

**FIRST AMENDMENT
TO THE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE SURFACE TRANSPORTATION BOARD,

THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,
THE WISCONSIN STATE HISTORIC PRESERVATION OFFICE,

THE MINNESOTA DEPARTMENT OF TRANSPORTATION, AND
THE WISCONSIN DEPARTMENT OF TRANSPORTATION
REGARDING
COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT,
AS IT PERTAINS TO THE NORTHERN LIGHTS EXPRESS HIGH SPEED RAIL PROJECT**

WHEREAS, Federal Railroad Administration (FRA), the Surface Transportation Board (STB), the Minnesota State Historic Preservation Office (MnSHPO), the Wisconsin State Historic Preservation Office (WisSHPO), the Minnesota Department of Transportation (MnDOT), and the Wisconsin Department of Transportation (WisDOT), executed a Programmatic Agreement on August 8, 2013 (incorporated and attached) (the “PA”) for the Northern Lights Express High Speed Rail Project (NLX Project) to provide project wide consistency in consultation procedures, documentation standards, and Federal agency oversight in compliance with Section 106 of the National Historic Preservation Act of 1966 (54 United States Code (U.S.C.) § 306108), as amended, and its implementing regulations at 36 Code of Federal Regulations (C.F.R.) § 800 (hereinafter collectively referred to as Section 106), as FRA determined a phased process for compliance with Section 106, pursuant to 36 C.F.R. § 800.4(b)(2), as appropriate for the NLX Project; and

WHEREAS, FRA, STB, MnSHPO, and WisSHPO are Signatories to the PA and MnDOT and WisDOT are Invited Signatories to the PA; and

WHEREAS, FRA has determined in consultation with STB, MnSHPO, WisSHPO, MnDOT, WisDOT that additional time is needed to amend the PA in consideration of efforts completed to date and anticipated additional Section 106 compliance efforts required for the NLX Project while procedural aspects of the PA require updating and additional time is required to amend the PA; and

WHEREAS, the PA will terminate within 10 years from the date of execution, on August 8, 2023, per Stipulation XVII.E. of the PA; and

WHEREAS, this First Amendment to the PA may be executed in counterparts, with a separate page for each signature. This PA will become effective on the date of the final signature of the Signatories. FRA will ensure each Signatory and Invited Signatory is provided with a complete copy and FRA will send a copy of this executed amendment to the Advisory Council on Historic Preservation (ACHP).

NOW, THEREFORE, in accordance with Stipulation XVII.B.1. of the PA, FRA, STB, MnSHPO, and WisSHPO agree to amend the PA as follows:

1. Amend Stipulation XVII.E. so it reads as follows:

In the event that the terms of this PA are not carried out within 11 years of the PA execution, this PA shall be assessed by the Signatories to determine if it is still needed and working effectively, or whether it should be terminated. If the PA is effective and its duration needs to be extended,

the Signatories can decide to extend the duration of the PA. If the Signatories determine that the PA is effective, but needs revisions, revisions will be made. In the event the Signatories determine that the PA is not effective and cannot be amended to address concerns, the PA shall be terminated, memorialized in a letter to the Signatories from FRA. If FRA or another Federal agency party to this PA chooses to continue with the undertaking, it shall re-initiate review of the undertaking in accordance with 36 C.F.R. § 800.

All other sections of the PA remain unchanged.

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SIGNATORY

Federal Railroad Administration

**LAURA ANNE
SHICK**  Digitally signed by LAURA
ANNE SHICK
Date: 2023.08.08 08:11:18
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Laura Shick
Acting Federal Preservation Officer

Date

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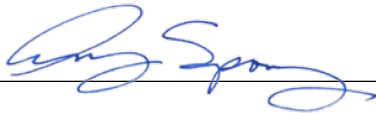
**THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,
THE WISCONSIN STATE HISTORIC PRESERVATION OFFICE,**

**THE MINNESOTA DEPARTMENT OF TRANSPORTATION, AND
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REGARDING**

**COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT,
AS IT PERTAINS TO THE NORTHERN LIGHTS EXPRESS HIGH SPEED RAIL PROJECT**

SIGNATORY

Minnesota State Historic Preservation Office



Amy H. Spong
Deputy State Historic Preservation Officer

08/07/2023

Date

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REGARDING**

**COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT,
AS IT PERTAINS TO THE NORTHERN LIGHTS EXPRESS HIGH SPEED RAIL PROJECT**

SIGNATORY

Wisconsin Historical Society



Daina Penkiunas
State Historic Preservation Officer

8/2/2023
Date

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REGARDING**

**COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT,
AS IT PERTAINS TO THE NORTHERN LIGHTS EXPRESS HIGH SPEED RAIL PROJECT**

SIGNATORY

Surface Transportation Board

DANIELLE GOSSELIN  Digitally signed by DANIELLE GOSSELIN
Date: 2023.07.27 15:27:41 -04'00'

Danielle Gosselin
Director, Office of Environmental Analysis

Date

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REGARDING**

**COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT,
AS IT PERTAINS TO THE NORTHERN LIGHTS EXPRESS HIGH SPEED RAIL PROJECT**

INVITED SIGNATORY

Minnesota Department of Transportation

Nancy Daubenberger Digitally signed by Nancy Daubenberger
Date: 2023.07.31 14:39:45 -05'00'

Nancy Daubenberger, P.E.
MnDOT Commissioner

Date

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INVITED SIGNATORY

Wisconsin Department of Transportation

DocuSigned by:

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26 July 2023

Barry Paye, P.E.
WisDOT Historic Preservation Officer

Date

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REGARDING
COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC
PRESERVATION ACT,
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PROJECT**

WHEREAS, the Minnesota Department of Transportation (MnDOT), in cooperation with the Minneapolis-Duluth-Superior Passenger Rail Alliance (Alliance) proposes to construct the Northern Lights Express High Speed Rail Project (NLX Project) between a southern terminus in Minneapolis, Minnesota and a northern terminus in Duluth, Minnesota/Superior, Wisconsin; and

WHEREAS, MnDOT has received a grant from the Federal Railroad Administration (FRA) through the High-Speed and Intercity Passenger Rail Program for initial planning, conceptual design, and preliminary engineering for the NLX Project; and

WHEREAS, FRA is the lead Federal agency relative to this Undertaking for compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA), codified at 16 U.S.C. 470f, and its implementing regulations at 36 CFR Part 800; and

WHEREAS, on April 17, 2013, the Surface Transportation Board (STB) determined that it may have jurisdiction over certain aspects of the NLX Project and requested that it be added as a signatory to the Programmatic Agreement (PA) to fulfill its obligations under Section 106 of NHPA;

WHEREAS, MnDOT and the Alliance, in cooperation with FRA and STB, are preparing an Environmental Assessment (EA) in accordance with the requirements of NEPA to address the potential impact of the NLX Project on a variety of human and natural resources; and

WHEREAS, FRA and STB have a statutory obligation, as Federal agencies, to fulfill the requirements of Section 106; and

WHEREAS, the purpose of this PA is to provide project wide consistency in consultation procedures, documentation standards, and Federal agency oversight in compliance with Section 106 of the NHPA for the NLX Project; and

WHEREAS, FRA and STB have delegated to MnDOT various actions required by Section 106, as set forth in this Programmatic Agreement (PA) in Section II. C. and a delegation letter to the Minnesota State Historic Preservation Office (MnSHPO) dated December 26, 2012; and

WHEREAS, MnDOT's Cultural Resources Unit (CRU) has the appropriately qualified staff and will manage the Section 106 responsibilities within MnDOT; and

WHEREAS, FRA authorizes MnDOT CRU to initiate consultation with the MnSHPO and the Wisconsin State Historic Preservation Office (WisSHPO) pursuant to 36 CFR 800.14(b)(1)(iii) for the Undertaking covered by this PA; and

WHEREAS, FRA and MnDOT CRU have initiated consultation with the MnSHPO and the WisSHPO concerning the potential types of effects the NLX Project may have on historic properties within Minnesota and Wisconsin, respectively; and

WHEREAS, MnSHPO and WisSHPO for purposes of this PA agree to consult only on historic properties within their respective states; and

WHEREAS, the WisDOT and WisSHPO have agreed that MnSHPO will have lead SHPO status over the Grassy Point Bridge, which crosses into both states; and

WHEREAS, the Project's Area of Potential Effect (APE) was determined by FRA and MnDOT CRU pursuant to 36 CFR 800.4(a)(1); and

WHEREAS, MnDOT CRU, on behalf of FRA, has completed Phase I survey within the APE for the NLX Corridor and identified properties that are potentially eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, MnDOT CRU will prepare, at the direction of FRA, additional environmental documentation on subsequent phases of the NLX Corridor implementation, in accordance with NEPA, including any cultural resource studies required for Section 106; and

WHEREAS, the NLX Project design is currently at concept-level engineering with the EA identifying broad impacts that would potentially result from project implementation; and

WHEREAS, following the EA and FRA's issuance of a Finding of No Significant Impact (FONSI), the NLX Project will enter the Preliminary Engineering phase, where greater information will be available regarding the ability to avoid, minimize or mitigate potential impacts to historic properties resulting from the NLX Corridor and future site specific projects; and

WHEREAS, FRA has determined that a phased process for compliance with Section 106, as provided for in 36 CFR 800.4(b)(2), is appropriate for the NLX Project such that completion of the identification of historic properties, determination of effects on historic properties, and consultation concerning measures to avoid, minimize, or mitigate if needed, any adverse effects will be carried out prior to any notice to proceed to construction and site specific project implementation; and

WHEREAS, FRA has determined that the proposed NLX Project includes rail lines, associated structures, maintenance and ancillary facilities, construction easements, and staging areas, which are subject to Section 106 review and may have an effect upon historic properties included on or eligible for inclusion on the NRHP. The NLX Project includes the following stages:

- Stage 1: NLX Corridor as detailed in the EA (NLX Corridor).
- Stage 2: All other site specific project elements and facilities not analyzed in the EA (Site Specific Projects).

WHEREAS, pursuant to the requirements of NEPA, FRA and MnDOT conducted a public and agency involvement program as part of the environmental review process for the EA through which information was provided to federal, state, and local agency representatives; elected officials; property owners; interested persons; and interested organizations; and

WHEREAS, FRA and MnDOT CRU prepared a list of Native American Tribes or groups for Section 106 consultation for the EA and initiated consultation with the identified federally-recognized Native American tribes. FRA sent letters to these tribes providing information about the proposed project alternatives and requesting information about any traditional cultural properties that could be affected by the NLX Project; and

WHEREAS, FRA and MnDOT CRU will continue to consult with federally-recognized Native American Tribes, concerning properties of traditional religious and cultural significance; and

WHEREAS, FRA, STB, MnSHPO and WisSHPO are signatories pursuant to 36 CFR 800.6(c)(1) and agree to implement the procedures and measures described herein for the NLX Project in keeping with the following stipulations; and

WHEREAS, MnDOT and WisDOT have been invited by the FRA to sign this agreement in accordance with 36 CFR 800.6(c)(2); and

WHEREAS, FRA has consulted with the Advisory Council on Historic Preservation (ACHP) concerning this PA and the ACHP has declined to participate in the consultation, and

WHEREAS, the Burlington Northern Santa Fe (BNSF) Railway, which owns the right-of-way and operates freight rail service within the NLX Corridor, invited to participate in this PA as a Concurring Party and on July 10 declined; and

NOW, THEREFORE, FRA, STB, MnSHPO and WisSHPO agree that the proposed NLX Project covered by this PA shall be implemented in accordance with the following stipulations in order to consider the effect of each element of the NLX Project on historic properties and that these stipulations shall govern compliance of the proposed NLX project with Section 106 of the NHPA until this PA expires or is terminated.

STIPULATIONS

I. APPLICABILITY

- A. Unless this PA is amended pursuant to section XVII B. or terminated pursuant to section XVII D., this PA shall apply to the NLX Project.
- B. While no use of tribal land is anticipated, if such undertakings occur, the lead Federal agency will follow appropriate tribal consultation procedures in 36 CFR Part 800, as well as those provided in Stipulation IV below, with regard to those effects.
- C. In the event that MnDOT applies for additional federal funding or approvals for the undertakings from another agency that is not party to this PA and the NLX Project, as described herein, remains unchanged, such funding or approving agency may choose to comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with FRA, STB, MnSHPO, WisSHPO, MnDOT and WisDOT. Any necessary modifications will be considered in accordance with Stipulation XVII.B of this PA.

II. ROLES AND RESPONSIBILITIES

A. FRA

As the lead Federal agency and pursuant to 36 CFR 800.2(a)(2), FRA is responsible for fulfilling the requirements of Section 106, and ensuring the provisions of this PA are carried out. FRA will conduct government-to-government consultation with federally-recognized Native American tribes, execute MOAs for the NLX Corridor and each future site specific project of the NLX Project, and participate in the resolution of disputes. FRA is responsible for all determinations of eligibility and finding of effect of the undertakings.

B. STB

As a cooperating Federal agency, STB is responsible for fulfilling the requirements of Section 106, pursuant to 36 CFR Part 800. STB is also responsible for reviewing project documentation in a timely manner and participating in consultation as set forth in this PA.

C. MnDOT

FRA and STB have delegated to MnDOT CRU responsibility for the implementation of the following provisions of this PA: Consult with other consulting parties and the public; conduct Section 106 reviews; delineate and change the APE as needed and get FRA permission for and inform the other signatories of the change; prepare documentation for MnSHPO, WisSHPO, STB and FRA including determinations of eligibility and effect; circulate comments from signatories; maintain documentation of the Section 106 compliance for the NLX Corridor and each site specific project within the NLX Project; develop a prototype MOA for the NLX Corridor and each site specific project within the NLX Project; invite local agencies, Native American groups, interested non-governmental organizations,

and individuals to participate in the development of the NLX Corridor and each site specific project MOAs to agree upon means to avoid, minimize, and/or mitigate adverse effects to historic properties; develop and assure adherence with site specific project MOAs for the NLX Corridor and each site specific project; develop a built-environment treatment plan and an archaeological treatment plan to be used for the NLX Corridor and each site specific project; develop and assure adherence with the individual NLX Corridor and site specific project treatment plans, as provisions in the MOAs for the NLX Corridor and each site specific project; and ensure project information is available to consulting parties and the public in concert with the NEPA process for the NLX Corridor and each site specific project.

D. MnSHPO and WisSHPO

1. MnSHPO and WisSHPO shall be responsible for reviewing project documentation and participating in consultation as set forth in this PA for the State of Minnesota and the State of Wisconsin, respectively.
2. All submittals to MnSHPO and WisSHPO shall be in paper format.
3. Pursuant to 36 CFR 800.3(c)(4), the MnSHPO and WisSHPO shall review and comment on all adequately documented project submittals within 30 calendar days of receipt.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

All actions prescribed by this PA that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) (Appendix A to 36 CFR Part 61) in the appropriate discipline. Hereinafter, such persons shall be referred to as Principal Investigators (PIs). MnDOT CRU shall ensure that the work outlined in this PA is conducted by staff meeting these qualifications standards. However, nothing in this stipulation may be interpreted to preclude FRA or MnDOT CRU or any agent or contractor thereof from using the services of persons who are not PIs, as long as their activities are overseen by PIs.

IV. ON-GOING CONSULTATION WITH NATIVE AMERICAN TRIBES

A. FRA

1. As the lead Federal agency with responsibility for Section 106 compliance, FRA is responsible for all government to government consultation with federally-recognized tribes. A list of federally-recognized Native American tribes contacted can be found in Attachment C.
2. FRA requested government-to-government consultation on the NLX Project via letters sent to all federally-recognized Native American tribes that could be affected by the undertaking

described in this PA. Federally-recognized Native American tribes were provided a 30-calendar-day opportunity to comment.

3. FRA shall ensure that on-going consultation with federally-recognized Native American tribes continues early in the project development process for the NLX Corridor and each site specific project to identify cultural, confidentiality, or other concerns including those about historic properties, and to allow adequate time for consideration of such concerns whenever they may be expressed.
4. In accordance with 36 CFR 800.2(c)(2), federally-recognized Native American tribes may be identified as consulting parties for the NLX Corridor and individual site specific projects and in subsequent MOAs that are prepared for the NLX Corridor and each site specific project covered by this PA as described further in Stipulation VIII.A.
5. Consultation with federally-recognized Native American tribes shall continue throughout the development of NLX Corridor and subsequent site specific projects, regardless of whether such tribes responded within 30 days to the consultation letter sent by FRA attempting to initiate such consultations at the outset of this NLX Project.
6. FRA shall identify tribes who will participate in an undertaking as a consulting party and shall consider future written requests to participate as consulting parties in an undertaking.

B. MnDOT

1. MnDOT CRU may consult informally with the federally-recognized Native American tribes and will coordinate such consultation with FRA, as appropriate.

C. Consultation for each Undertaking

1. MnDOT CRU may invite federally-recognized Native American tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking to participate in informal informational meetings for the NLX Corridor and site specific projects, if deemed necessary by the parties involved.
2. FRA shall consult on a government-to-government basis with federally-recognized Native American tribes identified as consulting parties that attach religious and cultural significance to historic properties that may be affected by an undertaking at key milestones in the Section 106 and NEPA processes to gain input from tribal governments. MnDOT CRU shall consult with all other involved Native American groups. The tribal consultation includes the following Native American consultation points:
 - i. During identification of cultural or historic properties, to confirm the historic or cultural properties identified.
 - ii. During assessment of adverse effects, (a) to provide requested inventory forms of historic properties adversely affected for review, (b) to determine when and where tribal monitors may be needed during ground disturbing activities in previously identified

sensitive areas or known sites, and (c) to develop avoidance, minimization and treatment measures for adverse effects to both archaeological and built resources.

- iii. During resolution of adverse effects, (a) to develop and finalize treatment plans for archaeology and built resources, (b) to develop and execute MOAs, and (c) to determine when and where tribal monitors may be needed during treatment plan implementation or construction.
- iv. During treatment plan and MOA implementation, (a) to provide for tribal monitors where agreed upon, and (b) to review and comment on the Programmatic Agreement Annual Report, including input on the treatment plan and MOA implementation.

V. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Public Involvement

Public involvement in planning and implementation of undertakings covered by this PA shall be governed by FRA's, STB's, and MnDOT's environmental compliance procedures, MnDOT's environmental planning methods, and any relevant federal and MnDOT guidance documents. Historic resources will be identified and effects will be disclosed to the extent allowable under 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3) and Stipulation XII of this PA. Consistent with Section 106, the public and consulting parties will have an opportunity to comment and have their concerns taken into account on the findings identified in Section 106 survey and effects determination documents via attendance at public meetings where they can submit comments on the information presented, as well as have access to the Section 106 documents. Public meetings specific to historic properties and the effects of the project and treatment of these properties will be held in locations along the NLX corridor and for site specific projects, as appropriate. Interest groups and interested individuals will be invited to comment on the treatments proposed and those with demonstrated interest in the project will be invited to participate as consulting parties to the individual section MOAs.

Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3), and the Freedom of Information Act, 5 U.S.C. 552, and the implementing regulation applicable to the U.S. Department of Transportation, at 49 CFR Part 7.

B. Consulting Parties

Consulting parties shall participate in undertakings covered by this PA in accordance with 36 CFR 800.2(c)(3) through (5) and 800.3(f). Consulting parties may include other federal, state, regional, or local agencies that may have responsibilities for historic properties and may want to review reports and findings for an undertaking within their jurisdiction.

MnDOT CRU shall submit to FRA, STB, MnSHPO and WisSHPO a list of consulting parties for the NLX Corridor and each subsequent site specific project and a summary of coordination efforts and comments received. MnSHPO and WisSHPO shall submit comments, including recommendations for additional parties to MnDOT CRU within 30 days. MnDOT CRU shall revise and update this information as necessary based on

MnSHPO's and WisSHPO's comments, and re-submit them to MnSHPO and WisSHPO as part of the reports to be prepared under Stipulation VI. MnDOT CRU and FRA shall also consider individuals' written requests to participate as consulting parties in the development of measures to avoid, minimize, and mitigate adverse effects to historic properties. Pursuant to 36 CFR 800.11(e) through (g), comments made by the public will be included in documentation of project effects to the NLX Corridor and subsequent site specific MOAs, as appropriate.

VI. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

A. Area of Potential Effects

An APE for the NLX Corridor was developed by FRA and MnDOT CRU pursuant to 36 CFR 800.4(a)(1) taking into account statements by MnSHPO, WisSHPO, stakeholders and interested parties. The APE for each site specific project will be determined by MnDOT CRU, on behalf of FRA, in accordance with the APE for the NLX Corridor and the APE Delineation guidelines (Attachment A). As described in Attachment A, throughout the design process, MnDOT CRU will determine if revisions to an undertaking require modifications to the APE. If an APE requires revisions, MnDOT CRU is responsible for informing the signatories, together with FRA or other federal agency, consulting Federally-recognized Native American tribes, and other consulting parties.

B. Identification and Evaluation of Historic Properties

1. The signatories to this PA agree that MnDOT CRU will have the responsibility to identify historic properties and prepare documentation in accordance with Attachment B. As appropriate, these methods may be modified for the NLX Project or site specific project in consultation with the signatories and in accordance with PI review and current professional standards. Findings shall be made by MnDOT CRU to FRA based on NRHP criteria (36 CFR 60.4) and evaluated in accordance with 36 CFR 800.4(c). Evaluation methods and criteria shall be consistent with the Secretary of the Interior's Standards and Guidelines for Evaluation (48 Fed. Reg. 44729-44738) (36 CFR 63) and shall be completed by PIs qualified in the appropriate discipline: archaeology, architectural history, or history.
2. Historic properties shall be identified to the extent possible within the APE for the NLX Corridor and each of the site specific projects and will be documented in individual Survey Reports (SR) as described in Attachment B. The content, methodology, level of effort, and documentation requirements for historic property evaluations in the SR shall follow federal, Minnesota and Wisconsin guidelines and instructions, and are provided in detail in Attachment B. The identification effort and ineligible properties shall be documented in separate technical reports for archaeological properties and historic architectural properties, the drafts of which will be submitted for review by the signatories and other consulting parties including tribal historic preservation officers (THPOs) and tribal representatives who have expressed an interest in the undertaking.

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- i. Archaeological properties include precontact and historic period archaeological sites, objects, and districts, and properties identified in 36 CFR 800.4. Evaluations shall be made by PIs fully qualified in the discipline of archaeology. Archaeological properties within the APE shall be documented in the SR. The content, methodology, level of effort, and documentation requirements for archaeological evaluations in the SR are provided in detail in Attachment B. Any archaeological investigations that may be required for portions of the project in Minnesota or Wisconsin on non-federal publicly owned land shall be conducted under a State Archaeologist's permit (Minnesota 138.31-.42 and WIS. 44.47). The goal of the investigation is to locate and identify any significant archaeological resources that could be affected by the project, well in advance of any construction. The results of the survey will be used in consultation in order to avoid, minimize, or mitigate adverse effects to identified significant archaeological resources. This requirement shall be incorporated into all Archaeological Treatment Plans proposed for portions of the project or project phases in Minnesota and Wisconsin.
 - ii. Historic architectural properties include historic buildings, structures, objects, sites, landscapes and districts. Evaluations shall be made by PIs. Historic architectural properties within the APE that are identified by PIs as historic properties shall be documented in the SR. Historic architectural properties evaluated as ineligible for the NRHP by PIs shall be documented in the SR. The content, methodology, level of effort, and documentation requirements for historic architectural evaluations in the SR are provided in detail in Attachment B.

C. Review of Documentation of Historic Properties

1. Upon review and concurrence of the determinations of eligibility by FRA, a Draft SR would be submitted by MnDOT CRU to the signatories and identified consulting parties, including Native American tribes, upon request and would include documentation of all properties in the APE that are listed in the NRHP, previously determined eligible for the NRHP, found eligible for the NRHP by PIs, or that appear ineligible for the NRHP. Known archaeological properties that cannot be evaluated prior to approval of an undertaking will be presumed NRHP eligible. Where archaeological testing to determine NRHP eligibility is not feasible during the identification and evaluation phase, project-specific MOAs may include a provision for treatment plans that include archaeological testing or use of a combined archaeological testing and data recovery program.
2. MnDOT CRU shall submit its determinations to the signatories and consulting parties, including Native American tribes, identified as a result of Stipulations IV.C and V.B, who shall have 30-days to review the determinations and provide their recommendations for changes to the determinations based on National Register criteria. If no objection is made, consistent with Stipulation VI.D, within the 30-day period, the determinations for those historic properties would become final.
3. Other potentially eligible properties within the APE will be evaluated by PIs, documented for each undertaking in a SR, and submitted to MnSHPO or WisSHPO for review and concurrence. If MnSHPO, WisSHPO, agency reviewer, consulting Native American tribe, or

other consulting party asks for additional information or a re-evaluation of a property that has been determined to be not eligible, that property and the updated finding of eligibility or non-eligibility shall be included in the Final SR. Comments received from the STB, MnSHPO, WisSHPO, the THPO, agency reviewer(s), consulting Native American tribe(s), and other consulting parties will be considered and may be incorporated into a Final SR.

- 4 If, after the submission of the Final SR, there are changes to the APE that include additional properties not exempt from evaluation or information is received that there may be additional historic properties within the APE, a Supplemental SR will be prepared, and distributed following review by FRA, to STB, MnSHPO, WisSHPO and all parties who received the Final SR for a review and comment period of 30 days. If no objection is made, consistent with Stipulation VI.D, within the 30-day period, the determinations for those historic properties in the Supplemental SR would become final.

D. Eligibility Disagreements

Should a disagreement arise regarding the NRHP eligibility of a property in the APE for an undertaking, FRA shall forward a Determination of Eligibility documentation to the Keeper of the National Register (Keeper) for resolution in accordance with 36 CFR 800.4(c)(2) if:

1. MnSHPO, WisSHPO or a federal agency with jurisdiction over the involved lands objects in writing within 30 days to a finding of eligibility, or
2. A Native American tribe or group that ascribes traditional religious and cultural significance to a property objects in writing within 30 days to a Finding of Eligibility regarding that property; and
3. FRA is not able to resolve that objection through consultation with the MnSHPO or WisSHPO and the objecting party as provided for in Stipulation XVII.A.

Should a member of the public disagree with any NRHP eligibility determinations, MnDOT CRU shall inform FRA and any affected signatories and take the appropriate objection into account. MnDOT CRU shall consult for no more than 30 days with the objecting party and, with any or all of the other signatories. MnDOT CRU shall document such consultation efforts and submit the findings in writing to FRA for review. FRA's decision regarding resolution of the objection from a member of the public will be final.

E. Phased Identification

In accordance with 36 CFR 800.4(b)(2), phased identification may occur in situations where identification of historic properties cannot be completed. In these cases, subsequent MOAs will provide a provision for the development and implementation of a post-review identification and evaluation effort as applicable to the NLX Project.

VII. ASSESSMENT OF ADVERSE EFFECTS

- A. If historic properties are identified within the APE for the NLX Project, MnDOT CRU shall assess adverse effects in accordance with 36 CFR 800.5 and document its assessment in the SR, providing it to FRA for review, for each undertaking where historic properties were identified within the APE. The SR shall describe the assessment of potential adverse effects to historic properties that would result from the construction or operation of the project, and identify mitigation measures that would eliminate or minimize effects to be incorporated into the design and construction documents of the NLX Project. Following FRA review and concurrence, MnDOT CRU shall distribute the SR to the signatories, and other consulting parties, including Native American tribes, identified as a result of Stipulations IV.C and V.B, who shall have a 30-day review and comment period. MnDOT CRU shall ensure that comments are considered prior to finalizing the SR for submission to the SHPO for final review and concurrence. The MnSHPO or WisSHPO shall have an additional 15 days for review and concurrence with the final SR.
- B. FRA will notify and invite the Secretary of the Interior (represented by the National Park Service regional office's program coordinator) when any project section may adversely affect a National Historic Landmark (NHL) pursuant to 36 CFR 800.10 and Section 110(f) of the NHPA.
- C. Consistent with 36 CFR 800.5(b) and (d)(1), FRA may determine that there is no adverse effect on historic properties within the APE for an undertaking when the effects of the undertaking would not meet the Criteria of Adverse Effect at 36 CFR 800.5(a)(1), the undertaking is modified to avoid adverse effects, or if conditions agreed upon by SHPO are imposed, such as subsequent review of plans for rehabilitation by the MnSHPO/WisSHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines, to avoid adverse effects. Any conditions would be documented by the written concurrence of the consulting parties. MnDOT CRU will submit all such written concurrence documents to FRA, which is responsible for ensuring compliance with all conditions to avoid adverse effects.

VIII. TREATMENT OF HISTORIC PROPERTIES

- A. Memoranda of Agreement
 - 1. A MOA will be developed by MnDOT CRU for the NLX Corridor and each site specific project that FRA determines would have an adverse effect to historic properties or when phased identification is necessary and adverse effects could occur.
 - 2. Each MOA will include minimization and protective measures for eligible properties identified in the SRs such as preservation-in-place; processes for addressing project design changes or refinements after the SRs for the NLX Corridor and each site specific project are completed, and a process for efficiently addressing unanticipated discoveries in the post-review period.

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3. FRA will notify the ACHP of any findings of adverse effect and invite the ACHP to participate in the development of the MOAs pursuant to 36 CFR 800.6(a)(1)(i)(c), as appropriate.
 4. Should Native American tribes or groups decline to participate as signatories to a NLX Corridor or site specific project MOA, unless requested, documentation regarding treatment that is called for in that NLX Corridor or site specific MOA will not be provided. Native American tribes and groups will continue to receive information on the NLX Corridor or subsequent site specific project MOAs as part of the NEPA process and may request to consult at any time on an undertaking, or request additional coordination with MnDOT or FRA.
 5. Pursuant to 36 CFR 800.11(e) through (g), views of the public will be considered and included where appropriate in specific project MOAs.
 6. Upon review, concurrence, and execution of the MOA, Section 106 review will be considered concluded for the NLX Corridor or particular site specific project, though coordination and compliance efforts would continue according to the terms of this PA and the MOA.

B. Individual Treatment Plans

1. Treatment plans will be developed by MnDOT CRU for the NLX Corridor and each site specific project. Where National Register eligible buildings or structures may be adversely affected by the NLX Corridor or a site specific project, a Built Environment Treatment Plan will be prepared. Where National Register eligible archaeological properties may be adversely affected by the NLX Corridor or a site specific project, an Archaeological Treatment Plan will be prepared. Such Treatment Plans will include, respectively:
 - i. The Built Environment Treatment Plan (BETP) will provide detailed descriptions of treatment measures for eligible buildings, structures, objects, landscapes and districts that would be affected by the undertaking. The BETP will also include descriptions of measures to be taken to protect historic properties and to avoid further adverse effects to historic properties. In accordance with 36 CFR 800.5(a)(1), BETPs will take into account the cumulative and foreseeable effects of the NLX Project on historic architectural properties.
 - ii. The Archaeological Treatment Plan (ATP) will provide detailed descriptions of protection measures for archaeological resources and resources of importance to Federally Recognized Native American Tribes or Native American groups because of cultural affinity. The ATP could include but is not limited to the establishment of archaeologically sensitive areas, use of preconstruction archaeological excavation, preservation-in-place, avoidance, minimization, monitoring during construction where appropriate, procedures to be followed when unanticipated discoveries are encountered, processes for evaluation and data recovery of discoveries, responsibilities and coordination with Federally Recognized Native American tribes, Native American

groups, and compliance, and curation of recovered materials pursuant to applicable Minnesota and Wisconsin laws and the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq.

2. Each treatment plan will address historic properties adversely affected and set forth means to avoid, protect, or develop treatment measures to minimize the NLX Project's effects where MnDOT CRU, in consultation with the appropriate agencies, MnSHPO and/or WisSHPO, and other MOA signatories, determines that adverse effects cannot be avoided. The treatment plans will conform to the principles of the Council's Treatment of Archaeological Properties: A Handbook Parts I and II, the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 Fed. Reg. 44716-44742 (September 29, 1983), and appropriate MnSHPO and WisSHPO Guidelines. MnDOT CRU will take into consideration the concerns of the consulting parties in determining the measures to be implemented.

C. Treatment Plan Reviews

1. Signatory Review

MnDOT CRU shall provide the treatment plans to FRA for review, prior to providing it to MOA signatories and MOA concurring parties for a 30-day review and comment period. Based on comments received, treatment plans will be revised and resubmitted for a final 30-day review. If FRA, MOA signatories and/or MOA concurring parties fail to comment within 30-days of receiving the treatment plan, MnDOT CRU may assume concurrence of the other parties and may proceed with the implementation of the treatment plan. Treatment plans may be amended by MnDOT CRU, upon FRA review without amending the MOAs. MnDOT CRU and FRA will make a good faith effort to identify major alterations to treatment plans that substantively affect mitigation measures and seek additional consultation with the other MOA signatories before approving such revised treatment plans. Where warranted, such good faith efforts shall include submittal of the draft revised treatment plan to the MOA signatories for a minimum of 15 calendar days prior to the anticipated approval of the revisions. Disputes will be resolved in accordance with the Dispute Resolution clause in Stipulation XVII.A.

2. Public Participation

MnDOT CRU shall take reasonable steps to provide opportunities for members of the public to express their views on the treatment plans. Opportunities for public input may include the distribution of treatment plans consistent with 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1) and (3). Where appropriate, MnDOT CRU will hold informational meetings with the public to explain the treatment plans and obtain comment. Any public comments received will be considered and incorporated into the treatment plans as appropriate.

D. Treatment Plan Implementation

1. Upon execution of each MOA and prior to the commencement of construction activities, each related treatment plan will be implemented. Depending upon the nature of the

treatment, the treatment may not be completed until after the specific project or the NLX Project is completed. Termination of the project after initiation of the treatment plans will require completion of any work in progress, and amendment of each treatment plan as described below. Amendments to the treatment plans will be incorporated by written agreement among the signatories to the MOA. Each MOA will outline appropriate reporting processes for the treatment plans.

2. Dispute Resolution

The parties participating in the development and implementation of the treatment plans will come to agreement on the treatment prescribed in and the implementation of the treatment plan in the MOA. If the parties are unable to come to agreement on the treatment of adverse effects in the MOA, the procedures outlined in XVII.A will be followed to resolve the dispute.

IX. CHANGES IN ANCILLARY AREA/CONSTRUCTION RIGHT-OF-WAY

MnDOT CRU will notify the MOA signatories and consulting parties of changes in the size or location of ancillary areas or the construction right-of-way that result in changes to the APE, or effects to historic properties (see Attachment A) as appropriate. If any changes result in the use of unsurveyed areas, MnDOT CRU will ensure that these areas are surveyed in order to locate any potentially significant cultural resources and that those resources are evaluated for NRHP eligibility. MnDOT CRU will consult with the MOA signatories and consulting parties regarding any newly identified historic properties that cannot be avoided. Protective and/or mitigation measures will be developed and the treatment plans will be amended and implemented in accordance with Stipulation VIII. All such changes will be documented in the annual Programmatic Agreement report.

X. CONSTRUCTION APPROVAL

Upon the completion of the pre-construction activities prescribed in the treatment plans and after treatment plan implementation where adverse impacts would occur, and in accordance with the provisions of the applicable MOA, or where no historic properties were identified, MnDOT CRU may authorize construction within portions of the APE.

XI. DISCOVERIES, UNANTICIPATED ADVERSE EFFECTS, UNANTICIPATED DAMAGE

In accordance with 36 CFR 800.13(a)(2), if a previously undiscovered archaeological, historical, or cultural property is encountered during construction, or previously known properties would be affected or have been affected in an unanticipated adverse manner, MnDOT CRU will implement the following procedures:

- A. MnDOT CRU shall ensure that all operations for the portion of the undertaking with the potential to affect an historic property are immediately ceased and will contact FRA, STB, and affected MOA signatories, if appropriate. upon unanticipated resource discovery;

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- B. MnDOT CRU shall make a preliminary determination of the National Register eligibility of the historic property and the potential for the undertaking to adversely affect the resource and shall forward that finding to FRA who will make the final eligibility and effects determinations. If adverse effects to the resource can be avoided, no consultation with MOA signatories and consulting parties is necessary. If adverse effects cannot be avoided, MnDOT CRU will consult with the MOA signatories and propose treatment measures to minimize the effects;
 - C. MnDOT CRU shall notify Federally-recognized Native American tribes of any discoveries that have the potential to adversely affect properties of religious or cultural significance to them. After being notified of such discoveries, the Native American tribes can request further consultation on the project by notifying MnDOT CRU, in writing within three business days. For interested Native American groups that are not Federally-recognized, MnDOT CRU shall notify them of any discoveries that have the potential to adversely affect properties of religious or cultural significance to them. After reviewing such discoveries, such interested Native American groups can request further consultation on the project by notifying MnDOT CRU in writing within three business days;
 - D. MnDOT CRU shall implement the avoidance, minimization, or treatment plan and advise FRA and other signatories of the satisfactory completion of the approved work. Once the approved work is completed, the activities that were halted to address the discovery of resources may resume;
 - E. Any treatment to damaged properties will follow the Secretary of the Interior's Standards for the treatment of historic properties. If MnDOT CRU determines damaged property should be repaired after construction is completed, then stabilization measures that will prevent and not cause further damage will be undertaken; and
 - F. If a National Historic Landmark is affected, MnDOT CRU shall include the Secretary of the Interior represented by the National Park Service regional office's program coordinator and the ACHP in the notification process.

XII. CONFIDENTIALITY

If disclosure of location information could result in disturbance of an historic resource, all parties to this PA shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance are protected from public disclosure to the greatest extent permitted by law, including conformance to Section 304 of the NHPA, as amended and Section 9 of the Archaeological Resource Protection Act and Executive Order on Sacred Sites 13007 FR 61-104 dated May 24, 1996.

XIII. HUMAN REMAINS

A. Notification and Treatment

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1. If human remains are inadvertently discovered during construction activities, all construction activity will cease within and immediately adjacent to the discovery and MnDOT would notify the appropriate parties in accordance with the project specific treatment plan.
 2. Any human remains and funerary objects discovered on non-federal land within the State of Minnesota during the implementation of the terms of this PA and subsequent project specific MOAs during the undertaking itself will be treated by MnDOT CRU in accordance with the requirements of the Minnesota Private Cemeteries Act (Minnesota 307.08) and the project specific treatment plan.
 3. Any human remains and funerary objects discovered on non-federal land within the State of Wisconsin during the implementation of the terms of this PA and subsequent project specific MOAs during the undertaking itself will be treated by MnDOT CRU in accordance with the requirements of the Wisconsin Burial Sites Protection law (Wisconsin Statutes 157.70 and Wisconsin Administrative Code HS 2), which includes immediately contacting the WisSHPO.
 4. If the appropriate state laws do not prescribe a course of action with regard to human remains and funerary objects, the ACHP "Policy Statement regarding Treatment of Human Burial Sites, Human Remains and Funerary Objects" February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf> shall be consulted for guidance.

XIV. CURATION

A. Collections from State and Private Lands

Cultural materials discovered on state lands shall belong to the respective states according to Minn. Stat. 138.31 to 138.42 and Wis. Stat. 44.77 and shall be curated in accordance with applicable laws and procedures.

Private landowners in Minnesota and Wisconsin shall be encouraged to curate archaeological materials recovered from their lands, as recommended in the foregoing statutes.

XV. DOCUMENTATION STANDARDS

- A. All documentation that supports the findings and determinations made under this PA shall be consistent with 36 CFR 800.11 and shall be in accordance with MnDOT CRU's requirements and its subsequent revisions or editions and with the attachments to this PA. Documentation shall be submitted to MnDOT CRU and prepared by PIs who, at a minimum, meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) (Appendix A to 36 CFR Part 61). MnDOT CRU shall review the documentation for adequacy, and transmit all documentation cited herein as stipulated by this PA.
- B. All documentation prepared under this PA shall be kept on file at MnDOT CRU and FRA and made available to the public without the inclusion of culturally sensitive information that

may jeopardize confidentiality as stipulated by this PA, consistent with applicable confidentiality requirements and Federal records management requirements.

XVI. AUTHORITIES

Compliance with the provisions of this PA does not relieve FRA or other federal agencies of any other responsibilities not described in this PA to comply with other legal requirements, including those imposed by NAGPRA (25 U.S.C. Section 3001 and 43 CFR 10), the ARPA (16 U.S.C. Section 470 aa-47011), and NEPA (42 U.S.C. Section 4321-4347), and applicable Executive Orders.

XVII. ADMINISTRATIVE STIPULATIONS

A. Dispute Resolution

1. Should any signatory to this PA object within 30 days to any action proposed or any document provided for review pursuant to this PA, FRA shall consult with the objecting signatory to resolve the objection. If FRA determines that the objection cannot be resolved within 15 days, FRA shall forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP. FRA will also provide a copy to all signatories and consulting parties for the undertaking. ACHP shall provide FRA with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FRA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the signatories and consulting parties, including Native American tribes, and provide them with a copy of this written response. FRA will then implement any action determined by this dispute resolution process and proceed according to its final decision.

If ACHP does not provide its advice regarding the dispute within 30 days, FRA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FRA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties for the undertaking, and provide them and ACHP with a copy of such written response.

B. Amendment

1. The signatories to this PA may request that it be amended, whereupon the signatories will consult to consider such amendment. This PA may be amended only upon written concurrence of all signatory parties.
2. To address changes in the treatment of specific historic or archaeological properties affected by the undertaking, MnDOT may propose revisions to the treatment plans or MOAs, as appropriate, rather than to this PA. Upon concurrence of the signatories, MnDOT and FRA may revise the treatment plans to incorporate the agreed upon changes without executing a formal amendment to this PA. An MOA may be amended only upon written concurrence of all signatory parties.

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3. Revisions to an attachment to this PA would be implemented through consultation and include any necessary revisions to the PA itself that may result from modification of an attachment.

C. Annual Report

1. The signatories and consulting parties, including Native American tribes, may review activities carried out by MnDOT CRU pursuant to this PA. MnDOT CRU shall facilitate this review by compiling specific categories of information to document the effectiveness of this PA and by making this information available in the form of a written annual PA report. Categories of information shall include, but are not limited to, a summary of actions taken under this PA, including all findings and determinations, public objections, and inadvertent effects or foreclosures. The range and type of information included by MnDOT CRU in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the PA and its manner of implementation constitute an efficient and effective program under 36 CFR Part 800.
2. MnDOT CRU shall prepare the written report of these findings annually following execution of this PA. MnDOT CRU shall submit the annual reports to FRA, STB, MnSHPO, WisSHPO and WisDOT no later than three (3) months following the end of the State fiscal year until all treatment is completed. There will be a 30-day period to review and comment on the report. The annual PA report will be finalized within 30 days of receipt of comments.
3. MnDOT CRU shall assure that the final report herein prescribed is made available for public inspection. The report will be sent to signatories and consulting parties, including Native American tribes, of this PA and any subsequent MOAs, and a copy available to members of the public for comment, upon request.

D. Termination

FRA, STB, MnSHPO, WisSHPO, MnDOT, or WisDOT may terminate this PA by providing 30 days written notice to the other signatories; the signatories shall consult during the 30-day period prior to termination to seek agreement on amendments or other actions that would avoid termination. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement. Should a signatory party propose termination of this PA, they will notify the other parties in writing. If any of the signatories individually terminates their participation in the PA, then the PA may be terminated in its entirety. In the event of termination, then FRA shall either consult in accordance with 36 CFR 800.14(b) to develop a new agreement or request the comments of the ACHP pursuant to 36 CFR Part 800. Beginning with the date of termination, FRA shall ensure that until and unless a new agreement is executed for the actions covered by this PA, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

E. Duration of this Programmatic Agreement

In the event that the terms of this PA are not carried out within 10 years, this PA shall be assessed by the signatories to determine if it still needed and working effectively, or whether it should be terminated. If the PA is effective and its duration needs to be extended, the signatories can decide to extend the duration of the PA. If the signatories determine that the PA is effective, but needs revisions, revisions will be made. In the event the signatories determine that the PA is not effective and cannot be amended to address concerns, the PA shall be considered null and void, memorialized in a letter to the signatories from FRA. If FRA or another Federal agency party to this PA chooses to continue with the undertaking, it shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

F. Execution and Implementation of the Programmatic Agreement

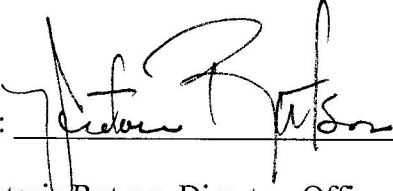
This PA may be implemented in counterparts, with a separate page for each signatory. Execution of this PA by FRA, STB, MnDOT, WisDOT, MnSHPO, and WisSHPO, and implementation of its terms evidence that FRA and STB have taken into account the effects of this undertaking on historic properties and afforded ACHP an opportunity to comment.

SIGNATORIES

Federal Railroad Administration

By: David Valenstein Date: August 8, 2013
David Valenstein, Division Chief Environment and Systems Planning

Surface Transportation Board

By:  Date: July 26, 2013

Victoria Rutson, Director, Office of Environmental Analysis

Minnesota State Historic Preservation Office

By: Barbara Howard Date: 7/24/2013

Barbara Mitchell Howard, Deputy SHPO

Wisconsin State Historic Preservation Office

By: Jim Draeger Date: 8/2/13
Jim Draeger, Deputy SHPO

INVITED SIGNATORIES:

Commissioner Minnesota Department of Transportation

By:  Date: 7/26/13

Charles A. Zelle, Commissioner

Secretary Wisconsin Department of Transportation

By: MR GOTTIE Date: 7/23/13

Mark Gottlieb, Secretary

ATTACHMENT A

AREA OF POTENTIAL EFFECTS DELINEATION

An APE for the NLX Corridor has been determined by FRA and MnDOT pursuant to 36 CFR 800.4(a)(1) and taking into account statements by stakeholders and interested parties. MnDOT, using Principal Investigators (PIs), is responsible for describing and establishing the APE in accordance with the APE defined for the corridor (see attached) and the APE delineation guidelines described below, and will sign any maps or plans that define or redefine an APE. The APE may be further refined in connection with future site specific studies.

As defined in 36 CFR 800.16(d), an APE 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 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.”

Different APEs may be established for archeological properties and historic architectural properties:

Archaeological Properties

For archeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archeological sites may also have qualities that could be affected indirectly.

The APE for archaeological properties is the area of ground proposed to be disturbed during construction of the undertaking, including grading, cut-and-fill, easements, staging areas, utility relocation, borrow pits, and biological mitigation areas, if any.

Traditional cultural properties and cultural landscapes are more likely to be subject to indirect, as well as direct effects; thus, in order to include the potential for such effects, the APE for such properties is usually broader than the archeological APE. For instance, the first row of potential properties beyond the right-of-way may be subject to such effects and thus included in an indirect APE when warranted.

Historic Architectural Properties

The APE for historic architectural properties includes all properties that contain buildings, structures or objects more than 50 years of age at the time the intensive survey is completed by the PIs, as follows:

1. Properties within the proposed right-of-way;
2. Properties where historic materials or associated landscape features would be demolished, moved, or altered by construction;
3. Properties near the undertaking where railroad materials, features, and activities *HAVE NOT* been part of their historic setting and where the introduction of visual or audible elements may affect the use or characteristics of those properties that would be the basis for their eligibility for listing in the National Register; and
4. Properties near the undertaking that were either used by a railroad, served by a railroad, or where railroad materials, features, and activities *HAVE* long been part of their historic setting, but only in such cases where the undertaking would result in a substantial change from the historic use, access, or noise and vibration levels that were present 50 years ago, or during the period of significance of a property, if different.

For the NLX Project, a key phrase in the APE definition in the Section 106 regulations contained within 36 CFR 800.16(d) is “may...cause alterations in the character or use of historic properties” because many of

the undertakings involve the construction of additional, relocated, and/or high speed rail alongside existing railroads. In such cases, potential historic properties near the proposed undertaking historically had railroad features, materials, and activities within their setting that contributed to their character, or may even have been used by or served by the railroad. For example:

- The character and use of a historic railroad passenger or freight depot or railroad bridge *would not change* unless it would be put out of service, destroyed, altered, or moved for the undertaking;
- The character and use of an industrial building next to existing railroad tracks *would not change*, unless freight railroad service was an important association and the spur lines or loading areas would be removed by the undertaking;
- The character and use of buildings *would not change* if they would be separated from the undertaking by an existing railroad; however,
- The character of a non-railroad or non-industrial building *would likely change* if the building is visually sensitive and the proposed undertaking introduces an elevated grade separation or other large building or structure;
- The use of a non-railroad or non-industrial building *would likely change* if the building is sensitive to noise, like a school, museum or library, and the frequency of noise or vibration events from passing trains is increased over historic-era railroad events.

When delineating the APE, the PIs shall follow the identification methodology in Stipulation VI.B., which are different for archaeological properties and historic architectural properties. The PIs shall take into account the nature of the proposed undertaking and whether or not it has the potential to affect the characteristics that might qualify the property for eligibility to the NRHP. Whenever an individual phase is revised (e.g., design changes, utility relocation, or additional off-site mitigation areas), the PIs will determine if changes require modifying the APE. If an APE proves to be inadequate, MnDOT is responsible for informing consulting parties in a timely manner of needed changes. The APE should be revised commensurate with the nature and scope of the changed potential effects.

NORTHERN LIGHTS EXPRESS PROJECT AREA OF POTENTIAL EFFECT RATIONALE

Prepared by: The 106 Group Ltd.

October 25, 2011

Updated: February 27, 2012

The Northern Lights Express (NLX) project is a proposed high-speed passenger railroad from the Twin Cities to the Duluth/Superior area. The proposed project is receiving funding from the Federal Railroad Administration (FRA); therefore, it must comply with the National Environmental Policy Act; Section 106 of the National Historic Preservation Act of 1966, as amended; and with other applicable federal and state mandates such as the Minnesota Historic Sites Act, Minnesota Private Cemeteries Act, and the Wisconsin Burial Sites Preservation Law. The purpose of this document is to conduct preliminary analysis concerning the potential effects the NLX project may have on historic resources and develop a rationale to assist the federal and state agencies in developing an appropriate area of potential effect (APE) for this project (see attached maps for current APE).

The construction and operation of the proposed NLX project will result in a variety of potential effects to historic properties; therefore, for the development of an APE, potential effects from various possible construction and operation activities were examined. A preferred alternative, Route No. 9, has been chosen for the NLX project and approved by the FRA. The route follows the existing Burlington Northern Santa Fe (BNSF) Railway from Minneapolis (MTI) northeast to Duluth (Depot). This rail line represents the only railroad connection currently in full active service between Minneapolis and Duluth/Superior. The corridor roughly parallels State Highways 65 and 23 through Hennepin, Anoka, Isanti, Pine, Carlton, Douglas (Wisconsin), and St. Louis counties and terminates in Duluth.

This route will utilize portions of six historic railroad corridors. These existing railroad lines contain intact tracks that will be upgraded from a class 3 to a class 5 line. FRA's track safety standards establish nine specific classes of track (Class 1 to Class 9). The difference between each Class of Track is based on progressively more exacting standards for track structure, geometry, and inspection frequency. Each Class of Track has a corresponding maximum allowable operating speed for both freight and passenger trains. The higher the Class of Track, the greater the allowable track speed and the more stringent track safety standards apply. The maximum allowable speed for passenger trains is 60 mph for a Class 3 track and 90 mph for a Class 5 track. The upgrades to a Class 5 line can be accomplished through tie replacement and ballast improvements, which can be done as maintenance on these line utilizing tie replacement trains and ballast placement trains. All work will be performed from the track and will have no impacts outside the existing track bed (FRA 2008).

For this project, the project area is defined as the proposed construction footprint, which can be bigger or smaller than the existing right-of-way (ROW) depending on the nature of the proposed improvements for the project. In addition, the proposed preferred alignment includes construction of new parallel track, new bridges associated with new parallel track, and improving/upgrading existing bridges. Therefore, the activities examined in developing the APE include the following:

- New track parallel to existing track (e.g., sidings and second mainlines with both tracks operational);
- New bridge associated with new parallel track;
- Replacing an existing bridge/underpass;
- Improving/upgrading an existing bridge;
- Using an existing alignment (possible replacement of existing rails, etc.); and
- Operation of the line.

Discussion of the potential effects to specific resources types are described below.

ARCHAEOLOGY

For the proposed NLX project, the APE for archaeology will include all areas of proposed construction activities or other potential ground disturbing activities associated with the project, including equipment storage areas and borrow areas. For construction of the railroad corridor itself, it is assumed that the construction footprint will not extend beyond the existing railroad ROW and that the only construction activity that may be located outside existing ROW may be borrow areas or equipment storage areas, if required; however, the location of borrow areas and storage/laydown areas is currently unknown and environmental review of these areas will be completed at a later date.

It is assumed that any modification to the existing railroad grade or to transition to a new alignment (i.e., adding new parallel track) will not extend below the existing railroad grade. Therefore, unknown archaeological sites that may be located below the existing railroad grade will not be impacted and survey of the existing railroad grade will not be required. If Native American burials are known to exist below existing grade or within the larger APE then the project will need to comply with Minnesota Private Cemeteries Act, 1975 (M.S. 307.08) or the Wisconsin Burial Sites Preservation Law (Wis. Stats. 157.70) and the specific situation will be addressed as part of consultation obligations under Section 106 of the National Historic Preservation Act.

The design of the proposed NLX project is continuing to be refined. As the design of the project progresses, if any of the assumptions above should change, then the proposed APE rationale would need to be adjusted accordingly.

ARCHITECTURAL HISTORY

For the proposed NLX project, the APE for architectural history needs to account for any physical, auditory, atmospheric, or visual impacts to historic properties. The potential effects from each component of the proposed project are different and, therefore, a different APE may be needed. The proposed project components are still being refined so the purpose of this discussion is to detail the APE associated with each component, which will then be combined into one APE based on the nature of the components proposed.

The types of effects anticipated may include direct physical and/or vibratory effects, as well as potential indirect visual, auditory, and atmospheric effects. Effects may be temporary or permanent. To aid in identifying the potential effects the proposed elements of the project may have on architectural history properties in order to define an appropriate APE for architectural history, the following was assumed based on current project information:

- Construction of the project will not exceed a time period of five years;
- Construction along the project corridor will generally be intermittent and not continuous at any one point along the corridor for the duration of construction;
- Construction activity will be limited to daytime hours, generally between 6:00 a.m. and 6:00 p.m., when higher noise levels are more acceptable;
- The construction and operation of depots (stations) and other facilities such as parking lots will be included in a separate National Environmental Policy Act (NEPA) process;
- The centerline of any new parallel track will be, at most, 30 feet (ft.) off-set from the centerline of the existing railroad track within a corridor;
- According to the *Minneapolis-Duluth/Superior Restoration of Intercity Passenger Rail Service Comprehensive Feasibility Study and Business Plan (December 2007)* by Transportation Economics & Management System, Inc. the number of freight trains that currently operate along the railroad corridors (Route No. 9) with active tracks range from 12 to 60 trains per day. A portion of one corridor also sees two intercity passenger trains per day. The maximum number of high-speed passenger trains (HSTs) that are proposed to be operated daily along the potential

railroad corridors is eight, which would increase the number of trains along the active lines (Route No. 9) by 7 to 25 percent per day. If project assumptions change, portions of this APE rationale may need to be revisited and potentially revised;

- The length of the proposed passenger trains will generally be much shorter than the freight trains that are currently operated along the proposed corridors with active tracks. According to the *Minneapolis-Duluth/Superior Restoration of Intercity Passenger Rail Service Comprehensive Feasibility Study and Business Plan* the proposed passenger trains will not exceed 600 ft. in length, whereas the freight trains that currently operate along the active corridors generally range from several hundred ft. to over one mile (mi) in length;
- The proposed passenger trains will be considerably lighter than freight trains and will therefore produce considerably less vibrations than freight trains and for shorter durations given their shorter lengths and higher speeds; and
- Except for the noise produced by the horns on the locomotives, which will be the same as freight trains, the proposed passenger trains will generally produce less noise and for shorter durations in a location compared to a freight train since they will have fewer locomotives and cars, less weight, better tracking, and will be shorter in length and operating at higher speeds.
- The proposed HSTs will travel at speeds of up to 110 miles per hour (mph), which is much faster than a freight train, so they will have a higher onset rate (approach rate due to their much higher speed) compared to freight trains that currently utilize the proposed NLX route.

The proposed project would traverse a wide array of areas, ranging from densely developed urban areas, to small towns, to open prairie and farmland, to forested areas. Similarly, the topography along the line will also vary from flatlands to rolling hills. Given the diversity of these areas and their respective conditions, the APE may need to vary, depending on the actual circumstances of a place and the activity proposed for that particular location. The following sections will describe a rationale for the development of an APE for each anticipated construction or operation activity, as detailed earlier in this document. Since the design of the project is still being refined, the discussion will generally focus on identifying the maximum limits of an APE, rather than a minimum which would need to be increased in places to address unique conditions. There may be locations where conditions may allow for a reduced APE from the maximum described below (e.g. more dense vegetation reducing visibility); however, this will be confirmed based on visual inspection of the viewshed during field survey.

New Track Parallel to an Existing Track

This action would entail laying new track(s) parallel to existing tracks within an existing railroad ROW (operation of the line is discussed under the heading: *Operation of the Line*). This alternative could potentially result in both temporary and permanent indirect and direct effects.

Temporary indirect effects would include increases in noise and dust during the construction of the new tracks. Noise associated with the construction of a new parallel track within the existing ROW would include noise from construction activities, and from increased vehicular traffic to deliver, load, and unload construction materials. While the exact dB levels associated with construction activities has not been determined, based on other similar projects, it is not anticipated that dB levels associated with construction of a new parallel track within an existing alignment will exceed acceptable levels as established by the State of Minnesota in areas more than 500 ft. on either side of the project area.

Construction of new parallel tracks would also result in temporary increases in dust and particulate matter associated with earthmoving activity, loading and unloading of materials, earth, and ballast dumping and storage. Dust levels in the air would be intermittent and would vary according to construction activity and atmospheric conditions. Any potential increase in dust associated with construction of parallel track within an existing alignment would be temporary and amounts generated would not likely be any greater than dust generated by wind storms in rural areas. In urban areas, the existing built environment (e.g. buildings and structures) would block and disrupt winds and further dissipate any dust generated during

construction. Therefore, the area that could potentially be adversely affected by increases in dust should be limited to no more 500 ft. and effects, if any, would be temporary.

Permanent effects would include direct physical and/or vibratory effects and potential indirect visual effects to the corridor and other historic properties as a result of changes to the existing corridor. Direct physical effects would be limited to the project area and alterations to the existing roadbed. Vibrations associated with new track(s) parallel to existing tracks within an existing railroad ROW could include vibrations from ground disturbing activity and from trucks, heavy equipment, rail-based equipment, and from the loading and unloading of materials in the project area. Vibrations from such activities would most likely be minimal and would not likely impact an area more than 500 ft. from the project area. Therefore, an APE of 500 ft. on either side of the project area would be sufficient to address vibrations associated with the construction of new track(s) parallel to existing tracks within an existing railroad ROW.

Permanent indirect visual effects may vary; however, provided that the grades, elevations, and profiles of the parallel track are similar to the existing roadbed in the corridor, the construction of a parallel track within an existing ROW would have a relatively minor affect on the visual character of the corridor, especially in relatively flat areas where the alignment cannot be viewed from above. As a result, the area that would be visually affected would be somewhat limited. Since the track will be placed parallel to the existing track offset no more than 30 ft. from the existing, and it is assumed that the height, grades, and profile of the new parallel track are not significantly different from the existing roadbed (e.g. height of the new and rebuilt roadbed is not changed more than a 2.5 ft. from the height of the existing roadbed), based on other railroad projects in Minnesota, an APE of 500 ft. on either side of the project area would be sufficient to account for potential visual effects.

However, if grades, cuts, and fills are modified, the associated changes in these elements of the existing corridor may alter, and increase the visual prominence of the corridor and would thereby impact a larger area. If the construction of a parallel track results in height and profile differences between the existing roadbed that exceeds 5 to 10 ft., depending on the location and terrain of the area (10 ft. in hilly and/or heavily forested areas and 5 ft. in generally flat and/or open areas), a larger APE would be required to account for the increased visual effect. In these instances, an APE of 0.125 (one-eighth) mi (660 feet) is recommended to account for changes to views of the corridor and the landscape.

In summary, the APE for laying new track(s) parallel to existing tracks should include 500 ft. on either side of the project area, assuming that the grade change of the new alignment is within 2.5 ft. of the height of the existing track. If the proposed alignment will have a grade change more than 2.5 ft. from the height of the existing track, an APE of 0.125 mi around the project area is recommended.

New Bridge Associated with New Parallel Track

This action would entail the construction of a new bridge(s) associated with a new parallel track(s) located adjacent to existing bridges within an existing railroad ROW. This alternative could potentially result in both temporary and permanent indirect and direct effects.

Temporary indirect effects would include increases in noise and dust during the construction of the proposed bridge. Noise associated with bridge construction would include noise from construction activities, increased vehicular traffic bringing materials to the site, loading and unloading construction materials, and potentially pile driving. While the exact dB levels associated with construction activities has not been determined, based on other similar projects, it is not anticipated that dB levels associated with construction of a new bridge will exceed acceptable levels as established by the State of Minnesota in areas more than 0.125 mi from the project area.

Construction of a new bridge would result in temporary increases in dust and particulate matter associated with earthmoving activity, loading and unloading materials, and storage of construction

materials and equipment. Dust levels in the air would be intermittent and vary according to atmospheric conditions; however, the level of dust in the air would disperse as distance from the project area increased. Therefore, the area that could potentially be adversely affected by increases in dust should be limited to no more than 0.125 mi from the project area.

Permanent effects would include potential direct effects from vibrations and indirect visual effects to the corridor and other historic properties as a result of changes to the existing corridor. Vibrations associated with new bridge construction could include vibrations from rail-based equipment, trucks and heavy equipment, and from loading and unloading materials. Vibrations from such activities would most likely be minimal and would not likely impact an area more than 500 ft. from the project area. However, pile driving associated with new bridge construction would result in greater vibrations that would have a wider area of impact.

Vibrations from pile driving can result in two types of potential effects: (a) real damage to property and (b) perception by humans (Transportation Research Board [TRB] 1997:1). For the development of an APE for architectural history properties related to the construction of the proposed NLX line, the primary consideration is real damage to historic properties as a result of vibrations, which can take the form of structural damage, including cracking and breaking of structural elements or ground settlement. Structural damage from impact driving can be minimized or eliminated by alternatives such as vibratory driving, or changing to auger cast (TRB 1997:1). However, for the development of an architectural APE for pile driving, it was assumed that the project will utilize impact driving.

A number of studies have been conducted on the impacts of vibrations and pile installations on adjacent structures, including historic buildings. Studies have been done to determine (a) the maximum safe limits of vibrations that will not result in damage to adjacent structures, including historic buildings, during construction projects, and (b) the area of influence for pile driving that falls within these maximum acceptable vibration limits. Many agencies have established maximum safe limits for vibrations as described below.

Based on its own studies, the non-extant U.S. Bureau of Mines recommended a “safe blasting limit” of 50 millimeters(mm)/second (sec) (2 inches[in]/sec) peak particle velocity (ppv) for mining activity (CTC & Associates and WisDOT RTD Program 2003:2). Given the many inherent similarities in terms of ground-borne vibrations between blasting and pile driving, over time, this maximum limit has also been commonly applied to construction vibration and is widely viewed by many engineers as being stringent enough to prevent damage to most surrounding structures, regardless of age or fragility (CTC & Associates and WisDOT RTD Program 2003:2).

While 50 mm/sec (2 in/sec) is a commonly used, a number of federal agencies and state transportation departments across the country have established significantly lower (more conservative) thresholds for projects subject to their oversight. The National Park Service (NPS) for example has set a maximum limit of 0.2 in/sec (5 mm/sec) ppv for structures that exhibit significant levels of historic architectural importance, or that are in a poor or deteriorated state of maintenance, which is one tenth of 50 mm/sec, and a slightly higher limit of 0.5 in/sec (12 mm/sec) ppv for all other historic sites (Sedovic 1984:59). The Federal Transit Administration (FTA) has established criteria for assessing potential vibration damage to structures based on the type of building construction (Table 1) (FTA 2006).

FIGURE 1. FTA CONSTRUCTION VIBRATION DAMAGE CRITERIA

Building Category	Maximum PPV
I. Reinforced-concrete, steel or timber (no plaster)	0.5 in/sec (12 mm/sec)
II. Engineered concrete and masonry (no plaster)	0.3 in/sec (7 mm/sec)

III. Non-engineered timber and masonry buildings	0.2 in/sec (5 mm/sec)
IV. Buildings extremely susceptible to vibration damage	0.12 in/sec (3 mm/sec)

A number of state departments of transportation have also established standards for projects they build or fund. For example, the California Department of Transportation (Caltrans) has set an “architectural damage risk level” for continuous vibrations (peak vertical particle velocity of 5 mm/sec (0.2 in/sec). For ruins, ancient monuments, and historical buildings and structures in poor condition, Caltrans recommends an even lower upper limit of 2 mm/sec (0.08 in/sec) for continuous vibrations (CTC & Associates and WisDOT RTD Program 2003:2).

Given the geographic area the proposed NLX line will traverse and its developmental history, it is highly probable that a significant percentage of the architectural history resources along the proposed NLX project corridor are non-engineered timber and masonry buildings that are also likely to contain plaster. Since these types of structures are more susceptible to damage from vibrations than engineered and reinforced structures, it is recommended that the APE for architectural history include all areas subject to a ppv of 5 mm/sec (0.2 in/sec) or greater as a result of vibrations related to construction activity, including pile driving to encompass the greatest range of potential vibration impacts to historic structures. This number corresponds with both (a) the NPS’s recommended maximum for both deteriorated historic resources and resources with architectural significance, and (b) the FTA’s standard for non-engineered timber and masonry buildings. However, in the event that the architectural history survey for the proposed project identifies extremely deteriorated, highly fragile architectural history properties that are eligible for the National Register of Historic Places, it is recommended that a vibration study be completed for these resources and attempts made to limit vibrations in these isolated locations to 3 mm/sec (0.12 in/sec).

When looking at the correlation between distance from the point of impact of pile driving and the potential for damaged to adjacent structures, according to the TRB, experience has shown that “direct damage to structures is not likely to occur at a distance from the pile of (a) more than 15 meters for piles 15 meters long or less, or (b) one pile length for piles longer than 15 meters” (TRB 1997:1). However, the TRB does note that “in few cases has there been direct damage to a structure when the pile driving was done at a distance of at least one pile length from the target (TRB 1997:43). The main exception to the one pile length distance “rule of thumb” guideline is typically related to the settlement of soils densified by vibrations, resulting in settlement that can take place at distances greater than one pile length (TRB 1997:43). To account for the potential presence of loose, clean sands in the zone of influence, the TRB recommends using a zone of influence of up to 400 meters from the pile driving. This distance translates to 1,312.34 ft., or approximately 0.25 mi.

Based on this analysis, it is recommended that an APE of 0.25 mi from the project area be used to account for all potential types of vibrations associated with bridge construction. In areas with sound soil, where a soil survey confirms there is no soil prone to settlement, the APE to account for impacts to architectural resources can be reduced to the length of the longest pile used in this particular area.

Permanent indirect visual effects may vary; however, it is assumed that if the new bridge(s) will be of a similar type, scale, height, and proportion, and constructed of similar materials as the existing parallel bridge, although the new bridge(s) may be visible from some distance, the area that would be significantly affected visually would be somewhat limited. Therefore, an APE of 0.125 mi is recommended. If the design of the new bridge(s) will be out of scale and proportion from the existing parallel bridge(s) and/or is a significantly different type, or constructed of different materials, its visual prominence would affect a larger area and a larger APE may be required.

In summary, the APE for the construction of a new bridge(s) associated with a new parallel track(s) located parallel to existing bridges within an existing railroad ROW assumes that the proposed bridge(s) would be of similar type, design, scale, height, and proportion and constructed of similar materials as the existing parallel bridge(s). Therefore, the APE should include a 0.25 mi buffer around the project area to account for all potential visual effects, as well as account for potential effects to historic properties from potential vibrations related to pile driving during construction. Specific details relating to the construction of new bridges are still being developed and if the design for a proposed new bridge(s) is not of a similar type, scale, height, and proportion, or constructed of similar materials as the existing parallel bridge, a larger APE may be required to account for potential increased indirect visual effects.

Replacing an Existing Bridge/Underpass

This action would entail removal of an existing bridge or underpass and replacing it with a newly constructed bridge or underpass. This alternative would result in both temporary and permanent direct and indirect effects.

Temporary indirect effects would include increases in noise and dust during the construction of the proposed bridge/underpass. Noise associated with bridge/underpass replacement would include noise from demolition and construction activities, increased vehicular traffic bringing materials to the site, and loading and unloading construction materials. While the exact dB levels associated with replacing an existing bridge/underpass has not been determined, based on other similar projects, it is not anticipated that dB levels associated with construction of a replacement bridge/underpass will exceed acceptable levels as established by the State of Minnesota in areas more than 0.125 mi from the project area.

The demolition of the existing bridge/underpass and the construction of a new bridge/underpass would result in temporary increases in dust and particulate matter associated with earthmoving activity, loading and unloading materials, and storage of construction materials and equipment. Dust levels in the air would be intermittent and vary according to atmospheric conditions; however, the level of dust in the air would disperse as distance from the project area increased. Therefore, the area that could potentially be adversely affected by increases in dust should be limited to no more than 0.125 mi from the project area.

Permanent effects would include direct physical effects to the existing bridge/underpass due to its removal and to the existing corridor and railroad roadbed, as well as direct vibratory effects to the corridor and other historic properties as a result of changes to the existing corridor. Vibrations associated with replacement bridge/underpass construction could include vibrations from rail-based equipment, trucks, heavy equipment, and from loading and unloading materials, which based on similar projects would be limited to an area 500 ft. from the project area. The demolition of the existing bridge/underpass would result in greater vibrations that would have a wider area of impact; an APE of 0.125 mi from the project area for this action is therefore recommended. However, as indicated in the section above for new bridges, pile driving associated with new bridge/underpass construction would result in greater vibrations that would impact a wider area; therefore, if pile driving is required for construction of the replacement bridge/underpass, an APE of 0.25 mi from the project area is recommended to account for all potential types of vibrations associated with bridge construction.

Permanent effects would also include permanent indirect visual effects; however, the area affected may vary. It is assumed that any replacement bridge will be constructed along the same alignment as the existing bridge and will be of a similar type, scale and design, and utilizes similar materials as the existing bridge and, therefore, the area that would be significantly affected visually would be somewhat limited. Based on similar projects, an APE of 0.125 mi is recommended. However, where a new design is used, its visual prominence could potentially affect a larger area and in these instances a larger APE may be required to account for potential increased indirect visual effects.

In summary, the APE for the removal and replacement of an existing bridge/underpass with a new bridge/underpass within an existing railroad ROW, provided the new bridge/underpass is of a similar

type, scale and design and utilizes similar materials as the existing bridge/underpass, should include a 0.25 mi buffer around the project area to account for all potential direct and indirect effects. Specific details relating to the construction of new bridges are still being developed and if a new design is used for the replacement bridge/underpass, a larger APE may be required to account for potential additional indirect visual effects.

Improving/Upgrading an Existing Bridge

This action would entail improvements and upgrades to existing bridge(s) within a railroad corridor. This alternative could potentially result in both temporary and permanent indirect and direct effects.

Temporary indirect effects would include increases in noise and dust during the construction of the proposed project. Noise associated with bridge improvement/upgrades would include increased noise from construction activities, increased vehicular traffic bringing materials to the site, loading and unloading construction materials, and potentially pile driving. While the exact dB levels associated with construction activities has not been determined, based on other similar projects, it is not anticipated that dB levels associated with bridge improvements/upgrades will exceed acceptable levels as established by the State of Minnesota in areas more than 0.125 mi from the project area.

Improving/upgrading a bridge would also result in temporary increases in dust and particulate matter associated with earthmoving activity, loading and unloading materials, and storage of construction materials and equipment. Dust levels in the air would be intermittent and vary according to atmospheric conditions; however, the level of dust in the air would disperse as distance from the project area increased. Since the proposed improvements will not include pier adjustments or pile driving, the area that could potentially be adversely affected by increases in dust should be limited to no more than 0.125 mi from the project area.

Permanent effects would include direct physical effects to the railroad corridor and the improved/upgraded bridge(s) and potential direct vibratory and indirect visual effects to the corridor and other historic properties as a result of changes to the existing corridor. According to information provided by SRF in March 2011, physical changes to the existing bridge(s) within the corridor will not include alterations to the approaches, abutments, cuts, the bridge piers, or to the railroad roadbed. In addition, it is assumed that any changes to the bridge spans will allow the bridges to maintain their appearance and retain a similar type, scale, height, proportion, and materials. Therefore, direct physical effects would be limited to the project area. Vibrations associated with bridge improvements/upgrades could include vibrations from trucks, heavy equipment, rail-based equipment, and from the loading and unloading of materials in the project area. Vibrations from such activities would most likely be minimal and would not likely impact an area more than 500 ft. from the project area. However, if pile driving is associated with bridge improvement/upgrades, vibrations from it could potentially result in greater vibrations and impact a wider area than other construction activities. According to information provided SRF in March 2011, proposed bridge improvements would not require significant pier adjustments, if any, and no pile driving is anticipated; therefore, an APE of 500 ft. on either side of the project area is recommended to account for all vibratory effects.

Indirect visual effects may vary; however, it is assumed that the improvements/upgrades to the bridge(s) will allow the bridge to maintain its appearance and retain a similar type, scale, height, proportion, and materials. Therefore, although the improved/upgraded bridge(s) may be visible from some distance in certain locations, the area that would be significantly affected visually would be somewhat limited. In this case an APE of 0.125 mi would be recommended, assuming that the improvements/upgrades to the bridge(s) are in scale and proportion and material types to the existing bridge(s). If the proposed improvements/upgrades include replacement spans that will be of a different type, design, scale, materials, or proportions than the existing spans, a larger APE may be required.

In summary, the APE for improvements and upgrades to existing bridge(s) within a railroad corridor should include a 0.125 mi buffer around the project area, and assumes the existing spans will be improved/upgraded with in-kind materials that would be consistent with the existing bridge(s). If the proposed improvements/upgrades include replacement spans that will be of a different type, design, scale, materials, or proportions than the existing spans, a larger APE may be required.

Using an Existing Alignment

This action would entail utilizing existing tracks along an existing railroad corridor (operation of the line is discussed under the heading: *Operation of the Line*). According to information provided by SRF in March and August 2011, the existing railroad lines contain intact tracks that will be upgraded from a class 3 to a class 5 line. The upgrades can be accomplished through tie replacement and ballast improvements, which can be done as part of line maintenance, utilizing tie replacement trains and ballast placement trains. All work will be performed from the track and would have no impacts outside the existing track bed will be required. This alternative may result in both temporary and permanent direct effects.

Temporary indirect effects would include increases in noise and dust during potential replacement or improvement of existing tracks. Noise associated with potential new tracks may include noise from construction activities; however, since the upgrades will be accomplished using tie and ballast replacement trains, noise effects associated with delivering, loading, and unloading construction materials should be minimal. While the exact dB levels associated with construction activities has not been determined, based on other similar projects, it is not anticipated that dB levels associated with construction of a new tracks on an existing alignment will exceed acceptable levels as established by the State of Minnesota in areas more than 500 ft. from the project area.

The use of an existing alignment may result in temporary increases in dust and particulate matter associated with earthmoving activity, loading and unloading of materials. Dust levels in the air associated with this potential activity would be intermittent and would vary depending upon atmospheric conditions; however, the level of dust in the air would disperse as distance from the project area increased. Since the repair/replacement of existing tracks will be completed using tie and ballast replacement trains from the existing rail corridor and no changes to grade profiles is proposed, the area that could potentially be adversely affected by increases in dust should be limited to no more than 500 ft. from the project area.

According to information provided by SRF in March and August 2011, the proposed upgrade of the existing alignment will not include any changes to the existing grade or height and profile of the existing track; therefore, permanent visual effects should be relatively minimal and, based on other railroad projects in Minnesota, should be confined to an area within 500 ft. of the project area. Permanent vibratory effects associated with repair or replacement of existing tracks could include vibrations from ground disturbing activity and from rail-based equipment loading and unloading materials in the project area. Vibrations from such activities would most likely be minimal and would not likely impact an area more than 500 ft. from the project area. Given the potential range of vibrations, an APE of 500 ft. on either side of the project area would be sufficient to address vibrations associated with the repair or replacement of existing tracks.

In summary, the APE for utilizing existing tracks along an existing railroad corridor should include a 500 foot buffer on either side of the project area.

Operation of the Line

Operation of the line could potentially result in permanent direct and indirect effects to historic properties. Potential permanent direct effects associated with an increase in vibrations from the trains and associated vehicular traffic include impacts to historic properties that could potentially result in their structural degradation and compromise overtime. However, as stated in the assumptions section, the vibrations caused from the operation of high-speed passenger trains, which will have fewer cars and will be lighter in weight, will be less than the existing freight trains. While the operation of the proposed line

will result in increases of train traffic and a slight increase in the frequency of train vibrations, the overall increases will be minimal.

Permanent indirect effects associated with operation of the line include noise due to increased train traffic, and increased vehicular traffic associated with the trains. Additional noise resulting from individual trains (operation and horns), and associated noise such as crossing signals may also potentially result in permanent indirect effects. Noise is typically defined as unwanted or undesirable sound, where sound is characterized by small air pressure fluctuations above and below the atmospheric pressure. The basic parameters of environmental noise that affect human response are (1) intensity or level, (2) frequency content and (3) variation with time (Johnson et al. 2011).

Several federal and state agencies have developed standards for evaluating noise impacts; however, since this project is subject to FRA approval, its criteria were used to determine an APE for noise. The FRA has established allowable noise levels for trains and train horns. The maximum allowed noise level for locomotives manufactured after December 31, 1979 and for moving trains is 90 decibels (dB) (FRA 2000). The minimum noise level for train horns is 96 dB and the maximum is 110 dB (FRA n.d.). As traditional diesel powered train sets, the HSTs will need to adhere to these standards. As noted in the assumptions section, the HSTs will be shorter, lighter and faster than the freight trains that currently utilize the line, so noise from their movement typically will not be greater than existing higher speed freight trains on the proposed line. However, a noise and vibration impact study for the proposed project prepared by Harris Miller Miller & Hanson (HMM&M) in April 2011, notes that an important characteristic of the noise from HSTs is the onset rate of the sound signature, which is the average rate of change of increasing sound pressure level in decibels per second (dB/sec) during a single noise event (Johnson et al. 2011:2). The rapid approach of an HST is accompanied by a sudden increase in noise for a receiver near the tracks. Sounds that have faster onset rates can cause more annoyance than sounds with slower variation or steady noise with the same noise level. The relationship between speed and distance defines locations where the onset rate for high-speed train operations may cause surprise or startle (Johnson et al. 2011:2-3).

According to the study, the maximum speed of the HSTs along the NLX corridor is 110 mph. Based on this speed, the area for potential for surprise or “startle” includes all areas within 22 ft. of the track centerline (Johnson et al. 2011:3).

This study also looked at overall noise impacts using the FRA's criteria, which are “based on well-documented research on community reaction to noise and are based on change in noise exposure using a sliding scale” (Johnson et al. 2011). The FRA criteria rely on the noise sensitivity levels of different land uses to determine impacts (Table 2). FRA criteria also include two levels of impact: severe impact and moderate impact. A severe impact is when project-generated noise is expected to cause a significant percentage of people to be highly annoyed by the new noise and normally requires mitigation. A moderate impact is when the change in the cumulative noise level is noticeable to most people, but may not be sufficient to cause strong, adverse reactions from the community. In these areas mitigation may or may not be required, depending on other factors, including existing noise levels, predicted level of increase over existing noise levels, the types and numbers of noise-sensitive land uses affected, the noise sensitivity of the properties, the effectiveness of the mitigation measures, community views and the cost of mitigating noise to more acceptable levels (Johnson et al. 2011:6-7).

TABLE 1. LAND USE CATEGORIES AND METRICS FOR HST NOISE IMPACT CRITERIA

Land Use Category	Description of Land Use Category
1	Tracts of land where quiet is an essential element in their intended purpose. This category includes lands set aside for serenity and quiet, and such land uses as outdoor amphitheaters and concert pavilions, as well as National Historic Landmarks with

	significant outdoor use.
2	Residences and buildings where people normally sleep. This category includes homes, hospitals and hotels where a nighttime sensitivity to noise is assumed to be of utmost importance.
3	Institutional land uses with primarily daytime and evening use. This category includes schools, libraries and churches where it is important to avoid interference with such activities as speech, meditation and concentration on reading material. Buildings with interior spaces where quiet is important, such as medical offices, conference rooms, recording studios and concert halls fall into this category, as well as places for meditation or study associated with cemeteries, monuments and museums. Certain historical sites, parks and recreational facilities are also included.
Source: Johnson et al. 2011, from Federal Railroad Administration, 2005	

Using FRA criteria, the HMM&M study assessed the overall impacts from HST noise using a “source-path-receiver” framework where the “source” generates noise levels that depends on the type of source (e.g., HSTs) and its operating characteristics (e.g., speed), the “receiver” is the noise-sensitive land use (e.g., a house or school) exposed to noise from the source, and the “path” between the source and the receiver is where the noise is reduced by distance, intervening buildings and topography (Johnson et al. 2011). During the study representative sites in sensitive land use areas along the proposed NLX line were monitored to (a) characterize existing baseline noise conditions and (b) determine the level of impact from the proposed project. Monitoring sites ranged from 10 ft. to 474 ft. from the proposed NLX tracks (Johnson et al. 2011). While the study did not specifically look at historic properties, it identified a total of 61 severe noise impacts and 289 moderate noise impacts to sites up to 459 ft. from the proposed NLX tracks (Johnson et al. 2011). Based on this study, at a minimum, the APE should include areas within 459 ft. of the centerlines of the proposed NLX tracks. However, since this study did not specifically consider impacts to historic properties where lower noise levels may be important aspects of their significance and historic integrity, a slightly larger APE is recommended. Therefore, an APE of 500 ft. on either side of the project area is recommended to account for potential impacts from noise related to operation of HSTs to architectural history resources.

In summary, the operation of the line would be a compatible use with the historical and current function of the area and associated rail corridors. Therefore, the APE for operation of the line, separate from the associated new construction, is recommended as 500 ft. on either side of the project area.

Other Associated Features

As noted previously the construction and operation of the proposed line would necessitate the construction of additional facilities such as repair and maintenance buildings; passenger stations; ticket booths; and parking lots. The construction of these associated facilities and their potential effect(s) will be addressed through a separate NEPA process.

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ATTACHMENT B
NLX DOCUMENTATION AND FORMAT GUIDELINES

PURPOSE

The purpose of the NLX program method for evaluation of cultural resources is to describe, in greater detail, how the FRA and MnDOT will implement the Section 106 process for the NLX Corridor and each site specific project and ensure that the identification and evaluation of cultural resources is conducted in accordance with the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (Standards and Guidelines) (48 CFR 44716-44742) and 36 CFR 800.4. Historic Properties Surveys conducted in the State of Minnesota will adhere to professional guidance provided in MnSHPO's Manual for Archaeological Projects in Minnesota and Guidelines for History/Architecture Projects in Minnesota, and MnDOT's Cultural Resources Unit Project and Report Requirements, as appropriate. Historic Properties Surveys conducted in the State of Wisconsin will adhere to professional guidance in WisSHPO's Historical and Architectural Survey Manual and the Wisconsin Archaeological survey's Archaeological Survey Guidelines, as appropriate. Historic Properties Surveys that include archaeological investigations in Minnesota and Wisconsin on non-federal publicly owned land shall be conducted under a State Archaeologist's Permit (Minnesota § 138.31-.42 and WIS. § 44.47).

The historic properties that should be identified include any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places (NRHP) maintained by the Secretary of Interior. This includes artifacts, records, and remains which are related to such district, site, building, structure, or object (16 U.S.C. Section 470(w)(5)). The term includes properties of traditional religious and cultural importance to an Indian Tribe or organization that meet the National Register criteria. Properties eligible for inclusion in the National Register can be properties that are formally determined as such in accordance with regulations of the Secretary of Interior and all other properties that meet the National Register criteria. The level of identification needed varies depending on the nature of the property or property type, the nature of the agency's authority, and the nature of the proposed undertaking's possible effects on the property.

METHODOLOGY FOR IDENTIFICATION OF HISTORIC PROPERTIES

The Area of Potential Effects (APE) would be delineated as described in Stipulation VI.A and Attachment A, using the best professional judgment of the PIs and taking into account historic property sensitivity and the effects that would occur from construction and operation of the undertaking. An APE Map showing the most current engineering available for the undertaking and the boundary delineated by PIs would be submitted to MnSHPO for projects with the potential to affect historic properties in Minnesota, and to WisSHPO for projects with the potential to affect historic properties in Wisconsin. The APE maps will be sent along with the Survey Report (SR). The APE maps would be on an aerial base at an appropriate scale and indicate whether the project is at-grade, elevated, or in tunnel configuration.

In consultation with the MnSHPO, WisSHPO and other parties to the Section 106 process, including Native American tribes, FRA and MnDOT will identify resources, determine eligibility, and treat any adverse effects, as outlined in 36 CFR Part 800 following guidance developed by the National Park Service and in conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation 1983 (48 FR 44716, as amended) as enumerated below:

- To identify known locations of historic properties within the APE, review the records for previously recorded archaeological properties and historic architectural properties at MnSHPO and WisSHPO. Review previous survey technical reports conducted within the APE for historic contexts, bibliography, and determination of significance of sites. Review historic USGS maps. Review properties listed in the National Register of Historic Places and the respective State Registers of Historic Places.

- Review survey findings conducted by local governments, historical societies, or historic preservation organizations, local historic landmark or monument designations, and any other inventories that may help identify or establish the significance of historic properties.
- Review subdivision maps, assessor maps, county/city directories, utility records, building permits, photographs, newspapers, diaries/journals, architectural drawings, Agency Records, Residential- and Commercial-Building Records, oral histories, thesis/dissertations, and preferred local and credible history studies. Research should be conducted with the appropriate agencies, knowledgeable individuals, local and regional historical societies, archives, and libraries.
- Develop relevant historic themes and contexts for the identification and evaluation efforts of historic properties within the APE. Use National Register Bulletin No. 15 for guidance.
- Employ standard archaeological inventory methods. Conduct presence/absence testing, if necessary, in areas where subsurface remains may be present. For resources that cannot be avoided conduct test excavations to determine resource significance in accordance with the research design.
- Consult with interested Native American Tribe(s) and other cultural groups to identify and evaluate any potential TCPs and cultural landscapes that could be affected by the project following the methods outlined in the National Register Bulletin 38 and the Secretary of the Interior's Standards for the Treatment of Historic Properties, respectively.
- Perform an intensive survey to identify, record, and evaluate architectural properties adjacent to the proposed alignment, stations and support facilities built within the time period identified in the plan to document and inventory all historic buildings, structures, objects, districts, and cultural landscapes in sufficient detail to permit evaluation for the NRHP (per Section 106 of the NHPA). Use field maps at an appropriate scale that have delineated parcel boundaries, APE boundaries, Assessor Parcel Numbers (APNs), street names, prominent natural and man-made features, and previously recorded sites. Documentation and evaluation efforts will follow the guidelines of National Register Bulletin No. 15. Private spaces (i.e., building interiors), suburban backyards, and restricted areas will not be surveyed. Surveys will occur from public vantage points, and if access is infeasible, then the property will be evaluated solely on available information or right-of-entry will be coordinated by MnDOT.

TECHNICAL REPORTS

- After completion of the archaeological and historic architectural research, inventories and evaluations, and tribal consultations prepare reports to document the findings and identification effort, and if any historic properties are identified for an undertaking, prepare a report to analyze the effects of the undertaking. Technical reports will be submitted to MnSHPO for undertakings with the potential to affect historic properties in the State of Minnesota. Technical Reports will be submitted to WisSHPO for undertakings with the potential to affect historic properties in the State of Wisconsin. All submittals to MnSHPO and WisSHPO shall be in paper format

ATTACHMENT C

REQUESTS FOR TRIBAL CONSULTATION

Mr. Mike Wiggins, Jr., Chairperson Bad River Band of Lake Superior Chippewa	Ms. Edith Leoso, THPO Bad River Band of Lake Superior Chippewa Indians of Wisconsin	Mr. Kevin Leecy, Chairman Bois Forte Reservation Tribal Council
Mr. Anthony Reider, President Flandreau Santee Sioux	Ms. Karen Diver, Chairwoman Fond du Lac Band of Lake Superior Chippewa	Mr. Mike Alloway, Tribal Office Forest County Potawatomi Community of Wisconsin
Mr. A.T. Stafne, Tribal Chair Fort Peck Tribes	Mr. Curley Youpee, Director Cultural Resources Department Fort Peck Tribes	Ms. Vicky Raske, THPO Grand Portage Band of Chippewa Indians
Mr. Norman Des Champe, Chairman Grand Portage Band of Chippewa Indians	Mr. Warren Swartz, President Keweenaw Bay Indian Community	Mr. Gordon Thayer, Chairperson Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Mr. Jerry Smith, THPO Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin	Mr. Tom Maulson, President Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin	Ms. Melinda Young, THPO Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin
Ms. giwewigizhigookway Martin, THPO Lac Vieux Desert Band Ketegitigaaning Ojibwe Nation	Mr. Arthur LaRose, Chairman Leech Lake Band of Ojibwe	Mr. Gabe Prescott, Chairman Lower Sioux Indian Community
Mr. Dave Grignon, THPO Menominee Indian Tribe of Wisconsin	Ms. Marge Anderson, Chief Executive Mille Lacs Band of Ojibwe	Ms. Natalie Weyaus, THPO Mille Lacs Band of Ojibwe
Mr. Leroy Spang, Chairperson Northern Cheyenne Tribe	Ms. Victoria Winfrey, President Prairie Island Community Council	Mr. Steve Ortiz, Chairman Prairie Band Potawatomi Nation
Ms. Rose Gurnoe-Soulier, Chairperson Red Cliff Band of Lake Superior Chippewa Indians	Mr. Larry Balber, THPO Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Mr. Floyd Jourdain Jr., Chairman Red Lake Band of Chippewa Indians
Mr. Jonathan Buffalo, NAGPRA Rep. Sac and Fox of the Mississippi in Iowa	Ms. Jane Nioce Sac and Fox Nation of Missouri in Kansas and Nebraska	Ms. Sandra Massey, NAGPRA Rep. Sac and Fox Nation of Oklahoma
Mr. Roger Trudell, Chairperson Santee Sioux Nation	Mr. Stanley Crooks, Chairperson Shakopee Mdewakanton Sioux Community	Mr. Robert Shepherd, Chairperson Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
Cultural Resource Director Sokaogon Chippewa Community Mole Lake Band	Mr. Garland McGeshick, Chairman Sokaogon Chippewa Mole Lake Band	Mr. Roger Yankton, Sr., Chairperson Spirit Lake Tribe Nation

Waste'Win Young, THPO
Standing Rock Sioux Tribe

Mr. Stuart Bearheart, Chairman
St. Croix Chippewa Indians of Wisconsin

Wanda McFaggen, THPO
St. Croix Band Chippewa Indians of
Wisconsin

Tex G. Hall, Chairman
Three Affiliated Tribes

Mr. Kade Farres, THPO
Turtle Mountain Band of Chippewa

Kevin Jensvold, Chairman
Upper Sioux Indian Community

Burney Tibbetts, Director of
Transportation
White Earth Band of Minnesota
Chippewa

Dr. Erma Vizenor, Chairwoman
White Earth Band of Minnesota
Chippewa

Tom McCauley, THPO
White Earth Band of Minnesota
Chippewa

Ms. Rosemary Berens, THPO
Bois Forte Band (Nett Lake) of the
MN Chippewa Tribe

Mr. James B. "JB" Weston, THPO
Flandreau Santee Sioux

Mr. LeRoy DeFoe, THPO
Fond du Lac Band of Lake Superior
Chippewa

Mr. Harold "Gus" Frank, Chairman
Forest County Potawatomi Community
of Wisconsin

Ms. Summer Sky Cohen, THPO
Keweenaw Bay Indian Community

Ms. Gina M. Lemon, THPO
Leech Lake Band of Ojibwe

Mr. Anthony Morse, THPO
Lower Sioux Indian Community

Mr. Conrad Fisher, THPO
Northern Cheyenne Tribe

Mr. Richard Thomas, THPO
Santee Sioux Nation

Mr. Leonard Wabasha, Director
Cultural Resources Department
Shakopee Mdewakanton Sioux
Community

Ms. Dianne Desrosiers, THPO
Sisseton-Wahpeton Oyate of the Lake
Traverse Reservation

Mr. Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

Mr. Elgin Crowsbreast, THPO
Three Affiliated Tribes

