

FACILITIES DEVELOPMENT MANUAL

Wisconsin Department of Transportation

TABLE OF CONTENTS

Chapter 26: Cultural Resource Preservation

Section 26-1 General

- 26-1-1 Introduction
 - 1.1 Originator
 - 1.2 Objective
 - 1.3 Background
 - 1.4 Participants
 - 1.5 Section 106 Duties & Requirements
 - 1.6 Overall Process
- Attachment 1.1 Glossary

Section 26-5 Section 106 Process

- 26-5-1 Establishing an Undertaking
 - 1.1 Federal Involvement/Funds
 - 1.2 Screening List
 - 1.3 Section 106 Review Form
 - 1.4 Determine Whether Any Other Applicable Laws Apply
 - 1.5 Complete Environmental Document
- Attachment 1.1 Establishing an Undertaking
- Attachment 1.2 Identify and Notify Appropriate Consulting Parties
- Attachment 1.3 Consultation for Determination of Area of Potential Effects (APE)
- Attachment 1.4 Identification
- Attachment 1.5 Evaluation and Results
- Attachment 1.6 Adverse Effects
- Attachment 1.7 Resolution of Adverse Effects
- Attachment 1.8 Implementation
- 26-5-2 Identify Participants, 36 CFR 800.3(c)1
 - 2.1 Projects Located on Federal Lands
 - 2.2 Projects Located on Tribal Lands
 - 2.3 Projects Located on State, Public, or Private Lands
 - 2.4 Notification Requesting Comment and inviting to Consult
- 26-5-3 Consultation for Determination of Area of Potential Effects
- 26-5-4 Identification
- 26-5-5 Evaluation and Results
 - 5.1 Evaluation Completed by Qualified Professional(s)
 - 5.2 Review of Evaluation Results
- 26-5-6 Results of Identification and Evaluation
- 26-5-7 Assessment of Adverse Effects
 - 7.1 Apply Criteria of Adverse Effect
 - 7.2 A Finding of No Adverse Effect (FNAE)
 - 7.3 Prepare and Submit Finding of No Adverse Effect to BTS
 - 7.4 FNAE Notification, Consultation, and Approval
 - 7.5 SHPO/THPO/Consulting party(ies) Objects
 - 7.6 Complete Section 106 Portion of Environmental Document
- 26-5-8 Resolution of Adverse Effects
 - 8.1 BTS Notifies Consulting Parties
 - 8.2 Consultation to Develop and Evaluate Measures to Avoid, Minimize, or Mitigate Adverse Effects to Historic Properties
 - 8.3 Prepare Finding of Adverse Effect (FAE) [also known as Documentation for Consultation (D FOR C)] and Memorandum of Agreement
 - 8.4 Documentation Accepted
 - 8.5 Complete Environmental Document
- 26-5-9 Implementation
 - 9.1 Review Environmental Commitment Sheet
 - 9.2 Implement Commitments
 - 9.3 Post-Review Discoveries
 - 9.4 Submit Evidence of Completion to BTS
 - 9.5 BTS Notifies FHWA/SHPO/THPO

Section 26-10 Reporting

- 26-10-1 Professional Reporting
 - 1.1 Wisconsin Public Lands Field Archaeology Permit(s)
 - 1.2 ARPA Permit for Federal or Indian Lands
 - 1.3 Tribal Permits for Indian Lands
 - 1.4 Architecture/History Survey Form (A/HSF) (DT1446)
 - 1.5 Archaeological Survey Field Report Form (ASFR) (DT1978) or more detailed Technical Report on Identification Survey
 - 1.6 Archaeological Literature and Records Review (DT 1459)
 - 1.7 Archaeological Site Inventory Form (ASI) [Word or PDF; short form Word or PDF]
 - 1.8 Bibliography of Archaeological Reports Form (BAR) [Word 97, PDF]
 - 1.9 Tribal Historic Preservation Review Worksheet [Contact BTS for Worksheet]
- Attachment 1.1 Tribal Historic Preservation Review Worksheet
- 26-10-5 Project Manager (PM)/Project Sponsor Reporting
 - 5.1 Section 106 Review Form (DT1635)
 - 5.2 Results of Consultation (Tribes and Interested Parties)
 - 5.3 Material Excavation Sites, Archaeological Survey Information Transmittal Form (DT1919)
 - 5.4 Cemetery/Burial Site Documentation Checklist (DT1614)
 - 5.5 Finding of No Adverse Effect (FNAE)
 - 5.6 Finding of Adverse Effect (FAE) [also known as Documentation for Consultation (D FOR C)]
 - 5.7 Documentation of Completed Commitments for Cultural Resources

Section 26-20 Compensation Regarding Historic Preservation

- 26-20-1 Compensation Regarding Historic Preservation

Section 26-25 Burial Sites & Burial Related Discoveries

- 26-25-1 General
 - 1.1 Objective
 - 1.2 Documentation
 - 1.3 Process
- Attachment 1.1 Uncataloged Burial Request (Example)
- Attachment 1.2 Cataloged Burial Request (Example)
- Attachment 1.3 Standard Contract (Example)

Section 26-30 Qualifications

- 26-30-1 Introduction
- 26-30-5 History/Architecture
 - 5.1 Required Education and Training
 - 5.2 Required Experience
 - 5.3 Desirable Education/Training
 - 5.4 Desirable Experience/Knowledge
 - 5.5 Other Skills
 - 5.6 Job Titles
- 26-30-10 Anthropology/Archaeology
 - 10.1 Required Education and Training
 - 10.2 Required Experience
 - 10.3 Desirable Education/Training
 - 10.4 Desirable Experience/Knowledge
- 26-30-15 Tribal Experts
 - 15.1 The Roles of Indian Tribes in the Section 106 Process
 - 15.2 Tribal Selection of Tribal Experts with Proper Qualifications
 - 15.3 Tribal Expert Services May Include but Are Not Limited to the Following
 - 15.4 Ethnographers

Section 26-35 Other Applicable Laws

- 26-35-1 General
- 26-35-5 Federal Laws, Executive Orders, and Regulations
 - 5.1 Related to Historic Properties and Historic Preservation
 - 5.2 Additional Orders Related to Consultation
- 26-35-10 State Statutes and Executive Orders
 - 10.1 Burial Sites Preservation Law
 - 10.2 Historic Preservation Program
 - 10.3 Executive Order 39

26-35-15 Tribal Laws

26-35-20 Treaty Rights

20.1 WisDOT Tribal Partnership Agreement, 2005



FDM 26-1-1 Introduction

February 18, 2020

1.1 Originator

This chapter originates from the Director of the Bureau of Technical Services (BTS). The Director has been designated as the Historic Preservation Officer (HPO) for the Wisconsin Department of Transportation (WisDOT). As WisDOT's HPO, the Director of BTS is responsible for ensuring that WisDOT projects meet the requirements of federal and state historic/cultural preservation laws explained in this chapter.

Many of the resources necessary to comply with the cultural resource requirements of project development are found at:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/cultural-resources.aspx>

1.2 Objective

The objective of this chapter is to help project managers develop their projects in compliance with federal and state laws regarding historic preservation and burials. The chapter will explain the user how to:

- Complete specific steps placed forth by policy and regulations for these laws
- Conduct effective and meaningful consultation with Tribes and other consulting parties
- Recognize when the assistance of a qualified professional (e.g., archaeologist, historian, tribal historian, or tribal expert) is needed for the identification, evaluation, and mitigation of historic properties
- Recognize and follow laws applicable to Tribal, federal, and state lands

1.3 Background

This chapter focuses on Section 106 of the National Historic Preservation Act of 1966 (NHPA). An important premise of the NHPA is that cultural resources are important to our nation's heritage and should be preserved. In this chapter, these resources are referred to as "historic properties" (listed on or eligible for the National Register of Historic Places).

Section 106 requires that the head of a federal agency with jurisdiction over an undertaking "take into account" the project's effects on historic properties. To do that, the federal agency must make a "good faith" effort to locate, identify, and evaluate historic properties (e.g., historic buildings and structures, archaeological sites, Traditional Cultural Properties). The federal agency, in consultation with the State Historic Preservation Office (SHPO), interested THPOs/Indian Tribes, and other interested consulting parties, next assesses effects upon eligible properties and takes steps to avoid, minimize, or compensate for any adverse effects. Additionally, it requires that the Advisory Council on Historic Preservation (ACHP) be given "a reasonable opportunity to comment" on projects.

These regulations are published as "Advisory Council Regulations 36 CFR Part 800: Protection of Historic Properties," and the process they specify has become known as the "106 Process." The Advisory Council also offers Section 106 guidance (<https://www.achp.gov/protecting-historic-properties>).

Other applicable laws and agreements include, but are not limited to, Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act of 1979 (ARPA), Executive Order 13007, Wis. Stats. 157.70, Wisconsin Executive Order 39, and WisDOT Tribal Partnership Agreement (refer to [FDM 26-35](#)).

1.4 Participants

For most projects overseen by WisDOT, and for most initial activities regarding those projects, the participants in the 106 Process are the project development team, consulting parties and the public (see 26-5-1 Attachment 1). Consulting parties include the SHPO and Indian Tribes [either the Tribal Historic Preservation Officer (THPO) or the Designated Tribal Representatives, as appropriate]. FHWA will generally not become involved unless formal consultation and/or resolution of effects to Historic Properties is required. For projects on Tribal lands (lands in trust, reservation, or allotted status), the THPO may assume the duties of the SHPO under 101(d)(2) of the NHPA, and consultation is conducted with the THPO in lieu of the SHPO. The goal of Section 106 is to allow

all participants in the process an opportunity to provide their views concerning the identification, evaluation, and effects of the project on historic properties. Indian Tribes must be consulted when they attach religious or cultural significance to a historic property. This consultation occurs regardless of the location or ownership of the property.

1.5 Section 106 Duties & Requirements

1.5.1 Project Manager Duties and Responsibilities

The WisDOT project manager or designee is responsible for coordinating compliance with Section 106 and integrating the requirements of Section 106 into the environmental document. The project manager communicates the need for the project to participants in the Section 106 Process and seeks comments from consulting parties. The project manager also initiates Tribal consultation and is responsible for adhering to the WisDOT Tribal Partnership Agreement where applicable and is responsible for carrying out the results of the Tribal consultation process (See [FDM 5-15-10](#); <https://wisconsindot.gov/Documents/doing-bus/civil-rights/tribalaffairs/pa.pdf>). The project manager is responsible for documenting how comments received were taken into account in the development of the project.

1.5.2 WisDOT Cultural Resources Team Duties and Responsibilities

The WisDOT BTS Cultural Resource Team monitors project compliance with Section 106 for archaeology, historic buildings/structures, and other types of historic properties. This Team advises the Regional Environmental Coordinators (REC) and Project Managers on the Project Manager's Section 106 responsibilities. It also assists the Project Manager to

- consult with Indian Tribes, tribal experts and interested parties.
- locate professional Cultural Resource consultants

Members of the Cultural Resource Team work directly with the SHPO and THPO (or Designated Tribal Representative) in compliance with the Section 106 Process and may attend as needed consultation meetings with Indian Tribes, THPOs, or other interested groups.

1.5.3 WisDOT Tribal Liaison and Regional Tribal Liaisons Duties and Responsibilities

The WisDOT Tribal Liaison assists interested parties in the Tribal consultation process when requested. The Tribal Liaison, in cooperation with the Regional Tribal Liaison, is responsible for providing assistance and expertise on inter-governmental relations when working with tribal governments. In addition, the WisDOT Tribal Liaison and Regional Tribal Liaison work with departmental compliance officers on incorporating tribal initiatives into appropriate policies and procedures.

1.5.4 Federal Agency

The federal agency has statutory obligation to fulfill Section 106. FHWA requires compliance to the Section 106 Process before approval of the Environmental Document.

1.5.5 Results

The results of the 106 Process, including commitments for compensation for effects (also referred to as mitigation), are included in the project's environmental documentation.

1.5.6 Professional Cultural Resource Consultants

These consultants must meet professional guidelines ([FDM 26-30-1](#), Qualifications: History/Architecture; Anthropology/Archaeology; Tribal Experts). In addition to providing appropriate professional research and evaluation, they are responsible for assisting the Project Manager in understanding the results and impacts of any studies they conduct or recommendations they make.

1.6 Overall Process

As mentioned previously in this procedure, the ACHP provides general guidance on the Section 106 Review Process. WisDOT has followed that guidance found at <https://www.achp.gov/index.php/protecting-historic-properties/section-106-process/introduction-section-106> (see [Figure 1.1](#)) and supplemented it in this manual with additional text and flow charts (See [FDM 26-5](#)). This additional material takes into account WisDOT's specific mission, organization and nomenclature. WisDOT also has formal and informal relationships with a variety of stakeholders. Any conflicts between ACHP guidance and this manual should be resolved in favor of the ACHP guidance.

Section 106 Regulations Flow Chart

Click on parts of the flow chart for more information. (Flow chart best viewed in Netscape 4.0 or higher)

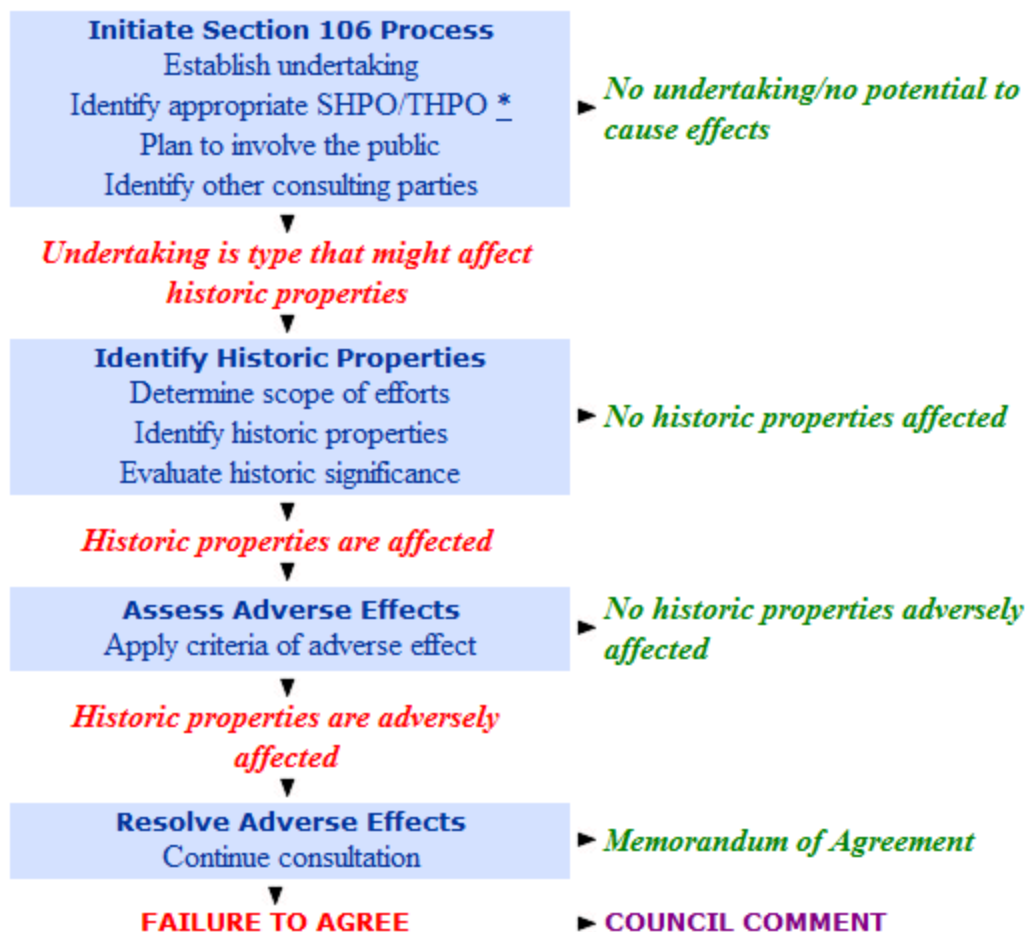


Figure 1.1 ACHP Section 106 Flow Chart as found at: <http://www.achp.gov/regflow.html>

LIST OF ATTACHMENTS

[Attachment 1.1](#)

Glossary

GLOSSARY:

Adverse effect: when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places (NRHP) in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative. Examples include physical destruction or damage; alteration; removal of the property from its historic location; change of use or physical features; introduction of visual, audible, or atmospheric elements that diminish integrity; neglect causing deterioration; or transfer, lease, or sale [36 CFR 800.5(a)(1-2)].

Advisory Council on Historic Preservation (ACHP or Council): An independent federal agency that advises the president and Congress on historic preservation matters and oversees the review of projects under Section 106 of the National Historic Preservation Act. The ACHP is responsible for commenting to the agency official on a project that affects eligible properties. The ACHP may respond to requests for assistance or information from interested persons concerned about a specific project.

Anticipatory demolition: Intentionally altering or destroying a historic property (intentionally significantly adversely affecting the property) with intent to avoid the requirements of Section 106 of the National Historic Preservation Act [16 U.S.C. 470-2(k)]. **Such an action may result in the federal agency withholding federal assistance or permission.**

Archaeological investigation: Any type study aimed at identifying, evaluating, or recovering data from archaeological sites. Refer to the Wisconsin Archaeological Survey's *Guidelines for Public Archeology in Wisconsin* (<http://www.uwm.edu/Org/WAS/WASurvey/guidelines.html>). In Wisconsin, a phased approach is used for archaeological studies conducted in compliance with federal and state historic preservation laws: Phase I site identification survey, Phase II site evaluation, and Phase III Mitigation/Data Recovery.

Area of Potential Effects (APE): 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].

Archival Review: Archival or background research generally undertaken prior to any archaeological or architecture/history investigation. Sources may include, but not be limited to, state inventories of archaeological, architectural and historical resources, previously developed historic contexts, historical maps, atlases, tax records, photographs, ethnographies, folklife documentation, oral histories, and other studies, as well as standard historical reference works, as appropriate for the research problem.

Building: A structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn [36 CFR 60.3].

Confidentiality: Project documentation may contain sensitive or culturally important locational information which may need to be protected from release due to concerns for unlawful looting or destruction of cultural resources. Information contained in these documents should be considered confidential. The determination that project documentation needs to be protected is based on stakeholder comments (refer below).

- On federal lands or Tribal lands, confidentiality requests shall be in accordance with Section 304 of the NHPA of 1966, as amended, 16 U.S.C. 470-470w-6, as implemented in 36 CFR 800.11.
- On state or privately owned lands, confidentiality requests shall be in accordance with 44.48 and 157.70 of Wisconsin Statutes.

Consultation: The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process [36 CFR 800.16].

Consulting parties: The primary participants in the 106 Process. Consulting parties always include the federal agency(ies) with jurisdiction over the project, WisDOT, and SHPO, THPO (if has assumed functions of SHPO for tribal lands under 101(d)(2) of the NHPA), and may—depending on circumstances—include others, such as the Advisory Council on Historic Preservation; local governments; Tribal governments, THPOs, or Designated Tribal Representatives; applicants for federal grants, licenses, or permits; affected landowners; and other interested persons.

Designated Tribal Representative (or Tribal Government Designee): A person identified and authorized by their Tribal government to represent the Tribe's cultural resources issues, if there is no THPO or NAGPRA representative.

Determination of Eligibility (DOE): A decision by the Agency HPO with concurrence from the SHPO/THPO that a district, site, building, structure, or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. A DOE does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite [36 CFR 60.3]; however, a property that is determined eligible is afforded the same protection under Section 106 as a property actually listed on the National Register.

District: A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history [36 CFR 60.3].

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places [36 CFR 800.16]. Effects may include alteration to features of a property's location, setting, or use, depending on a property's significant characteristics.

Eligible property (EP): A historic property that has been formally determined eligible for the National Register of Historic Places **or** that meets the National Register eligibility criteria [36 CFR 800.16].

Ethnographic Information: Information derived from ethnography, the descriptive and analytic study of the culture of particular groups or communities. An ethnographer seeks to understand a community through interview with its members and often through living in and observing it [NR Bulletin 38].

Federal agency: A department, agency, or instrumentality of the United States which has the jurisdiction over the project and legal responsibility for complying with Section 106. In the Division of Transportation System Development, highway projects are the responsibility of the Federal Highway Administration (FHWA), and airport projects are the responsibility of the Federal Aviation Administration (FAA). When projects require permits from a federal agency, such as the U.S. Army Corps of Engineers, the permitting agency must also comply with Section 106. FHWA and FAA also monitor compliance with Section 4(f).

Federal Preservation Officer (FPO): The official designated by the head of each federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act, as established in 16 U.S.C. 470h-2(c) [36 CFR 60.3].

Government-to-government relationship: The formal relationship that exists between federally recognized tribes and the federal government. Tribal governments are considered domestic sovereignties with primary and independent jurisdiction (in most cases) over tribal lands. The relationship between tribal and state governments should also be characterized as government-to-government [WisDOT Tribal Partnership Agreement].

Historic Preservation Officer (HPO): The individual responsible for ensuring that WisDOT projects meet the requirements of Section 106 explained in this chapter. The Director of BTS has been appointed as WisDOT's HPO by the Department Secretary.

Historic property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register of Historic Places. This term includes artifacts, records, and remains that are

related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria [36 CFR 800.16].

Interested persons/parties: Those individuals and organizations that have made known their concerns regarding the effects of a particular project on historic properties. Interested persons/parties may include local governments; applicants for federal assistance, permits and licenses; affected land owners; Tribal governments, THPOs, or Designated Tribal Representatives; and the general public. Contact with interested persons should be made at each stage in the 106 Process (identification, evaluation, assess effects, consultation). Consultation with Tribal governments should follow the WisDOT Tribal Consultation process and timelines as described in Procedure 26-5.

Memorandum of Agreement (MOA): The document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties [36 CFR 800.16].

Memorandum of Understanding (MOU) (also called Partnering or Partnership Agreement): An agreement between or among two or more entities that defines roles and responsibilities on how to conduct business [WisDOT Tribal Partnership Agreement].

Mitigation: A course of action taken to address the Section 106 requirement to “avoid, minimize, or mitigate” adverse effects of an undertaking on historic properties.

Mitigation measures can include recovery and recording of important information from historic properties (for example, excavations at archaeological sites or documentation of historic structures) but can also incorporate alternative treatments developed by the consulting parties, such as public interpretive displays. By considering alternatives to data recovery, federal agencies can address how the community or the general public best benefits from the expenditure of public funds for preservation treatments.

Museum Archaeology Program (MAP): A program area of the Wisconsin Historical Society that provides archaeological services to WisDOT for in-house designed and managed projects through a cooperative agreement between the two agencies. The MAP conducts screening, identification, evaluation, and mitigation studies; provides recommendations regarding the treatment of archaeological properties; and prepares required reports, documents, and interpretative products. The MAP also acts as curator for archaeological collections and associated records generated through this cooperative agreement.

NAGPRA (Native American Graves Protection and Repatriation Act) representatives: Individuals who have been determined by Tribal government resolution to act on the Tribe’s behalf in the identification and negotiations for repatriation of Indian remains, grave goods, sacred objects and objects of cultural patrimony. NAGPRA representatives represent their tribes on federal and intertribal levels. Tribal governments may determine that an individual can serve as both the THPO and the NAGPRA representative.

National Historic Landmark (NHL): A historic property that the Secretary of the Interior has designated a National Historic Landmark because of its national importance in American history, architecture, archaeology, engineering, or culture. The 106 Process affords special protection to NHLs.

National Register of Historic Places (NRHP or National Register): The nation's inventory of significant historic buildings and structures, archaeological sites, and traditional cultural places. The NRHP is administered by the National Park Service on behalf of the Secretary of the Interior. NRHP listings include buildings, structures, sites, objects, and districts that possess historic architectural, engineering, archaeological, or cultural significance. Properties listed are not limited to those of nationwide significance; most listed properties are significant at the state or local level.

National Register criteria: The criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register [36 CFR 800.16]. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and that are associated with events that have made a significant contribution to the broad patterns of our history; or

that are associated with the lives of persons significant in our past; or
that embody 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 represent a significant and distinguishable entity whose components may lack individual distinction; or
that have yielded, or may be likely to yield, information important in prehistory or history [36 CFR 60.4].

Potentially eligible property (PEP): A historic property identified as possibly meeting the criteria for the National Register of Historic Places, but not yet formally evaluated.

Project manager: The individual at the region or with a consulting engineering firm who is responsible for guiding the project through the environmental review and construction. The individual who is assigned this responsibility may change over the course of a project.

Sacred Sites: Any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Screening List: A streamlined process for projects with no potential to affect historic properties; these projects are exempted from comprehensive Section 106 Review. In compliance with a Programmatic Agreement (PA) with the FHWA, SHPO and WisDOT, projects are considered to qualify for the screening list if the potential effects of the project are foreseeable and likely to have no effect on historic properties and burial sites.

Secretary's Guidelines: The "Guidelines" portions of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (http://www.nps.gov/history/local-law/arch_stnds_0.htm). The Standards provide broad national principles of archaeological and historic preservation practices and methods. The Guidelines provide broad national guidance on how to apply the Standards [36 CFR 61.2] These guidelines are not regulatory but are frequently cited as a source for technical advice about archaeological and historic preservation activities, methods, and professional qualifications.

Site: The location of a significant event, or a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structure [36 CFR 60.3].

State Historic Preservation Officer (SHPO): The official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act to administer the State Historic Preservation Program or a representative designated to act for the State Historic Preservation Officer [36 CFR 800.16, 36 CFR 60.3]. In Wisconsin, the Historic Preservation – Public History Division of the Wisconsin Historical Society acts as the State Historic Preservation Office. The SHPO assists communities, organizations, agencies, and individuals with identifying and protecting archaeological sites, burial places, and historic buildings, and maintains inventories of those properties.

Structure: A work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale (36 CFR 60.3).

Survey: Field work and literature search conducted to identify historic properties that may be affected by a project. A broad range of survey methods and approaches are available (see Secretary's of the Interior's Guidelines for Identification, URL http://www.nps.gov/history/local-law/arch_stnds_2.htm), and the methods used should be tailored to the requirements of the particular project. Surveys should be completed under the guidance of a principal investigator who meets the Secretary of the Interior's Professional Qualification Standards (URL: http://www.nps.gov/history/local-law/Prof_Qual_83.htm).

Traditional Cultural Property (TCP): A property that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Evaluating the

National Register eligibility of a TCP involves (1) ensuring that the entity under consideration is a tangible property (rather than the intangible practices or beliefs themselves); (2) consideration of the property's integrity (does it have an integral relationship to traditional cultural practices and beliefs, and is the property's condition such that the relevant relationships survive?); (3) evaluation of the property in terms of the four National Register criteria of eligibility; and (4) determination of whether any of the National Register criteria considerations make the property ineligible [NR Bulletin 38].

Tribal experts: Tribal individuals with whom THPOs or Designated Tribal Representatives consult as a resource regarding historic properties. *Tribal experts are NOT the official contact or resource for the consultation process unless specifically determined by the Tribal government in writing.*

Tribal governments: The governing body of any American Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for the entity or its members. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act.

Tribal Government Designee (see *Designated Tribal Representative*)

Tribal Historic Preservation Officer (THPO): The Tribal official appointed by the Tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on Tribal lands in accordance with Section 101(d)(2) of the National Historic Preservation Act [36 CFR 800.16]. These officers serve to inform and protect tribal cultural resources for the Tribe, state, and federal agencies. THPOs uphold Tribal cultural resources laws and policies on their respective reservations *and* are to be consulted on off-reservation projects as well.

Tribal Liaison: The internal WisDOT Tribal Liaison responsible for intergovernmental relations between WisDOT and the federally recognized Tribal governments in Wisconsin. The Tribal Liaison is responsible for information and expertise on working with Tribal governments in all sections of WisDOT. The Tribal Liaison, in cooperation with the Regional Tribal Liaisons, work with departmental compliance officers on incorporating tribal initiatives into appropriate policies and procedures.

Tribal sovereignty: The ability of a Tribe to govern itself; having the status, dominion, rule, or power of a sovereign. In the United States, this term refers to the status of federally recognized American Indian tribes and pueblos, for which court decisions since the ratification of the United States Constitution have established legal doctrines that presume them to be sovereign "domestic dependent nations." Sovereignty is not given by an exterior government, but is recognized by said exterior government.

Undertaking: 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].



FDM 26-5-1 Establishing an Undertaking

February 18, 2020

Getting started; the project manager will review the steps below to determine the level of effort needed to complete Cultural Resource documentation. The flow chart in [Attachment 1.1](#) gives an overview of the process in Getting Started.

Based on the outcomes described below, the PM will be able to determine if his/her project will qualify for the provisions contained in 800.3(g) 'Expediting Consultation' or will need to complete a comprehensive section 106 review. The steps are described below.

ESTABLISHING AN UNDERTAKING, 36 CFR 800.3(a)1-2

The flow chart in [Attachment 1.1](#) gives an overview of the process in Establishing an Undertaking.

1.1. Federal Involvement/Funds

Determine if the project includes federal involvement or funds and if the project has the potential to affect historic properties.

- Is the project located on federal or tribal lands? If yes, go to [FDM 26-5-2](#); if no, continue.
- A federal undertaking means 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. If yes, continue to [FDM 26-5-1.1.1](#).
- If the project does not have federal participation and has only state participation (funds, permits, licenses, etc.), compliance with Wisconsin Statutes 44.40 is required (contact BTS for further guidance).

1.1.1. Historic Properties

Does the project (undertaking) have the potential to affect historic properties? If yes, go to [FDM 26-5-2](#); if no, continue

A decision that there is no potential to affect historic properties is warranted when all of the following are true:

- The project's action and proposed activities is listed on the agreement (between the FHWA, and WisDOT) for those projects determined to have low potential for affecting historic properties.
- An archival and literature search conducted resulted in no known cultural resources (archaeological, burial sites, mounds, others) in the project area.
- There will be no changes in the type or dimensions of any highway-related elements. Highway-related elements include but are not limited to the roadway, median, curb and gutter, sidewalks, shoulders, beam guard, as well as activities that might change a building's setting such as ditching, flattening a curve, or grading.
- Project acquires land, in easement or fee simple, less than 0.5 acre (0.20 hectare), or in strips equal to or less than five feet (1.52 meters) wide.
- Project disturbs land within existing or proposed right-of-way of less than 0.5 acre (0.20 hectare), or in strips equal to or less than five feet (1.52 meters) wide.
- Project is not adjacent to or proposing to rehabilitate historic buildings or structures and is not within historic districts or adjacent to archaeological sites.
- There will be no change in the traffic-carrying capacity of the highway (e.g., no parking removed to create additional lane or lanes).
- No trees, bushes, or other substantial landscape features, such as retaining walls, will be removed or altered.
- Results of solicitation of public input indicate that there are no concerns about historic properties.
- Results of solicitation of input from Indian Tribes indicate there are no concerns about historic properties.
- Review of the National Register of Historic Places (NRHP) and state inventories for archaeological, architectural and historical resources indicates no listed or eligible historic properties in or adjacent to the project.

1.2. Screening List

Determining if project is on or qualifies for the Screening (streamlined project review) List

1. Having reviewed the criteria in [FDM 26-5-1.1](#), the Project Manager ensures that:
 - a. The project is on the Screening List (streamlined project review) for BOTH History and Archeology. The Project Manager prints out page from Screening List (streamlined project review) and include it as defined in the guidance (blue language) for the appropriate environmental document template being used for the project; which can be found here: <https://wisconsin.gov/Pages/doing-business/eng-consultants/cnsit-rsrcs/environment/formsandtools.aspx>. The correct language for the comment is "Pursuant to 36 CFR 800.3 WisDOT and SHPO concur that this project has no potential to affect historic properties."
 - b. The project is not on the Screening List (streamlined project review) for EITHER History OR Archeology.
 - The Project Manager, having reviewed the criteria in [FDM 26-5-1.1](#), believes the project qualifies for the Screening List.
 - The Project Manager provides BTS with appropriate materials to document that the project qualifies for the Screening List.
 - BTS reviews the materials, arranges for archival and literature search if appropriate and notifies Project Manager of the decision (qualifies or does not qualify) within 15 working days.
2. Projects not on the Screening List (streamlined project review) will require further work. Go to [FDM 26-5-1.3](#).

1.3. Section 106 Review Form

Reporting Notification Efforts and Commitments or Identification Steps on the Section 106 Review Form

In some cases, a project may not qualify for the Screening List, but little or no extra research is required by Cultural Resource specialist(s). That is, sufficient information exists to allow for documentation of how the project will proceed under Section 106 and that documentation can be reported on the Section 106 Review form. Here archeology and historic buildings and structures are slightly different.

- Archeology. If a known archeological site is adjacent to a project, it may be possible for the Project Manager to notify and consult with consulting parties and commit to avoidance techniques. This resolution can be recorded on the Section 106 Review form. **
- Historic Buildings and Structures. For projects where all the adjacent historic buildings and structures are known, and the Project Manager can apply the criteria of effect and adverse effect, it may be appropriate to do so. In such cases, the results can be reported on the Section 106 Review form. **

Go to [FDM 26-5-2](#) Identify Participants below.

*** The SHPO will have 30 days to comment on the findings. Their signature on the form constitutes their comments. With that signature, the Project Manager may conclude that s/he has "taken into account" possible project impacts on historic properties and may proceed with project development.*

1.4. Determine Whether Any Other Applicable Laws Apply

In some cases, other federal, state, local, or Tribal laws, procedures, and agreements may require consideration by WisDOT for actions. The WisDOT project manager or designee is responsible for making this determination.

1.5. Complete Environmental Document

If the project is on the BTS Screening List, the Project Manager should include one of the following statements in the project file and environmental document:

"The WisDOT and THPO (if assumed the functions of the SHPO) concur that this project has no potential to affect historic properties."

or

"The WisDOT and SHPO concur that this project has no potential to affect historic properties."

SECTION 106 FULFILLED

LIST OF ATTACHMENTS

Attachment 1.1	Establishing an Undertaking
Attachment 1.2	Identify and Notify Appropriate Consulting Parties
Attachment 1.3	Consultation for Determination of Area of Potential Effects (APE)

Attachment 1.4	Identification
Attachment 1.5	Evaluation and Results
Attachment 1.6	Adverse Effects
Attachment 1.7	Resolution of Adverse Effects
Attachment 1.8	Implementation

FDM 26-5-2 Identify Participants, 36 CFR 800.3(c)1

February 16, 2021

The flow chart in [Attachment 1.2](#) gives an overview of the process in [FDM 26-5-2](#).

Identify Appropriate Federal Agency (usually FHWA), SHPO, THPO (or Designated Tribal Representative), and Other Interested Parties for the Determination of the Area of Potential Effects (APE), 36 CFR 800.3(c)1.

2.1 Projects Located on Federal Lands

The appropriate Federal Agency, appropriate Federal Preservation Officer (FPO), interested Tribes, and other interested parties must be consulted.

2.2 Projects Located on Tribal Lands

The appropriate Federal Agency, THPO (or Designated Tribal Representative), interested Tribes, and other interested parties must be consulted. For projects on tribal lands, the WisDOT will authorize project development once tribal agreement (e.g. Tribal Chair, Tribal Council and THPO) is reached. For purposes of consultation, tribal lands include DOT right-of-way held in fee within the exterior boundaries of any Indian reservation and all dependent Indian communities.

2.3 Projects Located on State, Public, or Private Lands

The appropriate Federal Agency, SHPO, interested tribes, and other interested parties must be consulted.

2.4 Notification Requesting Comment and inviting to Consult

After determining land ownership, the project manager will provide notification and project details to the appropriate review official (federal agency/SHPO/THPO/Designated Tribal Representative). Notifications requesting comments and inviting parties to consult on the undertaking must contain the following information:

- Project description
- Project location (project map)
- Archival results, if available
- Recommendations to consider methods and level of identification efforts that will be carried out to determine if historic properties are located within the undertaking

The Project Manager will use the lists of Tribal Contacts and Areas of Tribal Interest for Project Notification (see links above; also see [FDM 5-15-10](#)) to identify tribes based on the geographical areas of interest. Regardless of land ownership, these tribes shall be notified on all undertakings within the geographical areas for which they have expressed interest.

A list of Tribal contacts and geographical Areas of Tribal Interest for Project Notification is maintained and available from the WisDOT Tribal Liaison and found at <https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/cultural-resources.aspx>.

ACTION: The WisDOT Project Manager notifies interested parties of proposed undertaking. This notification letter is required to come from WisDOT staff. If the Project Manager is a consultant, the notification letter is to be sent from the WisDOT Project Supervisor. (Pursuant to 36 CFR 800.3, WisDOT is requesting comments and consultation regarding the proposed undertaking. During this commenting period if no response(s) is received, if necessary, the project manager shall make follow up attempts (telephone, email, in-person meeting, and etc.) to consult with the THPO or designated Tribal representative. These attempts shall be commensurate to level of undertaking, and the attempts shall be documented in the project record. If no response is received within 30 days, the project may proceed to the next step in the process.)

FDM 26-5-3 Consultation for Determination of Area of Potential Effects

November 17, 2010

Consultation for Determination of Area of Potential Effects, 36 CFR 800.3(d)-(g)

See [Attachment 1.3](#) for an overview of [FDM 26-5-3](#).

The project APE as defined by 36 CFR 800.16(d) as

“...the geographic area or areas within which an undertaking may directly or indirectly cause alternations in the character or use of historic properties, if any such properties exist. The area of potential effect is influenced by

the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking". Project actions to determine the APE, include but not limited to: utilities, haul roads, staging of equipment, storm water management, etc.

The most common types of historic properties are the following:

- Archaeological sites: The APE is generally considered to be the right-of-way, existing and proposed, and easements. It may also include areas used for the mitigation of other environmental impacts caused by the project.
- Historic buildings and structures: The APE generally consists of the existing and proposed right-of-way and beyond if the project will directly or indirectly cause changes in the setting or use of historic buildings and structures. (Refer to Architecture Survey Manual.)
- Other Historic Properties: Other types of historic properties may extend the project's APE due to the potential to impact. Besides historic buildings and structures and archaeological sites, historic properties may include the following:
 - Traditional Cultural Property (TCP)
 - Traditional Cultural Gathering Area
 - Location of cultural importance or religious significance
 - Sacred Site

Upon receipt of a request to consult with interested Tribes, the project manager shall do the following:

ACTION: *PM takes the following actions.*

1. - Arrange Consultation Meetings:
 - The project manager coordinates with tribal contacts to set a time, place, and agenda
 - Discusses the need to include tribal experts in addition to the THPO (or Designated Tribal Representative)
 - Establishes meeting formats and goals

Note: Tribal governments are entitled to be consulted government-to-government at a federal level, which requires that meetings may be held independently from those meetings identified in FDM Chapter 5.

2. Agenda for Initial Consultation:

- Seeking comment on Area of Potential Effects
- Considering alternative methods of identification of historic properties within the APE (for example, archival review and literature research, oral history interviews, sample field investigations, field survey)
- Discussing concerns with properties of religious or cultural significance
- Addressing confidentiality¹ concerns if requested under NHPA Section 304
- Planning and discussing the agenda for the next meeting(s), if applicable

The project manager may refine the project's footprint to avoid potential impacts to properties identified during consultation, thereby redefining the APE. This may require additional notification to Tribes and other interested parties if refinements exceed original APE.

ACTION: *If project APE changes occur because of design refinements/etc., the Project Manager re-notifies interested parties. If requested by a consulting party, the Project Manager arranges a consultation meeting to receive comments.*

Upon completion of the determination of the APE, go to [FDM 26-5-4](#), Identification.

FDM 26-5-4 Identification

November 17, 2010

IDENTIFICATION [36 CFR 800.4(a)-(b)] describes how WisDOT meets the requirements to identify historic properties that could be affected by a WisDOT-managed or supervised project.

The flow chart in [Attachment 1.4](#) gives an overview of the process in [FDM 26-5-4](#), Identification.

Based on the consultation efforts conducted in [FDM 26-5-3](#), the project manager shall ensure identification strategies for historic properties are carried out. These strategies usually include retaining the expertise of appropriate qualified professionals (See [FDM 26-30](#); qualifications)

- For in-house design projects, the PM notifies BTS Cultural Resource Team by filling out a Section 106 Review ([DT1635](#)) form identifying the scope of the project. BTS in turn, will retain the appropriate

¹ Refer to Confidentiality, [FDM 26-1 Attachment 1.1](#) (Glossary).

professional service.

- For consultant-designed projects, the contractor is responsible for retaining the appropriate professional service.

To better consider Tribal interests in projects requiring EIS and EA documentation or all projects on Tribal lands, the project manager shall send the Tribal Historic Preservation Review Worksheet (see [FDM 26-10](#)) to all federally recognized Tribes of Wisconsin, according to their designated geographical areas of interest (see [FDM 5-15-10](#)).

ACTION: Project manager shall send the Tribal Historic Preservation Review Worksheet to all federally recognized Tribes of Wisconsin, according to their designated areas of interest (See [FDM 26-10](#), See [FDM 26-20](#) regarding compensable services)

Upon completion of the identification studies, the qualified professional will report the results and provide recommendations regarding whether further work is required. These results and recommendations could include the following:

1. An archival and literature search conducted resulted in no known cultural resources (archaeological, burial sites, mounds, others) in the project area, and determined by the professional a field survey was not warranted.
2. A survey was completed, and no potentially eligible historic properties or burials were identified in the APE. Go to the Section 106 Review Form description (No Potentially Eligible Historic Properties).
3. A survey was completed, and potentially eligible historic properties were identified. Further work is required. Go to [FDM 26-5-5](#), Evaluation. Note: The project manager should determine whether further work can be avoided through redesign and evaluate whether Section 4(f) will apply ([FDM 21-25-1](#)).
4. A survey was completed and a burial site (cemetery, mound or burial) was identified within the APE. Further work is required, and Wis. Stats. 157.70 may apply. Refer to [FDM 26-25](#) for details.

Note: Depending on the type of burial site, the project may need to go to [FDM 26-5-5](#), Evaluation. This decision is determined by BTS and SHPO/THPO.

5. A survey was conducted and potentially eligible historic properties, cemeteries or burial sites, or sacred sites were identified on federal or Tribal lands. Further work is required; go to [FDM 26-5-5](#), Evaluation. For these efforts, WisDOT partners with the Museum Archaeology Program of the Wisconsin Historical Society regarding compliance with NAGPRA.

FDM 26-5-5 Evaluation and Results

February 18, 2020

Evaluation and Results, 36 CFR 800.4(c)

The flow chart in [Attachment 1.5](#) gives an overview of the process for Evaluation and Results.

Evaluation [36 CFR 800.4(c)] covers the efforts to determine whether a cultural resource meets the criteria for eligibility to the National Register of Historic Places (NRHP).

When a survey indicates the presence of a cultural resource(s), either the project can be redesigned to avoid impacts to the cultural resource, or the resource must be evaluated for NRHP eligibility by a qualified professional. Completion of the steps below will aid determining whether any of the cultural resources are eligible for inclusion in the National Register.

Note: When potentially eligible properties or cemetery/burial sites are identified on federal or Tribal lands, coordination with BTS is required due to the requirements of NAGPRA, ARPA, and relevant Executive Orders, and the following process is superseded.

5.1. Evaluation Completed by Qualified Professional(s)

The project manager will retain a qualified professional(s) (see Qualifications, [FDM 26-30](#)) to complete an evaluation of cultural resources identified within the APE by applying the National Register of Historic Places criteria and, if necessary, preparing an appropriate Determination of Eligibility (DOE). The qualified professional(s) will provide their evaluation results to WisDOT for review.

1. Historians will present their results using the Wisconsin Historical Society DOE form (<https://www.wisconsinhistory.org/Records/Article/CS4118>)
2. Archaeologists use the Wisconsin version of [NPS Form 10-900](#) for sites that are eligible and cannot be avoided. Archaeologists must also complete a Technical Report on Archaeological Evaluation whether a site is eligible or not. Project Managers should ask the archaeologist which combination of form and/or report is appropriate.
3. The WisDOT acknowledges Indian Tribes possess special expertise in assessing the eligibility of cultural resources to which they attach religious and cultural significance [36 CFR 800.4(c)1]. Tribal experts will also use the appropriate eligibility forms for evaluations of any potentially eligible

properties.

Also, be sure to note the following:

- The Tribal Historic Preservation Review Worksheet applies to initial identification of cultural resources and/or historic properties for EA/EIS projects and is not acceptable documentation for evaluations of potentially eligible properties. All Department of the Interior NRHP documentation standards pertain.
- Each building/structure, site, district or complex will be the subject of a separate determination. For additional guidance for architecture/history resources see the [Survey Manual](#).

5.2. Review of Evaluation Results

If the qualified professional recommends a property is potentially eligible, the project manager may wish to consider redesigning the project to avoid impacts to the property. This includes Traditional Cultural Properties located outside the project's footprint but still within the APE.

If refining efforts are unable to avoid impacts to historic properties or properties that may be eligible, the project manager must submit the following information, as appropriate, to BTS Cultural Resource Team for review of the evaluation results and assessment of eligibility:

- Section 106 Review Form (Form [DT1635](#)) - fill in appropriate boxes
- Results of consultation meetings with Indian Tribes and interested parties, when applicable
- Documentation and reporting
- Survey results from initial identification efforts, [FDM 26-5-4](#).
- Evaluation report and/or DOE form(s)

FDM 26-5-6 Results of Identification and Evaluation

November 17, 2010

Results of Identification and Evaluation, 36 CFR 800.4(d)

After determining whether any eligible or potentially eligible historic properties are affected, WisDOT shall provide any and all supporting documentation to FHWA, SHPO, and THPO (or Designated Tribal Representative). If the Section 106 Review Form and accompanying materials are complete and the qualified professional's recommendations are appropriate, the WisDOT HPO will make a determination and then sign the Section 106 Review Form under Item IX and forward this determination to the SHPO and/or appropriate THPO for review and concurrence.

ACTION: *Project Manager/BTS Cultural Resource Team submits findings to consulting parties and requests consultation. (Project Manager has responsibility for submitting results to all consulting parties except for SHPO or THPO when assumed duties of SHPO.) Refer to notification of survey/evaluation results letter template; also see [FDM 5-15-10](#).*

- No Eligible Historic Properties in APE, or No Effects on Historic Properties in APE
 - The project manager will notify all consulting parties of the determination that no historic properties will be affected.
 - The SHPO/THPO reviews WisDOT's decision and, if concurs with findings, signs and returns the Section 106 Review Form.
- If the SHPO/THPO, Indian Tribes and WisDOT or FHWA disagree, SHPO/THPO and/or Indian Tribes must notify the WisDOT in writing. WisDOT must involve the WisDOT Tribal Liaison in the subsequent mediation. The project manager shall include any letter of opposition received from the Indian Tribes and SHPO/THPO in the supporting documents of determination.
- If no objections are received, go to Complete Environmental Document below.
- (Pursuant to 36 CFR 800.4, WisDOT is requesting comment/consultation regarding the findings. During this commenting period if no response(s) is received, if necessary, the project manager shall make follow up attempts (telephone, email, in-person meeting, and etc.) to consult with the THPO or designated Tribal representative. These attempts shall be commensurate to level of undertaking, and the attempts shall be documented in the project record. If no response is received within 30 days, the project may proceed to the next step in the process.)*
- If objections are received, go to Assessment of Adverse Effects, 36 CFR 800.5 ([FDM 26-5-7](#)) below.
- Eligible Historic Properties Affected:
 - If WisDOT determines that there are historic properties that may be affected by the undertaking, WisDOT (project manager) shall notify all consulting parties, including FHWA, SHPO/THPO (or Designated Tribal Representative), Indian Tribes, and other interested parties, to consult and consider concerns regarding potential adverse effects on these historic properties. A template notification letter to Tribes regarding potential effects to historic properties is provided at [add

link; copy of letter is appended to this file] (also see [FDM 5-15-10](#)).

Go to [FDM 26-5-7](#), Assess Effects.

(Pursuant to 36 CFR 800.5, WisDOT is requesting comment/consultation regarding the finding of Effect. During this commenting period if no response(s) is received, if necessary, the project manager shall make follow up attempts (telephone, email, in-person meeting, and etc.) to consult with the THPO or designated Tribal representative. These attempts shall be commensurate to level of undertaking, and the attempts shall be documented in the project record. If no response is received within 30 days, the project may proceed to the next step in the process.)

Complete Environmental Document

If there are no eligible properties in the APE or no effects on historic properties in the APE, and no objection to findings has been received from stakeholders, the Section 106 Process is fulfilled. Proceed with the environmental document and/or place the signed Section 106 Review Form in the project file. The environmental document should include one of the following statements:

"The WisDOT and SHPO concur that this project has no effect on historic properties."

"The WisDOT and THPO (if assumed the functions of the SHPO) concur that this project has no effect on historic properties."

or

"The WisDOT, SHPO and THPO concur that this project has no effect on historic properties."

SECTION 106 FULFILLED

FDM 26-5-7 Assessment of Adverse Effects

February 18, 2020

ASSESSMENT OF ADVERSE EFFECTS (36 CFR 800.5):

This section provides instructions on how to assess adverse effects upon the eligible or potentially eligible properties. In consultation with the federal agency (usually FHWA), State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO) or Designated Tribal Representative, Indian Tribes who attach religious and cultural significance to properties, and interested parties, the WisDOT project manager shall determine whether or not the project will affect eligible or potentially eligible properties within the Area of Potential Effects (APE).

The flow chart in [Attachment 1.6](#) gives an overview of the process in [FDM 26-5-7](#).

7.1. Apply Criteria of Adverse Effect

The project manager, in cooperation with the Bureau of Technical Services (BTS), shall determine if the undertaking will have an adverse effect on historic properties within the APE. According to 36 CFR 800.5 (a) (1), an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register, in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative.

The project manager, in cooperation with BTS, shall consult with FHWA, SHPO, THPO or Designated Tribal Representatives in determining whether the project will have an adverse effect upon eligible or potentially eligible properties.

ACTION: Project Manager/BTS Cultural Resource Team in cooperation with FHWA submits findings to consulting parties and requests consultation.

If there is a finding of no adverse effect, proceed to [FDM 26-5-7.2](#).

If it is determined that there will be an adverse effect, and the properties cannot be avoided by refining the project, go to [FDM 26-5-8](#), RESOLVE ADVERSE EFFECTS. Note: The Project Manager should also review [FDM 20-45](#) to determine whether Section 4(f) applies.

7.2. A Finding of No Adverse Effect (FNAE)

A Finding of No Adverse Effect (FNAE) is appropriate when an eligible or potentially eligible property is in the APE and there is nothing about the project that might adversely affect or diminish the characteristics that qualify the property for the National Register. FNAE may include conditions to ensure there is no adverse effect to the historic property (referred to as CNAE – Conditional No Adverse Effect). If the project does not adversely affect historic properties, the Project Manager submits a FNAE to BTS. See [FDM 26-5-7.3](#).

7.3. Prepare and Submit Finding of No Adverse Effect to BTS

The project manager submits the documentation for the determination of No Adverse Effect to BTS for approval

by the WisDOT Historic Preservation Officer (HPO). The FNAE must contain information about all historic property types, including archaeological sites and historic buildings and structures. Reporting requirements for the FNAE are included in [FDM 26-10](#).

ACTION: Project Manager submits FNAE to BTS Cultural Resource Team.

7.4. FNAE Notification, Consultation, and Approval

The WisDOT HPO reviews the submitted documentation and determines whether the findings support the FNAE. If the submittal is determined to be sufficient, the WisDOT HPO will approve the FNAE and forward it to the appropriate² SHPO/THPO or Designated Tribal Representative and consulting parties for review and comment.

If there is no objection from any parties or no response, Section 106 is fulfilled. Go to [FDM 26-5-7.6](#).

Should any consulting party object to the FNAE, see [FDM 26-5-7.5](#).

7.5. SHPO/THPO/Consulting party(ies) Objects

The SHPO/THPO (or Designated Tribal Representative) and other consulting parties have thirty (30) days from receipt to object to the FNAE (under 36 CFR 800.5(c)). As stipulated in 36 CFR 800.5(c)(2)(i), the objecting consulting party(ies) must notify the FHWA or WisDOT in writing that it disagrees with the finding and specify the reasons for the disagreement.

The FHWA, SHPO/THPO (or Designated Tribal Representative), BTS, and project manager will consult to resolve the objection. If the objection cannot be resolved, go to [FDM 26-5-8](#), RESOLUTION OF ADVERSE EFFECTS.

7.6. Complete Section 106 Portion of Environmental Document

Documentation of the FNAE must be included in the environmental document or project file by the project manager.

If the FNAE includes conditions that must be implemented for the project to have no adverse effect on eligible or potentially eligible properties, the Project Manager must complete the Environmental Commitments page in the EIS or appropriate environmental document template found here:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

SECTION 106 FULFILLED

FDM 26-5-8 Resolution of Adverse Effects

February 18, 2020

RESOLUTION OF ADVERSE EFFECTS (36 CFR 800.6) brings parties together to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties. This step will outline the recommended approach to conduct consultation regarding measures to avoid, minimize, or mitigate adverse effect and drafting conditions within a Memorandum of Agreement (MOA).

The flow chart in [Attachment 1.7](#) gives an overview of the process in [FDM 26-5-8](#).

8.1. BTS Notifies Consulting Parties

On behalf of the WisDOT Historic Preservation Officer (HPO), the Bureau of Technical Services (BTS) notifies consulting parties that the project is expected to have an adverse effect on eligible or potentially eligible properties. Consulting parties may include the federal agency (usually FHWA), Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) or Designated Tribal Representative, local governments, and any interested parties, Indian Tribes, and property owners. Documentation must be consistent with 36 CFR Part 800.11(e).

FWHA/WisDOT goal is to schedule a consultation meeting to address effects within 30 days of notifying consulting parties of a determination of adverse effect. Consulting parties who are unable to attend the meeting may submit comments by telephone, letter, fax, e-mail, or other venues. To ensure these comments are taken into consideration during this phase of project planning, responses from consulting parties are requested prior to the day of the meeting.

ACTION: FHWA/WisDOT-BTS notifies and invites consulting parties to consult on adverse effect(s) to eligible/potentially eligible historic properties.

Refer to the link below for geographical Areas of Tribal Interest for Project Notification regarding notification on projects:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/cultural-resources.aspx>

² Refer to Confidentiality, [FDM 26-1 Attachment 1.1](#) (Glossary).

8.2. Consultation to Develop and Evaluate Measures to Avoid, Minimize, or Mitigate Adverse Effects to Historic Properties

Consultation will be coordinated by the WisDOT Regional Environmental Coordinator (REC), project manager, and/or BTS. The goal of the consultation will be to:

- discuss actions that can be taken to avoid, minimize, or mitigate effects on eligible properties
- decide who will complete necessary documentation, including the Finding of Adverse Effect (FAE) and Documentation for Consultation (D for C)
- determine responsible parties for agreed-upon actions/stipulations

If, as a result of consultation, adverse effects can be avoided, return to Finding of No Adverse Effect in [FDM 26-5-7](#), ASSESS EFFECTS, as appropriate. If adverse effects cannot be completely avoided, see [FDM 26-5-8.3](#).

8.3. Prepare Finding of Adverse Effect (FAE) [also known as Documentation for Consultation (D FOR C)] and Memorandum of Agreement

Responsibility for completing the Finding of Adverse Effect (FAE) report and Memorandum of Agreement (MOA) will be assigned at the consultation meeting. The FAE presents alternatives that were considered to avoid or minimize the adverse effect on eligible properties. The MOA contains mitigation measures agreed upon by the consulting parties. A FAE and a MOA will be developed for projects having an effect on historic property(ies). Upon completion, the FAE and MOA are submitted to BTS. See [FDM 26-5-8.4](#).

8.4. Documentation Accepted

If the MOA stipulates mitigation measures that are acceptable to all parties, FHWA will send the agreed-upon MOA out for signature to all interested consulted parties. After a 30-day signature response period, all received signatures will be included in the MOA. See [FDM 26-5-8.5](#).

If agreement cannot be reached among the consulting parties to resolve adverse effects the FHWA and WisDOT may determine that further consultation will not be productive and terminate consultation. The FHWA/WisDOT shall notify the other consulting parties and provide them the reasons for terminating in writing. FHWA shall request that ACHP comment and shall notify all consulting parties of the request. Within 45 days of receipt of request, the ACHP shall provide its comments to the FHWA with copies provided to WisDOT and all consulting parties as appropriate. The FHWA shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate her/his responsibilities pursuant to Section 106.

8.5. Complete Environmental Document

The project manager may proceed with the environmental documentation for the project after the ACHP has accepted the MOA. The ACHP's accompanying letter, which indicates concurrence in the MOA, should be included in the environmental document. The Project Manager must complete the Environmental Commitments page in the EIS, or appropriate environmental document template found here:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

FDM 26-5-9 Implementation

November 17, 2010

IMPLEMENTATION:

The project manager is responsible for retaining qualified professionals for the implementation of any mitigation commitments agreed upon during [FDM 26-5-8](#): Resolve Adverse Effects. These professionals may include archaeologists, historians, Tribal experts, museum curators, or other specialists who may be required to execute certain types of mitigation commitments.

The flow chart in [Attachment 1.8](#) gives an overview of the process in [FDM 26-5-9](#).

9.1. Review Environmental Commitment Sheet

The project manager shall review the Environmental Commitments Sheet (Basic Sheet 8) to identify any commitments that must be fulfilled before, during, or after construction. These commitments are to be incorporated into the special provisions of the construction contract. The commitments are tailored to a specific project and range from simple activities that can be completed within a short time period to complex assignments that may take several years.

9.2. Implement Commitments

Commitments must be executed to fulfill WisDOT's legal obligations as agreed upon during the NEPA/NHPA process.

9.3. Post-Review Discoveries

During project implementation, if significant inadvertent discoveries are encountered that have the potential to be eligible for the NRHP, Section 106 requirements regarding post-review discoveries (36 CFR 800.13) are in

effect.

9.4. Submit Evidence of Completion to BTS

Once the commitments have been fulfilled, the project manager must submit documentation of the completed commitments to BTS.

9.5. BTS Notifies FHWA/SHPO/THPO

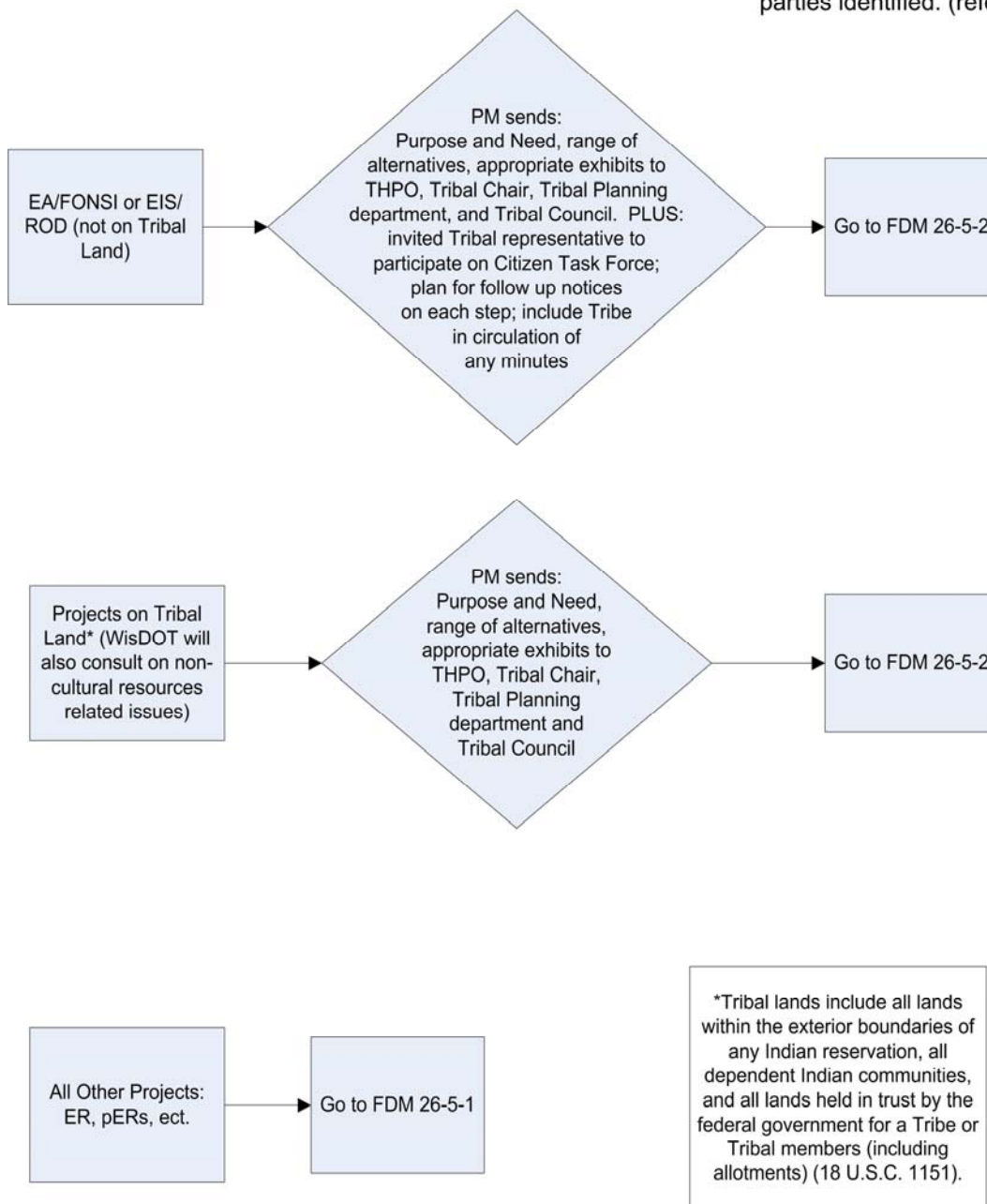
After receiving documentation of completed commitments, BTS will notify the FHWA and the SHPO/THPO that all Section 106 commitments have been fulfilled. Any documentation will be forwarded to the SHPO/THPO.

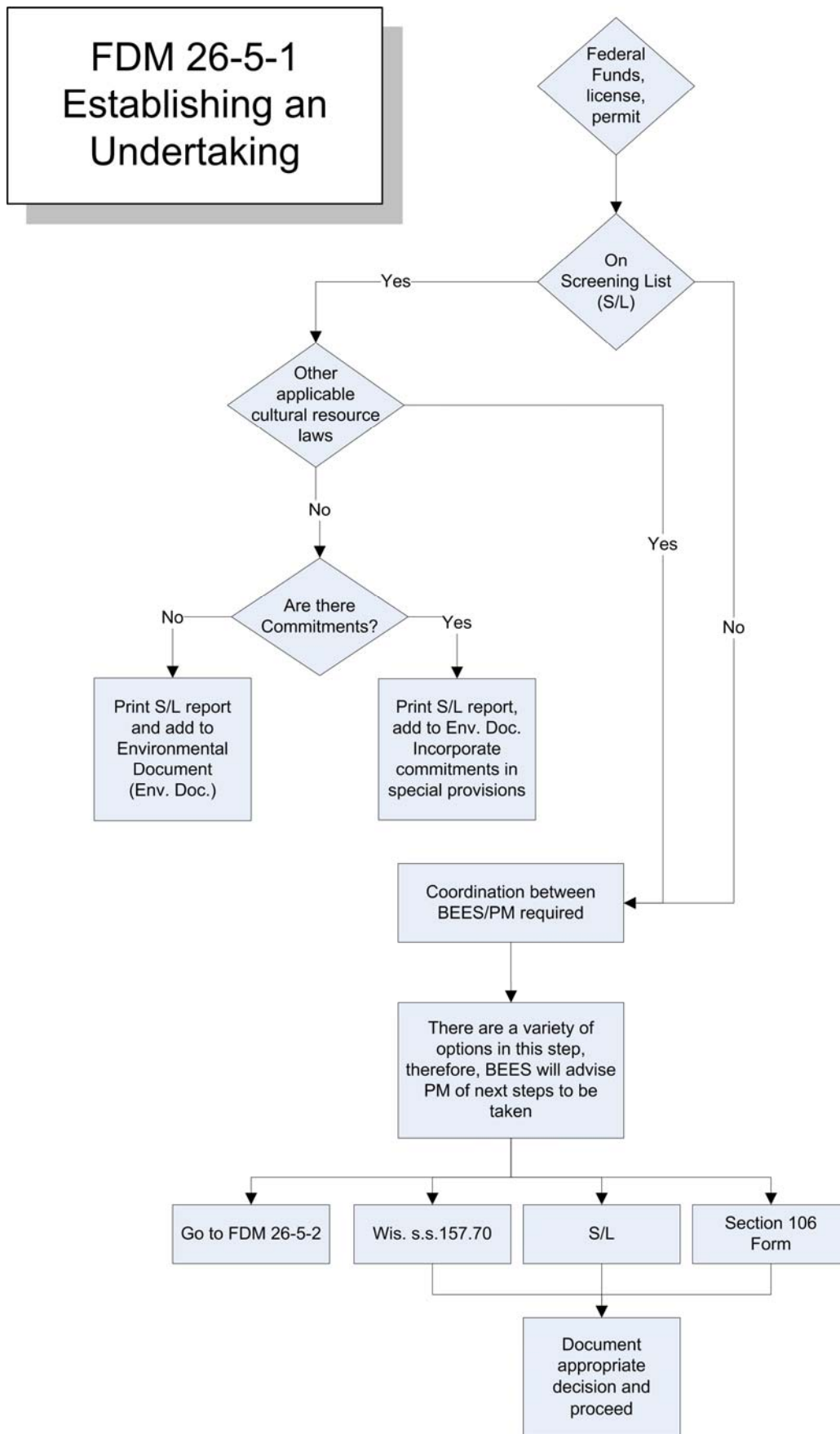
SECTION 106 FULFILLED

ASSUMPTIONS:

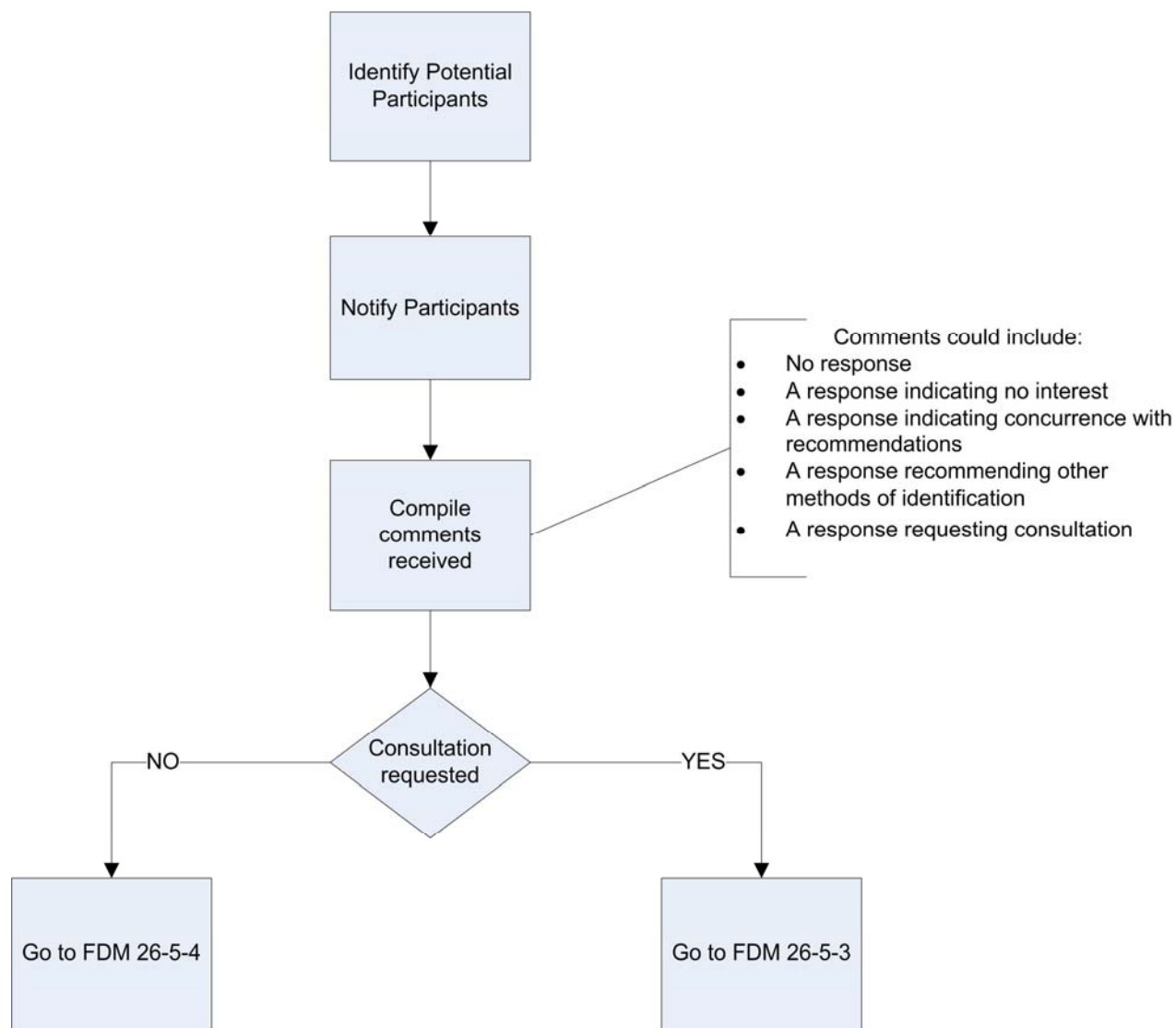
1. The project is a federally funded/permited highway project
2. Larger projects and projects on Tribal land will require more consultation
3. BEES will act on behalf of FHWA
4. BEES is Single Point of Contact with FHWA and SHPO
5. SHPO will be involved
6. Appropriate Tribes & Other consulting parties identified. (refer to FDM 5-15-10)

Getting Started

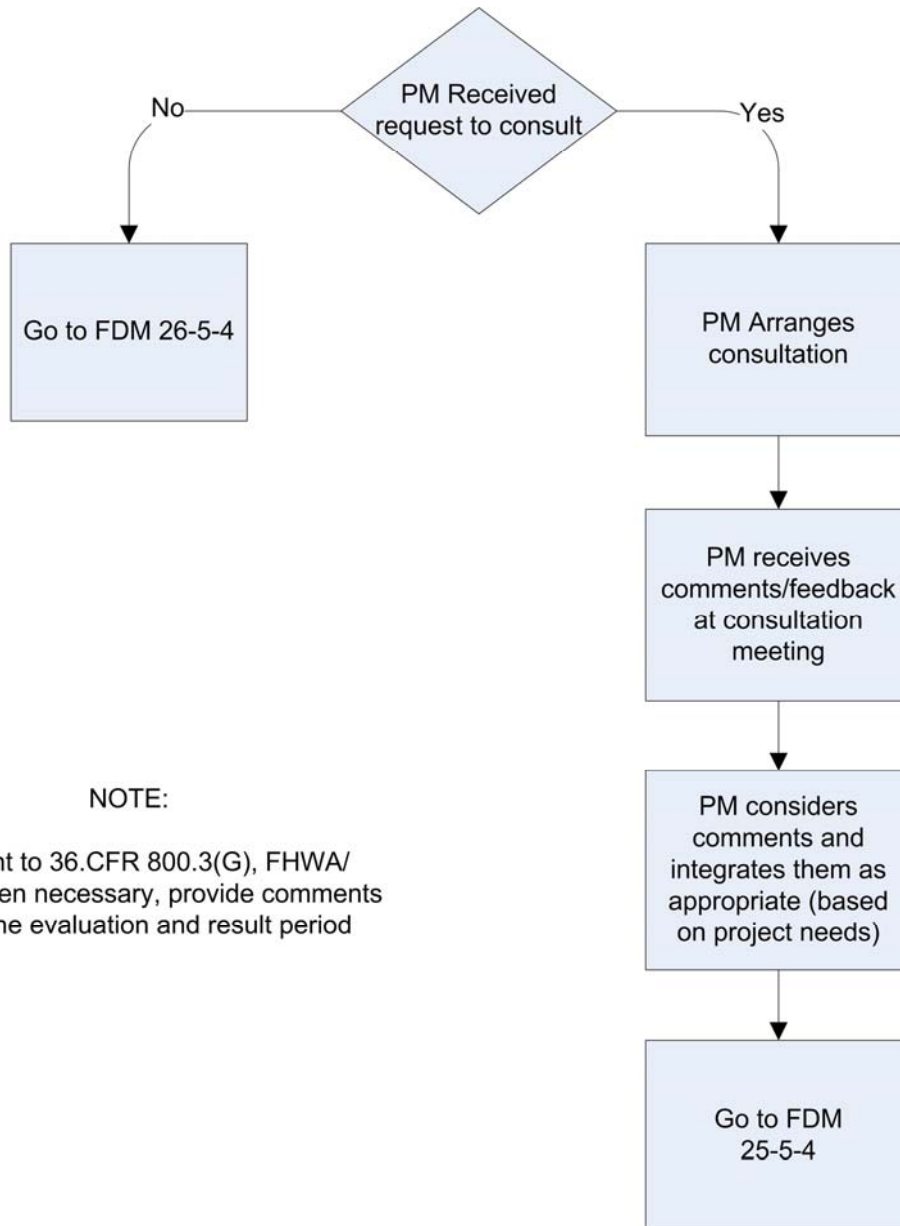




FDM 26-5-2 Identify and Notify Appropriate Consulting Parties

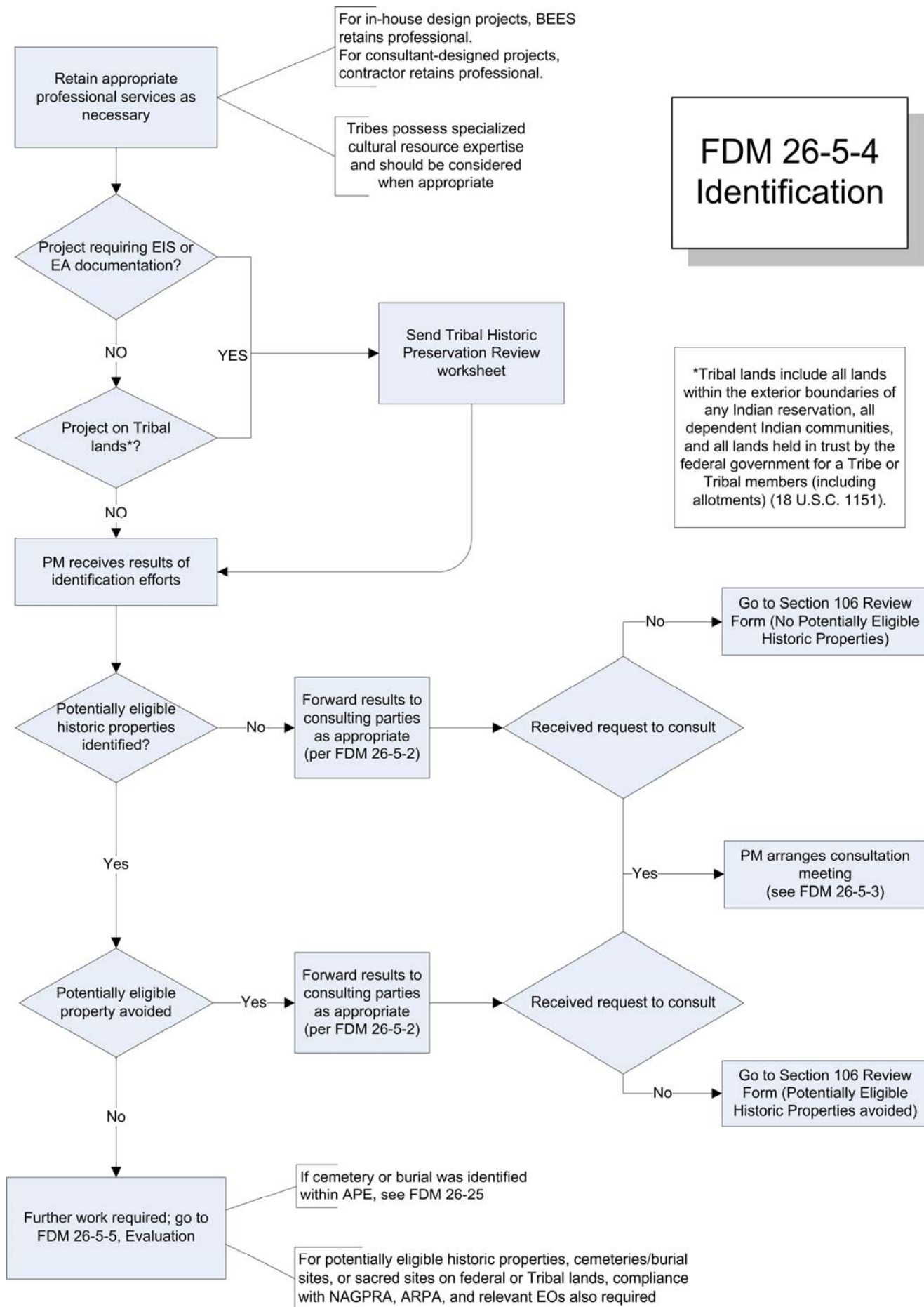


FDM 26-5-3 Consultation for Determination of Area of Potential Effects (APE)



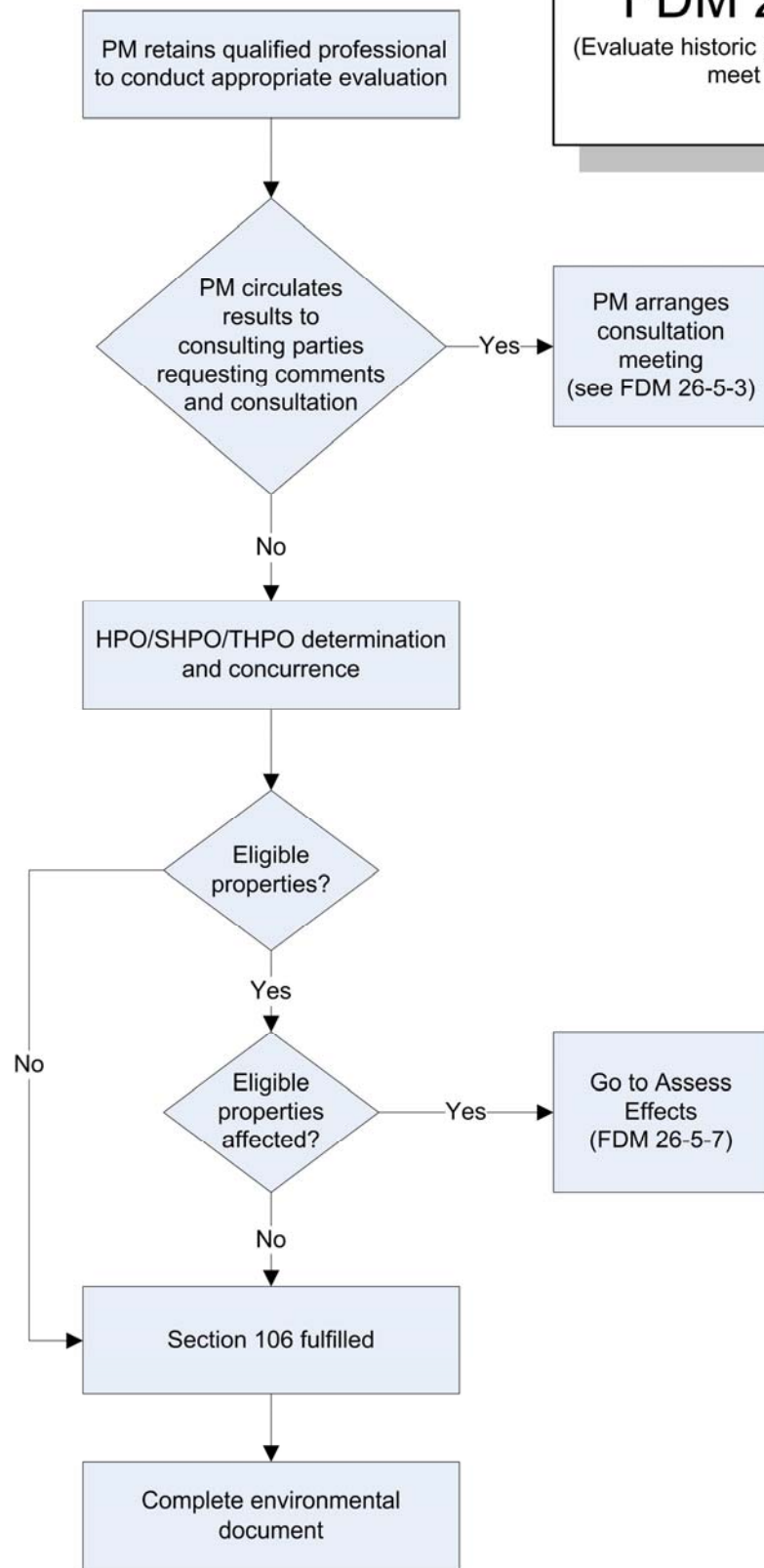
NOTE:

Pursuant to 36.CFR 800.3(G), FHWA/SHPO, when necessary, provide comments during the evaluation and result period



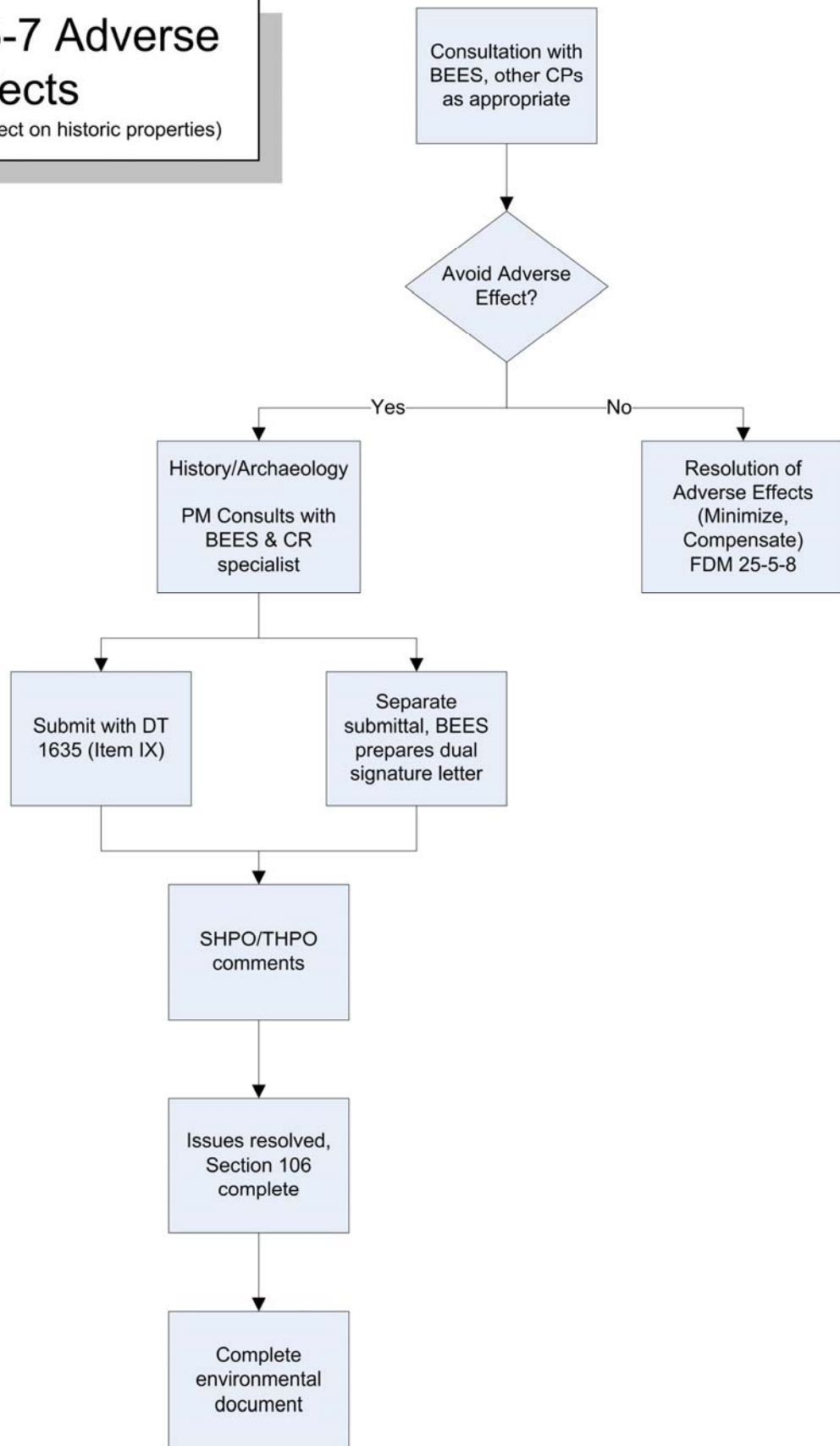
FDM 26-5-5 Evaluation; FDM 26-5-6 Results

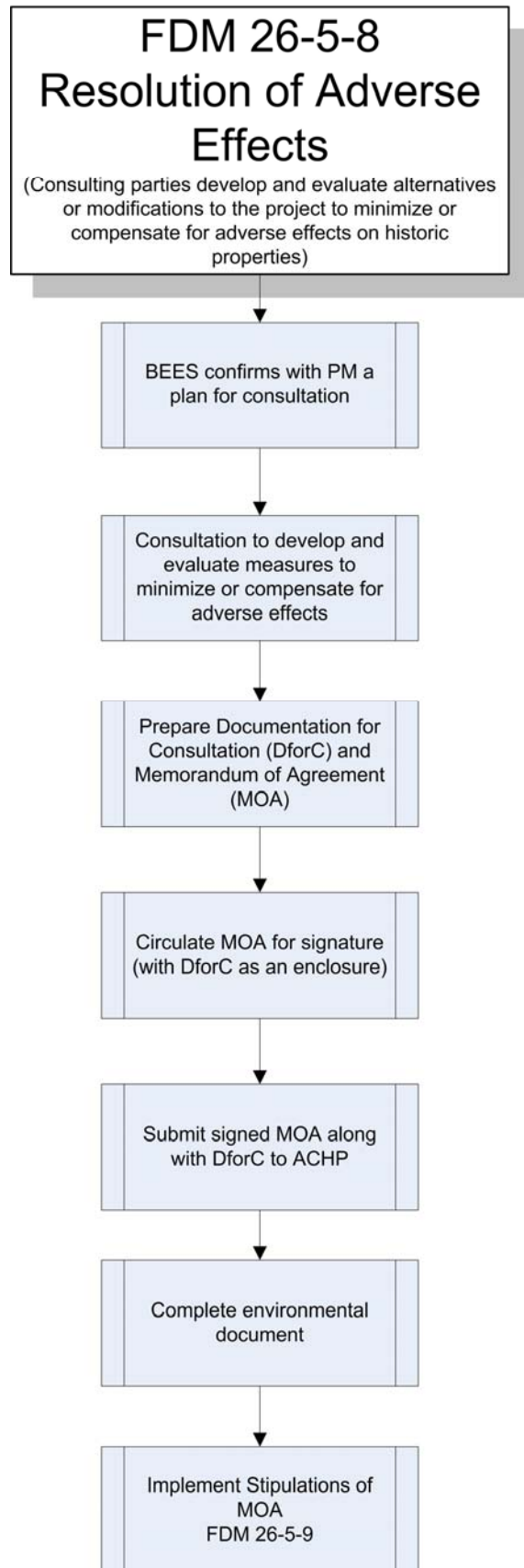
(Evaluate historic properties to determine whether they meet NRHP eligibility criteria)



FDM 26-5-7 Adverse Effects

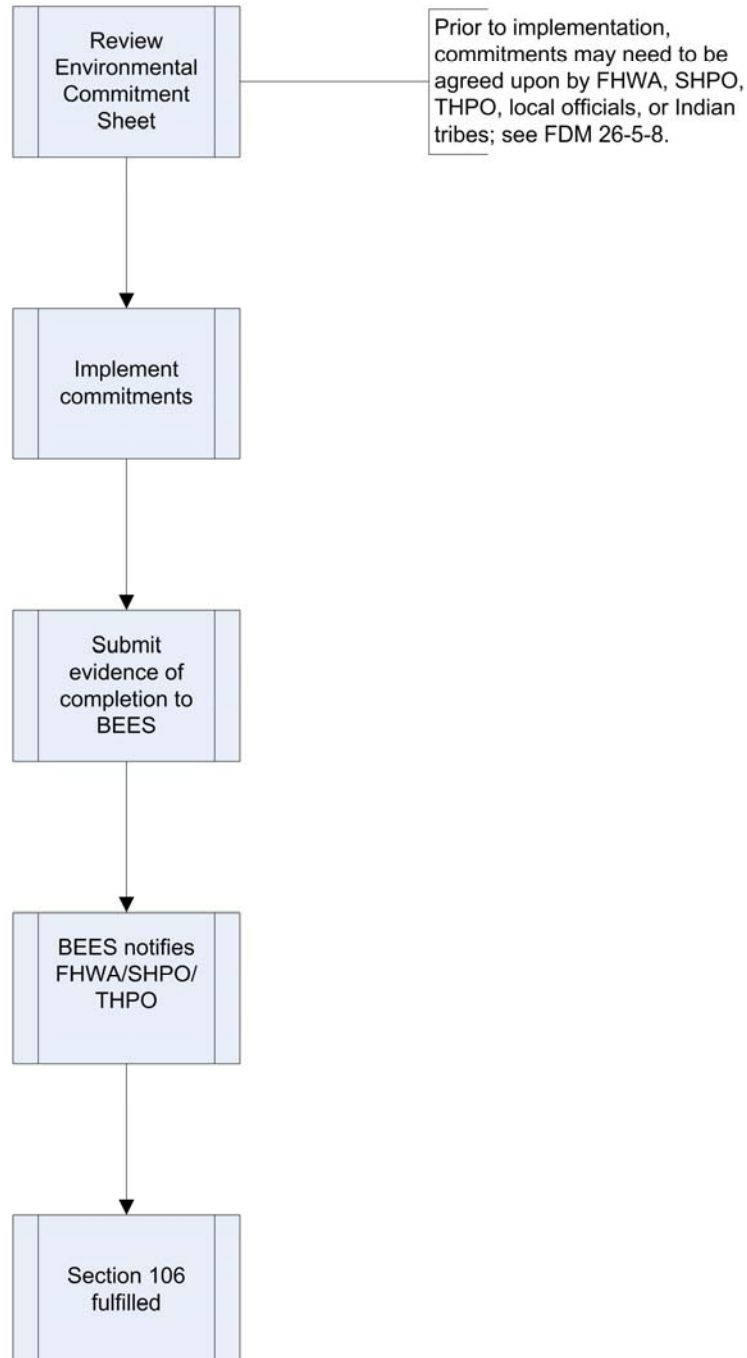
(Assess effects of project on historic properties)





FDM 26-5-9 Implementation

(Project manager is responsible for retaining qualified professionals to implement any commitments agreed upon.)





FDM 26-10-1 Professional Reporting

February 18, 2020

This section involves the preparation of reports by qualified professionals contracted by or on behalf of the department, and aids in the completion of these reports. Upon completion of the report(s) the qualified professional will provide appropriate number of copies to the department contact.

Note: The department will be responsible for forwarding copies to appropriate parties. Copies are not to be released by the professional, unless agreed upon in advance. The following documentation should be included:

1. Wisconsin Public Lands Field Archaeology Permit(s)
2. ARPA Permit for Federal or Indian Lands
3. Tribal Permits for Indian Lands
4. Architecture/History Survey Form (A/HSF) ([DT1446](#))
5. Archaeological Survey Field Report Form (ASFR) ([DT1978](#)) or more detailed Technical Report on Identification Survey
6. Archaeological Literature and Records Review ([DT1459](#))
7. Archaeological Site Inventory Form (ASI)
8. Bibliography of Archaeological Reports Form (BAR)
9. Burial Sites Report Form
10. Technical Report on Historic Property Evaluation
11. Determination of Eligibility (DOE for history; NRHP for archaeology)
12. Tribal Historic Preservation Review Worksheet

This procedure outlines what is included in each of the above reports, who prepares each type of reports, and how many copies to submit. The region submits reports to the Bureau of Technical Services (BTS) for transmittal to the State/Tribal Historic Preservation Office (SHPO/THPO) under the signature of the WisDOT Historic Preservation Officer (HPO). Each submittal must be accompanied by two copies of the Section 106 Review Form (see below) with the following exhibits: county or city map and project plans or aerial photographs showing extent of project and any attachments such as APE, Archival Review, etc.

1.1 Wisconsin Public Lands Field Archaeology Permit(s)

All archaeological fieldwork on public land (excepting federal land and Tribal lands) requires this permit, which is issued by the Wisconsin Historical Society under Wisconsin Statute § 44.47. The archaeological consultant is responsible for obtaining this permit. As of February 6, 2008, a signed curation agreement must be on file with the Wisconsin Historical Society in order to receive a permit. The curating institution shall be able to provide "professional, systematic and accountable curatorial services on a long-term scale." This permit is submitted to the project manager as an attachment to the ASFR form or more detailed technical report.

(<https://www.wisconsinhistory.org/Records/Article/CS4123>)

1.2 ARPA Permit for Federal or Indian Lands

Under the Archaeological Resources Protection Act (ARPA), a permit is required to excavate or remove archaeological resources from federal lands or Tribal lands. The qualified professional (usually the archaeologist) is required to obtain this permit from the appropriate federal agency with land management oversight (such as Bureau of Indian Affairs [BIA] or U.S. Department of Agriculture [USDA]) and in cooperation with the Tribe.

(<http://www.nps.gov/archeology/npsGuide/permits/docs/04PermitAppFinal.pdf>)

1.3 Tribal Permits for Indian Lands

A permit may be required under tribal government ordinance or policy to conduct archaeological field investigation on Tribal lands. The qualified professional (usually the archaeologist) is required to consult with the appropriate tribal government entity regarding the need for a tribally issued permit.

1.4 Architecture/History Survey Form (A/HSF) (DT1446)

The historian uses this form to document the efforts to identify historic buildings and structures. The form includes the following information:

- previously identified sites and surveys within the Area of Potential Effects (APE)

- explanation of why surveyed properties are in the APE
- description of area surveyed and researched
- description of physical setting of any identified properties
- survey results and recommendations for further work
- list of sources consulted
- attachments to the form include: inventory cards, negatives, disk and maps

An original and two copies of this form should be submitted to BTS. Each copy must include photocopies of the inventory cards.

The project manager must submit results of the survey of historic buildings and structures at the same time as the results of the archaeological survey and Tribal review - refer to Tribal Historic Preservation Review Worksheet. BTS cannot forward the A/HSF to the appropriate¹ SHPO/THPO without the results of the archaeological survey and Tribal review, if available. If requested, BTS will review the A/HSF prior to this formal submittal.

1.5 Archaeological Survey Field Report Form (ASFR) (DT1978) or more detailed Technical Report on Identification Survey

1.5.1 Archaeological Survey Field Report Form (ASFR) (DT1978)

The WisDOT has an agreement with the SHPO that the ASFR, a standardized reporting form, may be used when a survey has been conducted and no evidence of archaeological sites was discovered, or only isolated finds were encountered. The qualified archaeologist completes the ASFR form. The ASFR includes:

- description and location of the project
- results of the archaeological literature and records review
- field methods and techniques used
- description of the area surveyed
- description of any findings not considered to represent an archaeological site (and, if appropriate, a statement that no evidence of previously recorded sites was encountered)
- attachments as listed on form
- overlay map indicating location of project activities, areas previously investigated archaeologically, area surveyed under this current report, locations of sites previously recorded or discovered during the survey, and project APE

Three copies of the ASFR should be submitted to BTS. The project manager must submit results of the archaeological survey with the results of the historic buildings and structures survey and the result of Tribal review, if available. BTS cannot forward the ASFR to the SHPO/THPO without the results of the historical survey and Tribal review. If requested, BTS will review the ASFR prior to this formal submittal.

1.5.2 More Detailed Technical Report on Identification Survey

If potential historic properties are discovered, the qualified professional must prepare a more detailed technical report than is offered by an ASFR. The technical report must follow the Secretary of the Interior's Standards & Guidelines for Archeology and Historic Preservation.

(http://www.nps.gov/history/local-law/arch_stnds_0.htm).

This report is usually completed upon completion of the Identification Survey if the cultural resources identified are not considered to be significant (potentially eligible for the National Register of Historic Places), or if they were avoided through project redesign. Three copies of the report should be submitted to BTS. (Note: WisDOT BTS is moving toward the expectation of digital/electronic submissions in addition to paper copies.)

This technical report at a minimum includes the following information:

- description and location of the project
- results of the literature search
- results of oral histories, if available
- field methods and techniques used
- description of the area surveyed
- description of all cultural resources identified (and, if appropriate, a statement that no evidence of previously recorded sites was encountered)

¹ Refer to Confidentiality, FDM 26-1 Attachment 1.1 (Glossary).

- statement of project effect
- recommendations
- attachments as listed on form
- overlay map indicating location of project activities, areas previously investigated archaeologically, area surveyed under this current report, locations of sites previously recorded or discovered during the survey, and the project APE

Qualified professionals (usually ethnographers; see 26-30-1) evaluating and documenting Traditional Cultural Properties must follow the provisions contained in the National Register Bulletin (formerly NR Bulletin 38) Guidelines for Evaluating and Documenting Traditional Cultural Properties.

(<https://www.ncptt.nps.gov/articles/c2a/guidelines-for-traditional-cultural-properties/>)

Qualified archaeological professionals must follow, in addition to the Secretary of the Interior's Guidelines, the Wisconsin Archaeological Survey's Guidelines for Public Archaeology in Wisconsin.

(<http://www.uwm.edu/Org/WAS/WASurvey/WASpubs.html>)

The project manager must submit results of the identification survey with the results of the historic buildings and structures survey and Tribal review, if one was required. BTS cannot forward the technical report to the appropriate² SHPO/THPO without the results of the historical survey and Tribal review, if available. If requested, BTS will review the technical report prior to this formal submittal.

1.6 Archaeological Literature and Records Review (DT 1459)

This form is completed by the archaeological consultant to document previously recorded sites within or adjacent to the project area, and is submitted to the project manager as an attachment to the ASFR or more detailed technical report. Sources may include (but are not limited to) the Archaeological Sites Inventory (ASI)/Wisconsin Historic Preservation Database (WHPD), historical maps, atlases, tax records, photographs, ethnographies, folklife documentation, oral histories, and other studies as well as standard historical reference works, as appropriate for the research problem.

1.7 Archaeological Site Inventory Form (ASI) [Word or PDF; short form Word or PDF]

This form is completed by the archaeological consultant for each previously unrecorded archaeological site, and is submitted to the project manager as an attachment to the technical report. It provides summary and location information so that the site can be adequately included in the state's database³. ASI Update forms may also be completed for previously recorded sites where refined information is available [update Word or PDF]

(<https://www.wisconsinhistory.org/Records/Article/CS4121>)

1.8 Bibliography of Archaeological Reports Form (BAR) [Word, PDF]

This form is completed by the archaeological consultant and submitted to the project manager as an attachment to the ASFR or technical report. It includes, among other items, bibliographic information, survey methods and coverage, and an abstract.

(<https://www.wisconsinhistory.org/Records/Article/CS4121>)

1.8.1 Burial Sites Report Form

This Wisconsin Historical Society form is used by the qualified professional to report the location and other pertinent information for previously unreported burial sites.

(<https://www.wisconsinhistory.org/Records/Article/CS15239>)

1.8.2 Technical Report on Historic Property Evaluation

When historic properties are evaluated, the qualified professional must prepare a technical report following the Secretary of the Interior's Standards & Guidelines for Archeology and Historic Preservation

(http://www.nps.gov/history/local-law/arch_stnds_0.htm). The technical report includes but is not limited to the following information:

- description and location of the project
- results of the archival review and cultural context
- description of identification efforts
- field methods and techniques used

² Refer to Confidentiality, FDM 26-1 Attachment 1.1 (Glossary).

³ Same as above.

- results of the field investigations
- results of the analysis
- statement of significance and DOE forms if there are eligible properties:
 - for historic buildings and structures, use Wisconsin Historical Society DOE form (<https://www.wisconsinhistory.org/Records/Article/CS4118>)
 - for archaeological sites, use Wisconsin version of NPS Form 10-900 (<http://www.wisconsinhistory.org/hp/forms/nr-form.doc>)
- statement on project effect
- recommendations
- attachments

Qualified professionals (usually ethnographers, see [FDM 26-30-1](#)) evaluating and documenting Traditional Cultural Properties must follow the provisions contained in the National Register Bulletin (formerly NR Bulletin 38) Guidelines for Evaluating and Documenting Traditional Cultural Properties.

(<https://www.ncptt.nps.gov/articles/c2a/guidelines-for-traditional-cultural-properties/>)

Qualified archaeological professionals must follow, in addition to the Secretary of the Interior's Guidelines, the Wisconsin Archaeological Survey's Guidelines for Public Archaeology in Wisconsin.

(<http://www.uwm.edu/Org/WAS/WASurvey/WASpubs.html>)

The technical report should also contain the results of the initial identification survey so that all documentation on historic properties for the project is contained in one report. Three copies of the technical report should be submitted to BTS⁴. (Note: WisDOT BTS is moving toward the expectation of digital/electronic submissions in addition to paper copies.)

1.8.3 Determination of Eligibility (DOE)

A DOE is prepared to report on historic properties that have been evaluated for eligibility to the National Register. Historians use the Wisconsin Historical Society DOE form

(<http://www.wisconsinhistory.org/hp/forms/doe.doc>) for documenting historic buildings and structures, while archaeologists use the Wisconsin version of NPS Form 10-900 (<http://www.wisconsinhistory.org/hp/forms/nr-form.doc>) for documenting archaeological sites.

For more detailed information regarding history (structures/architecture) DOE requirements refer to the survey manual at: <https://www.wisconsinhistory.org/Records/Article/CS4120>. For more information concerning DOEs for archaeological sites, please see the National Register Bulletin (formerly NR Bulletin 36) How to Complete the National Register Registration Form. (<https://www.nps.gov/subjects/nationalregister/upload/NRB36-Complete.pdf>)

A DOE includes but is not limited to the following information:

- description of the historic and present appearance of the property
- statement of the significance of the property, justifying applicable NRHP criteria and area and period of significance
- boundary description and justification
- photographs (when required)

An original and three copies of the DOE should be submitted to BTS⁵. The project manager must submit all DOEs prepared for the project simultaneously.

1.9 Tribal Historic Preservation Review Worksheet [Contact BTS for Worksheet]

This worksheet is sent to federally recognized Tribes of Wisconsin, according to their designated areas of interest, in the following cases:

- projects requiring EIS documentation
- projects requiring EA documentation
- projects on Tribal lands regardless of documentation type (Note: This worksheet is sent to the appropriate THPO or Designated Tribal Representative.)

This worksheet records results from THPOs (or Designated Tribal Representatives) in identifying historic properties within a project area, assisting with evaluation, or providing recommendations regarding treatment of

⁴ Refer to Confidentiality, FDM 26-1 Attachment 1.1 (Glossary).

⁵ Same as above.

historic properties. If the Tribe wishes to participate, the THPO(s) or Designated Tribal Representative(s) is responsible for providing the worksheet, with appropriate supplementary documentation, to the project manager⁶. (Refer to [FDM 26-20](#) regarding compensable services)

The worksheet and documentation will include the following:

- Project description
- Investigation results
- Determination of eligibility findings, if applicable
- Statement of significance for historic properties (for example, Traditional Cultural Properties), if applicable
- Recommendations, if applicable

Refer to **Tribal Worksheet Form** ([Attachment 1.1](#))

LIST OF ATTACHMENTS

[Attachment 1.1](#) Tribal Historic Preservation Review Worksheet

FDM 26-10-5 Project Manager (PM)/Project Sponsor Reporting

February 18, 2020

Section 106 involves the preparation of a number of reports that are cited in this chapter:

1. Section 106 Review Form ([DT1635](#))
2. Results of Consultation (Tribes and Interested Parties)
3. Material Excavation Sites, Archaeological Survey Information Transmittal ([DT1919](#))
4. Cemetery/Burial Documentation Checklist ([DT1614](#))
5. Finding of No Adverse Effect (FNAE)
6. Finding of Adverse Effect (FAE) [also known as Documentation for Consultation (D FOR C)]
7. Documentation of Completed Commitments for Cultural Resources

This procedure outlines what is included in each of the above reports, who prepares each type of report, and how many copies to submit. The region submits reports to the Bureau of Technical Services (BTS) for transmittal to the State/Tribal Historic Preservation Office (SHPO/THPO) under the signature of the WisDOT Historic Preservation Officer (HPO). Each submittal must be accompanied by two copies of the Section 106 Review Form (see below) with the following exhibits: county or city map and project plans or aerial photographs showing extent of project and any attachments such as APE, Archival Review, etc.

5.1 Section 106 Review Form (DT1635)

The Section 106 Review Form ([DT1635](#)) is designed to guide the project manager in two important activities:

1. Managing completion of the Section 106 Review process, and
2. Providing information to the Cultural Resource specialist, the WisDOT HPO, the SHPO, and other consulting parties.

The project manager must determine how to fulfill their oversight role. S/he signs the DT 1635, and verifies the accuracy and also the clarity and usefulness of the project information. How s/he wishes to accomplish this, however, is a local decision. [DT1635](#) guides the Project Manager in

1. Determining the need for a Cultural Resource specialist(s), and
2. Once a Cultural Resource specialist is retained, in coordinating with that specialist to confirm the project's APE, determine the level of research effort and the identification methods, and appropriate contact or "check-in" points.

Sections I and II of [DT1635](#) provide information that establishes the basic description of the undertaking. Clear communication here is essential for efficient completion of the subsequent steps in the Section 106 Process.

Part III of the form may be filled out in cooperation with the Cultural Resource specialist(s). Part III is a good "check-in point" to assure that everyone knows what the expectations or the roles and responsibilities are.

Part IV is also a joint effort and the project manager will benefit by discussion with the Cultural Resource specialist. Each project will present different issues for discussion.

Parts V, VI and VII are to be filled out by the Cultural Resource specialist. If historic properties (or potentially eligible properties) are located, it is better not to simply rely on the boxes being checked. The project manager is

⁶ Same as above

encouraged to require the specialist to contact her/him and discuss the findings.

Section VIII should only be used where adverse effects can be avoided by:

1. incorporating design modification(s) into the project plans or
2. specifying specific actions to be incorporated in the Special Provisions.

Section IX records the decision regarding potential to effect historic properties. For most WisDOT administered projects, the Section 106 Process will be fulfilled at this step with one of the first two boxes checked: "No historic properties (historical or archaeological) in the APE" or "No historic properties (historical or archaeological) affected" and with the SHPO signature on the form. For other projects, there are historic properties and there may be an effect, but that effect is not harmful to the historic significance of the property. In this circumstance documentation for a Determination of No Adverse Effect can be provided along with the Section 106 Review form. Again, a SHPO signature signifying concurrence ends the Section 106 Process.

5.2 Results of Consultation (Tribes and Interested Parties)

Consultation with Indian Tribes and other interested parties is carried out throughout the Section 106 Process. Section 106 expects consultation to be conducted in good faith when taking into consideration project impacts to historic properties.

The project record must contain documentation on consultation efforts used in reaching a project decision. Documentation can take the form of meeting minutes, telephone logs, e-mails, letters, or any other type of correspondence or communication.

Below are some examples of results from coordination or consultation:

(Note: These examples should not be considered a complete list.)

- Determination of the APE
- Determination of methods for identifying historic properties
- Discussion of concerns regarding properties of religious or cultural significance to Tribes
- Results of confidentiality⁷ concern raised by Tribes

Consultation carried out pursuant to results of identification, evaluation, and determining adverse or no adverse effects including mitigation, and any or all MOAs, PAs, and MOUs should be documented using this format. However, depending on which phase of Section 106 consultation is being carried out, additional issues and consideration may need to be added.

Results of consultation, if requested, shall be submitted to all consulting parties and to BTS and FHWA. This documentation should be compiled annually for all WisDOT undertakings to ensure that adequate consultation is being carried out on a programmatic level.

5.3 Material Excavation Sites, Archaeological Survey Information Transmittal Form (DT1919)

Refer to Construction and Materials Manual (CMM) Chapter 1 Section 58 on how to complete this form. It is used in preparation for a review of the state inventories of archaeological, architectural and historical resources for proposed material locations to be used by the contractor. The contractor shall complete the department form [DT1919](#). The completed form is sent to BTS for review prior to use of the proposed material excavation site.

5.4 Cemetery/Burial Site Documentation Checklist (DT1614)

This checklist provides guidance on required documentation for cemeteries or other types of burial sites that is needed for submittal to the SHPO. This information is used to determine if the burial site extends into the project's area of potential effect which includes the existing right-of-way. When burial sites extend into project's area of potential effect, the Director of the Wisconsin Historical Society must be petitioned for authorization to proceed (Wisconsin Statute § 157.7) See [FDM 26-25](#).

5.5 Finding of No Adverse Effect (FNAE)

Documentation shall be consistent with 36 CFR 800.11(e). If potentially eligible historic properties will not be adversely affected, the qualified professional completes the FNAE. The FNAE must contain the following information at a minimum:

- description of the project including photographs, maps, and drawings, as appropriate
- description of historic properties and potentially eligible properties that may be affected by the project
- description of the efforts used to identify historic properties
- statement of how and why the criteria of adverse effect were found inapplicable

⁷ Refer to Confidentiality, FDM 26-1 Attachment 1.1 (Glossary).

- summary of consultation with Indian Tribes and interested parties
- signed Section 106 Review Form ([DT1635](#))
- justification of the determination that the historic property/potentially eligible property will not be adversely affected
- exhibits depicting an historic property/potentially eligible property and its relationship to the project
- Name, address, and phone number of any interested parties

Three originals and one copy of the FNAE should be submitted to BTS for approval by the WisDOT HPO and transmittal to the SHPO/THPO⁸. The FNAE must address historic properties (historical and archaeological) associated with the project.

5.6 Finding of Adverse Effect (FAE) [also known as Documentation for Consultation (D FOR C)]

Responsibility for completing the FAE will be assigned at the consultation meeting. If potentially eligible historic properties will be adversely affected, the qualified professional (archaeologist, historian, tribal expert, others) completes the Finding of Adverse Effect (FAE). Documentation shall be consistent with 36 CFR 800.11(e). The FAE must contain the following information:

- description of the project including photographs, maps, and drawings, as appropriate
- description of historic properties and potentially eligible properties that may be affected by the project
- description of the efforts used to identify historic properties
- statement of how and why the criteria of adverse effect were found applicable
- mitigation measures for historic properties (may include a Data Recovery Plan for archaeological resources)
- summary of consultation with Indian Tribes and interested parties

Three originals and one copy of the FAE should be submitted to BTS for approval by the WisDOT HPO and transmittal to the SHPO/THPO. The FAE must address both historical and archaeological issues associated with the project. This documentation must be forwarded to ACHP and Indian Tribes and other consulting parties⁹.

5.7 Documentation of Completed Commitments for Cultural Resources

This section provides guidance on required documentation for completed or fulfilled commitments as stipulated on the Screening List, Section 106 Review Form, Data Recovery Plan, or agreement document such as MOA or MOU (26-5-9-D). This evidence of completion is needed for submittal to the SHPO/THPO and consulting parties. The qualified professionals contracted by or on behalf of the department, shall aid in the completion of this documentation. The project manager forwards the documentation to BTS Cultural Resources. BTS will be responsible for forwarding the documentation to appropriate parties. It may include, but is not limited to, the following information:

- identify the commitment(s)
- description of efforts in fulfilling the commitment(s), including date(s) of completion
- photographs, maps, and/or drawings illustrating actions taken to fulfill the commitment(s), as appropriate
- photographs of any products, such as an exhibit, manufactured to fulfill a commitment

⁸ Same as above

⁹ Refer to Confidentiality, FDM 26-1 Attachment 1.1 (Glossary).

TRIBAL HISTORIC PRESERVATION REVIEW WORKSHEET

Wisconsin Department of Transportation

I. PROJECT INFORMATION

Project ID	Highway/Street	County
Project Termini		
Township(s)	Township/Range	Sections

II. SOURCES REVIEWED

<input type="checkbox"/> Tribal Site Inventory	<input type="checkbox"/> Oral History	<input type="checkbox"/> Other	<input type="checkbox"/> Other	<input type="checkbox"/> Other
--	---------------------------------------	--------------------------------	--------------------------------	--------------------------------

III. CULTURAL RESOURCES

Summary

☐ **No** site reported in APE ☐ **Yes** site reported in APE
☐ **No** site reported within 1 mile of APE ☐ **Yes** site reported outside of APE but within 1 mile
☐ Additional consultation requested

Identified Sites (continuation sheet on reverse side)

SITE: Tribal Designation or State Site No. (47xx-xxxx)	Description	Burial/cemetery			Archaeological or historic site	Site of religious or cultural importance	Documentation attached	Confidentiality requested*
		Federal land	Tribal land	Ancestral land				
		—	—	—	—	—	—	—
		—	—	—	—	—	—	—
		—	—	—	—	—	—	—
		—	—	—	—	—	—	—
		—	—	—	—	—	—	—
		—	—	—	—	—	—	—

Research conducted by:	Date:
------------------------	-------

***Confidentiality:** Tribes may consider information regarding the description or location of certain properties with religious or cultural significance as sensitive cultural information. FHWA and WisDOT agree and believe that this information falls under, and therefore its confidentiality is protected by, Section 304 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6, as implemented in 36 CFR 800.11.

Treaty rights and preservation of jurisdiction: This form is intended to help WisDOT identify sites that might be affected by the proposed project, and the signature below is requested to confirm that the information was collected in accordance with Tribal policy. Submission of the completed form does not alter WisDOT's responsibility to comply with all pertinent laws and regulations, nor does it in any way cede or alter the Tribe's existing jurisdiction.

I hereby certify that this historic preservation review was done in accordance with Tribal policy:

Name of Tribal Expert <i>(please print)</i>	Signature of Tribal Expert	Date
Name of Tribe or Firm: <i>(please print)</i>	Signature of THPO	Date

TRIBAL HISTORIC PRESERVATION REVIEW WORKSHEET

Page 2—continuation sheet

Additional information or comments:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



FDM 26-20-1 Compensation Regarding Historic Preservation

November 17, 2010

To support the consultation process, WisDOT frequently has the need to obtain field services (including survey, testing, and monitoring), oral history interviews, and archival and background searches. Separate from their participation in consultation, Tribes frequently have the resources to provide these and other services; such as, ethnographic reports and National Register nominations. These support services are separate and distinct from the Tribe's direct participation in the Section 106 consultation process. WisDOT has the discretion to obtain these support services from any qualified individuals, firms, or organizations, including Tribes and Native American firms and individuals, through appropriate procurement procedures. When appropriate, WisDOT personnel are encouraged to obtain such support services from Tribes, Tribal firms, and Tribal members. The procurements may be undertaken on an individual project basis, or through a broader agreement, consistent with applicable WisDOT procurement procedures and requirements.

However, WisDOT does not compensate any entity, including Tribes, for consultation required by law, regulation, or other authorities, where the consultation is part of administrative processes designed to protect the interests of the consulting entity.

It is WisDOT's goal to limit the costs to tribes for their participation in the Section 106 consultation process. Therefore, WisDOT seeks to schedule meetings at locations on or near Indian reservations or Tribal offices.

When WisDOT has provided sufficient opportunity to consult and has documented the process, and the intended consultation partner declines or refuses to consult, WisDOT's requirement is met.



FDM 26-25-1 General

November 17, 2010

1.1 Objective

This procedure provides guidance with compliance to Wisconsin Statute § 157.70 regarding any WisDOT-managed or supervised project where a recorded cemetery or other type of burial site is within or adjacent to the project's Area of Potential Effects (APE).

Note: On federal lands or Tribal lands (in trust, reservation, or allotted status), coordination with BTS Cultural Resource Team and compliance with NAGPRA, ARPA, and relevant Executive Orders is required.

THE FOLLOWING INFORMATION PERTAINS TO STATE OR PRIVATELY OWNED LANDS.

The APE for archaeology consists of the existing and proposed ROW, temporary and permanent easements, staging of equipment, or any land activity (including erosion, wetland, etc.). The APE may also include additional areas depending on consultation.

Wis. Stat. § 157.70 requires appropriate parties to request in writing authorizations or permits from the WHS before proceeding with ground-disturbing activities at known burial sites (including cemeteries) as delineated in the Wisconsin Archaeological Sites Inventory (ASI). BTS will contact the Wisconsin Historical Society at (608) 264-6507 to initiate the authorization/permit process prior to proceeding with construction. Work may not commence until authorization or a permit has been received. *No ground-disturbing activities* (archaeological, construction, mitigation, etc.) may proceed without authorization or permission from the WHS. This requirement applies to all burial sites as defined under Wis. Stat. § 157.70 whether it is uncataloged or cataloged under that statute.

1.2 Documentation

The services of a qualified professional will be required to determine whether the boundary of the cemetery or other type of burial site extends into the project's APE.

Determining whether an archaeological site is recorded as a burial site under Wis. Stat. § 157.70, a qualified professional (usually an archaeologist) must research the site's 'status' (this information is available through the Wisconsin Historical Preservation Database, WHPD).

If the qualified professional determines the boundaries of a burial site or the information in the WHPD is otherwise incorrect, they will contact the WHS and correct the boundaries by submitting an ASI update form.

1.2.1 Cemeteries (formally designated and/or marked grave site(s))

WisDOT form [DT1614](#) (Cemetery checklist) shall be completed. (The PM may wish to consult an archaeologist in completing this form.)

1.2.2 Other Burial Sites (unmarked grave site(s) and/or mounds)

A qualified professional (usually an archaeologist, ethnographer, and/or Tribal expert), through consultation, will need to determine if the boundary of a burial site extends into or is adjacent to the project's APE.

The professional will need to provide a formal response as to whether the boundary does or does not extend into the project's APE.

1.3 Process

If it is determined the cemetery or other type of burial site extends into the project's APE, the Director of the Wisconsin Historical Society (WHS) will need to be petitioned for permission to work within the boundaries of the site (cemetery/burial) as stated in Wis. Stat. § 157.70 subs. (4) and (5).

- Depending upon the type of work, this request may or may not be granted.
- Depending on the type of burial site (uncataloged/cataloged under Wis. Stat. § 157.70), it may take 3 months before a decision is determined. This delay is to accommodate the WHS's obligation under Wis. Stat. § 157.70 to send out notices requesting comments from the Registry of Interested Persons.

1.3.1 Procedure for Uncataloged burial sites 157.70 (4)

- Submit request to WHS to work within boundaries of uncataloged burial site (See attached example)
- Request should include brief project description, nature and extend of proposed work including methods to be employed and the size of area to be investigated
- Receive authorization from WHS before proceeding with any ground-disturbing activities.
- Depending on the scope of work proposed, mitigation measures (e.g. fencing, monitoring, etc.) may be required to reduce or prevent effect(s) to the site.

- BTS is currently responsible for preparing and submitting the petitioning request to WHS.

1.3.2 Procedure for Cataloged burial sites 157.70 (5)

Note: Allow time for notification, review, and notice of decision, minimum of 90 days

- Submit a "Request to disturb" to WHS (See attached example)
- Request should include brief project description, nature and extend of proposed work including methods to be employed and the size of area to be investigated.
- Registry of Interested Persons have 30 days from receipt to respond.
- The WHS Director then makes a decision based on comments to authorize or refuse the disturbance.
- BTS is currently responsible for preparing and submitting the petitioning request to WHS.

1.3.3 Procedure for Inadvertent discoveries

- The WisDOT construction project manager shall immediately stop construction activities and fence off the site area if any inadvertent burial related discoveries are encountered. The project manager is responsible for fulfilling other commitments for inadvertent discoveries of human remains as may be stipulated in existing project agreement documents such as MOA or MOU.
- *On state or privately owned lands:* The treatment of burial related discoveries will comply with Wis. Stat. § 157.70 . Any such finds will be considered within the category of a "known uncatalogued burial site", and a Wisconsin Historic Preservation Division standard contract for treatment of human remains will be followed (See attached contract example). This attachment will be completed in the event of a discovery.
- If human remains are discovered, all construction in the area of the discovery will be stopped and the area protected. The project manager will immediately notify BTS and BTS will notify FHWA, and interested consulting parties of these discovery(ies).
- Human skeletal elements discovered in non-burial context (such as an unintended or accidental depositing of human remains) are considered isolated human remains.
 - Isolated remains may include, but not limited to; teeth, bones in previously disturbed context (e.g. fill), and bones in refuse context.
 - Disposition of these remains will be coordinated in consultation with the FHWA, and interested consulting parties.

Note: On federal or tribal owned lands in trust, reservation, or allotted status.

The WisDOT construction project manager shall immediately stop construction activities and fence off the site area if any inadvertent burial related discoveries are encountered. Native American human remains and/or objects subject to the provisions of the NAGPRA, i.e. burials, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony, are encountered during construction, WisDOT shall notify and consult with the FHWA, interested consulting parties to determine appropriate treatment measures for the remains and/or objects. It shall be the responsibility of FHWA and WisDOT to either preserve or repatriate the human remains, and associated objects, depending on the agreed upon determination of the consulting parties

LIST OF ATTACHMENTS

Attachment 1.1	Uncataloged Burial Request (Example)
Attachment 1.2	Cataloged Burial Request (Example)
Attachment 1.3	Standard Contract (Example)

UNCATALOGED BURIAL REQUEST (EXAMPLE)

10/27/2010

Compliance Officer
Wisconsin Historical Society, Office of Preservation Planning
816 State Street
Madison, Wisconsin 53706-1482

RE: Request to work within the boundaries of un-cataloged burial site(s):
Site # (Site Name) T.R.S. (Town, Range, Section) -
WisDOT Project ID:
Title: Termini
County, Wisconsin

Pursuant to Wisconsin Statute 157.70(4) and Wisconsin Administrative Code HS 2.04(2), the Wisconsin Department of Transportation (WisDOT) is requesting authorization to work within the recorded boundaries of un-cataloged burial site(s) Site # (Site Name).

Undertaking

Provide a brief summary of the project

Ground Disturbing Activities

Commitments

Include any agreed upon commitments eg. Fencing, monitoring, no staging, etc.

If human bone is discovered during construction, WisDOT will cease work activities immediately and will contact the Wisconsin Historical Society at 1-800-342-7834 for compliance with Wis. Stat. 157.70 regarding the protection of human burial sites.

If I can be of further assistance, or provide additional information please feel call me at (608) 261-0137.

Sincerely,

WHS concurrence authorizes request

Archaeology Program Manager Date

Office of Preservation Planning Date

Cc:

CATALOGED BURIAL REQUEST (EXAMPLE)

10/27/2010

Compliance Officer
Wisconsin Historical Society, Office of Preservation Planning
816 State Street
Madison, Wisconsin 53706-1482

RE: Request to work within the boundaries of cataloged burial site(s):
Site # (Site Name) T.R.S. (Town, Range, Section) -
WisDOT Project ID:
Title: Termini
County, Wisconsin

Pursuant to Wisconsin Statute 157.70(5), the Wisconsin Department of Transportation (WisDOT) is requesting permission from the WHS director in obtaining a permit to work within the recorded boundaries of cataloged burial site(s) Site # (Site Name)

Undertaking

Provide a brief summary of the project

Ground Disturbing Activities

Commitments

Include any agreed upon commitments eg. Fencing, monitoring, no staging, etc.

If human bone is discovered during construction, WisDOT will cease work activities immediately and will contact the Wisconsin Historical Society at 1-800-342-7834 for compliance with Wis. Stat. 157.70 regarding the protection of human burial sites.

As a result, WisDOT is requesting SHPO concurrence with the assessment that the proposed undertaking will result in no effect to burial sites pursuant to 157.70.

If I can be of further assistance, or provide additional information please feel call me at (608) 261-0137.

Sincerely,

Archaeology Program Manager Date

Cc:

STANDARD CONTRACT (EXAMPLE)

This agreement is made with _____ (Wisconsin Department of Transportation, 4802 Sheboygan Ave, Madison WI 53707), the Wisconsin Historical Society (WHS) and _____, (insert archaeological contractor's name and address) for archaeological and analytical services to be performed at _____ (provide address). The purpose of this Contract is to ensure that the excavation and analysis of human remains and associated objects are performed and completed in a timely manner and that sufficient information is provided to the Director of the Wisconsin Historical Society to allow for a disposition decision per Wis. Stat. §157.70(6) and HS 2.05(1) following the completion of the excavation and skeletal analysis.

Deliverables include:

1. The professional archaeological excavation and removal of human remains and any associated objects.
2. The determination of either direct kinship, or the cultural, tribal or religious affiliation of the remains by a "Qualified Skeletal Analyst" as defined in HS 2.02(12) and HS 2.04(6)(b) as well as the minimum and maximum number of individuals identified, including their age, and sex, if possible. To the extent necessary to make the determination, the analysis may also include documentation and description of trauma, evidence for cultural and/or medical intervention, the presence and documentation of pathology, as well as any relevant taphonomic factors. Refer to "Standards for data Collection From Human Skeletal Remains" by J. E. Buikstra and D. H. Ubelaker
3. Soil removed from the bones during cleaning must be retained with the remains for future disposition.
4. It is the responsibility of the archaeological contractor to retain the services of a "Qualified Skeletal Analyst." A current listing of those individuals is appended to this contract and may be found at http://www.wisconsinhistory.org/hp/burialsites/about/bs_skeletalanalyst.pdf.
5. The preparation of an overall site map that references the location of the burial(s) relative to a permanent datum point as well as the preparation of an *in-situ* plan view and profile drawings of the excavation and each burial.
6. Scaled photometric documentation of the disturbance, the excavation and any associated objects.
7. The completion and submittal of an archaeological site inventory (ASI) form to the State Archaeologist's office at the WHS.
8. The Wisconsin Department of Transportation shall be responsible for submitting two copies of the report to the director of the WHS for review once the excavation and analysis are completed. The report must include information on the context of discovery and any associated cultural information that would aid in determining the antiquity and direct kinship, or the cultural, tribal or religious affiliation of the remains.
9. The Wisconsin Department of Transportation shall be responsible for transferring all reports generated and copies of field notes, maps, and photographs related to the burial site to the Wisconsin Historical Society, under HS 2.04(10).

A complete literature search and interviews with local residents should be undertaken prior to beginning the excavation. No bone samples may be harvested for study without the expressed permission of the director under HS 2.04(9) and particular care should be taken to follow pages 84-102 of the 1997 Wisconsin Archaeological Survey "Guidelines for Public Archaeology in Wisconsin, as Revised," during the excavation and recording of the human remains and associated objects. It is the responsibility of the archaeological contractor to secure a field permit under Wis. Stat. §44.47(4) from the State Archaeologist prior to initiating fieldwork on state, county or municipal land. No images, pictures, or video of the burial, or work on the human remains, may be used in any public presentation or report. Drawings and illustrations based upon the above and the fieldnotes are appropriate.

The terms of payment shall be arranged between _____ (Wisconsin Department of Transportation) and _____, (the archaeological contractor), but in no case shall more than 50% of the total agreed upon payment shall be paid to the archaeological contractor until the report is received and approved by the director of the WHS. An archaeologist qualified to excavate burials shall be on-site at all times during the

excavation and the archaeological contractor will hold temporary custody of the remains and any associated artifacts in a secure facility until such time as a disposition decision is made by the Wisconsin Historical Society.

If the stipulations stated above are not carried out by the agreed-upon timelines in this contract; the project sponsor (WISDOT) retains responsibility of the remains and shall execute a new contract for the service deliverables contained in this contract. This contract will remain in effect until the work has been successfully completed and agreed upon by the Director or designee of the Historical Society.

The excavation will be completed no later than _____. The analysis will be completed by _____ and the report will be submitted to the director of WHS no later than _____. It is understood by all parties that inadvertent discoveries during the course of the excavation may result in unforeseen delays; such delays must be immediately communicated to and coordinated with the Program Coordinator, at the Wisconsin Historical Society so that a new field completion date may be negotiated. Results of the analysis may not be published or presented in a public forum prior to the acceptance of the final report by the Wisconsin Historical Society.

Signed/Dated: _____ (Wisconsin DOT).

Signed/Dated: _____ (the archaeological contractor).

Signed/Dated: _____ (Wisconsin Historical Society).



FDM 26-30-1 Introduction

November 17, 2010

For historic preservation professional services conducted on Tribal lands, qualification requirements may change from those provided below. To determine whether Tribal laws or policies require any additional qualifications for professionals conducting these services on Tribal lands, consult the THPO/Designated Tribal Representative.

FDM 26-30-5 History/Architecture

November 17, 2010

These qualifications are for consultant historians who are IDENTIFYING ([FDM 26-5-4](#)) or EVALUATING ([FDM 26-5-5](#)) potentially historic houses, buildings, bridges, or other structures. They apply to ALL projects subject to Section 106 of the National Historic Preservation Act. Project managers must take care to verify the qualifications of consultant historians.

5.1 Required Education and Training

The following requirements must be met:

- A graduate or professional degree in historic preservation, architectural history, historic architecture, or related field, OR a bachelor's degree in historic preservation, architectural history, historic architecture, or related field, with an emphasis in U.S. History AND two years of full-time experience. A related field might be "public history, with a focus on architecture in the United States." Anthropology and archeology are not considered "related fields" for the purposes of this qualification.
- Completion of an introductory course in the provisions of Section 106 such as offered by the ACHP, National Preservation Institute (NPI), or other recognized agency.

5.2 Required Experience

Preparation of Section 106 documents for architectural/historical resources, such as Reconnaissance Surveys, Determinations of Eligibility, or nominations to the National Register of Historic Places is required.

5.3 Desirable Education/Training

The following is desirable:

- An advanced course in preparing agreement documents under Section 106.
- Annual FHWA/SHPO/WisDOT workshop for consultant historians
- Training in Tribal Consultation and Tribal Sensitivity Training if working on federal lands or Tribally owned lands in trust, reservation, or allotted status, or ancestral lands.

5.4 Desirable Experience/Knowledge

- Preparation of effect and mitigation documents, including: Finding of No Adverse Effect; Documentation for Consultation; Memorandum of Agreement; 4(f) Evaluation
- Understanding of the design and construction procedures for WisDOT projects.
- Use of databases, such as the Wisconsin Historic Preservation Database (WHPD), also referred to as the Architectural History Inventory (AHI)
- Use of regional or statewide resource evaluation studies, such as Cultural Resource Management in Wisconsin
- Experience in working with Tribes on federal lands or Tribally owned lands in trust, reservation, or allotted status, or ancestral lands
- Experience in conducting oral interviews to obtain and document historic features, sites, and characters

5.5 Other Skills

Is it also desirable for the consultant historian to have superior oral and written communication skills.

For more information, contact the WisDOT staff historian at the Bureau of Technical Services, (608) 266-0369.

5.6 Job Titles

5.6.1 Professional in Architectural History

The following requirements are those used by the National Park Service and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The minimum professional qualifications in architectural

history are a graduate degree in architectural history, historic preservation, or a closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation, or a closely related field plus one of the following:

- At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization, or other professional institution; or
- Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

5.6.2 Professional in Historic Architecture

The following requirements are those used by the National Park Service and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

- At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or a closely related field; or
- At least one year of full-time professional experience on historic preservation projects.
- Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

5.6.3 Qualified Consultant Historian

Performs identification, documentation, and evaluation of historic resources; applies National Register of Historic Places criteria to determine the significance and integrity of historic resources; prepares survey reports, performs historical research. Consultants must meet the requirements of a professional in History, Architectural History, and/or Historic Architecture used by the National Park Service and previously published in the code of Federal Regulations, 36 CFR Part 61.

5.6.4 Professional in History

The following requirements are those used by the National Park Service and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The minimum professional qualifications in history are a graduate degree in history or a closely related field; or a bachelor's degree in history or a closely related field plus one of the following:

- At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
- Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

FDM 26-30-10 Anthropology/Archaeology

November 17, 2010

Consultants in anthropology and archaeology must meet the Professional Qualification Standards in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (http://www.nps.gov/history/local-law/Prof_Qual_83.htm).

10.1 Required Education and Training

The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or a closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management;
2. At least four months of supervised field and analytical experience in general North American archeology; and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the historic period.

In addition to these qualifications, an archaeologist excavating human burial sites shall have received prior approval from the Director of the Wisconsin Historical Society as required by Wis. Stats. § 157.70(1) (i) and HS 2.04(6).

10.2 Required Experience

The following experience is required:

- Familiarity with Section 106, ARPA, and other laws, regulations, policies, and guidelines related to historic preservation
- Preparation of Section 106 documents for archaeological/historical resources, such as Reconnaissance Surveys, Determinations of Eligibility/National Register of Historic Places nominations form
- Familiarity with the Wisconsin Archeological Survey's *Guidelines for Public Archeology in Wisconsin*

10.3 Desirable Education/Training

Training in Tribal Consultation and Tribal Sensitivity Training if working on federal lands or Tribally owned lands in trust, reservation, or allotted status, or ancestral lands is desirable.

10.4 Desirable Experience/Knowledge

The following experience/knowledge is desirable:

- Preparation of effect-related and mitigation documents, including: Finding of No Adverse Effect; Documentation for Consultation; Memorandum of Agreement; 4(f) Evaluation
- Understanding of the design and construction procedures for WisDOT projects.
- Use of databases, such as the Wisconsin Historic Preservation Database (WHPD), also referred to as the Archaeological Sites Inventory (ASI)
- Use of regional or statewide resource evaluation studies, such as *Cultural Resource Management in Wisconsin*
- Experience in working with Tribes on federal lands or Tribally owned lands in trust, reservation, or allotted status, or ancestral lands
- Experience in conducting oral interviews to obtain and document historic sites, and characters

Note: Conducting oral history interviews may require specialized/formal training.

FDM 26-30-15 Tribal Experts

February 18, 2020

15.1 The Roles of Indian Tribes in the Section 106 Process

Section 106 requires that historic properties of significance to Indian Tribes be given full consideration in the federal planning process. The Section 106 regulations require agencies, when identifying historic properties, to seek information from Indian Tribes on those properties that have religious and cultural significance to them and to consult with Indian Tribes throughout the Section 106 Process regarding historic properties (eligible or potentially eligible) both on their tribal reservation lands and on their ancestral lands regardless of current ownership status. During such consultations, the Indian Tribe may discharge two different but closely related and essential functions that of tribal expert, and that of a consulting party.

WisDOT recognizes that Indian Tribes and traditional religious leaders have unique expertise regarding the places of traditional religious and cultural importance to the Tribes. Indian Tribes and traditional religious leaders are the best and most reliable, often the sole, source of information about such places. The knowledge and expertise of ethnographers, archaeologists, or other cultural professionals, in-depth literature reviews, etc., are no substitute for the direct expertise of the Tribe and the Tribe's traditional religious leaders.

15.2 Tribal Selection of Tribal Experts with Proper Qualifications

Tribal experts can only be retained through direct consultation with the Indian Tribe(s). Tribal experts may be traditional religious leaders, elders, storytellers, language experts, Tribal curators, Tribal museum staff, THPOs, general cultural resource experts, Native American Graves Protection and Repatriation Act (NAGPRA) representatives, ground-penetrating radar (GPR) experts, Tribal archaeologists, Tribal ethnographers, etc.

The THPO or Designated Tribal Representative will be responsible for identifying the Tribal expert(s) and providing WisDOT with the Tribal expert's name and contact information.

15.3 Tribal Expert Services May Include but Are Not Limited to the Following

WisDOT may seek the assistance of a Tribal expert to assist with identification of historic properties through oral tradition, ceremonial knowledge, on-site assessments, and field survey. Assistance may also include evaluation and authentication of historic properties. During mitigation it may be necessary to provide an on-site Tribal monitor to ensure appropriate care and treatment of cultural materials that may be impacted during construction.

(Refer to FDM 26-20 regarding compensable services)

15.4 Ethnographers

Refer to Appendix II, Professional Qualifications: Ethnography, Guidelines for Evaluating and Documenting Traditional Cultural Properties (formerly National Register Bulletin 38)

(<https://www.nps.gov/subjects/nationalregister/upload/NRB38-Completenessweb.pdf>).

Basic qualifications include but are not limited to:

1. Language skills: It is customarily important to talk in their own language with those who may ascribe value to traditional cultural properties. While ethnographic fieldwork can be done through interpreters, ability in the local language is always preferable.
2. Interview skills, for example:
 - ability to approach a potential informant in his or her own cultural environment, explain and if necessary defend one's research, conduct an interview and minimize disruption, elicit required information, and disengage from the interview in an appropriate manner so that further interviews are welcome
 - ability to create and conduct those types of interviews that are appropriate to the study being carried out, ensuring that the questions asked are meaningful to those being interviewed, and that answers are correctly understood through the use of such techniques as translating and back-translating. Types of interviews normally carried out by ethnographers, one or more of which may be appropriate during evaluation and documentation of a traditional cultural property, include:
 - semi-structured interview on a broad and/or narrow topic
 - structured interview on a well-defined specific topic; open ended life history/life cycle interview
 - genealogical interview
3. Skill in making and accurately recording direct observations of human behavior, typically including:
 - ability to observe and record individual and group behavior in such a way as to discern meaningful patterns
 - ability to observe and record the physical environment in which behavior takes place, via photography, mapmaking, and written description
4. Skill in recording, coding, and retrieving pertinent data derived from analysis of textural materials, archives, direct observation, and interviews. Proficiency in such skills is usually obtained through graduate and post-graduate training and supervised experience in cultural anthropology and related disciplines, such as folklore/folk life.



FDM 26-35-1 General

November 17, 2010

This procedure summarizes other laws and regulations that relate to historic properties and Tribal consultation. Its purpose is to:

- alert project managers of other responsibilities
- identify where and how these other laws relate to Section 106

The project manager is responsible for determining whether project activities warrant consideration of other additional laws and regulations.

The following table lists applicable laws and regulations that are included in this procedure. Each entry in the table is hyperlinked to the appropriate description.

Federal Laws, Executive Orders, and Regulations:			Link:
Sec. 106 (36 C.F.R. 800)		Section 106 of NHPA	FDM 26-35-5.1.1
16 U.S.C. 470 et seq.	NHPA	National Historic Preservation Act of 1966, as amended	FDM 26-35-5.1.2
Sec. 4(f) (49 U.S.C. 303)		Section 4(f) of the DOT Act	FDM 26-35-5.1.3
42 U.S.C. 1996 & 1996a	AIRFA	American Indian Religious Freedom Act	FDM 26-35-5.1.4
42 U.S.C. 2000bb	RFRA	Religious Freedom Restoration Act	FDM 26-35-5.1.5
E.O. 13007		Executive Order 13007 of 1996, Indian Sacred Sites	FDM 26-35-5.1.6
25 U.S.C. 3001 et seq.	NAGPRA	Native American Graves Protection and Repatriation Act	FDM 26-35-5.1.7
43 C.F.R. 10		NAGPRA Final Regulations (1995) and Final Rule (2007)	FDM 26-35-5.1.8
16 U.S.C. 470aa-mm	ARPA	Archaeological Resources Protection Act of 1979	FDM 26-35-5.1.9
16 U.S.C. 461-467	HSA	Historic Sites Act of 1935, as amended	FDM 26-35-1
42 U.S.C. 4321-47	NEPA	National Environmental Policy Act of 1979, as amended	FDM 26-35-5.1.9
16 U.S.C. 469	AHPA	Archaeological and Historic Preservation Act of 1974, as amended	FDM 26-35-5.1.10
36 C.F.R. 79		Curation of Federally-Owned and Administered Archaeological Collections	FDM 26-35-5.1.11
25 U.S.C. 450	ISDEA	Indian Self-Determination and Education Act of 1975, as amended	FDM 26-35-5.1.12
E.O. 11593		Executive Order 11593 of 1971, Protection and Enhancement of the Cultural Environment	FDM 26-35-5.1.13
E.O. 12898		Executive Order 12898 of 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	FDM 26-35-5.1.14
E.O. 13084		Executive Order 13084 of 1998, Consultation and Coordination with Indian Tribal Governments (superceded by Executive Order 13175)	FDM 26-35-5.2.1
E.O. 13175		Executive Order 13175 of 2000, Consultation with Indian Tribal Governments	FDM 26-35-5.2.2
Executive Memorandum, 2004		Government-to-Government Relationship with Native American Tribal Governments	FDM 26-35-5.2.3
State Statutes and Executive Orders			
Section 157.70		Burial Sites Preservation Law	FDM 26-35-10.1
Section 44.40		Historic Preservation Law	FDM 26-35-10.2
Executive Order 39		Executive Order 39 (Government-to-Government Relationships Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin)	FDM 26-35-10.3
Additional WisDOT Policies and Agreements			
		WisDOT Tribal Partnership Agreement, 2005	FDM 26-35-20.1

FDM 26-35-5 Federal Laws, Executive Orders, and Regulations

February 18, 2020

5.1 Related to Historic Properties and Historic Preservation

The National Park Service offers an online list of laws, regulations, standards, guidelines, and executive orders (<http://www.nps.gov/history/laws.htm>) and publishes a book entitled *Federal Historic Preservation Laws, The Official Compilation of U.S. Cultural Heritage Statutes* (2006 ed.) (https://www.nps.gov/parkhistory/online_books/fhpl/)

5.1.1 Section 106

Section 106 [36 C.F.R. 800]

(<https://www.achp.gov/digital-library-section-106-landing/section-106-regulations>)

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. The Section 106 Process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

The Section 106 requirements apply to all WisDOT-administered projects unless the region, in consultation with the WisDOT HPO, has made an informed decision not to apply for federal reimbursement. The Section 106 requirements apply to all WisDOT-administered projects when:

1. WisDOT has determined that the project is a federal undertaking; and
2. The project has the potential to effect historic properties eligible or potentially eligible for the NRHP.
3. Even if the project does not involve federal reimbursement, Section 106 may still apply if a federal permit—such as a Federal Army Corps of Engineers Section 404 permit—or license is needed.

Special permits are required to undertake the Section 106 Process on Indian lands (for example, see Archaeological Resources Protection Act, below), and Tribal laws pertaining to Section 106 must be followed on Tribal lands. Larger projects, such as corridor studies and capacity expansion projects, must be coordinated with the SHPO, THPO(s), BTS Cultural Resource Team, Tribal governments, and the FHWA during the earliest initial project design planning stage.

5.1.2 National Historic Preservation Act

National Historic Preservation Act [16 U.S.C. 470 et seq.] (sections other than 106)

(<https://www.nps.gov/history/local-law/nhpa1966.htm>)

Section 101(d)2 establishes the process by which a Tribe may assume all or any part of the function of the SHPO, thus forming a federally recognized THPO office.

Section 110(f) provides special protection to National Historic Landmarks (NHLs). It states that prior to the approval of any federal undertaking which may directly and adversely affect any NHL, the head of the responsible federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the ACHP a reasonable opportunity to comment on the undertaking. Any project manager who is involved with or foresees involvement with an NHL should contact BTS Cultural Resource Team immediately.

Section 110(k) focuses on "anticipatory demolition," the intentional alteration or destruction of an eligible property to avoid compliance with Section 106. In short, intentional deceit to avoid Section 106 is a violation of the law and will jeopardize federal assistance and/or permits.

5.1.3 Section 4(f) of the DOT Act

Section 4(f) of the DOT Act (49 U.S.C. 303)

(https://www.environment.fhwa.dot.gov/env_topics/4f_tutorial/overview.aspx?h=e)

Section 4(f) says that historic properties (and ascertain other resources) cannot be used for a project under the jurisdiction of the Secretary of Transportation unless no prudent and feasible alternative exists and all possible planning is carried out to minimize harm to the property. The provisions of Section 4(f) that relate directly to historic properties are as follows:

1. applicability is based on the criteria of the National Register of Historic Places (NRHP);
2. special considerations apply to archaeological sites;
3. identification and evaluation of potentially eligible properties relies on Section 106 requirements; and
4. the prudent and feasible test may constrain Section 106's consultation step.

5.1.4 American Indian Religious Freedom Act

American Indian Religious Freedom Act (AIRFA) [42 U.S.C. 1996 and 1996a]

(<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section1996&num=0&edition=prelim>)

This act sets forth as U.S. policy the protection and preservation of American Indians' inherent right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights. Project managers should work with BTS Cultural Resource Team to ensure that undertakings do not impact these rights.

5.1.5 Religious Freedom Restoration Act

Religious Freedom Restoration Act (RFRA) [42 U.S.C. 2000bb]

([https://uscode.house.gov/view.xhtml?req=\(title:42%20section:2000bb%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:2000bb%20edition:prelim)))

RFRA establishes certain tests that must be met before an agency can "substantially burden a person's exercise of religion." This law applies to *everyone's* practice of religion, not just Native Americans. Project managers should work with BTS Cultural Resource Team to ensure that the concerns of religious groups are addressed during project development.

5.1.6 Executive Order 13007 of 1996, Indian Sacred Sites

Executive Order 13007 of 1996, Indian Sacred Sites

(<https://www.nps.gov/history/local-law/eo13007.htm>)

This executive order applies on federal land and directs federal agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, as well as to avoid adversely affecting the physical integrity of such sacred sites. Although federal agencies must consult with Tribes to learn the existence of places that require management decisions to be made, the directive requires agencies to maintain the confidentiality¹ of sacred sites where appropriate for their protection.

5.1.7 Native American Graves Protection and Repatriation Act with Final Regulations

Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001 et seq.] with Final Regulations [43 C.F.R. 10, 1995] and Final Rule [43 C.F.R. 10, 2007]

NAGPRA: <https://www.nps.gov/subjects/nagpra/regulations.htm>

NAGPRA applies to the protection of human remains, funerary objects, sacred objects, and objects of cultural patrimony located on land owned by the Federal government or tribal lands. Only projects on such land will involve this law.

Project managers should contact BTS Cultural Resource Team for assistance.

5.1.8 Archaeological Resources Protection Act of 1979

Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470aa-mm]

(<https://www.nps.gov/archeology/tools/laws/ARPA.htm>)

This law protects archaeological resources on land owned by the federal government or tribal lands. ARPA requires that a permit be issued to anyone conducting archaeological activities that involve ground disturbance or removal of cultural material from federal or Tribal land. The archaeological consultant is responsible for obtaining this permit which is issued by the federal agency with land management responsibilities in cooperation with the Tribe. Project managers should contact BTS Cultural Resource Team for assistance.

5.1.9 National Environmental Policy Act of 1969, as Amended [NEPA; 42 U.S.C. 4321-4347]

(<https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>)

A federal agency must consider the effects of its actions on the environment "to preserve important historic, cultural, and natural aspects of our national heritage." The "cultural environment" includes historic properties and other culturally valued places, as well as sociocultural attributes (such as social institutions, lifeways, religious practices).

5.1.10 Archaeological and Historic Preservation Act of 1974, as Amended [AHPA; 16 U.S.C. 469]

(<https://www.nps.gov/archeology/tools/laws/AHPA.htm>)

This act provides protection of archaeological, historical, and scientific data threatened by federal, federally assisted, and federally licensed projects. It requires that agencies report to the Secretary of the Interior whenever their actions may damage or destroy archaeological data and take actions in concert with the

¹ Refer to Confidentiality, FDM 26-1 Attachment 1.1 (Glossary).

Secretary to preserve such data.

5.1.11 Curation of Federally-Owned and Administered Archaeological Collections [36 C.F.R. 79]

(<http://www.nps.gov/archeology/tools/36cfr79.htm>)

These regulations, issued by the Department of the Interior and National Park Service, govern the perpetual curation of archaeological materials, data and associated records owned or administered by federal agencies.

5.1.12 Indian Self-Determination and Education Assistance Act of 1975, as Amended (ISDEA) [25 U.S.C. 450]

([https://uscode.house.gov/view.xhtml?req=\(title:25%20section:5301%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title25-section5301\)&f=treesort&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=(title:25%20section:5301%20edition:prelim)%20OR%20(granuleid:USC-prelim-title25-section5301)&f=treesort&num=0&edition=prelim))

This act deals with implementation of the trust responsibility and provides for Tribes to assume the functions of the BIA, Indian Health Service, and some other agencies in the conduct of programs. Under this act, Tribes sometimes take over agency responsibilities in implementing NHPA.

5.1.13 Executive Order 11593 of 1971 (Protection and Enhancement of the Cultural Environment)

(<https://www.archives.gov/federal-register/codification/executive-order/11593.html>)

(<https://www.nps.gov/fpi/Documents/EO%2011593%20FFF%20Final.pdf>)

This executive order was issued by President Nixon to provide direction to Federal agencies in the management of historic properties. Most of its provisions have been absorbed into NHPA.

5.1.14 Executive Order 12898 of 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

(<http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>)

This executive order was issued by President Clinton to ensure that Federal agencies attempt to avoid disproportionately high adverse human health and environmental impacts. Minority and low-income populations are targeted.

5.2 Additional Orders Related to Consultation

The following additional orders focus on consultation with Indian governments. Please note that this is not a complete listing of all federal laws and regulations pertaining to Tribal consultation

5.2.1 Executive Order 13084 of 1998, Consultation and Coordination with Indian Tribal Governments

(superseded by Executive Order 13175, see below)

5.2.2 Executive Order 13175 of 2000, Consultation with Indian Tribal Governments

(http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr09no00-167.pdf)

This order was enacted to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the U.S. government-to-government relationships with Indian tribes, and reduce the imposition of unfunded mandates upon Indian tribes. Among other provisions, it directs agencies to adhere to certain criteria when formulating and implementing policies that have tribal implications, and to have an accountable consultation process.

5.2.3 Executive Memorandum, 2004, Government-to-Government Relationship with Native American Tribal Governments

(http://www.usdoj.gov/archive/otj/Presidential_Statements/presdoc1.htm)

This memorandum recognizes the unique legal and political relationship of Tribes and reaffirms that each executive department and agency fully respect the rights of self-government and self-determination in their working relationships with federally recognized Tribal governments.

FDM 26-35-10 State Statutes and Executive Orders

February 18, 2020

10.1 Burial Sites Preservation Law

(<https://www.wisconsinhistory.org/Records/Article/CS15239>)

Section 157.70 of the Wisconsin Statutes provides for the protection of all burial sites in Wisconsin. No one may disturb a human burial site without authorization from the Director of the Wisconsin Historical Society. If human bones or bones suspected to be human are discovered, work must stop immediately, and the Wisconsin Historical Society and BTS Cultural Resource Team must be notified:

- Wisconsin Historical Society, (608) 264-6507 or (800) 342-7834
- BTS Cultural Resource Team, (608) 261-0137 or 266-0099

A recommendation will be made regarding the continuation of work. Purchase of land from a cemetery must be

coordinated with BTS Cultural Resource Team.

10.2 Historic Preservation Program

(<https://docs.legis.wisconsin.gov/statutes/statutes/44/II/40>)

Section 44.40 of the Wisconsin Statutes provides guidance to state agencies conducting state-funded projects. Projects being developed under Section 106 are exempt from Section 44.40. Project managers wishing to proceed under Section 44.40 must first contact BTS Cultural Resource Team.

10.3 Executive Order 39

(https://docs.legis.wisconsin.gov/code/executive_orders/2003_jim_doyle/2004-39.pdf)

Issued by Governor Jim Doyle to affirm “the Government-to-Government Relationships Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin,” this executive order directs state agencies to consult with Tribal governments before taking actions that might affect them and to consider Tribal needs and interests.

FDM 26-35-15 Tribal Laws

November 17, 2010

These laws vary from Tribal Nation to Tribal Nation. It is critical that the project manager research the applicable laws when carrying out undertakings within an Indian Reservation and on Tribal lands.

There are also a variety of tribal laws pertaining specifically to cultural resources and archaeological studies. Each Tribe may have a list of these laws that can be accessed through the Tribe before determining the scope of work.

FDM 26-35-20 Treaty Rights

February 18, 2020

FHWA and WisDOT must take into account their activity’s impact on the ability of Tribal nations and their members to carry out their treaty rights. Currently, the State of Wisconsin has eleven federally recognized tribes residing within its boundaries.

- List of treaties by name of Tribe
(<https://dc.library.okstate.edu/digital/collection/kapplers/id/26940/rec/2>)
- Bad River Band of Lake Superior Tribe of Chippewa Indians
- Forest County Potawatomi Community
- Ho-Chunk Nation
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- Lac Du Flambeau Band of Lake Superior Chippewa Indians
- Menominee Indian Tribe of Wisconsin
- Oneida Tribe of Indians of Wisconsin
- Red Cliff Band of Lake Superior Chippewa Indians
- Sokaogon Chippewa Community
- St. Croix Chippewa Community
- Stockbridge-Munsee Band of Mohican Indians

20.1 WisDOT Tribal Partnership Agreement, 2019

(<https://wisconsindot.gov/Documents/doing-bus/civil-rights/tribalaffairs/pa.pdf>)

This document, created as a result of Executive Order 39 (above), creates and defines the processes by which WisDOT and FHWA will work in collaboration with Wisconsin’s 11 sovereign Indian Nations. It is designed to acknowledge and support the government-to-government relationship between Tribes and state and federal agencies and to support American Indian sovereignty. It outlines guiding principles, protocols, and processes of effectively working with Tribal governments in all areas, including cultural resources.