites, historic sites, buildings more than 50 years old, etc.). Include the site number (SITS number) and a brief description of each site. Attach a Class I Cultural Resource Inventory (file search): <input type="checkbox"/> Attached
A Class III cultural resource inventory (survey) been conducted for this project: If yes, attach copy of the report. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Attached
What is your plan for public involvement? (such as solicitation of views, public input meeting, public hearing, etc.) <input type="checkbox"/> Attached
Attach county maps showing the Area of Potential Effect (project location). <input type="checkbox"/> Attached
Rural projects: Attach 7.5 minute USGS topographic maps showing the specific area of potential effect. Each map sheet must be labeled with the quad map name and the township/range. Include the site boundary for each site as shown on the SITS form. Urban projects: Include a city map showing the boundaries of all historic districts, and the site boundaries of the sites along the project. <input type="checkbox"/> Attached

Material Sources

- ▶ Any areas to be used in conjunction with NDDOT construction projects that are not listed in the plans must be approved through the NDDOT Material Source Approval Procedures.
- ▶ These areas include material source locations, access routes to the source, stockpile locations, rock source locations including rock piles from cultivated fields, plant sites, processing and staging areas, waste locations, and any other areas not identified in the plans.
- ▶ Information on requirements can be found in NDDOT Standard Specifications 107.04 and on the NDDOT Website:
<https://www.dot.nd.gov/divisions/environmental/materialsource.htm>.

Consultant Inventory Requirements and Procedures

Class III Survey Required On-System Highway Projects

- ▶ **Must hold ND State Historic Preservation Office (SHPO) permit¹**
 - ▶ Permitted Field Supervisor must be in the field 100% of the time
- ▶ File search:
 - ▶ **Make sure to read the pertinent literature**
 - ▶ If sites near/within ROW or sites have been tested, read the reports
 - ▶ If previous surveys near/within ROW read the reports
- ▶ Meet SHPO Class III² standards
 - ▶ **Shovel/auger probes are a must when there is poor ground surface visibility (GSV) and high site potential**
- ▶ Field Supervisor on SHPO Permit and in field 100% of time
- ▶ Survey both sides of roadway
- ▶ If right of way (ROW) survey only, then pay attention to land immediately adjacent for better GSV opportunities (consider 10' adjacent to the ROW)
- ▶ Check for ROW dimensions on NDDOT Website³
 - ▶ Printing of the plats may be very useful during the inventory

Links (1, 2, 3):

- ▶ http://history.nd.gov/hp/PDFInfo/Permit_SF3639.pdf
- ▶ <http://history.nd.gov/hp/signguidelines.html>
- ▶ http://gis.dot.nd.gov/external/ge_html/?viewer=row.

Working with Tribes 4-Lane Hwy 2



Our Tribal Partners



Working with Tribes Williston NW



Consultant Inventory Requirements and Procedures

- **Tribal Traditional Cultural Specialists (TCS) are required in field with the cultural resource professionals**
 - Follow TCS process (below) through THPO contact list (to be provided upon required pre-field meeting with the CRS)
 - **Provide maps and project information to the THPO so they can provide the information to and prepare their Traditional Cultural Specialist.**
 - Make sure to begin notification of THPOs to request TCS as soon as you know when you would like fieldwork to begin as they too need to plan effective use of their personnel
- **Meeting with CRS (701-328-4378; jborcher@nd.gov) required prior to fieldwork**

Site Recording Needs

- Record entire site area, not a boundary based on the survey corridor (unless other considerations [e.g., really large site] then call Jeani Borchert @ 701-328-4378)
- Update all previously recorded site forms and site lead forms for sites within or partially within the Area of Potential Effect (APE) for the project
 - *It is important to note that if a site lead is not found in the project area the lead form should be updated to redefine the boundary of that lead to exclude the survey area.*
- Update previously recorded site forms and site lead forms for sites with noted changes when they are immediately adjacent to the APE for the project
- For Stone Feature sites record following the standards below
- **Do not put probes in Stone Feature sites; define boundaries on feature distribution and landform**
- Record features and site boundaries using GPS
 - Justify boundaries
- **Do not extend boundaries unreasonably within existing ROW** (e.g., we might have a meter depth potential within the upper portions of the back slope; if so record it accurately, especially important when updating a previously recorded site)

Example



Site Recording Needs

- ▶ Do not record culverts unless they are masonry
- ▶ Bridges
 - ▶ Note that most post 1945 bridges in ND are covered by the ACHP Program Comment. Even though many were recommended eligible by RTI as a result of their 1999-2000 work, these were not determined eligible by SHPO. We have a list of 10 bridges from the post-1945 era that will be considered under section 106 and are exceptions to the Program Comment. You can get the list from NDDOT CRS during your pre-field meeting or find it here:
 - ▶ https://www.environment.fhwa.dot.gov/histpres/bridges_list.asp

Project Reporting Needs

- ▶ All newly *or previously* recorded sites, isolated finds, and site leads within the APE shall be discussed in the report Results and Recommendations Section
 - ▶ Make sure to understand the literature about previous survey and sites, particularly previous site testing
 - ▶ Do not rely only on site forms for previously recorded sites; read the literature
- ▶ Put **Reference Points** on your maps (these are available on the ND Hub <https://www.nd.gov/gis/mapsdata/web/>)
- ▶ Shortened reporting form acceptable for small projects with few sites
- ▶ Negative reporting form acceptable for small projects with no sites
- ▶ Include discussion of Tribal involvement with names of TCS and their contributions

Put Reference Points on Your Topo Maps



Project Reporting Needs

- When reporting on large survey include a separate section on results [The following gives us a clear understanding of each site and the eligibility potential with an understanding of project effects all in one spot in the report]
 - Discuss each site
 - What it is
 - Previous recording description with any updated information
 - Evaluation information whether formal or your professional perspective
 - Effect from project (You should work with the Engineer to determine whether or not sites will be impacted. Avoidance is the first option that needs to be explored. We avoid impact to stone features at great effort.)
 - Aerial or Sketch Map
 - Photos as needed
- When there is over a handful of sites to report on in the Management Summary or other titled ending use a table to list the sites with at least
 - SITS #,
 - Site Type,
 - Eligibility (eligible, not eligible, unevaluated), and
 - Project Specific Effects and Recommendations
 - (Please do not recommend "Clearance." You might rather say, "A finding of No Historic Properties Affected is appropriate for this project with ..." considerations of site avoidance or whatever actions you recommend.

Project Reporting Needs

- No site forms in report
- Off Reservations submit a manuscript data record form with each report
- Submit GIS shapefiles of survey boundaries and site boundaries to the NDDOT
- Submit reports electronically in pdf format with one hard copy for us to send to SHPO/THPO (the only expectations are when we have other Federal Agencies that are Cooperating Agencies under NEPA and we need to provide review and final copies to them)
- If changes are requested you can resubmit electronically with one hard copy
- Submit all site forms and updates to the NDDOT electronically in pdf format
- Off Reservations Place electronically on your SHPO ftp site when you send to us electronically
- Update your SHPO ftp if report changes are requested
- Provide an incident report (example below) for issues involving TCS, Landowners, Law Enforcement, etc.

Incident Report

- | | |
|------------------------------------|-------------------------------|
| ■ Incident Reporting Form: | ■ Result: |
| ■ NDDOT Project # _____ | ■ _____ |
| ■ NDDOT PCN: _____ | ■ _____ |
| ■ Archaeological Consultant: _____ | ■ _____ |
| ■ THPI/TCS Name and Tribe: _____ | ■ Recommended Further Action: |
| ■ Incident: _____ | ■ _____ |
| ■ _____ | ■ _____ |
| ■ _____ | ■ _____ |
| ■ _____ | ■ Reported By: _____ |
| ■ _____ | ■ Reported Date: _____ |
| ■ _____ | |

TCS Process (Tribal Monitors)

- The NDDOT has agreed to incorporate Tribal Traditional Cultural Specialists (TCS) at the cultural resource identification level for on-system projects contracted to cultural resource/archaeological firms. It is our hope that this process will benefit the Tribes by providing the opportunity to reacquaint themselves with the landscape and give them participation opportunity and confidence in the identification process.
- TCS will not be included for identification efforts with Local Government projects or Material Source locations as part of this program.
- **TCS on Local Government projects and Material Source locations will proceed as currently undertaken; as identified on an individual basis for specific projects/sources; e.g. testing projects and complex projects with new ROW.**
- **Cultural resource consultants under contract with the NDDOT, or hired by an Engineering Firm acting on our behalf, for on-system highway projects will be required to facilitate the TCS involvement program.** Consultants will provide for mileage and meals; provide lodging; and pay our negotiated rates for TCS pay. Method and timing of payment for mileage, meals, and fee will be discussed and agreed upon with THPOs when you contact them to provide TCS for NDDOT projects.

TCS Process (Tribal Monitors)

- A list of Tribal Contacts will be provided by the NDDOT to the cultural resources consultants.
- When the Consultant is near to completing the contracting process with the NDDOT or Contracted Engineering Firm, having a planned fieldwork schedule, the Consultant will be required to contact someone from the Tribal Contacts list on the nearest Reservation to the project area to request a TCS.
- **There are times that a specific tribe or tribes have been identified for specific project interests during our tribal consultation process. Please contact the CRS (701-328-4378) prior to THPO contact to ensure agreements are being followed.**
- If a TCS is not available for the proposed fieldwork day(s), the Consultant will contact another Tribal Contact to attempt to arrange for a TCS. The CRS may be aware of Tribes that have TCS available. If contact has been attempted/made with each Tribal Contact on the list provided, planned fieldwork is ready to be implemented, and no TCS is available, the Consultant will contact the NDDOT CRS (701-328-4378) to receive authorization to proceed without a TCS.
- Participation of TCS in the cultural resource surveys will be facilitated by the Consultant, but these TCS are not typically employees of the Consultant; they will remain independent. They will be expected to participate in the survey as they see fit, to offer their input on sites identified by the Consultant, and to notify the Consultant's Field Director when they have identified a cultural resource of potential importance to the Tribes – preferably as the crew is working in this site vicinity. Consultant will include the Tribal perspective, excluding confidential information, in their report.
- If there is conflict regarding any aspect of the TCS process on a specific project, the NDDOT TCC member and the TCC member(s) from the TCS's Tribe will be consulted (Contact CRS at 701-328-4378).

Stone Feature Recording Procedures

- **Provide these to the TCS and your employees at the start of fieldwork.**
 - The NDDOT would like to record stone feature sites on our projects in the following manner [NOTE that the TCC has agreed to this recording method and their TCSs should follow this directive]:
 - Identify site in consultation with TCS
 - Use a metal walking stick with carbide tip hidden inside the rubber end cap (or a similar kind of metal probe) as needed to assist in identifying partially buried stone features, particularly problematic in our current moist environment with heavy vegetation
 - Return to site with crew after survey of a segment for recording purposes
 - Flag and number each feature identified by archaeologist or TCS
 - Take GPS reading of a point on the side of each feature (not center – try to stay out of features)

Stone Feature Recording Procedures

- Make quick hand sketch (5 minute maximum) of each feature
 - Except in cases of unreasonably large site area [some stone feature sites run for ¼ or ½ mile or longer on a large landform and sketching each feature when the site would be avoided is beyond the acceptable scope of the project.] Or
 - Large, complicated project with hundreds to thousands of stone features (appropriate sketching of features will be worked out on a project specific basis.)
- Take brief notes on each feature including feature diameter, estimation of the number of stones in the feature, any rocks with notable color variation and where they are located within the feature, any perceptible gaps in stone circles and any configurations running out from the stone circle/arc.
 - [An archaeologist may not see what stones to note/sketch, but they can note that there are rocks outside the circle that may be an extension of the feature.]
 - Also note: when the exception above would apply, you may need to simply summarize the types of features and variations within each type of feature.
- Draw a boundary around the site features in consultation with the Tribal participant and justify the boundary in recording the site.

Stone Feature Recording Procedures

- As policy, tribal involvement will be required for formal evaluation of all stone feature sites. We rarely excavate in stone feature sites. We are working to with our TCC to define appropriate language for statements of significance. We will also be defining methods for determination of significance.
- The NDDOT will provide the SHPO or THPO and each TCC member a copy of the site form.
- Note: If there is disagreement between the archaeologists and the TCSs in regard to whether or not a particular identified feature is cultural or not, call Jeani Borchert (701-328-4378) and she will talk with the appropriate THPO to determine how to proceed.
- When walking the project area for identification purposes and you see stones, use the probe to assist in determination of whether or not the visible stones are part of a cultural feature or a natural distribution of stones.
- (Revised 10/3/11 as result of April and September 2011 TCC meetings)
- **NOTE: Some tribes require TCS to discuss with their THPO what to say, and in some cases the THPO needs to consult with a Cultural Committee.** However, TCS should still be able to say here is a stone feature and it is a cairn, circle, effigy, alignment.

Testing

- The NDDOT has formal testing standards that have been accepted by SHPO. We still need a scope of work from you for specific approaches to the fieldwork, but you can just reference our standards for the other details of field methods and required lab/reporting methods. These testing standards are on our website.
- If any of the sites are on Federal, or Tribal land or Allotted land within the exterior boundaries of a reservation, remember that their processes for approving reports and scopes of work may take much longer, up to 3-6 months in some cases, so plan accordingly. You may need to update your time schedule if testing is needed on Federal or Tribal land.

Site Avoidance

Cultural Resources Sites may require avoidance. Check the **Environmental Commitments section of the NEPA document and in the plan sheets** for more information. If there are unevaluated or eligible sites on your project, the NEPA document may discuss the need to fence these resources during construction to ensure avoidance. Check with Cultural Resources Section for clarification.

Fencing of sites to ensure avoidance during construction/extraction activities

Procedures:

- Steel Fence Posts
- Snow Fence (Unless Otherwise Documented Through CRS Contact)
- On Projects Districts Should Coordinate Fencing With CRS
- On Material Sources Contractor and/or District Should Coordinate Fencing With CRS
- CRS Must Be Involved In Identification Of Fencing Locations In The Field
- Fencing Will Not Be Removed Until All Construction/Extraction Activities Have Been Completed or Permanent Fence Has Been Installed Which Protects The Avoidance Area
- All Material Source Avoidance Measures Shall Be Strictly Enforced

Discoveries

For projects where we believe the potential for discoveries is high, the CRS prepares a **Discovery Plan** prior to construction.

- If you have a Discovery situation and a Discovery Plan is in-place, follow the procedures outlined in the plan.
- If you are unsure what to do, the following would always be appropriate:



Discoveries

Discovery of Potential Archaeological Significance:

- **STOP** - Protect the discovery and contact CRS at 701-328-4539 or 701-328-4378.
- **RESUME:** The NDDOT will work with all involved to ensure the project can proceed in the discovery area as quickly as possible. Work in other areas of the project can continue while the discovery is being addressed.



Discoveries


Discovery of a Burial:

- **STOP** - Protect the burial and contact Cultural Resources Section at 701-328-4539 or 701-328-4378. Always contact the County Sheriff's Office immediately upon discovery.
- **NOTE:** The ND State burial law has strict time and reporting requirements. It is imperative that your notification to the NDDOT CRS be prompt and that the burial is well protected.
- **RESUME:** The NDDOT will work with all involved to ensure the project can proceed in the discovery area as quickly as possible. Work in other areas of the project can continue while the discovery is being addressed according to State Law.
- North Dakota State Burial Law, Century Code: [CC 23-06-27](#); [AC 40-02-03](#)



Contacts

- ▶ Bob Christensen: 328-4539
 - ▶ Section Administration, Local Government Projects
- ▶ Jeani Borchert: 328-4378
 - ▶ On-System Highway Projects, Tribal Consultation
- ▶ Greg Wermers: 328-2731
 - ▶ Material Sources
- ▶ Valerie Bluemle: 328-2152
 - ▶ Division Admin, Assists Jeani with SOV letters, primary responsibility for report review, cultural resource project management, report writing, tribal consultation, etc.; Assists Greg and Bob with a variety of tasks as needed.



Upcoming Meetings

- ▶ April 20
Right of Way - Consultant Requirements & Updated Forms
- ▶ May 18
Design - Manual for Assessing Safety Hardware (MASH)
- ▶ June 22
TBA