Section 106 Compliance for Local Public Agency Projects

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Section 106 of the National Historic Preservation Act

Compliance with Section 106 requires:

1. *Initiate the Process*
2. *Identify Historic Properties*
3. *Assess Adverse Effects*
4. *Resolve Adverse Effects* (i.e., avoidance, minimization, and/or mitigation of any adverse effect on historic properties)
The Section 106 Process

1. INITIATE the process
   - Determine undertaking
   - Notify SHPO/THPO
   - Identify Tribes and Other Consulting Parties
   - Plan to involve the public

2. IDENTIFY historic properties
   - Determine APE
   - Identify historic properties
   - Consult with SHPO/THPO, Tribes, and Other Consulting Parties
   - Involve the public

3. ASSESS adverse effects
   - Apply criteria of adverse effect
   - Consult with SHPO/THPO, Tribes, and Other Consulting Parties
   - Involve the public

4. RESOLVE adverse effects
   - Avoid, minimize, or mitigate adverse effects
   - Notify ACHP
   - Consult with SHPO/THPO, Tribes, and Other Consulting Parties
   - Involve the public

No undertaking/potential to cause effects?

No historic properties present/affected?

No historic properties adversely affected?

Agreement (MOA/PA) or Council Comment
The “Public” Aspect of Section 106

§ 800.2 Participants in the Section 106 process

(a) Agency official
(b) Council
(c) Consulting parties
   (1) State historic preservation officer
   (2) Indian tribes and Native Hawaiian organizations
   (3) Representatives of local governments
   (4) Applicants for Federal assistance, permits, licenses and other approvals
   (5) Additional consulting parties – certain individuals and organizations with a demonstrated interest in the undertaking ... or their concern with the undertaking's effects on historic properties
(d) The public
Early Start in the Section 106 Process

The most effective way to avoid or minimize harm to historic properties is to offer alternatives that still meet the need of the project.

Early in the project development process is when the broadest range of alternatives are available.
MoDOT Engineering Policy Guide: Category: 136 Local Public Agency (LPA) Policy
Chapter 136.6.4.1: Section 106 (Cultural Resources) Compliance

- 136.6.4.1.1 Step 1, Determine Need for Cultural Resource Investigations
- 136.6.4.1.2 Step 2, Cultural Resource Investigations
- 136.6.4.1.3 Step 3, Preparation of the Memorandum of Agreement
- 136.6.4.1.4 Step 4, Mitigation of Adverse Effect
Phase I Survey Timelines

Architectural survey
- Fieldwork is usually completed before or during the archaeological survey
- Require approximately 2-3 months to complete after access is granted (fieldwork & write-up)

Phase I archaeological survey
- Initial investigations intended to locate unrecorded archaeological sites
- Require approximately 2-3 months to complete after access is granted (fieldwork, analysis & write-up)
Phase II Testing Timelines

Phase II archaeological testing

- Evaluate site’s significance and the project’s effects upon it
- Requires approximately 1-2 weeks per site to complete
Mitigation Timelines

Phase III archaeological mitigation

- Needs signed Memorandum of Agreement among FHWA, LPA and SHPO regarding archaeological data recovery plan
  - Usually requires 3-6 months to draft the MOA, unless there are special issues
- Fieldwork requires approximately 1-3 months to complete after property is acquired
- Fieldwork needs to be completed before the project is let
- Report is competed and submitted to SHPO after construction
Mitigation Timelines

Bridge & Architectural mitigation

- Mitigation, usually consisting of documentation; photos and mapping will need to be taken before construction, the report can be completed afterwards

Bridge Marketing

- Advertisement for reuse of bridges should start 12 months before the Letting and run for 6 months
Free Bridges!
From MoDOT and our partners

When Missouri bridge projects require the removal of historic bridges, the Missouri Department of Transportation or its local transportation partners must make them available for use by others. Federal law requires any state proposing demolition of a historic bridge involved in a bridge replacement project using federal funds to “first make the historic bridge available for donation to a State, locality, or responsible private entity” provided the recipient agrees to maintain the bridge and the features that give it historic significance and assume all future legal and financial responsibility for the bridge (see 23 USC 144 (g)).

Bridges advertised here are listed on or eligible for listing on the National Register of Historic Places and are available for reuse in place or relocation to a suitable location. The Missouri Department of Transportation and its local transportation partners are seeking proposals for their reuse. Because they are historic, preservation covenants to help preserve them and the features which make them historic, may apply. The Bridge Marketing Plan provides additional information on the overall process.

Up to 80% of the demolition costs (what would have been spent to demolish the bridges) is potentially available to reimburse recipients for reusing them. This funding is primarily available if the recipient is removing the bridge from its current location themselves. If the applicant needs the bridge removed and set aside for later pick-up, the funding is not available since the removal of the bridge is construed as a “demolition” activity. If these demolition funds are used by the recipient, Federal law prohibits using any other Title 23 Federal transportation funds for the bridge in the future.

Therefore, applicants should consider if other programs might be more beneficial for their project. The applicant may use other Federal funds [other than demolition funds] to relocate bridges, such as Transportation Alternatives Program (TAP) or Recreation Trails Program (RTP) funds, without incurring this limitation, see http://www. dyna.dot.gov/bridge/144_2001.cfm.

Applicants should also be aware that “Buy America” provisions of federal grants will apply, even for projects involving historic bridges. Waivers for the Buy America provisions can be obtained, but the process takes 6-12 months. This should be factored into projected schedules for grant timelines.

Bridge ownership will be transferred to the recipient and the new owner must assume all legal and financial responsibility for the structure.

The following bridges are available for reuse or relocation. Proposals for their reuse, or the reuse of individual spans of multi-span bridges, should be submitted to the contact listed on each individual bridge page by selecting a bridge below. Download the Proposal Checklist to assist in the preparation of your proposal.
“Creative/Alternative” Mitigation

What is the value of the site to others?

- Scientific
- Educational
- Sacred or Traditional Place
- Community Identity
- Heritage Tourism

National Register of Historic Places criteria for evaluation:

A. ...associated with events that have made a significant contribution to the broad patterns of our history; or

B. ... associated with the lives of persons significant in our past; or

C. ...embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

D. ...have yielded, or may be likely to yield, information important in prehistory or history
Tips for Effective Consultation

All parties should:

- Keep an open mind
- State your interests clearly
- Acknowledge that others have legitimate interests, and seek to understand and accommodate them
- Consider a wide range of options.
- Identify shared goals and seek options that allow mutual gain
- Creative ideas about alternatives—not complaints—are the hallmarks of effective consultation
Old Appleton Bridge
Washington Avenue Bridge
In Conclusion

A project that uses federal funding or requires a federal permit/license must comply with Section 106.

The Section 106 process should start very early in the project development.


If mitigation is required, “creative/alternative” mitigation methods should be explored.