



FDM 26-5-1 Establishing an Undertaking, 36 CFR 800.3(a)1-2

November 15, 2024

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires that the lead federal agency with jurisdiction over an undertaking "take into account" the project's effects on historic properties.

A [Programmatic Agreement \(PA\)](#) was executed, September, 2023, between the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), United States Army Corps of Engineers (USACE), Advisory Council on Historic Preservation (ACHP), Wisconsin State Historic Preservation Office (SHPO), Wisconsin Department of Transportation (WisDOT), and consulting Tribes. While the PA sets the framework for how Section 106 of the NHPA (Section 106) compliance and consultation activities will be conducted between the signatories, this chapter provides the practical application of the PA.

If your project has involvement from another Federal Agency, contact the WisDOT Cultural Resource Team (CRT).

Compliance with other federal, state, local, or tribal laws, procedures, and agreements may be required. The project team is responsible for making this determination.

1.1 Determining Federal Involvement

To establish if your project is a federal undertaking and compliance with Section 106 is required, review the criteria below:

- If the project is located on federal or tribal lands, it is a federal undertaking.
- If the undertaking is 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; or is carried out with federal financial assistance; or requires a federal permit, license, or approval; it is a federal undertaking.

If the project is not a federal undertaking and has only state participation (funds, permits, licenses, etc.), compliance with [Wisconsin Statute 44.40](#) is required and project teams should contact CRT for further guidance.

1.2 Project Description

In preparation for Section 106 consultation and the environmental review process, a project description and an Area of Potential Effect (APE) need to be developed. The project description should include the project location map, termini, and the proposed project activities. It is best practice to include the most comprehensive list of potential activities. Include all ground disturbing activities. If project actions may change in the future, it is easier to remove project activities during and after the review process than to add new ones, so it is best to go with the "worst case scenario" or maximum extent of disturbance.

For amendments to projects that have previously been reviewed (e.g., design refinements, scope changes, etc.), the project description should only include new/added project actions and materials.

1.3 Area of Potential Effect (APE)

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

"...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 APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking."

Project actions to determine the APE include but are not limited to: utilities, haul roads, staging of equipment, storm water management, etc.

Examples of APEs:

- For Archaeology: The APE is generally considered to be the existing and proposed right-of-way and easements. It may also include areas used for the mitigation of other environmental impacts caused by the project. Include a plan view map indicating the maximum area of ground disturbance and new right of way. Include all temporary, limited and permanent easements. Ensure the proposed APE extends to the maximum area that may be required by the potential design alternatives.

- For Architecture/History: The APE generally consists of the existing and proposed right-of-way and beyond if the project will directly or indirectly cause changes in the setting or use of historic buildings and structures. (Refer to WisDOT [Architecture Survey Manual](#).)

There may be other types of historic properties in the APE for the project, such as Traditional Cultural Properties (TCP). In these cases, contact CRT for guidance.

1.4 Identify Participants, 36 CFR 800.3(c)1

Participants in the Section 106 process include the federal agency(ies), SHPO, and the interested Tribal Historic Preservation Offices (THPOs) (or Designated Tribal Representatives). Other interested parties may become consulting parties through the Section 106 process including local historical societies, property owners, and interest groups.

Projects located on federal lands require additional coordination with that federal agency's Historic Preservation Officer (HPO) to complete Section 106.

Projects located on tribal land will require additional coordination with the THPO (or Designated Tribal Representative) and may require additional coordination with the Bureau of Indian Affairs (BIA) and Tribal Council.

1.5 Tribal Notification (Initiating the Section 106 Process)

The environmental review process officially starts with the initial Tribal Notification. For additional information on the environmental review process, see [FDM Chapter 20](#).

Section 106 requires notification to interested parties, including Tribes, when a project is a federal undertaking (36 CFR 800.3). Additionally, WisDOT sends project notification to Tribes for projects that have state funding or oversight per the [Partnership Agreement](#). All WisDOT project notification to Tribes should be sent electronically or as preferred (some tribes require hard copies via US Mail). The project notification is sent to the [distribution list](#) found in the WisDOT Microsoft Outlook global address book and must come from a WisDOT email address.

As a part of the project notification to Tribes, WisDOT requests comments and consultation regarding the proposed undertaking. If no responses are received within 30 days, the project may proceed to the next step in the process. If resources are identified or impacts to resources may occur (including to a TCP), CRT will pursue further coordination with the THPO (or Designated Tribal Representative).

If a response is received requesting consultation, contact CRT and the region tribal liaison.

For additional guidance and templates, see "Tribal Historic Preservation Officer (THPO) Notification Process" on [WisDOT's Cultural Resources Webpage](#).

1.6 Tribal Consultation

If a Tribe responds to the initial notification requesting consultation (this is different from a simple request to remain a consulting party that receives ongoing project updates), the project team should notify CRT and the region tribal liaison. The project team will arrange a meeting, if requested, to discuss the project and provide the Tribe an opportunity to comment or share concerns.

The project team coordinates with CRT and tribal contacts to set a time, place, and agenda. The agenda for the meeting should generally include:

- Introductions
- Project overview and proposed project activities
- Proposed project schedule
- Identified historic resources (if available)
- Open discussion

The project team may change the project's APE to avoid potential impacts to properties identified during consultation. This may require additional notification to Tribes and other interested parties.

Tribal nations are entitled to be consulted government-to-government at a federal level, which requires that meetings may be held independently from those meetings identified here. If a Tribe requests government-to-government consultation, contact CRT for next steps.

FDM 26-5-5 Screening Process**5.1 Screening Overview**

The Screening Process (streamlined undertaking review) is defined and outlined in the [Programmatic Agreement \(PA\)](#). A project may be submitted for only archaeology screening, only architecture/history screening, both, or neither. The project team has discretion at any step of the process to forego screening and instead complete the full Section 106 process (see [FDM 26-1 Attachment 1.1](#), Glossary).

5.2 Screening Criteria

Not all proposed projects will qualify for the screening process. The project team will need to review the screening criteria to determine if a project is likely to qualify for screening. The screening criteria for both archaeology and architecture/history determines if a project has minimal potential to affect a historic property.

5.2.1 Archaeology Screening Criteria

- An archival and literature search resulted in no known cultural resources (archaeological, burial sites, mounds, others) in the project area.
- There will be no changes in the type or dimensions of any highway-related elements. Highway-related elements include, but are not limited to, the roadway, median, curb and gutter, sidewalks, shoulders, and beam guard, as well as activities that might change a building's setting such as ditching, flattening a curve or grading.
- Project acquires land, in easement or fee simple, less than 0.5 acre (0.20 hectare), or in strips equal to or less than 5 feet (1.52 meters) wide. Contact CRT to discuss strip acquisition.
- There will be no change in the traffic-carrying capacity of the highway (e.g., no parking removed to create additional lane or lanes).
- No trees, bushes or other substantial landscape features, such as retaining walls, will be removed or altered.
- Results of solicitation of public input indicate there are no concerns about historic properties.
- Results of solicitation of input from Tribes indicate there are no concerns about historic properties.
- Review of the National Register of Historic Places (NRHP) and state inventories for archaeological resources indicate no listed or eligible historic properties in or adjacent to the project.

5.2.2 Architecture/History Screening Criteria

- An archival and literature search conducted resulted in no known cultural resources (objects, buildings, structures, districts) in the project area.
- There will be no changes in the type or dimensions of any highway-related elements. Highway-related elements include, but are not limited to, the roadway, median, curb and gutter, sidewalks, shoulders, and beam guard, as well as activities that might change a building's setting such as ditching, flattening a curve or grading.
- Project is not adjacent to, within or proposing to rehabilitate historic buildings or structures within historic districts.
- There will be no change in the traffic-carrying capacity of the highway (e.g., no parking removed to create additional lane or lanes).
- No trees, bushes or other substantial landscape features, such as retaining walls, will be removed or altered.
- Results of solicitation of public input indicate there are no concerns about historic properties.
- Results of solicitation of input from Tribes indicate there are no concerns about historic properties.
- Review of the NRHP and state inventories for architectural and historical resources indicate no listed or eligible historic properties in or adjacent to the project.

5.3 Projects on Tribal Lands

Projects entirely within tribal lands are subject to tribal review and approval. Projects partially on tribal lands may be submitted for screening, but only the portions of the APE located outside of tribal lands will be reviewed by

CRT. The THPO (or Designated Tribal Representative) retains authority to review the portions of the APE lying within tribal boundaries. In this case, the project team will need to coordinate with the THPO (or Designated Tribal Representative) for review and concurrence prior to the project being placed on the screening list. Copies of all correspondence will need to be provided to CRT.

5.4 Screening Submittal and Process

Once a project team determines that their project meets the screening criteria, they must complete the [DT1030 form](#) and provide a project location map. For additional reference go to the [CRT FAQ](#).

The screening submittal will be added to the screening queue for review. The initial literature review may take up to 10 weeks. During the review, CRT or its service providers may request additional information or recommend additional research to finalize their screening recommendation. The additional research step, if needed, may take an additional 12 weeks. A project team has discretion to remove their project from the screening queue at any step in this process and complete the full Section 106 process.

5.5 Project Qualifies for Screening List

If the project qualifies for screening, it will appear on the [screening list](#). It is the responsibility of the project team to review this list regularly.

Projects that qualify for archaeology screening may also include commitments. It is the project team's responsibility to ensure the commitments are added to the appropriate environmental document template being used for the project and, if necessary, include in the construction special provisions.

Projects remain on the screening list for five years; after this time, projects must be resubmitted for screening review.

5.6 Amendments and Scope Changes

If a project's activities or termini change, a project must be resubmitted for screening as an amendment to the original DT1030. Include only new information in the amended submittal.

5.7 Project Does Not Qualify – Next Steps

If a project does not qualify for the screening list, the project team will be notified by CRT or its service providers, along with guidance on the appropriate next steps. Additional work may be required; however, in some instances a project will not need to go through the full Section 106 process.

5.7.1 Non-Survey Documentation

Non-Survey Documentation may need to be prepared to fulfill the Section 106 process for either archaeology or architecture/history. CRT will work with the project team to determine if Non-Survey Documentation is applicable. Non-Survey Documentation is appropriate for projects within or adjacent to the boundary of a determined eligible or NRHP-listed archaeological site, or an NRHP-listed or determined eligible historic district or individual property.

The documentation will be completed by CRT service providers or by previously contracted subconsultants. This form of documentation requires standard information that will be requested by the subconsultant/service provider. The project team is responsible for providing the necessary information in a timely manner.

The project team will submit the Non-Survey Documentation to CRT upon its completion. These materials will accompany the Section 106 submittal that is sent to SHPO. SHPO will have 30 days to comment on the Non-Survey Documentation findings.

See [FDM 26-10](#) for more information.

5.7.2 Burials – Request to Disturb, DT2251

When a burial site is within the APE, a project will not qualify for archaeology screening. The project team must comply with Wisconsin State Statute §157.70 (157.70). It is the project team's responsibility to notify CRT when the project is within one year of starting construction. Use the Request to Disturb form [DT2551](#). CRT will then petition the Wisconsin Historical Society (WHS) to work within the boundaries of the burial site(s).

See [FDM 26-10](#) and [FAQ](#) for more information.

5.7.3 Full Section 106 Process – DT1635

In some cases, the full Section 106 process must be completed. For example, a consulting party may request survey, or the nature of the project activities or location disqualifies it for screening. Use the Section 106 Review Archaeological/Historical Information form [DT1635](#).

5.7.4 Traditional Cultural Property (TCP)

If a TCP is present, contact CRT for next steps.

5.8 Including Results in Environmental Document

If the project is on the CRT Screening List, please include the date on the factors page of the environmental document along with any commitments (if applicable) on the commitments page. The relevant page from the screening list should be included as an attachment.

FDM 26-5-10 The Section 106 Process

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10.1 Initiating Section 106, 36 CFR 800.1 - 800.3

Consulting parties should include the lead federal agency, WisDOT, SHPO/THPO (or Designated Tribal Representative), the local government, an applicant for federal assistance (if one is involved), local historical societies or organizations, and tribes. Additionally, other state or federal agencies, property owners or those with an interest in preservation outcomes may be invited to join consultation.

10.2 Step 1 – Identification, 36 CFR 800.4(a)-(b)

The project team shall ensure appropriate identification methodology for historic resources are carried out by qualified professionals (see [FDM 26-30: Qualifications](#)).

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

For in-house design projects, CRT will assign the appropriate professional service and notify the project team. To begin this process, the project team must provide CRT the following:

- Fill out the first page of the Section 106 Review Form ([DT1635](#))
- Provide project plans
- Provide property owner notification

Once CRT assigns a professional service, the qualified professional will coordinate with the project team regarding project schedule and logistics. The qualified professional will:

- Complete a literature search
- Obtain permits and property authorization
- Determine level of documentation
- Conduct field survey
- Prepare appropriate reports
- Provide recommendations

If a project is located on federal or tribal lands, the results of the work will be reviewed by the appropriate officials with jurisdiction (HPO or THPO).

If additional regulatory requirements are applicable, such as an Archaeology Resource Protection Act (ARPA) permit, the project schedule may be impacted.

10.2.1 Results and Reporting

Upon completion of the identification survey(s), the qualified professional will report the results and provide recommendations regarding whether further work is required. Examples of these results and reporting can be found in [FDM 26-10](#).

10.2.2 Submittal and Next Steps

If no historic resources are identified or affected, follow the procedures for [Section 106 Submittals](#) on the WisDOT CRT Frequently Asked Questions guidance.

If potentially eligible sites are identified during survey, the qualified professional may need to work with the project team to determine if the historic resource can be avoided through redesign. If the historic resource(s) cannot be avoided, the project will need to go to 10-3: Step 2 – Evaluation.

10.2.3 Including Results in Environmental Document

If there are no eligible properties in the APE, and none of the consulting parties object to the findings within 30 days of notification, the project team should include the signed Section 106 Review form and any correspondence from consulting parties in the environmental document and place the signed Section 106 Review Form in the project file.

The following comment should be included on the factors page: “SHPO/THPO concurred that there are no eligible properties in the APE; the Section 106 form was signed on [date]” along with any commitments (if applicable) on the commitments page.

10.3 Step 2 – Evaluation, 36 CFR 800.4(c)

Evaluation covers the efforts to determine whether a historic resource meets the criteria for eligibility for the NRHP. The evaluation stage for archaeology is typically referred to as Phase II and for architecture/history is known as the Determination of Eligibility (DOE).

When a survey indicates the presence of a potentially eligible historic resource, the project team may either redesign to avoid impacts to the historic resource or the resource must be evaluated for NRHP eligibility by a qualified professional.

If a TCP is identified, additional coordination and consultation will be required. Tribes possess special expertise in assessing the eligibility of historic resources to which they attach religious and cultural significance. Work with CRT if a TCP is identified.

The project team will retain or continue to utilize the existing qualified professional(s) to complete an evaluation of historic resources identified within the APE by applying the NRHP criteria and, if necessary, preparing an appropriate DOE or Phase II. The qualified professional(s) will provide their evaluation results to WisDOT for review.

- Historians will present their results using the WisDOT [Determination of Eligibility](#) form.
- Archaeologists will present their results using a Technical Report, and if eligible sites are impacted the Wisconsin DOE version of [NPS Form 10-900](#).

10.3.1 Results and Reporting

Upon completion of the evaluations, the qualified professional will report the results and provide recommendations regarding whether further work is required. Examples of these results and reporting can be found in [FDM 26-10](#).

10.3.2 Submittal and Next Steps

If no historic properties are determined eligible and/or affected, follow the procedures for [Section 106 Submittals](#) on the WisDOT CRT Frequently Asked Questions guidance.

If historic properties may be affected, the qualified professional will need to work with the project team to determine if avoidance is possible. If the historic property cannot be avoided, the project will need to go to 10-4: Step 3 – Assess Effects.

10.3.3 Including Results in Environmental Document

If avoidance of the historic properties is possible, and none of the consulting parties object to the findings within 30 days of notification, the project team should include the signed Section 106 form and any correspondence from consulting parties in the environmental document and place the signed Section 106 Review Form in the project file.

The following comment should be included on the factors page: “SHPO/THPO concurred that there are no historic properties affected; the Section 106 form was signed on [date]” along with any commitments (if applicable) on the commitments page.

10.4 Step 3 – Assessment of Effect, 36 CFR 800.5

WisDOT shall consult with the federal agency(ies), SHPO/THPO (or Designated Tribal Representative), and interested parties in order to determine whether or not the project will adversely affect eligible properties within the APE.

10.4.1 Apply Criteria of Adverse Effect, 36 CFR 800.5(a)(1)

The federal agency(ies), WisDOT and/or the qualified professional in conjunction determine whether the project will or will not adversely affect historic properties. An adverse effect is when an undertaking may directly or

indirectly alter any of the characteristics of a historic property that qualify it for inclusion in the NRHP, in a manner that would diminish the integrity of the property. Adverse effects may include individual or cumulative effects.

If avoidance is not possible, the qualified professional and project team shall review the proposed project activities and the boundaries of the historic properties to determine if the sites can be avoided or the project can be redesigned to minimize potential impacts to the identified resources. If there is potential for the project to result in an adverse effect, contact CRT and follow the steps in 10-5: Step 4 – Resolve Adverse Effects.

Note: The project team should also review [FDM 20-35](#) to determine whether Section 4(f) of the U.S. Department of Transportation Act applies and if there is a potential “use” of a Section 4(f) property.

10.4.2 Determination of No Adverse Effect

A Determination of No Adverse Effect (DNAE) is appropriate when an eligible or listed property is in the APE and the proposed project activities do not meet the Criteria of Adverse Effect (for Criteria see 36 CFR 800.5(a)(1)). The qualified professional will complete a DNAE; For guidance see the [DNAE template](#)

The project team can either include the DNAE with the initial Section 106 submittal or submit after SHPO concurrence on the eligibility of the historic property[s] has been received. If there is no objection from any parties or no response, Section 106 is fulfilled.

If any consulting parties object to the DNAE, contact CRT for next steps.

10.4.3 Including Results in Environmental Document

The signed Section 106 form or the executive summary must be included in the environmental document. The full DNAE must be placed in the project file by the project team. If the DNAE includes conditions that must be implemented for the project to have no adverse effect on eligible or listed properties, the project team must include those conditions as commitments on the environmental commitments page.

The project team should also include the following statement in the environmental document: “documentation for Determination of No Adverse Effects is included...WisDOT has concluded that this project will have No Adverse Effect on historic properties. Signature by SHPO [on the Section 106 form] indicates SHPO concurrence in the DNAE and concludes the Section 106 Review process for this project. The Section 106 form was signed on [date].”

10.5 Step 4 – Resolve Adverse Effects, 36 CFR 800.6

Adverse effects can be resolved with a variety of approaches. The process brings together consulting parties to determine the best course forward. Potential solutions can include project modifications to avoid or minimize impacts, or mutually agreed upon mitigation for effects that cannot be avoided. Consultation for a project that results in an adverse effect will take additional time for coordination and concurrence.

10.5.1 Preparing for Consultation

As FHWA states in their Environmental Review Toolkit: “Consultation is the process of seeking input and dialogue among the participants to consider project design options that avoid or minimize effects to historic properties. However, it is not always possible to meet the needs of the project and simultaneously retain a historic property. FHWA makes the final decision about how a project will proceed.”¹

Consulting parties may include the federal agency, ACHP, SHPO or THPO (or Designated Tribal Representative), local governments, property owners, and any interested parties. Qualified professionals and the project team prepare the necessary documents, which may include:

- Current project plans (with historic boundaries on plans)
- Project narrative description
- APE
- Archaeology/History Report(s)
- Previous comments from the public

¹ “Section 106 Tutorial: Steps of the Section 106 Process,” *Federal Highway Administration*, https://www.environment.fhwa.dot.gov/env_topics/section_106_tutorial/chapter4_5.aspx#:~:text=Resolving%20adverse%20effects%20involves%20the,minimize%2C%20or%20mitigate%20adverse%20effects

It is the project team's responsibility to set-up and run the consultation meeting, with support of CRT and the federal agency(ies). Consultation meetings may be held in-person or virtually, and this will be determined by the consulting parties for the project.

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

Prior to the consultation meeting, the project team should share the necessary documents and an agenda with all consulting parties. The agenda for the meeting should generally include:

- Introductions
- Project overview and proposed project activities
- Proposed project schedule
- Identified historic properties
- Proposed mitigation items
- Open discussion

The project team should consider who will moderate and lead the meeting and who will be taking notes to share with consulting parties. Consulting parties may submit comments by letter, phone or email at any time throughout the process. Meeting minutes and comments should be documented for inclusion in the effect documentation.

Tribal Nations have the ability to request direct government-to-government consultation with the lead federal agency at any time during this process (36 CFR 800.2(c)(2)(ii)(C)).

If, as a result of consultation, adverse effects can be avoided, return to Finding of No Adverse Effect in 10-4. If adverse effects cannot be completely avoided, see 10-5-3.

10.5.3 Documentation for Consultation (D for C) and Memorandum of Agreement (MOA)

The qualified professional will complete the D for C and MOA, as well as any other documents such as the Data Recovery Plan (DRP). The [template for the D for C](#) is on the [WisDOT CRT website](#). Documentation in the D for C is consistent with 36 CFR Part 800.11(e).

Once a draft is completed, multiple review stages are required before finalizing each document.

Document flow generally follows:

- Project team circulates draft documents to local consulting parties for comment; if applicable, revisions are made.
- Project team submits draft documents to CRT for review; revisions may be requested.
- If no edits are required, CRT submits draft documents to SHPO for review and comment. SHPO has 30 days for review and comment.
- SHPO comments are incorporated into the documents by the project team and the updated materials are sent to CRT for transmittal to FHWA for review and filing with the ACHP. The ACHP has 15 days to review and comment.
- If no additional edits are requested, document may move forward to signature. If additional edits are required, the above steps may need to be repeated.

Once the documents are finalized, CRT will notify the project team to gather any local signatures for the MOA. When the project team submits the final documents with local signature(s), CRT gathers any state or federal agency, and/or Designated Tribal Representative signatures. CRT will share the executed MOA with consulting parties when all parties have signed.

A Programmatic Agreement (PA) is similar to an MOA, but reserved for complex projects where adverse effects to historic properties cannot be determined prior to the project's approval. Documentation is consistent with 36 CFR 800.14(b)(3). The qualified professional will complete the PA, as well as any related documents. The project team should contact CRT for guidance if they believe a PA is suitable to their project. See [FDM-26-10-1.8](#) for more information.

10.5.4 Including Results in Environmental Document

The signed Section 106 form and the executed MOA of PA must be included in the environmental document. A copy of the D for C and MOA must be placed in the project file by the project team. The project team must include the stipulations from the MOA on the environmental commitments page.

The project team should coordinate with the REC to determine what should be included on the factors page.

10.5.5 Implementation of the MOA Stipulations

The project team is responsible for retaining qualified professionals for the implementation of any mitigation commitments agreed upon during consultation. These professionals may include archaeologists, historians, tribal experts, museum curators, or other specialists who may be required to execute certain types of mitigation commitments.

Any commitments that must be fulfilled during construction are to be incorporated into the special provisions of the construction contract; however, some commitments will need to be fulfilled either before or after project construction. The commitments are tailored to a specific project and range from simple activities that can be completed within a short time period to complex assignments that may take several years. All MOA stipulations must be completed by the MOA's sunset date. If it is determined that a stipulation cannot be completed in accordance with the MOA, contact CRT to begin further coordination with FHWA.

As the stipulations are fulfilled, the project team must submit documentation of the completed commitments to CRT. After receiving documentation that all stipulations have been fulfilled, CRT will notify FHWA and the SHPO/THPO, and the project team.

Stipulations must be completed to fulfill WisDOT's legal obligations as agreed upon during the NHPA/NEPA process. When all commitments are completed, CRT will send a closeout letter to FHWA, SHPO/THPO, and the project team.

Additionally, once a year CRT will reach out to project teams to gather updates for the Division of Transportation System Development (DTSD) Annual MOA Performance Report.

FDM 26-5-15 Other Items

November 15, 2024

15.1 Inadvertent and Post-Review Discoveries 36 CFR 800.13

During project implementation, if significant inadvertent discoveries are encountered that have the potential to impact NRHP-eligible resources, Section 106 requirements regarding post-review discoveries (36 CFR 800.13) are in effect. Contact CRT for guidance.

15.2 Objections During Section 106 Process

During the consultation process, consulting parties may object to the findings at any step. If this occurs, contact CRT.

15.2.1 Consulting Party(ies) Object to Finding of No Historic Properties in APE, No Historic Properties Affected, or No Adverse Effect

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

FHWA, SHPO/THPO (or Designated Tribal Representative), CRT, and the project team will consult to resolve the objection. If the objection cannot be resolved, go to [FDM 26-15-2.2](#).

15.2.2 Consulting party(ies) objects to consultation during Resolution of Adverse Effect 36 CFR Part 800.7

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