

NCDOT'S 2020 SECTION 106 PROGRAMMATIC AGREEMENT IMPLEMENTATION MANUAL

The intent of this manual is to guide the user through an efficient and effective Section 106 historic property consultation process for NCDOT projects.

This manual establishes the day-to-day NCDOT procedures used to maintain compliance with Section 106 of the [National Historic Preservation Act \(NHPA\)](#) of 1966, as amended (as well as other state and federal historic preservation requirements), in accordance with the requirements of the following parties:

***Federal Highway Administration (North Carolina Division),
United States Army Corps of Engineers, Wilmington District,
North Carolina Department of Transportation,
North Carolina Historic Preservation Office,
North Carolina Office of State Archaeology, and
Advisory Council on Historic Preservation***

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Abbreviations

<u>ACHP</u>	<u>Advisory Council on Historic Preservation</u>
<u>APE</u>	<u>Area of Potential Effects</u>
<u>CE</u>	<u>Categorical Exclusion</u>
<u>COA</u>	<u>Certificate of Appropriateness</u>
<u>CRS</u>	<u>Cultural Resources Specialist (NCDOT)</u>
<u>DE</u>	<u>Determined Eligible</u>
<u>DES</u>	<u>Division Environmental Staff (NCDOT)</u>
DNCR	North Carolina Department of Natural and Cultural Resources
<u>DOE</u>	<u>Determination of Eligibility</u>
<u>EA</u>	<u>Environmental Assessment</u>
EAU	Environmental Analysis Unit (NCDOT)
EBCI	Eastern Band of the Cherokee Indians
<u>EIS</u>	<u>Environmental Impact Statement</u>
FHWA	Federal Highway Administration
<u>HPO</u>	<u>North Carolina State Historic Preservation Office</u>
<u>LD</u>	<u>Locally Designated</u>
<u>MOA</u>	<u>Memorandum of Agreement</u>
MOU	Memorandum of Understanding
NCDOT	North Carolina Department of Transportation
NEPA	National Environmental Policy Act
<u>NHPA</u>	<u>National Historic Preservation Act</u>
NPS	National Park Service
<u>NRHP</u>	<u>National Register of Historic Places</u>
NR	National Register
<u>OSA</u>	<u>North Carolina Office of State Archaeology</u>
OSARC	Office of State Archaeology Research Center
<u>PM</u>	<u>Project Manager (NCDOT)</u>
<u>PE</u>	<u>Project Engineer (NCDOT)</u>
<u>PA</u>	<u>Programmatic Agreement</u>
SEPA	North Carolina (State) Environmental Policy Act
<u>SL</u>	<u>State Study List</u>
<u>SHPO</u>	<u>State Historic Preservation Officer</u>
<u>SS</u>	<u>Surveyed Site</u>
USACE	United States Army Corps of Engineers
USFS	United States Forest Service

1 Overview of the Programmatic Agreement

1.1 Summary of PA and Manual

Under a [Programmatic Agreement \(PA\), effective December 21, 2020](#), portions of the decision-making authority for transportation program [historic property](#) reviews has been transferred from the Federal Highway Administration's North Carolina Division (FHWA), U.S. Army Corps of Engineers' Wilmington District (USACE), and [North Carolina Historic Preservation Office \(HPO\)](#) to the North Carolina Department of Transportation (NCDOT) Cultural Resources Group, specifically the Archaeology Team and the Historic Architecture & Landscapes Team in the Environmental Analysis Unit (EAU).

This manual:

- explains the **basis for NCDOT's internal reviews** under the 2020 PA;
- **identifies [undertakings](#)** to be submitted for internal review, those [exempt](#) from further review, and those [excluded](#) from the PA;
- outlines [procedures for submitting](#) directly to NCDOT Archaeology and Historic Architecture & Landscapes teams in lieu of HPO;
- provides an **overview of the forms** to be used to process undertakings; and
- outlines the [roles and responsibilities](#) of NCDOT staff and the PA signatories.

A federal nexus is the "trigger" for NCDOT to meet a federal standard for a permit or approval from one of the federal partners. Common examples of a federal nexus are when FHWA provides federal-aid for a project, for which NCDOT prepares documentation under the National Environmental Policy Act (NEPA), or a permit from the USACE (including non-notification Nationwide permits), for which NCDOT prepares documentation under the State Environmental Policy Act (SEPA). The parties executed the PA to define NCDOT's internal 106 review processes for most undertakings with a federal nexus. Specifically, the PA stipulates the expanded responsibilities of NCDOT's Cultural Resources Group in evaluating and assessing [effects](#) on historic properties for transportation undertakings. **This Manual does not pertain to Federal Railroad Administration, Federal Transit Administration, Federal Aviation Administration, or Locally-Administered Program undertakings. This manual also does not apply to state funded transportation projects without a federal nexus.**

The processes outlined in this Manual apply to all NCDOT transportation undertakings with a federal nexus (unless specifically excluded herein) regardless of their NEPA/SEPA classification of action. Therefore, the PA may be utilized for [projects](#) that qualify as a NEPA [Categorical Exclusion \(CE\)](#), [Environmental Assessment \(EA\)](#), [Environmental Impact Statement \(EIS\)](#) or the SEPA equivalent. At the opposite end of the spectrum, the PA specifies activities that are exempted from cultural resources reviews ([see Appendix A for "Exempt Activities Under Section 106 "](#)).

The PA establishes the process by which FHWA will meet its responsibilities under Section 106 (of the [National Historic Preservation Act of 1966](#)) and the USACE will meet its responsibilities under Section 106 per the 33 CFR 325 (Appendix C and interim guidance of 25 April 2005 and 31 January 2007 – hereafter referred to as “Appendix C”) with the assistance of NCDOT, for all federally funded and/or authorized transportation undertakings administered directly by NCDOT in North Carolina.

Undertakings are considered 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\(y\)](#)].

The PA establishes the basis for NCDOT’s internal review of transportation undertakings and defines how the parties will be involved in these reviews.

1.2 Parties to the PA and their Roles

The signatories to the PA are:

- FHWA
- USACE
- NCDOT
- [SHPO](#)
- [Advisory Council on Historic Preservation \(ACHP\)](#)

The United States Forest Service (USFS) is a [concurring party](#), but is not a signatory to the PA.

1.2.1 FHWA as [Lead Federal Agency](#)

FHWA administers the [Federal-Aid Highway Program \(FAHP\)](#) in North Carolina through NCDOT. The Division Administrator of the FHWA North Carolina Division Office is the agency official responsible for Section 106 compliance for the FAHP. For transportation [undertakings](#) NCDOT considers eligible for the FAHP, NCDOT will prepare NEPA documentation (i.e., [CE](#), [EA](#), or [EIS](#)) and FHWA will serve as the *lead federal agency* under both Section 106 and NEPA. For FAHP undertakings that require USACE permits, the USACE designates FHWA as the lead federal agency for Section 106 purposes.

1.2.2 USACE as [Lead Federal Agency](#)

For state-funded transportation [undertakings](#) that NCDOT does not consider eligible for [FAHP](#) but will require authorization by a USACE Permit (Section 404/10 waters), USACE generally serves as the lead federal agency under both Section 106 and NEPA and will utilize the PA in support of its permit action. If a state-funded undertaking requires a USACE permit but USACE is not the lead federal agency, the PA may be used to satisfy USACE’s Section 106 compliance responsibilities.

Federal agencies that recognize FHWA or USACE as the lead federal agency for an undertaking may fulfill its obligations under Section 106 of [NHPA](#) according to 36 CFR 800.2(a)(2), provided that FHWA, USACE, and NCDOT follow the requirements of the PA and the agency's undertaking does not have the potential to cause [effects](#) to historic properties beyond those considered by FHWA, USACE, and NCDOT.

1.2.3 *Projects with No Federal Involvement*

[Projects](#) with no federal involvement include state-funded transportation [undertakings](#) that are not considered eligible for [FAHP](#), or that have no NEPA document, no federal permits, no involvement of federal property, and no federal actions; these projects must comply with [NCGS 121-12\(a\)](#) if they affect properties listed on the [National Register of Historic Places](#), including [consultation](#) with the [HPO](#) as staff of the North Carolina Historical Commission. Compliance with NCGS 121-12(a) is provided under separate policy.

Both federal and state-funded transportation [undertakings](#) must comply with NCGS 160A-400 if they affect properties or districts that are under the jurisdiction of a local historic preservation commission. In some cases, a [Certificate of Appropriateness \(COA\)](#) from the local commission will be required.

2 Procedures

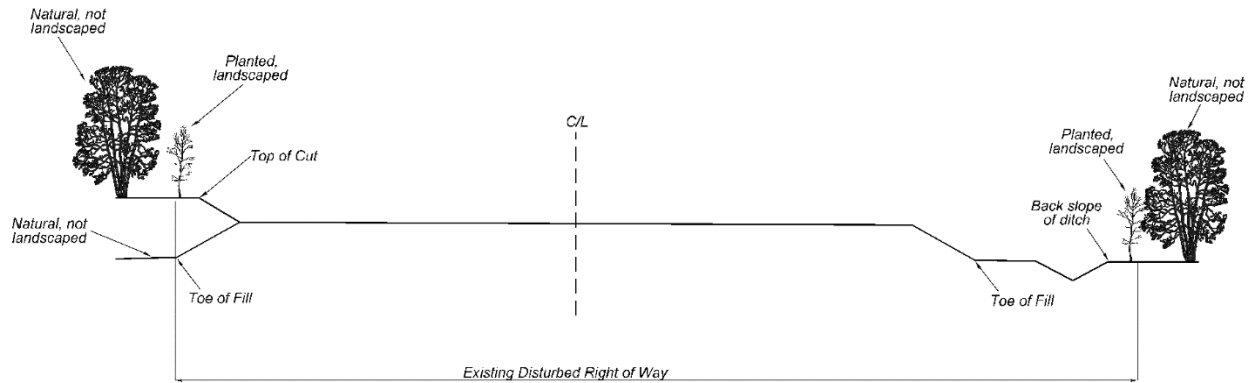
2.1 Included in the [PA](#)

[Projects](#) included under this PA are transportation [undertakings](#) administered directly by NCDOT with federal financial assistance (through the [FAHP](#) in part or whole) or those requiring a federal permit, license, or approval.

2.2 Exempted under the [PA](#)

Exempted from the PA are certain transportation [undertakings](#) that meet the conditions specified in [Appendix A of the PA](#) which constitute activities that pose little potential to affect historic properties and therefore are exempt from further Section 106 review. Per Stipulation IV of the PA, the [NCDOT PM, PE](#) or [DES](#) shall review the list of conditions and activities and use their knowledge and best judgement to complete the 106 PA Checklist for the undertaking or a batch of similar undertakings. The 106 PA Checklist shall be placed in the project file and included within all Permit Applications.

Condition 2 of Appendix A restricts activities to [existing disturbed ROW](#) and/or permanent easements. The figure below should be consulted to help determine if the activity is within existing disturbed ROW and/or permanent easement. If an activity is not listed in Appendix A or there are questions regarding the activities, the Cultural Resources Group within the Environmental Analysis Unit or the [lead federal agency](#) should be contacted prior to submitting the project for further historic preservation review.



Any undertaking involving [tribal lands](#) as defined in [36 CFR 800.16\(x\)](#) shall not be solely governed by this PA, but shall be reviewed by the lead federal agency and NCDOT in accordance with 36 CFR 800 and any applicable government-to-government agreement(s).

2.3 Excluded from the PA

Undertakings excluded from the PA, include FHWA Locally Administered Project undertakings, Federal Railroad Administration undertakings, Federal Aviation Administration undertakings, or Federal Transit Administration undertakings. Please contact the appropriate NCDOT Unit or Division to determine their Section 106 process.

3 Cultural Resources Group Review Process

3.1 Submittal Guidelines

Per the stipulations of the PA, Cultural Resources Reviews will be administered internally by NCDOT's Archaeology and Historic Architecture & Landscapes Teams. Requests for reviews of transportation [undertakings](#) should be submitted directly to EAU; submission to [HPO](#) is not required. Submissions are made by the NCDOT PM, the DEO/DES, or their designee. All requests must provide contact information for the NCDOT PM.

In addition, the [Tribal Protocol](#) will be initiated by the NCDOT PM for background information on unknown tribal resources for any undertaking that is not exempted under PA in accordance with Section 2.2 of the Manual and Appendix A of the PA.

3.2 Request for Cultural Resources Review in NCDOT's Environmental Tracking and Coordination System (ETRACS)

An [ETRACS](#) request must be submitted for each transportation [undertaking](#) that requires a review. Separate requests are required for archaeology and historic architecture. There are several request types available, but at a minimum, the following information should be included:

- [NCDOT PM](#)

- TIP and/or WBS project number
- County
- Funding source
- Document type
- [Lead Federal agency](#) designation
- [Project](#) description
- Design information and plans
- Permit requirements
- SharePoint site information
- Maps or aerial photography
- Project location map
- Study area/alternatives shapefiles
- [HPO](#) and/or Tribal project correspondence
- Proposed ROW and all easement limits
- Project schedule

At any time, if an undertaking changes in lead federal agency designation, scope, funding, [APE](#), design changes that are within or adjacent to a [historic property](#) or district, or changes to the design that impact project commitments, the [NCDOT PM, PE](#) or [DES](#) will need to consult with the Archaeology and Historic Architecture Team Leads to determine the need to resubmit the project via ETRACS for review. If a resubmittal is warranted, the NCDOT CR Specialist(s) shall re-assess the previous findings issued by their respective specialties to determine if the findings remain valid or if additional surveys or [effects](#) assessments are required for either discipline within 30-calendar days.

3.3 Initiate Cultural Resources Review

Upon receipt, requests for cultural resources review will be processed and logged in by EAU and assigned to a [Cultural Resource Specialist \(CRS\)](#) in each CR Team. Once assigned and accepted by the CRS, they will work within a standard 30- calendar day timeframe to define the [undertaking](#), establish the initial [Areas of Potential Effects \(APEs\)](#), and conduct background research to determine the need for a survey. **The standard 30- calendar day timeframe determines the need for a survey only.**

3.4 Determine the [Area of Potential Effects](#)

The [CRS](#) will determine and document the discipline specific archaeological and architectural [APEs](#). The APE is defined as the “geographic area(s) within which the proposed [undertaking](#) may cause changes in the character or use of historic properties listed or eligible for listing in the [National Register of Historic Places](#)” ([36 CFR 800.2\(c\)](#)). Consideration will be given to the study area, [lead federal agency](#) designation, and any available preliminary [permit areas](#) to establish the APEs.

For undertakings, whether or not the USACE is the lead federal agency, the APE, as defined in 36 CFR 800.2(c), will be used throughout the entire PA process until a determination of [effects](#) must be made for a [project](#).

When the USACE is the lead federal agency and an effects determination needs to be made, the following will occur:

- (a) NCDOT will review/survey the entire APE for historic resources.
- (b) NCDOT will submit a delineation of waters of the U.S. for the project to the USACE.
- (c) USACE will verify the delineation.
- (d) NCDOT will provide USACE the location of all proposed permanent and temporary impacts to delineated waters. The anticipated impacts to waters of the U.S. and WET file must be depicted for the entire project in plan view.
- (e) If Historic resources are discovered, the NCDOT PM, PE, or DEO/DES will provide the location and boundaries of the historic resource(s) to the USACE representative so that a preliminary permit area(s) can be determined.
- (f) USACE will establish the preliminary permit area(s) in accordance with Appendix C of 36 CFR 325.
- (g) USACE, along with NCDOT and HPO/OSA, will make a determination(s) of effect based on the preliminary permit area(s).
- (h) It is understood that changes to the delineation of waters of the U.S. or the impact areas may result in a change to the boundaries of the preliminary permit area(s) and subsequent determination(s) of effect. Therefore, please notify the USACE and HPO of any project revisions as soon as possible so that earlier decisions can be confirmed or revised.

3.5 Identify the [Consulting Parties](#)

The [CRS](#), if appropriate, should identify and invite other parties, such as local governments or [historic property](#) owner(s), to participate in the [consultation](#) and will initiate consultation with appropriate tribal governments as detailed in the [Tribal Protocol](#). Identification and coordination with [consulting parties](#) continues throughout the Cultural Resources review process. If [tribal lands](#) are affected, contact the [lead federal agency](#) to determine if additional government-to-government agreements are applicable.

3.6 Conduct Background Research

The [CRS](#) will search the maps and files maintained by [HPO](#) and [OSA](#), and document any known prehistoric or historic resources in the [APEs](#). For standing structures, these include National Register (NR), [Determined Eligible \(DE\)](#), [State Study List \(SL\)](#), [Locally Designated \(LD\)](#) and [Surveyed Sites/Unassessed \(SO\)](#) resources. For archaeological sites, these include National Register (NR), [Determined Eligible \(DE\)](#), [Not Eligible \(NE\)](#) and [Unassessed \(U\)](#) resources.

3.7 Determine the Need for Field Surveys

Factors the [CRS](#) will consider when forming a survey recommendation include, but are not limited to:

- Any views provided by [consulting parties](#) or Tribes.
- If no known prehistoric or historic resources are identified based on the background research, assess the likelihood that unidentified prehistoric and/or historic resources exist in the [APE](#) and determine the need for a survey. If the available background information, such as [HPO](#) county surveys, [OSA](#) site files, Tribal input, soil surveys, topographic maps, historic maps, historic designation rosters, indexes, and county GIS systems, provides a reliable basis for reasonably predicting that there are no unidentified prehistoric or historic resources in the APE, issue a *No Survey Required* form for the undertaking.
- If designated [NR](#), [DE](#), and/or [LD](#) resources exist, consider conducting a field reconnaissance of the [APEs](#) to confirm existing prehistoric and/or historic property boundaries and photograph the resources in conjunction with the proposed transportation undertaking. If background research indicates that there is a potential for unidentified prehistoric and/or historic resources in the undertaking area, issue a *Survey Required* form for the discipline specific APE for the undertaking. Enough information should be gathered in the field to determine an appropriate methodology to complete the survey.
- If [SL](#) resources, previously recorded archaeological sites, and/or [SS](#) resources exist, consider conducting a field reconnaissance of the discipline specific [APE](#). If there is likelihood that properties within the APE may be [determined eligible](#), issue a *Survey Required* form for the discipline specific APE for the [project](#). Enough information should be gathered in the field to determine an appropriate methodology to complete the survey.
- If background research indicates there is a potential for [National Register of Historic Places \(NRHP\)](#) eligible resources to be present in the undertaking area, regardless what has been previously recorded in the [APE](#), issue a *Survey Required* form for the discipline-specific APE for the undertaking.

This section does reference issuing No Survey and Survey Required forms, please see the next section 3.8(PA Review Forms) for an overview of all the discipline specific forms.

3.8 PA Review Forms

[PA](#) review forms are discipline specific and are designated as follows:

- [Archaeology: No Survey Required](#)
- [Archaeology: Survey Required](#)
- [Archaeology: Effects Required](#)
- [Archaeology: No NRHP Archaeological Sites Present](#)
- [Archaeology: No NRHP Archaeological Sites Affected](#)

- [Archaeology: No Adverse Effects](#)
- [Archaeology: Adverse Effects](#)
- [Historic Architecture: No Survey Required](#)
- [Historic Architecture: Survey Required](#)
- [Historic Architecture: Effects Required](#)
- [Historic Architecture: No NRHP Properties Present](#)
- [Historic Architecture: No NRHP Historic Properties Affected](#)
- [Historic Architecture: Assessment of Effects](#)

It is important to note that the issuance of any of the PA review forms referenced above is not necessarily sequential. It is also important to understand that any one of the results, findings or recommendations represented by the forms can be revisited or changed throughout a project's duration. For example, a No Survey Required recommendation may be changed to a Survey Required recommendation as a result of an increase in the project study limits. A *No Archaeological Sites Present* form may be replaced with a *No Adverse Effects* form based on new site information not available at the time of the initial review. What follows in this section mirrors the sequence outlined in the Stipulations of the [2020 Section 106 PA](#) with regards to the PA review forms. Please read though the entire Section to understand how the forms are created both before and after surveys and [NRHP](#) evaluations are completed.

If an undertaking changes in scope, funding, or [APE](#), the [NCDOT PM, PE](#) or [DES](#) should consult with the [CRS](#) for archaeology and historic architecture to determine if the previous findings issued by their respective disciplines remain valid or if additional surveys will be required.

3.8.1 *No Survey Required*

The CRS for both Archaeology and Historic Architecture will issue a *No Survey Required* form for undertakings which meet the following conditions:

- a) have no known prehistoric or historic resources in the APE based on historic background research; or
- b) the available background research, including but not limited to [HPO](#) county surveys, [OSA](#) site files, Tribal input, soil surveys, topographic maps, historic maps, and historic designation rosters and indexes, provides a reliable basis for reasonably predicting that there are no unidentified prehistoric or historic resources in the APE.

The discipline specific *No Survey Required* form includes undertaking information, project numbers, permitting information, and a summary of cultural resources review. The CRS will provide a brief description of review activities, results of review, and conclusions. Also including a brief explanation of why the available information provides a reliable basis for reasonably predicting that there are no unidentified prehistoric or historic properties in the APE. Support documentation such as maps, previous survey

information, evidence of severe landform disturbance, photos, and correspondence may be included.

The CRS will complete the discipline specific *No Survey Required* form and provide copies to the PM, PE and/or DES for inclusion in the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to HPO/OSA.

3.8.2 *No Historic Properties Affected*

The CRS will issue a discipline specific *No Historic Properties Affected* form for projects which the available information (including information provided by other [consulting parties](#) and/or Indian Tribes) provides a reliable basis for reasonably predicting that the scope of the undertaking would not have the potential to cause [effects](#) on historic properties, assuming such historic properties were present. Additionally, the CRS will provide the NCDOT PM, PE, or DES with the location of any properties of concern should there be a change in the scope or design. **Issuing a *No Historic Properties Affected* determination at this point is generally reserved for previously surveyed APEs where NRHP determinations have been made and a *Survey Required* form is not needed. It should be noted that reviews by the Archaeology Team rarely result in a *No Historic Properties Affected* at this point of the PA process.**

A site visit by the CRS during the initial screening process could aid in the determination that no historic properties will be affected by the project. If a site visit is conducted, the CRS shall complete a discipline specific *No Historic Properties Affected* form based upon site observations, site relocation attempts, and field conditions.

The CRS will complete the discipline specific *No Historic Properties Affected* form and provide copies to the PM, PE and/or DES for inclusion in their the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to HPO.

3.8.3 *Survey Required*

Should no known prehistoric or historic resources be identified based on the background research, the CRS shall assess the likelihood that unidentified prehistoric or historic resources may exist in the APE and determine the need for a survey. Should sites be present that have not been assessed for listing in the NRHP, the CRS may determine a survey is necessary. Other factors that suggest that a survey is needed are:

- a) lack of up-to-date available background information;
- b) outdated resource agency mapping;
- c) [consultation](#) with Tribes, local historians, and local preservation representatives affirms a need for a survey;
- d) aerial images and/or USGS maps identify patterns of historic/prehistoric development, and therefore indicating a likelihood for the presence of prehistoric or historic resources; or

- e) predictable occurrences of archaeological resources, in nearby or similar environmental settings.

The discipline specific *Survey Required* form includes project information, project numbers, permitting information, and a summary of cultural resources review. The CRS will provide a brief description of review activities, results of their review, and conclusions. The CRS will include support documentation such as maps, previous survey information, evidence of severe landform disturbance, photos, and correspondence.

The CRS will complete the discipline specific *Survey Required* form, upload it to the project SharePoint site, and notify the NCDOT PM, PE, and/or DES for inclusion in the project file. An additional copy will be included in the annual report to HPO/OSA.

3.8.4 *Effects Required*

If only designated [NR](#) and/or [DE](#) resources with verified historic boundaries exist in the APE, the CRS can issue a discipline specific *Effects Required* form and return it to the PM, Project Engineer and/or DES. The CRS will include the shapefiles for the [historic property](#)'s boundaries and notify the requestor that an effects consultation needs to be scheduled as soon as design plans are sufficiently developed and available. A site visit by the CRS prior to the effects meeting will aid in the preliminary assessment of effects and could influence the development design plans. **It should be noted that reviews by the Archaeology Team rarely result in an *Effects Required* at this point of the PA process.**

4 Historic Architecture & Landscape Surveys and Evaluations

The processes outlined below shall only be conducted by a NCDOT CR Architectural Historian or consultants that meet the Secretary of the Interior's Professional Qualifications Standards in the fields of architectural history or historical architecture.

4.1 Building Inventories

These reconnaissance-level surveys provide brief documentation and evaluations to identify properties in the [APE](#) and their potential eligibility for National Register listing. [HPO](#) Survey Site forms are not required for this level of survey. Building inventories will be reviewed by a majority of the NCDOT CR Architectural Historians in a building presentation meeting with the surveyor. Recommendations for further research and documentation should be made if a property appears to be potentially eligible for National Register listing. In addition to digital images of the properties over approximately 50 years of age, the surveyor should provide an aerial map of the APE indicating the location of the properties and a table listing the property name, site ID numbers, addresses, brief description, and eligibility recommendation. The surveyor may adjust the initial screening APE to reflect field conditions.

If the initial screening or the building inventory reveals a specific historic resource or potentially eligible site, a field survey with intensive historical research and subsequent eligibility evaluation report is required.

4.1.1 PA Form

If the reconnaissance-level survey concludes that there are no potentially eligible properties in the APE, the NCDOT CR Architectural Historian can issue a *No Historic Properties Present* form for the project and return it to the requestor. On the form, the NCDOT CR Architectural Historian shall include a synopsis of the survey area and properties evaluated so that there is documentation that the recommended survey was completed. The CR Architectural Historian will provide copies of the form to the [NCDOT PM, PE](#), and/or [DES](#) for inclusion in the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to the HPO.

4.2 Eligibility Evaluation Reports

These intensive-level surveys provide in-depth documentation and evaluations to evaluate historic architecture and landscape properties in the [APE](#) for National Register listing. This entails evaluating the primary and secondary resources, identifying landscape features, documenting the integrity of building materials and form, and creating a site plan. Digital images should include elevations of the primary resource, interior photographs (if access is available), associated secondary structures, and images that capture the landscape and viewsheds of the property. HPO Survey Site forms are required for this level of survey.

The surveyor may choose to print an informational sheet for the project to be given to property owners, residents, or any interested party that they encounter during the survey. Typically provided in postcard or letter format, the handout shall include a basic description of the project, an explanation of the survey process, and contact information should the recipient have further questions.

Where [historic property](#) boundaries have not previously been established, the surveyor shall identify recommended boundaries following standards set forth in National Register Bulletin 21: Defining Boundaries for National Register Properties.

Eligibility Evaluation Reports and HPO Survey Site Forms shall be sent by the NCDOT CR Architectural Historian to HPO for review and comment prior to the application of the criteria of [effect](#). If within thirty (30) days of receiving this notification, HPO does not object or does not comment, NCDOT may proceed with the project without further review.

4.2.1 PA Forms

For those projects which have no National Register-listed or [determined eligible](#) historic architecture/landscape sites in the APE a NCDOT CR Architectural Historian Specialist shall document the finding, following the requirements in [36CFR 800.11\(d\)](#) using the *No Historic Properties Present* form. The CR Architectural Historian will provide copies of the form to the [NCDOT PM, PE](#), and/or [DES](#) for inclusion in the NEPA/SEPA project file

and permit application. An additional copy will be included in the annual report to the [HPO](#).

For those projects which include National Register-listed or determined eligible historic architecture/landscape sites in the APE, a NCDOT CR Architectural Historian Specialist shall document the result, following the requirements in 36CFR 800.11(d) using the *Effects Required* form. The CR Architectural Historian will provide copies of the form to the NCDOT PM, PE, and/or DES for inclusion in the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to the HPO.

5 Archaeological Surveys and Evaluations

The processes outlined below shall only be conducted by a NCDOT CR Archaeologist or consultants that meet the Secretary of the Interior's Professional Qualifications Standards in the field of archaeology.

5.1 General Survey Requirements

An intensive survey consists of a systematic, detailed examination of an area to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance within specific historic contexts. Archaeological surveys will make a good faith effort to identify all archaeological sites, including cemeteries, within the entire [APE](#) for the proposed [project](#). For most [undertakings](#) the archaeological APE is defined as the maximum area of ground disturbing activities including easements. All investigations should be consistent with the Office of State Archaeology guidelines as detailed in the [PA](#) within Attachment B. The primary purpose of these archaeological investigations will be to identify and evaluate the eligibility of archaeological sites for inclusion on the [NRHP](#) through the application of [36 CFR §60.4 criterion {a-d}](#). Evaluation of archaeological sites typically consists of establishing site integrity whereas integrity is defined by the National Park Service as the ability of a property to convey its significance. In the case of archaeological resources evaluated under 36 CFR §60.4 criterion {d}, characteristics that convey significance include location, design, materials, and association; however, as stated above all archaeological sites within an undertaking's APE will be evaluated for inclusion on the NRHP through the application of 36 CFR §60.4 criterion {a-d}.

Shovel and/or auger testing will be used in areas of low ground surface visibility. The general standard interval between tests (shovel and auger) and transects will be 15/30 meters, to be determined by the consultant based on landform, restrictions, archaeological site potential, etc. This interval may need to be reduced to 7.5/15 meters or less in situations that warrant the testing and delineation of sites on smaller landforms within the APE. When a site is discovered based upon a positive shovel test, the testing interval will be reduced and additional radial shovel tests will be excavated in a cruciform pattern, which maximizes the coverage of that portion of the APE containing the site. [OSA](#) guidelines state that two negative shovel tests are to be used for site boundary delineations however transportation corridor APEs do not always allow for this due to their constrictive nature. In some cases, the extent of a site may be

considered to continue outside of the APE. Should either of these instances occur it must be discussed in the PA documentation. Site boundaries will be based upon shovel tests, the distributions of surface artifacts, or natural barriers that would have prevented habitation. In addition to shovel tests, larger test units including 1-meter × 1-meter excavation units might be utilized to examine the vertical and horizontal limits of artifacts in order to assess site significance and make recommendations of eligibility for the NRHP. Other techniques that may be of assistance in completing site delineations and NRHP evaluations include, pedestrian survey, geoarchaeology, Ground Penetrating Radar (GPR), Light Detection and Ranging (LIDAR), Metal Detection, electromagnetic methods (EM), single and multi-beam echosounders and side scan sonar. The use of these methods is largely dependent on the location and extent of the APE.

Field recordation standards will consist of the following: 1) Standard forms will be used for recording sites, shovel tests, features encountered, etc.; 2) Photographs will be taken as necessary to document sites and features; 3) All sites will be assessed for significance and recommendations of eligibility to the [National Register of Historic Places](#) will be completed. Enough information will be gathered at each site to support the assessment of site significance and NRHP eligibility recommendation; 4) All excavated shovel tests (negative and positive) and archaeological sites identified by the survey will be recorded in the field with GPS technology to be transferred onto scaled maps as shapefiles. Shovel tests will measure approximately 12 inches (30 centimeters) in diameter and will be excavated to sterile subsoil or underlying bedrock/saprolite. From those test pits in which archaeological material is recovered, soil color and texture, and notes on the stratigraphic relationship of the artifacts will be recorded. The same information will be recorded for negative shovel test pits in order to characterize adequately the nature of deposits in the project area. When archaeological materials are encountered, additional shovel test pits will be excavated to ascertain site integrity and artifact density, and to gather preliminary information on cultural affiliation and age of the site.

The NCDOT Archaeology Team Manager shall be consulted prior to test unit excavation. The fieldwork for newly identified sites will follow general documentation standards delineated in the following section on Excavation Procedures and Standards. An on-site review to discuss survey results may be required or considered beneficial as deemed appropriate by the Archaeology Team Manager in discussion with, [HPO](#), OSA or other identified consulting Tribes and the [lead federal agency](#) representative.

5.2 Background and Documentary Research

Depending upon the archaeological and historical resources identified during the survey, additional historic research may include sources such as census records; land deeds; historic maps and plats; family papers (e.g., wills and probate inventories); military records from the Department of Archives and History, county courthouses, and regional libraries; informant interviews; or additional tribal [consultation](#).

5.3 Excavation Procedures and Standards

Excavation methodology will conform to the [Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation \(36 CFR Part 61\)](#) and will follow these specific standards:

1. A temporary datum will be placed in any site vicinity and all excavation units (shovel tests as well as 1-meter × 1-meter units) will be laid out according to a grid established in reference to the datum. Measurements will be recorded using metric system units, with English equivalents. Prior to excavations, a plan view of the surface features and elevations of the site should be drawn to scale.
2. A system of designation of individual cultural features, excavation units, and levels will be devised and keyed to the excavation drawings, written records, and photographs.
3. Excavation units will be a standard size (1-meter × 1-meter), although half units or rectangular units of roughly the equivalent size may be used as necessary (e.g., a half unit to investigate a builder's trench). Soil features may be excavated discretely, rather than within units.
4. All hand-excavated soils will be sifted through 1/4-inch mesh, except that a finer mesh can be substituted for sifting of feature soils or other special samples. Excavated levels should conform to natural soil strata as much as possible. Soils will be described using standardized measures such as Munsell Soil Color Charts.
5. All cultural features will be properly recorded, and a representative sample of the features will be excavated by hand. Feature locations will be tied-in to the general site map. Written descriptions of features will include dimensions, shape, matrix color and texture, depth below surface, stratigraphy, and recovered materials. Features will be mapped in plan view prior to cross-section excavation, and in profile to record the cross-section. Features will be excavated by methods appropriate to their size and type. For example, post holes will be bisected, half of the fill removed, and one profile recorded; trash pits may be fully excavated if the material appears to date to the period of occupation/significance; a small test unit may be placed to investigate the builder's trench of structural features. The depth and type of fill material will determine the extent of sampling; for example, modern fill deposited to fill a well shaft will not be hand-excavated or screened. Intact deposits should be sampled by either screening a portion of each discrete deposit or bisecting the shaft. This will also depend on the depth and stability of the fill.
6. Flotation and/or fine-screened samples of feature fill will be processed for floral and faunal analysis if appropriate materials are present.
7. A digital photographic record of the excavations will be maintained of all features in plan-view and cross-section and at least one soil profile of each excavation unit.

5.4 Laboratory Analysis and Artifact Curation

A number of methodologies should be adopted for the purpose of the analysis of cultural material and the evaluation of archaeological deposits. These recommendations include, but are not limited to:

1. Intra-site Pattern Analysis: A site plan or plans will be drawn, showing the topographic contours of any site, landmarks, site excavation grid, features and important site data plotted during excavations. Excavation blocks or units may be shown separately for clarity but should be keyed to an overall site map. Photographs, stratigraphic drawings, artifact density maps and other illustrations will be used as necessary to support interpretations.
2. Artifact Analysis: Artifacts will be analyzed, typed, quantified, and described in comparison to established typologies for the region. Any lithic identification should follow the guidance developed by the North Carolina Geological Survey (NCGS) in conjunction with the NCDOT Archaeology Team.
3. Feature Content Analysis: If features, like refuse pits, are encountered, the fill material will be subjected to fine screening (wet or dry) and samples of the matrix will be taken for flotation processing to recover floral and faunal samples for analysis.

5.5 Artifact Curation and Storage

It is the intent of NCDOT that all archaeological materials recovered from transportation-related projects in North Carolina be transferred to the North Carolina Department of Natural and Cultural Resources (hereafter DNCR) for curation. In some instances, NCDOT will not retain ownership of the curated materials and instead transfer ownership to DNCR as deemed appropriate through discussions between NCDOT and DNCR. NCDOT, in cooperation with DNCR, ensures proper preservation and curation of artifacts resulting from archaeological investigations on transportation-related projects.

1. Artifacts recovered from any archaeological sites will be stored in bags or containers labeled by provenience unit, stratum, date, and other pertinent information. With the exception of certain bulk artifacts (e.g., historic construction materials such as brick and mortar fragments, shell, etc.), all artifacts will be washed, dried, inventoried, and marked with a permanent accession number. The aforementioned exemptions may, at the contractor's discretion, be discarded following proper documentation and inventorying with a sample retained. If required, preservation specialists from the DNCR/OSARC should be consulted with regards to preservation treatments for perishable items and materials.
2. Accession numbers will be assigned by the [OSA](#). After analysis is complete, an inventory of all artifacts and processed samples will be prepared for inclusion with these materials and other appropriate documentation in the curation package as per the instructions outlined in the OSA's [Archaeological Investigation Standards and Guidelines for Background Research, Field Methodologies, Technical Reports, and Curation \(OSA 2017\)](#). Cultural materials may be temporarily stored at a contractor's laboratory facility or at the NCDOT until such time as the curation package and materials may be transferred to a facility maintained by the DNCR for permanent storage or another permanent curatorial facility as warranted.

5.6 Archaeological Technical Documentation

Results of the intensive survey of the proposed project's [APE](#) will be summarized and incorporated into the appropriate PA form. [NRHP](#) recommendations for all archaeological sites discovered and assessed will be presented. Full technical reports may be required by NCDOT in lieu of PA forms at their discretion. With the exception of site location information provided to the [OSA](#) to obtain official site numbers, the results of the archaeological survey conducted by NCDOT's Archaeology Team typically will not be discussed nor disseminated until after such results have been received and reviewed by the NCDOT Archaeology Team. Site forms will be completed for each site identified or revisited during the field investigations and must be provided to OSA by the NCDOT Archaeology Team on a project-by-project basis.

The archaeological documentation generated will comply with the [Secretary of the Interior's Standards for Intensive Archaeological Survey \(FR 44739\)](#) as well as [OSA's Archaeological Investigation Standards and Guidelines \(OSA 2017\)](#). Draft documentation (i.e., the Draft Report) will be submitted to the NCDOT Archaeology Team Manager for review as a hard copy. A final version will be submitted only after receiving comments from NCDOT on the draft report, if any. In addition, documentation will include the following key elements.

5.6.1 *Results of Background Research*

Sufficient background research will be included within the documentation to show the types of archaeological remains likely to be encountered in the project area. This will include results of an examination of all archaeological site records known for the area, review of all previous known archaeological research in the project vicinity, and examination of relevant historical sources.

5.6.2 *Archaeological Site Significance Assessment and NRHP Recommendations*

All archaeological sites discovered within the project's APE must have clear and concise significance assessments as well as recommendations concerning NRHP eligibility. These recommendations will be shown in a summary table format in addition to the descriptive text in the report. For archaeological sites recommended as not eligible, sufficient justification must be provided. Archaeological sites recommended as eligible to the NRHP must have clear application of the criteria for eligibility (usually based on the results of close interval shovel tests and larger test units and upon contextual information). This will include a detailed description of the field methods employed and will also incorporate a basic research design indicating potential site-specific research questions that may be addressed.

5.6.3 *Scale Mapping and Locational Information*

Documentation will include scale mapping sufficient to allow the NCDOT to make management decisions concerning possible [effects](#) and impacts to archaeological resources evaluated by the consultant. The maps will include, but not be limited to, shovel tests and test unit locations, site features, GPS-GIS shapefiles, site boundary delineations, landmarks, and their relationship to the project areas, and any defined APE.

5.6.4 *No NRHP Eligible or Listed Archaeological Sites Present*

For those projects subjected to archaeological field investigations which have no National Register-listed or eligible archaeological sites in the APE, a [NCDOT CR Archaeology Specialist](#) shall document the recommendation using the *No National Register of Historic Places Eligible or Listed Archaeological Sites Present* Form. This form is designed to document the APE, the level of archaeological investigation, and identified sites for forwarding to OSA to incorporate into their site records. This documentation allows for NCDOT and others completing Section 106 compliance to determine if surveys are warranted for other undertakings that may involve portions of their APE that were previously subject to surveys and NRHP site evaluations. This form shall be provided to the [NCDOT PM, PE](#), and/or [DES](#) for inclusion in the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to [HPO/OSA](#).

5.6.5 *Effects Required*

For those projects for which available information provides a reliable basis for reasonably predicting that all of the historic properties have been identified and evaluated for National Register eligibility in the APE, or surveys completed to date have identified NRHP-eligible properties, and the effects need to be considered on the National Register-listed or eligible historic properties, a NCDOT CR Archaeology Specialist shall issue a recommendation of Effects Required for the project using the *Effects Required* Form. This form shall be provided to the NCDOT PM, PE, and/or DES for inclusion in the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to HPO/OSA.

6 Assessing Effects

Once the project alternatives have been established and the boundaries of the properties have been delineated on the design plans, the [CRS](#) will apply the criteria of [adverse effect](#). In general, an effect means alteration to the characteristics of a property qualifying it for inclusion in or eligibility for the NR.

If the [lead Federal agency](#) for the project is the FHWA, then the CRS can determine effects and document the findings in [consultation](#) with FHWA and the [HPO](#), Tribes and other [consulting parties](#). The PA outlines the discipline specific requirements to document these findings for both archaeology and historic architecture.

If the lead Federal agency for the project is the USACE, then the CRS will ask the [NCDOT PM, PE](#), or [DES](#) to provide the location and boundaries of the [historic property](#)(ies), a delineation of the waters of the U.S., and the location of impacts to waters, to the USACE representative so that a preliminary [permit area](#) can be determined. As noted previously, for those projects where the USACE is the lead federal agency, the APE, as defined in 36 CFR 800.2(c), will be used throughout the entire PA process until a determination of effects must be made for a project. When an effects determination needs to be made and the USACE is the lead federal agency for that project, the following will occur:

- (a) NCDOT will review/survey the entire APE for historic resources.
- (b) NCDOT will submit a delineation of waters of the U.S. for the project to the USACE.
- (c) USACE will verify the delineation.
- (d) NCDOT will provide USACE the location of all proposed permanent and temporary impacts to delineated waters. The anticipated impacts to waters of the U.S. and WET file must be depicted for the entire project in plan view.
- (e) If Historic resources are discovered, the NCDOT PM, PE, or DEO/DES will provide the location and boundaries of the historic resource(s) to the USACE representative so that a preliminary permit area(s) can be determined.
- (f) USACE will establish the preliminary permit area(s) in accordance with Appendix C of 36 CFR 325.
- (g) USACE, along with NCDOT and HPO/OSA, will make a determination(s) of effect based on the preliminary permit area(s).
- (h) It is understood that changes to the delineation of waters of the U.S. or the impact areas may result in a change to the boundaries of the preliminary permit area(s) and subsequent determination(s) of effect. Therefore, please notify the USACE and HPO of any project revisions as soon as possible so that earlier decisions can be confirmed or revised.

6.1 [Effects Findings](#)

During the NCDOT effects assessment, one of three outcomes will be reached for each property: (1) [No Effect](#) (2) [No Adverse Effect](#), or (3) [Adverse Effect](#).

6.1.1 [No Effect](#)

“[No Effect](#)” means that there are prehistoric or historic properties present but the [undertaking](#) will not alter the characteristics of a property qualifying it for inclusion in or eligibility for the [NR](#).

6.1.2 [No Adverse Effect](#)

“[No Adverse Effect](#)” means that there is an effect to the property, but conditions are imposed to avoid adverse effects or the impacts are minor and do not alter the characteristics for which the property is eligible for the [National Register](#). For example, an undertaking may place fill material over an archaeological site determined NRHP eligible under Criterion D without adversely affecting the characteristics that qualified it as eligible. This could be accomplished by limiting the depth of the fill encroaching upon a site consisting of the concrete foundation remnants of a hydroelectric plant.

6.1.3 [Adverse Effect](#)

An “[Adverse Effect](#)” is found when an undertaking may alter, directly or indirectly, any of the characteristics of a property that qualify the property for inclusion in the NR in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a prehistoric or [historic property](#), including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the NR. 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 (36 CFR 800.5(1)). Examples of Adverse Effects on prehistoric or historic properties include, but are not limited to:

- Physical destruction of or damage to all or part of the property;
- Removal of a property from its historic location;
- Change of the character of the property's use or physical features within the property's setting that contribute to its historic significance;
- Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's [significant](#) historic features;
- Neglect of a property which causes its deterioration;
- Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicap access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties.

6.2 Notifying [HPO](#) of Findings

Regardless of the outcome of the NCDOT [effects](#) assessment ("[No Effect](#)", "[No Adverse Effect](#)", or "[Adverse Effect](#)"), the [CRS](#) will submit the effects finding to the [lead federal agency](#), [HPO](#) and/or [OSA](#), and all [consulting parties](#) using the appropriate PA forms and support documentation. The PA forms will be provided to the [NCDOT PM, PE](#), and/or [DES](#) for inclusion in the NEPA/SEPA project file and permit application. An additional copy will be included in the annual report to HPO/OSA.

6.3 [Consultation](#) for "[No Effect](#)" or "[No Adverse Effect](#)" Findings

After [HPO](#) and other [consulting parties](#) receive an NCDOT finding of either "[No Effect](#)" or "[No Adverse Effect](#)", a standard 30-calendar day timeframe is established for HPO/[OSA](#) to concur on the finding. Should HPO/OSA not reply within the 30-calendar day timeframe, the finding is accepted. Generally, this will be completed within the 30-calendar day timeframe. However, if a consulting party (ex. a federally recognized tribe) raises a substantive issue with the effects determination, as determined by the [lead federal agency](#), this timeframe may be extended.

Should NCDOT/HPO and/or OSA concurrence for the finding of "No Effect" or "No Adverse Effect" not be reached for a project, NCDOT, HPO and the lead federal agency will consult. After [consultation](#), should NCDOT, HPO, and lead federal agency concur on the finding, the project may proceed.

Should NCDOT, HPO, and/or OSA or another consulting party not concur on the finding, the project will be processed under the Dispute Resolution (Stipulation XIII) of the PA. If [tribal lands](#) are affected, contact the lead federal agency to determine if additional government-to-government agreements are applicable.

6.4 [Consultation](#) for “[Adverse Effect](#)” Findings

Should the [CRS](#) anticipate a finding of “[Adverse Effect](#)”, the [lead federal agency](#) will be notified, after which the following parties shall be notified: [HPO/OSA](#), the NCDOT Division Office, [consulting parties](#), and any additional [cooperating federal agencies](#) (per 36 CFR 800.6).

For projects with a federal nexus, the lead federal agency, NCDOT, HPO, and appropriate consulting parties will consult to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate the project’s adverse effects. Should NCDOT and the [lead federal agency](#) concur on the measures to be taken, a finding of “[No Adverse Effect](#)” or “[No Effect](#)” may replace the “Adverse Effect” finding. The HPO may also recommend mitigation or other actions to reach a finding of “No Adverse Effect” or “No Effect.”

Should [consultation](#) result in “Adverse Effect” and NCDOT and the lead federal agency agree that mitigation or other measures to reduce the adverse effects are appropriate (however, still results in an “Adverse Effect”), a [Memorandum of Agreement \(MOA\)](#) will be developed in accordance with 36 CFR 800.6(c). The MOA outlines agreed-upon measures that NCDOT will take to avoid, minimize, or mitigate the adverse effects.

- If the [ACHP](#) is not part of the consultation, then the MOA is executed between NCDOT and the lead federal agency and HPO/[THPO](#) and filed with ACHP.
- When ACHP is involved in the consultations, the MOA is executed among NCDOT and the lead federal agency, HPO/THPO, and ACHP.
- Signatories to a MOA (usually at a minimum the lead federal agency, HPO, and, if participating in the consultations, ACHP) contribute to the process or solution or have some responsibility under the MOA.
- NCDOT is considered an invited signatory for most MOAs.
- In accordance with [36 CFR 800.6\(c\)\(2\)](#), the lead federal agency may invite additional parties to be signatories.
- In accordance with [36 CFR 800.6\(c\)\(3\)](#), the lead federal agency may invite consulting parties to concur in the MOA, but only the signatories, including invited signatories, can amend or terminate the MOA.

With the successful execution of an MOA, 106 consultation is complete and the undertaking may proceed. NCDOT and the lead federal agency are responsible for ensuring MOA commitments are met to maintain compliance with the applicable regulations. If a USACE permit is issued for a project with an MOA, the permit will contain a special condition that requires compliance with the stipulations of the MOA.

Cultural resource commitments, whether included in a MOA or as part of the administrative record, are often phased in relation to a project’s right of way and construction schedules. This may span several years. It is extremely important that the NCDOT PM track and communicate commitments to the appropriate staff throughout the duration of the project. NCDOT’s future projects rely upon the success of our current projects.

7 Frequently Asked Questions

What is meant by “an FHWA authorized transportation project”?

An authorized transportation project is a project that requires FHWA funding and/or approval; an example of funding would be [FAHP](#)-anticipated funding or a federal BUILD/TIGER grant, and an example of an approval would be a project affecting an interstate interchange that requires an Interstate Access Report (formerly known as Interchange Modification Reports (IMRs) or Interchange Justification Reports (IJRs)).

Who is our [lead federal agency](#)?

For transportation undertakings in the State of North Carolina that NCDOT considers eligible for the [FAHP](#), the FHWA will serve as the [lead federal agency](#) under both Section 106 and NEPA. For state-funded transportation undertakings that NCDOT does not consider eligible for FAHP but will be authorized by a USACE Permit, USACE will generally serve as the lead federal agency under both Section 106 and NEPA.

What is a [historic property](#)?

A [historic property](#) is any prehistoric or historic district, site, building, or structure included in or eligible for inclusion in the [National Register of Historic Places](#). Properties of traditional religious and cultural importance to Indian Tribes may also be eligible for inclusion in the National Register of Historic Places.

How is a property determined to be “historic”?

A property must meet at least one of the [National Register Criteria](#), must generally be at least fifty years of age, and retain integrity.

What are the [National Register Criteria](#)?

The criteria are:

- A. Properties that are associated with events that have made a [significant](#) contribution to the broad patterns of history; or
- B. Properties that are associated with the lives of persons [significant](#) in our past; or
- C. Properties 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
- D. Properties that have yielded, or may be likely to yield, information important in prehistory or history.

Why are there different [APEs](#) for Historic Architecture and Archaeology?

The scale and nature of a project should directly influence the geographic extent of the APE. The NCDOT Archaeology Team defines an initial APE as the maximum area of ground disturbing activities (including any anticipated temporary or permanent easements) associated with an undertaking. The NCDOT Historic Architecture & Landscapes Team must account for potential topographic, auditory, visual, and vibratory factors, which often leads to a larger APE than the

direct ground-disturbance area. Topographic features (hills, expansive flat land, undisturbed forests) can enhance or inhibit an undertaking's visual [effects](#) on an [historic property](#). The project's setting (urban vs. rural, modern development vs. pastoral land uses) can affect the APE extent as well. An APE can (and should) be refined as an undertaking evolves.

Is my study area the [APE](#)?

The NCDOT study area is the basis for establishing an APE and can correspond to the area that requires archaeological and or historic architectural investigations. In some cases, the APE may be smaller or even larger than the study area depending on the nature of the undertaking.

What is the difference between an [APE](#) and the USACE's [permit area](#)?

Both of these terms are clearly defined above, but this topic can become confusing. An APE can be established very early in the project development process before anything is known about whether the USACE will require a permit for the project. If the USACE becomes the [lead federal agency](#) for the project, they will need to establish a permit area based upon their regulatory requirements under Appendix C.

Does this process need to be followed for USACE non-notifying permits such as a Nationwide 3?

Yes, this process pertains to all projects that require a USACE permit, even permits that are considered non-notifying. All Nationwide Permits contain a general condition that addresses the permittee's responsibilities when there is a potential that an activity might have an effect to historic properties. NCDOT is expected to ensure that all permits are in compliance with Section 106 of the NHPA.

What is involved in completing an historic architectural survey?

Surveys must be completed under the supervision of individuals who meet the professional qualifications in the fields of architectural history or historical architecture, as defined in the Secretary of the Interior's Professional Qualifications Standards at [36 CFR 61](#) and [48 FR 44716](#). A historic architecture and historic landscape survey is typically designed to identify and evaluate above-ground historic resources greater than 50 years of age within a project [APE](#). The survey includes background research, fieldwork, photography, identifying comparables, and writing reports using the NR criteria of evaluation.

What is involved in completing an archaeological survey?

Surveys must be completed under the supervision of individuals who meet the professional qualifications defined in the Secretary of the Interior's Professional Qualifications Standards at [36 CFR 61](#) and [48 FR 44716](#) in the fields of archaeology. An archaeological survey designed to identify and evaluate properties for [NRHP](#) eligibility will require background research to establish a context for understanding their significance. Archaeological field investigations that follow are designed to find subsurface resources by shovel tests, larger test units, and some remote sensing methods such as ground penetrating radar. Artifacts found during the fieldwork are cleaned, analyzed, and cataloged to determine age, function, and extent of any given site to assist in NRHP recommendations.

Who gets to see the archaeological information?

Archaeological site information is protected from distribution to the general public by both state and federal law. NCDOT staff and their consultants working on a given project are provided site locations for planning purposes. If NCDOT applies for authorization from the USACE, the PCN or permit application will contain any pertinent archeological information.

Do survey results expire?

Archaeological surveys are generally valid if the work was generated to the standards established by the Office of State Archaeology unless new site information is developed after the survey was completed. Newly discovered sites in an [APE](#) can require additional survey and or [NRHP](#) evaluation work. Historic architectural surveys are generally considered valid for 7-10 years; however, revisiting the project area after 5 years is recommended because properties that have recently reached 50 years of age may need to be evaluated.

What if funding or the [lead federal agency](#) changes?

A project may likely need to be reviewed again when this occurs. Some projects may require additional survey work and even mitigation if the shift is from state to federal funding. Projects reviewed to a federal standard that are later determined to have no federal nexus (i.e., federal funding, permits or property use) may require no additional investigations unless National Register listed properties are present. It is strongly recommended that you contact both the Archaeology and Historic Architecture & Landscapes Team Managers to discuss these changes to determine your specific project's Section 106 requirements.

What if the scope or schedule of a project changes?

Communication is key to a successful outcome in the Section 106 process. Should the scope or schedule of a project change, it is strongly recommended that the [NCDOT PM, PE](#) or [DES](#) contact both the Archaeology and Historic Architecture Teams' managers to assess what may be required. For example, if a bridge project was previously evaluated assuming a particular bridge construction material and this changes, the NCDOT PM, PE or DES should contact the CR teams to verify previous findings are still valid.

Does the 2020 [PA](#) apply to the Locally Administered Projects (LAP)?

No. Locally Administered Projects (LAP) need to be submitted directly to the Historic Preservation Office for review. Please see the following website for submittal guidance: <https://www.ncdcr.gov/state-historic-preservation-office/environmental-review>.

Why does the Tribal Protocol include state Tribes?

Non-federally recognized Tribes within the state of North Carolina are included on the North Carolina counties list (even though they do not have a statutory right to be included in the Section 106 process) as an agency may invite them to participate if they have a demonstrated interest in a project. Please coordinate with the [lead federal agency](#) before inviting any Tribes that are not [federally recognized](#).

Can consulting firms working on behalf of NCDOT consult with Tribes?

No. While project information can be compiled by a consulting firm, [consultation](#) must occur at the government-to-government level. Please see the [Tribal Protocol](#) for further information.

Are there other considerations for projects that occur on Tribal trust lands?

Yes. The Wilmington District of the [USACE and the Eastern Band of Cherokee Indians \(EBCI\) have a Memorandum of Understanding \(MOU\)](#) establishing procedures to ensure activities regulated by Section 404/Section 10 that are located on EBCI trust land are processed efficiently and using agreed-upon methods. If you are working on a project that involves EBCI trust land, coordination with the Archaeology Team manager and USACE Project Manager is highly advised.

If the NCDOT Archaeology Team recommends no survey, do I need to notify the Tribes?

If you have provided an opportunity for Tribes to comment on your project prior to requesting an archaeological review of your project and the Tribe raised no issues, then you do not need to forward the no survey documentation to the Tribe(s). If a review of the undertaking resulted in a no survey recommendation and you have yet to contact the Tribe(s), you may include the no survey recommendation as part of your Tribal [consultation](#) request documentation provided to the Tribe(s). Each archaeological form produced under the terms of the [PA](#) will have a statement covering which Tribe(s) have expressed an interest in the counties where your project is located.

Who sends archaeological survey results and/or findings to the Tribes?

The [NCDOT PM, PE](#), and/or [DES](#) should provide all survey results to the Tribes. Section 106 findings including [No Effect](#), [No Adverse Effect](#) and [Adverse Effect](#) should be provided to the appropriate Tribes by you unless the Archaeology Team has already done so as part of the PA process or you are otherwise directed by the [lead federal agency](#). The [NCDOT PM, PE](#), and/or [DES](#) may contact their undertaking's lead agency representative or the Archaeology Team to determine if any additional Tribal [consultation](#) requirements not covered in the Tribal Coordination Protocol are in effect.

Can another federal agency use the PA determinations and findings for their 106 compliance?

Yes, provided they formally notify the PA signatories of their intent to do so. Federal Agencies who recognize FHWA or USACE as the [lead federal agency](#) for an undertaking may fulfill their obligations under Section 106 provided that FHWA, USACE, and NCDOT follow the requirements of the PA and the agency's undertaking does not have the potential to cause [effects](#) to historic properties beyond those considered by FHWA, USACE, and NCDOT. For FEMA-funded activities, FEMA and SHPO have executed a separate Programmatic Agreement. For FEMA activities, please consult with the Historic Architecture and Archaeology Teams for direction.

Why do I need separate forms from Historic Architecture and Archaeology?

While both the Archaeology and Historic Architecture Teams must comply with Section 106 and the state's general statutes related to cultural resources, the [APE](#) definitions, the methodology

and timing of their investigations and results are quite different so separate determinations (forms) are needed.

If a project is an [exempt activity](#) under this PA, do I need to forward the project information to the Tribes for consideration?

No. Exempt undertakings require no further Section 106 action.

Do [NCDOT PMs](#), [PEs](#), and/or [DES](#) have to complete an [exemption screening checklist](#) for every project?

Yes. The exemption form should be filled out for each of your projects as it is the basis for determining the need for further cultural resources coordination depending on the answers you provide on the checklist.

If my activity is listed on the [Exempt Activities](#) list, do I need to submit it for review by the Cultural Resources Teams?

Completion of the [Cultural Resource Programmatic Screening Checklist](#) will indicate if you need to submit the activity for review by the Cultural Resources Teams. If there are any questions regarding the activity, you can contact the Archaeology and/or the Historic Architecture Team Supervisors for further guidance and advice on whether to submit a review request via [ETRACS](#).

As an [NCDOT PM](#), [PE](#) or [DES](#), do I need to keep a record of the projects that are exempt under this PA for inclusion in the Annual Report?

No. Only projects that are reviewed by the Cultural Resources Teams are required to be submitted as part of the annual report. The [NCDOT PM](#), [PE](#) or [DES](#) must maintain a copy of the Exemptions form as part of the project's NEPA/SEPA administrative record and as a public record.

What if my project is exempt but falls within the jurisdiction of a local historic preservation commission?

While this is not required for Section 106 and 4(f), both federal and state-funded transportation projects must comply with NCGS 160A-400 if they affect properties or districts that are under the jurisdiction of a local historic preservation commission. In some cases, a [Certificate of Appropriateness \(COA\)](#) from the local commission will be required. You need to check with your local historic preservation commission.

Can the PA process be used for state funded projects with no federal nexus?

No. Separate guidance will be used for compliance with [NCGS 121-12\(a\)](#). NCGS 121-12(a) requires state funded projects to assess the [effects](#) to National Register listed properties.

What is the difference between Section 106 and 4(f)?

Sections 106 and 4(f) are similar in that they both mandate consideration of historic properties in the planning of a federal undertaking. But despite their similarities, the two statutes have some key differences. An important distinction between them is that Section 106 considers project [effects](#) to "historic properties," Section 4(f) considers whether there is a use of "historic properties." Under Section 4(f), agencies of the U.S. Department of Transportation (DOT) must avoid the use of historic properties (as well as parks, refuges, etc.). If no prudent and feasible

alternative exists that avoids the use, then the agency must employ all possible planning to minimize harm to historic sites (and other property types) resulting from use of the properties by the project. In this way, Section 4(f) has a substantive requirement that requires historic sites to be avoided, while Section 106 requires “historic properties” to be identified and project impacts be considered.

Additional important differences between the two statutes include:

- Section 4(f) applies only to programs and projects undertaken by agencies of the U.S. DOT (FHWA, FRA, FTA, FAA), while Section 106 applies to actions of any federal agency.
- Section 4(f) applies to the actual use or occupancy of an [historic property](#), while Section 106 involves an assessment of [adverse effects](#) of an action on historic properties. There is no direct correlation between "use" in the Section 4(f) context and "adverse effect" in the Section 106 context.
- The Section 106 process is integral to the Section 4(f) process when historic sites are involved. The Section 4(f) process is not integral to the Section 106 process.
- The Section 4(f) process applies a more stringent analysis with respect to totally avoiding historic properties than does the Section 106 process.

8 Glossary of Key Terms

Adverse Effect – An [effect](#) of an [undertaking](#) that “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. Consideration shall be given to all qualifying characteristics of an historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. 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.” 36 C.F.R. § 800.5(a).

Advisory Council on Historic Preservation (ACHP) – An independent agency created by Title II of the [NHPA](#), 16.U.S.C. § 470f. The review process established by NHPA Section 106, 16 U.S.C. § 470f, is conducted according to regulations issued by the ACHP, 36 C.F.R. part 800, as authorized by 16 U.S.C. § 470s.

Affected Indian Tribe or Affected Tribe – Consistent with 36 C.F.R § 800.14(f)(1), an affected Indian Tribe includes [federally recognized](#) Tribes that attach religious and cultural significance to historic properties potentially affected by the undertaking, and federally recognized Tribes with jurisdiction over [Tribal lands](#) on which the undertaking has the potential to affect historic properties.

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 C.F.R. § 800.16(d). See also [Permit Area](#)(s) for state-funded projects.

Categorical Exclusion (CE) – Categorical exclusion, under NEPA, covers various categories of actions which do not individually or cumulatively have a significant effect on the human environment and are exempt from the requirement to prepare an [Environmental Assessment](#) or an [Environmental Impact Statement](#). 40 CFR 1508.4

Certificate Of Appropriateness (COA) – Once a resource has been designated as a landmark or an historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall be required whether or not a building or other permit is required. COAs are not a requirement of Section 106 and 4(f), however both federal and state-funded transportation projects must comply with NCGS 160A-400 if they affect properties or districts that are under the jurisdiction of a local historic preservation commission.

Concurring Party – An entity with an interest in the subject matter of a MOA and which signs the MOA to signal its concurrence with the terms of the MOA, but which does not have any authority or responsibility under the terms of the MOA.

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 C.F.R. § 800.16(f).

Consulting Party – Any entity that has a consultative role in the Section 106 process, as defined by 36 C.F.R. § 800.2(c). This includes, among others, the [ACHP](#), [SHPOs](#), [THPOs](#), [affected Indian Tribes](#), other affected agencies, [signatory parties](#), [concurring parties](#), and any additional entities invited to participate due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s [effects](#) on historic properties (see 36 C.F.R. § 800.2(c)(5)).

Cooperating Agency – “Cooperating Agency,” under NEPA, means any agency other than the [lead federal agency](#) which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal for any action significantly affecting the human environment.

Cultural Resources Specialist (CRS) – NCDOT personnel who meet the professional qualifications defined in the *Secretary of the Interior's Professional Qualifications* at 36 CFR Part 61 and 48 FR 44716 in the fields of archaeology, architectural history, or historical architecture.

Determination Of Eligibility (DOE) – Although only the National Park Service may make an official Determination of Eligibility for inclusion in the National Register, if the Federal agency, NCDOT and the [SHPO](#) agree on a property's eligibility, the Federal agency may proceed in the Section 106 process as if an official NPS determination had been made.

Determined Eligible (DE) – The term used to describe an [historic property](#) that has been found to meet the criteria for inclusion on the [National Register of Historic Places](#).

Effect - (i) Effect means alteration to the characteristics of a [historic property](#) qualifying it for inclusion in or eligibility for the National Register. 36 CFR 800.16(i)

Environmental Assessment (EA) – Under NEPA and SEPA, an Environmental Assessment serves to evaluate the significance and alternative means of a proposed agency action, focusing on the context and intensity of effects to the human and natural environment. An EA is a tool for decision making. Often the EA will identify ways in which the agency can revise the action to minimize environmental effects. A Finding of No Significant Impact (FONSI) is typically the culmination of the EA process. *40 CFR 1508.9*

Environmental Impact Statement (EIS) – Under NEPA and SEPA, an Environmental Impact Statement is a document for certain actions that significantly affect the quality of the human environment. An EIS is a tool for decision making. It describes the positive and negative environmental effects of a proposed action, and it usually lists one or more alternative actions that may be chosen instead of the action described in the EIS. A Record of Decision (ROD) is the culmination of the EIS process. *40 CFR 1508.11*

Exempt Activities – Undertakings with Little Potential to Cause [Effects](#) and are excluded from further Section 106 Review as determined by Appendix A of the PA.

Existing Disturbed Right Of Way – Generally the area encompassed between the Top of Cut/Toe of Fill including the back of slope ditch and planted landscaping. See Figure in Section 2.2.

Federal Aid Highway Program (FAHP) – The FAHP is a federally-assisted program of State-selected projects. The FHWA and NCDOT have long worked as partners to deliver the FAHP in accordance with Federal requirements, under the purview of a Stewardship & Oversight Agreement between the two agencies. Many projects are programmed in NCDOT's State Transportation Improvement Plan (STIP) as federally-funded FAHP projects from the outset; others may be initially identified in the STIP as state-funded, but with NCDOT staff identifying them as FHWA-led to preserve FAHP eligibility for right-of-way or construction funding.

Federally Recognized Tribe – A federally recognized Tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

Historic Property – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the [National Register of Historic Places](#) maintained by the Secretary of the Interior. 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 or Native Hawaiian organization and that meet the National Register criteria. 36 C.F.R. § 800.16(l)(1), providing elaboration on the statutory definition codified at 16 U.S.C. § 470w(5).

Interested Member of the Public – An individual or entity that is not a [consulting party](#) (until invited to be so), but which the [Lead Federal Agency](#) believes may be interested in information about the undertaking and its [effects](#) on historic properties based on, for example, the Lead Federal Agency’s prior experience or contact with the individual or entity, the recommendations of a [SHPO](#) or [THPO](#), [affected Indian Tribes](#), or the individual or entity’s own initiative in providing its views. See 36 C.F.R. § 800.2(d).

Lead Federal Agency – The federal public agency with primary responsibility for carrying out or approving an undertaking; in general, the lead federal agency is the agency with the greater degree of involvement in the undertaking. For NCDOT, the lead federal agency is most often FHWA due to federal funding or federally required approvals that require NEPA review, with the USACE acting as our lead federal agency in most other cases due to their permitting action. NCDOT generally prefers our NEPA lead federal agency to also be our Section 106 lead federal agency. When an undertaking subject to review under Section 106 of the [NHPA](#) is to be approved or assisted by more than one federal agency, the Section 106 regulations allow for some or all of those agencies to designate one lead federal agency [see 36 C.F.R. § 800.2(a)(2)]. Once designated, a lead federal agency acts on their behalf to address all Section 106 responsibilities. Alternatively, each federal agency can choose to remain individually responsible for compliance with Section 106 and conduct its own Section 106 review without designating a lead federal agency to act on its behalf. For the purposes of the PA, the USACE has agreed to designate the FHWA as lead federal agency for Section 106 when both the FHWA and the USACE are involved in a project.

Locally Designated (LD) – Local governments may establish an historic preservation commission under North Carolina G.S. 160A-400.1-400.14. A preservation commission may carry out a comprehensive preservation program, including recommending individual properties and areas for designation by *local* governing boards as landmarks and historic districts.

Memorandum of Agreement (MOA) – An accord that is prepared when an undertaking will have [adverse effects](#) on [historic property](#)(ies), and the [consulting parties](#) agree on ways to

reduce, avoid, minimize or mitigate such effects.

Minimum Criteria Determination Checklist (MCDC) – Similar to a NEPA [Categorical Exclusion](#), an MCDC is a SEPA checklist for NCDOT to review and document the environmental effects of a proposed action; such actions are exempt from the requirement to prepare an [Environmental Assessment](#) or an [Environmental Impact Statement](#) under SEPA.

National Historic Preservation Act (NHPA) – The National Historic Preservation Act (16 U.S.C. 470) is an act that was passed in 1966. The act established a program for the preservation of historic resources throughout the nation. Section 106 of the NHPA requires federal agencies to identify and assess the [effects](#) its actions may have on historic resources.

National Register of Historic Places (NRHP) – The National Register is the official federal list of districts, sites, buildings, structures, and objects [significant](#) in American history, architecture, archaeology, engineering, and culture. National Register properties have significance to the history of their community, state, or the nation. The National Park Service, through the authority of the Secretary of the Interior maintains the NRHP. Historic properties are [determined eligible](#) for listing using criteria defined in 36 C.F.R. § 60.4.

No Adverse Effect – An undertaking has an [effect](#) on an [historic property](#), but the effect would not be harmful to those characteristics that qualify the resource for inclusion in the [NRHP](#). *36 CFR 800.5(b)*

No Effect – An undertaking has no [effect](#) of any kind (neither harmful nor beneficial) on a resource that is eligible for inclusion in the [NRHP](#). *36 CFR 800.16(i)*

No Historic Properties Affected – A determination made by NCDOT Cultural Resources staff on behalf of the PA's signatories for projects for which available information (including information provided by other [consulting parties](#) and/or Indian Tribes) provides a reliable basis that either:

- (a) reasonably predicts that the scope of the undertaking would not have the potential to cause [effects](#) on historic properties, assuming such historic properties were present; or
- (b) indicates there are no historic properties present; or
- (c) indicates there are historic properties present, but that the undertaking will have no effect upon them. *36 CFR 800.3(a)(1)* and *36 CFR 800.4(d)(1)*.

North Carolina Historic Preservation Law (NCGS 121-12a) – Requires a state agency to consider National Register properties in undertakings funded or licensed by the state. Where a state undertaking conflicts with the preservation of a National Register property, the North Carolina Historical Commission is given the opportunity to review the case and make recommendations to the state agency responsible for the undertaking. The commission's recommendations to the state agency are advisory.

North Carolina Historic Preservation Office (HPO) – Agency that assists private citizens, private

institutions, local governments, and agencies of state and federal government in the identification, evaluation, protection, and enhancement of properties [significant](#) in North Carolina history and archaeology. The agency carries out state and federal preservation programs and is a component of the Office of Archives and History, North Carolina Department of Natural and Cultural Resources.

North Carolina DOT Project Manager (PM) or Project Engineer (PE) – The individual within NCDOT administering a project’s scope, schedule, and budget, including any required environmental studies or Tribal [consultations](#).

North Carolina DOT Division Environmental Staff (DES) - The individuals within NCDOT Highway Divisions typically responsible for environmental studies and Tribal [consultations](#).

North Carolina State Study List – The State Study List, maintained by the [HPO](#), identifies properties and districts that are likely to be eligible for the National Register. Inclusion in the State Study List is not a guarantee of eligibility, and not every county/region has been studied to the same degree.

Office of State Archaeology (OSA) – North Carolina's Office of State Archaeology coordinates and implements a statewide program of prehistoric, historic, and underwater archaeology. The OSA serves as the professional archaeology staff for the [State Historic Preservation Office](#) and the North Carolina Historical Commission.

Permit Area(s) – Per the USACE’s regulations in Appendix C of 33 C.F.R. § 325, the term "permit area" as used in this Manual means those areas comprising the Waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing (permitting) the work or structures as determined by the USACE. The final “permit area” **does not always equate to** the undertaking’s initial [APE](#) for the USACE’s **consideration of historic properties**. Additionally, Appendix C states that the following three tests must all be satisfied for **an activity occurring beyond waters of the United States to be included within the permit area**: (1) Such activity would not occur but for the authorization of the work or structures within the waters of the United States, (2) Such activity must be integrally related to the work or structures to be authorized within the waters of the United States. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and (3) Such activity must be directly associated (first order impact) with the work or structures to be authorized.

Programmatic Agreement (PA) – A legally-binding agreement between the [ACHP](#) and a federal agency’s implementation of a particular program with regards to its Section 106 responsibilities.

Project – *See also Undertaking*. An action that is being developed by NCDOT and for which NCDOT has primary responsibility; many which are highway improvement projects as found in the STIP. An entire project may be an undertaking under this PA; conversely, a portion of a

project may be an undertaking if, for example, portions of the project qualify as [APE](#) (or [permit area](#)) under the USACE's Appendix C while other portions of the project do not.

Signatory Party – An entity that signs a MOA and has authority or responsibility under the terms of the MOA.

Significant – A prehistoric or historic district, site, building, structure, or object meeting one or more of the Criteria for Evaluation used in considering [NRHP](#) eligibility. Significance is achieved through association with events or important persons, distinctive physical characteristics, or the potential to yield important information. The National Register regulations, 36 CFR 60, note that significance is found in properties that have “integrity of location, design, setting, materials, workmanship, feeling, and association.”

State Historic Preservation Officer (SHPO) – The official appointed or designated pursuant to Section 101(b)(1) of the [NHPA](#) to administer the state historic preservation program or a representative designated to act for the state historic preservation officer. *36 C.F.R. § 800.16(v)*.

Surveyed Site – Archaeological sites, structures, and landscapes in North Carolina that have been identified by professional archaeologists and/or architectural historians as a result of federal, state, or local studies.

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.” The property must meet the requirements defined in 36 C.F.R. § 60.4 and the National Park Service, National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1990). Properties of traditional religious and cultural importance to a Tribe are a type of TCP.

Tribal Historic Preservation Officer (THPO) – The official appointed or designated by an Indian Tribe to implement the Tribal Historic Preservation Program. The term applies only for Tribes on the National Park Service list that, in accordance with Section 101(d)(2) of [NHPA](#), have formally assumed the responsibilities of the [SHPO](#) for purposes of Section 106 compliance on their [Tribal lands](#).

Tribal Lands – (A) All lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities. 16 U.S.C. § 470w(14). Tribal lands include lands held in trust by the United States for a Tribe external to the boundaries of a reservation if the lands are under Federal superintendence but does not include allotments external to the boundaries of a reservation. See [MOU between EBCI and USACE](#)

Undertaking – “A project, activity, or program funded in whole or in part under the jurisdiction of a Federal agency, including those carried out with Federal financial assistance; (or) those requiring a Federal permit, license or approval.” *36 C.F.R. § 800.16 (y)*. Under the [NHPA](#), a

federal action that is subject to Section 106 review. It is intended to include any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties were to be located in the [APE](#).

EXEMPT ACTIVITIES UNDER SECTION 106

The [Programmatic Agreement \(PA\)](#) applies to all FHWA funded and/or authorized transportation undertakings administered directly by NCDOT in North Carolina, excluding locally-administered projects (LAP). The PA applies to NCDOT undertakings that require a Department of Army Permit. The PA does not apply to undertakings where the [lead federal agency](#) is the Federal Railroad Administration, Federal Aviation Administration, or Federal Transit Administration. Any undertaking involving [tribal lands](#) as defined in 36 CFR 800.16(x) shall not be solely governed by this PA but shall be reviewed by the lead federal agency and NCDOT in accordance with 36 CFR 800 and any applicable government-to-government agreement(s).

Per Stipulation IV of the Agreement, *Undertakings with Little Potential to Cause Effects – Exempt Activities*, [NCDOT Project Managers, Project Engineers](#) or [Division Environmental Staff](#) shall utilize their best judgment to certify that the undertaking(s) meet the conditions listed below and document internally by utilizing the *106 PA Checklist* (Attachment A). The completion of the *106 PA Checklist* will indicate if the undertaking(s) is subject to further Section 106 review or if the undertaking(s) is exempt from further review. The *106 PA Checklist* (Attachment A) shall be retained in the project file.

Conditions

1. HPOWEB (<https://www.ncdcr.gov/about/history/division-historical-resources/gis-maps-and-data>) should be used to determine if the undertaking is within or adjacent to a [Historic Property](#), classified herein as [NRHP](#) Eligible or Listed Buildings, Districts, Objects, Sites, or Structures
2. No activity can involve the acquisition of additional right-of-way (ROW) or easements (activities must be restricted to [existing disturbed ROW](#) and/or permanent easements). Right of Entry is exempt as long as clearing, grubbing, or ground disturbance does not occur.
3. If an activity is not listed below or there are questions regarding the activities, the [Project Manager, Project Engineer](#) or [Division Environmental Staff](#) may contact the Cultural Resources Group within the Environmental Analysis Unit, or contact the [lead federal agency](#) prior to submitting the project for further historic preservation review.
4. No activity can be a subset of a larger activity.
5. No new earthwork activity on federal property or federally granted easement.

Section A: Bridge Repairs/Bridge Maintenance* on Interstates, US Highways, and NC State Maintained Routes

*Activities permissible on historic/non-historic bridges unless noted in the Exceptions.

Activities limited to [existing disturbed right of way](#).

No.	Activity	Description	Exceptions
1	Steel bridge painting	Reapplication of paint for steel bridge structures H-piling, metal shell piling, and steel sway bracing	Historic bridges
2	Pile encasement for steel bridges	Reinforcement of piles with concrete sheaths including: <ul style="list-style-type: none"> Addition of concrete encasement approximately 6 in in diameter Placement of temporary fill for dewatering activities. 	
3	Hydro-demolition of concrete bridge decks		
4	Full deck replacement		
5	Replacement of edge beams	Concrete stiffening member placed transversely at the end of a span	Historic bridges
6	Installation of chain link safety fencing	Addition of brackets and fence posts attached to the bridge with the fencing stretched atop the bridge railing	Historic bridges Within or adjacent to Historic Properties
7	Repair/replace portions of approach slabs & bridge deck	Includes the following activities: <ul style="list-style-type: none"> Overlay with permanent asphalt Fill voids with flowable fill 	
8	Post tension duct repair/internal post-tensioning	Steel strands passed through ducts formed in the concrete then grouted in place	
9	Repair/replace co-polymer overlay on deck	Replaced with conductive polymer overlay system to protect concrete bridge deck and improve friction	
10	Reset bearings	Strengthening bearings by jacking bridge less than 1inch and replacing or repairing	

No.	Activity	Description	Exceptions
11	Clean drainage scuppers/drain pipes		
12	Vegetation Removal at Bridges	Includes the following: <ul style="list-style-type: none"> • Hand cutting vegetation around bridge, including the substructure to allow access by bridge inspection team • Typically cut 10-20ft from either side of bridge structure 	
13	Epoxy injection repair of all concrete members (i.e. decks, beams, caps, columns, etc.)		
14	Replacement of existing bridge fender structures by driving piles	Involves cutting the existing fenders to 2ft below the mud line for removal and installing new fenders in close proximity to the original location	
15	Use of temporary load transfer system (“jumper bridge”)	Facilitates equipment access, typically over culverts, and is restricted to the existing roadway	
16	Installation of sway braces	Braces used for H-pile bents where the unbraced length of piles exceeds 10 feet	
17	Installation of carbon fiber reinforcement or post-tensioning design for the substructure/caps	Bridge Strengthening technique	Historic bridges
18	Heat straightening and/or in-kind replacement of damaged steel beams		
19	Repair/replace existing box girder drainage system	Drainage system found on larger bridges. Includes repair of internal PVC drainage system within the bridge structure	

No.	Activity	Description	Exceptions
20	Bridge Jacking	Includes the following activities: <ul style="list-style-type: none"> • Increases vertical clearance by elevating the bridge through use of bearings • Approaches are modified, as needed, within existing roadway 	Historic bridges Activities restricted to existing roadway and bridge embankment, with no shifts in alignment of the approaches
21	Scour Repair: Repair undermined abutment caps	Fills voids with flowable fill	
22	Scour Repair: Replacement of floor beams	Includes the following activities: <ul style="list-style-type: none"> • Removal of concrete and rebar and the subsequent setting of pre-stressed concrete or steel beams • Placing of framework, rebar, and concrete 	Historic bridges
23	Scour Repair: Replacement of rip rap or fill	Includes the following activities: <ul style="list-style-type: none"> • In-kind replacement over existing materials at bridge bents and/or abutments as a result of wash out • If existing rip-rap is fully washed away, filter fabric is applied to existing grade before addition of replacement rip-rap or fill 	
24	Repair/replace bridge headers, voids, end & back walls, concrete bent caps, bridge/pot bearings	Activities confined to the bridge structure itself	
25	Repair/replace bridge expansion joints		
26	Abutment Slope Repair	Repair and repave existing concrete abutments in-kind	abutment extension or footprint increases
27	Installation of Crutch or Helper Bents		Historic bridges

Section B: Pavement Resurfacing/Shoulder Rehabilitation and Guardrail/Cable/Median Barriers on Interstates, US Highways, and NC State Maintained Routes

Activities allowed in or adjacent to historic properties unless listed in the exceptions.

Activities limited to [existing disturbed right of way](#).

No.	Activity	Description	Exceptions
1	Roadway resurfacing and/or rehabilitation	<p>Includes the following activities for asphalt roadways:</p> <ul style="list-style-type: none"> • Overlay • Milling • Crack Repair • Chip Seal (AST/BST) • Patching • Resurfacing, including full depth replacement <p>Includes the following activities for concrete roadways:</p> <ul style="list-style-type: none"> • Grinding • Grooving • Pavement rehabilitation • Spall repair 	
2	Shoulder/Median work	<p>Includes the following activities:</p> <ul style="list-style-type: none"> • Shoulder building through the addition of pavement to existing shoulder, within toe-of-slope • Typically associated with resurfacing or construction of turn lanes, bikes lanes, medians, etc. • May also include repair of roadway edge line • Equipment confined to existing roadway and shoulder • All activities in existing median including median barrier • Shoulder clipping/pulling 	
3	Guardrail Installation	Installation of new, or rehabilitation of existing, guardrail and guardrail anchors within existing disturbed right of way	Historic bridges
4	Median Crossovers	<p>Includes the following activities:</p> <ul style="list-style-type: none"> • Installation of, or upgrade to, median crossovers on divided 	

No.	Activity	Description	Exceptions
4 (cont'd)	Median Crossovers	<p>highways, to include the addition of turn lanes</p> <ul style="list-style-type: none"> Includes grading and/or fill within median and addition of paved surface and associated striping 	
5	Cable Barriers	<p>Includes the following activities:</p> <ul style="list-style-type: none"> Installation of new, or rehabilitation of existing, cable barriers within existing roadway toe-of-slope. Includes concrete foundation, breakaway post, and cable. 	

Section C: Utilities/Signage/Traffic Signals on Interstates, US Highways, and NC State Maintained Routes

Activities allowed in or adjacent to historic properties unless listed in the exceptions.

Activities limited to [existing disturbed right of way](#).

No.	Activity	Description	Exceptions
1	Installation and in-kind replacement/relocation of existing utility poles and underground utilities	Utility markers cannot be within 20 feet of significant element of or access to a historic property .	
2	New Signage	Includes NC DOT Sign Types A, B, D, E and F	
3	Installation of Dynamic Message Signs	<p>Includes the following activities:</p> <ul style="list-style-type: none"> Installation of concrete footer to support sign pole or truss structure Installation of pull boxes, cabinets, and conduit 	Within or adjacent to historic properties
4	Pavement markings	<p>Includes installation of the following:</p> <ul style="list-style-type: none"> Rumble strips, chevrons, stop bars, and other pavement markings (raised, reflective, or otherwise) Additional or replacement roadway striping 	

No.	Activity	Description	Exceptions
5	New advance warning signs	Installation of flashing lights as you approach an intersection	
6	Directional underground boring		
7	Installation of Intelligent Transportation Systems (ITS) equipment to existing poles	<ul style="list-style-type: none"> • Addition of ITS components (cameras, wireless devices, signs, cabinets, etc.) to an existing pole. • Connected to existing pull box and conduit. • Applicable to all NCDOT maintained routes 	Installation of new stand-alone cabinets within or adjacent to historic properties
8	Upgrade existing traffic signals and city signal systems	Involves the installation or replacement of traffic signals, poles, and/or signals cabinets	Installation of new stand-alone cabinets within or adjacent to historic properties
9	Installation of new traffic signals		Within or adjacent to historic properties
10	Installation and replacement of Pedestrian Poles and Pedestrian Signals	Involves the installation or replacement of signal heads and/or push-button stations	Installation within or adjacent to historic properties

Section D: Specific Maintenance/Upgrade Activities

Activities allowed in or adjacent to historic properties unless listed in the exceptions.

Activities limited to [existing disturbed right of way](#).

No.	Activity	Description	Exceptions
1	Landscaping	Includes the following activities: <ul style="list-style-type: none"> • Shallow grading, tilling, and planting. Grading and tilling, if needed, are used to smooth surface and/or bring in soil prior to planting • Mowing • Seeding 	Landscaping within or adjacent to historic properties
2	Right-of-way Reclamation	Includes the following activities: <ul style="list-style-type: none"> • Removal of vegetation which has grown since original construction or reconstruction 	Within or adjacent to historic properties

No.	Activity	Description	Exceptions
2 (cont'd)	Right-of-way Reclamation	<ul style="list-style-type: none"> Consists of cutting back existing vegetation within the clear zone May include chemical treatment or grinding of stump to prevent regrowth 	Within or adjacent to historic properties
3	Replacement of existing lighting	In-kind replacement of existing lighting within right-of-way or at underpasses. In-kind lighting is defined as being of similar height, material, and location.	
4	Replacement of existing fencing	In-kind replacement of existing fencing within right of way. In kind is defined as being of similar height, material, and location	
5	Ramp and intersection improvements	<p>Consists of in-place replacement or upgrading of ramps and the addition of ramp turn lanes</p> <p>Installation of ramp meters</p>	

Section E: Other Maintenance/Upgrade Activities

Activities allowed in or adjacent to historic properties unless listed in the exceptions.

Activities limited to [existing disturbed right of way](#).

No.	Activity	Description	Exceptions
1	Minor Drainage Improvements	<p>Includes, but not limited to the following:</p> <ul style="list-style-type: none"> Installation, replacement or removal of culverts and headwalls Installation, replacement, and extensions of pipes Addition of pipe end sections 	Installation and replacement of headwalls on USFS property
2	Routine cleaning, maintenance, and repair of existing drainage stormwater management, and water quality facilities and devices		

No.	Activity	Description	Exceptions
3	Construction or repair of erosion control and protection measures	Includes, but not limited to the following: <ul style="list-style-type: none"> • Slope stabilization • Slide repair • Rip Rap • Retaining walls • Streambank Stabilization 	
4	Correcting substandard roadway geometrics and intersections		Within or adjacent to historic properties
5	Modernization of an existing transportation facility by widening equal to or less than a travel lane	Includes, but not limited to the following: <ul style="list-style-type: none"> • Shoulder additions • Bridge approaches • Turn lanes 	
6	Construction or repair of existing sidewalks, bicycle lanes, and multi-use paths		Within or adjacent to historic properties
7	Disposal of excess properties		Structures more than 45 years of age Within or adjacent to historic properties
8	Preliminary Engineering Activities	Activities which do not involve or lead directly to construction (program activities), such as planning and research activities; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system [23CFR 771.117(c)(1)]	
9	Railroad crossing rehabilitation	Includes installation of the following: <ul style="list-style-type: none"> • Bells, lights, gates • Pavement marking • LED upgrades • Paving of unpaved approaches Does not include modifications to the railroad alignment or grade	Modifications to the railroad alignment or grade

No.	Activity	Description	Exceptions
10	Stormwater Retrofits	Construction of Stormwater BMP's into existing roadways and facilities	Within or adjacent to historic properties

Section F: ADA Upgrades

Activities allowed in or adjacent to historic properties unless listed in the exceptions.

Activities limited to [existing disturbed right of way](#).

No.	Activity	Description	Exceptions
1	Installation of ADA curbcuts on existing sidewalks		Granite curbs within or adjacent to historic properties
2	Installation of ADA ramps to existing facilities		Within or adjacent to historic properties

Cultural Resources Programmatic Agreement Screening Checklist for Section 106

Project TIP:

FA:

WBS:

Project Name:

County:

Project Description:

Funding Source:

[Lead Federal Agency:](#)

Permits Anticipated:

Instructions:

[NCDOT Project Managers, Project Engineers](#), or the Division Environmental Staff shall complete the following checklist based upon knowledge of the project site and adjacent parcels. Webservice (<https://www.ncdcr.gov/about/history/division-historical-resources/gis-maps-and-data>) should be reviewed for [NRHP](#) Eligible or Listed Buildings, Districts, Objects, Sites, or Structures. Before checking "Unable to Determine", efforts should be made to acquire any available information. If the answer to any question is "Yes" or "Unable to Determine", the undertaking is subject to further historic preservation review by NCDOT Cultural Resources staff. If answers to all the questions are "No", the undertaking will be considered to have *Little Potential to Cause [Effects – Exempt Activities](#)* and excluded from further historic preservation review, until differing information is discovered. Please reference "Appendix A [Exempt Activities Under Section 106](#)" of the [Programmatic Agreement](#) for Transportation Program in North Carolina prior to completion.

	Yes	No	Unable to Determine
A. Would this activity have the potential to cause effects on historic properties, assuming historic properties are present? See list in Appendix A.			
B. Is this project directly related to other actions with individually insignificant, but cumulatively significant environmental effects ?			
C. Are you aware of any concerns raised by the owner of a historic property or public controversy for this undertaking?			
D. Locations of cemeteries have been found on the webservice? (https://www.ncdcr.gov/about/history/division-historical-resources/gis-maps-and-data)			

By my signature, I certify that I have completed a site visit or am familiar with the specifics of the project and to the best of my knowledge answers to the questions above are correct. I also understand that no further environmental analysis is required at this time, as all of the answers are "No".

Name (print)

Signature

Date