Section 106 Historic Preservation

Tips and Techniques to Improve and Accelerate Consultation

Format of Discussion

- Feel Free to Ask Questions and Bring up Issues
- Share your experiences

Handout – Section 106 Coordination

- How to combine your NEPA steps with Section 106 coordination

What is the Purpose of Section 106?

- It is to ensure that the preservation of historic properties is thoroughly considered.
- CONSULTATION!!!!!

Basic Section 106 Process

- Invite Consulting Parties (CP’s)
- Determine an Area of Potential Effects (APE)
- Identify Eligible Properties
- Determine Effects
- Resolve Adverse Effects
- Memorandum of Agreement - Implementation

The CE is done, Is it time to contact consulting parties?

- You should get consulting parties involved at Early Coordination
- Your Early coordination letter should include at least a preliminary APE, maybe Eligibility, and even possibly a preliminary effect finding to begin discussion.
- At list of consulting parties is on our website
- Don’t forget about inviting Native American Tribes to be consulting parties, IF NECESSARY (new alignments)
APE – The area within the construction limits...Next

- Wrong
- Area of Potential Effects
- At least adjacent properties need to be considered but sometimes you need to consider a larger view shed, depending on the magnitude of the project.
- A larger APE is less likely to create concern by consulting parties

That building is 50 years old, its eligible.

- Wrong
- The Structure, Site or District must be eligible for listing in the National Register, including an evaluation of its condition.
- See the website
- Level of Detail of Evaluation Depends really on effects and cost to avoid or mitigate
- You may want a historian on projects with complicated impacts on multiple historic sites...It could save you time and money in the end.

The SHPO need’s to tell us if there is an adverse effect

- Wrong
- The Consultant (representing FHWA) should give a preliminary finding and the reasons for that finding.
- The final Finding is actually FHWA’s finding, not the SHPO’s but we rely on their expertise.
- The more info the CP’s are given up front, the quicker the process goes.

We’re just replacing the road and sidewalks...no adverse effects there.

- Well, maybe.
- Is the setting important to the structure? Does the project change the setting?
- Are you adding/removing trees? New light fixtures? Park Benches?

HISTORIC REHABILITATION PROJECTS MAY NOT BE AN ADVERSE EFFECT

- Check the Secretaries standards for rehabilitation projects (see website)
- If you are consistent with the standards, then there should be no adverse effect.
- Even adding guardrail could be no adverse effect, if its done properly.

800.11(e)

- For projects that effect historic properties (adverse or not), the 800.11(e) must be created and distributed to consulting parties.
- FHWA will send the 800.11(e) to the ACHP if there is an adverse effect after the public has had the opportunity to comment on the finding.
- THIS MUST OCCUR BEFORE THE MOA IS SIGNED!!!
- Don’t forget about 800.11(d) documentation for projects with No effect to Historic properties.
Consulting Parties Meetings

- When to have them...
- On each step of Section 106 when it is apparent that consensus has not been reached or assistance is needed in developing mitigation.
- May not be necessary at all if the consulting parties are agreeable to a MOA.

Additional Points:

- Start 106 early... as much info in the early coordination document as possible (at least identification of properties)
- Be responsive to SHPO, anticipate issues
- If you do your homework, less likely to get surprises and difficult questions from CP’s
- Provide good quality photos of properties of questionable eligibility

More points:

- Effects – describe what you feel the effects are early, don’t wait for CP’s to ask
- FHWA, SHPO, CP’s, and public reviews can be done simultaneously
- Adverse effects does not mean the project is Bad, we just have to deal with it and the sooner the better.

And the list goes on

- If an impasse is reached or expected, get INDOT and FHWA involved ASAP to get it resolved
- For adverse effects, avoidance alternatives are a must and good detail of why they are not feasible and prudent are required.
- Abandoning a bridge is still an adverse effect!
- If you give CP’s little detail, they may assume eligibility and adverse effect.
Categorical Exclusion and Section 106 Coordination

Recommendations to keep things moving!
For each of these steps, the level of interest of consulting parties should be considered. Projects with controversy or require an individual 4(f) document may require additional steps and Consulting parties (CP) meetings. Approved below means approved by FHWA.

Early Coordination letters to SHPO and CP
Include Area of Potential effects determination (usually approved)
Include eligible properties (preliminary or may be approved)
May Include preliminary effects finding.

Complete effects finding (by getting FHWA’s approval of finding) and schedule CP meeting, if necessary. (requires 30-day comment period, CP meeting may occur within the 30-day comment period, provided they have at least 15-days notice). Mail draft 800.11(e) (if applicable) to all consulting parties.

Release public notice on effects OR Get Categorical exclusion approved for public involvement and release public notice for public involvement on CE and effect finding.
- can occur before or after CP meeting.
- if necessary, should include draft 4(f) document with CE (FHWA will need 14 copies of Draft 4(f))

After time period for notice expires and CP meeting(s), prepare final 800.11(e) documentation for FHWA. For Adverse effect findings, FHWA requires 2 copies. One to send to ACHP for 15 day response period.

For projects with Adverse effects:
Circulate Draft MOA to CP (may have been presented as draft at CP meeting(s)).
Get MOA Signatures (First Local Govt (if applicable), then INDOT, then FHWA, then SHPO). MOA cannot be signed by FHWA until after ACHP has had 15-day review time of the 800.11(e) adverse effect document.
Prepare 800.11(f) for FHWA submittal to ACHP (usually just MOA unless there are revisions to 800.11(e) document)
Send approved MOA to all consulting parties.

After all NEPA public involvement complete, get INDOT’s Approval of CE and if necessary submit to FHWA for approval requesting approval of programmatic 4(f) or Final 4(f)

FOR DETAILS CHECK OUT OUR WEBSITE:
http://www.fhwa.dot.gov/indiv/procedur.htm

National Register Criteria:
http://www.cr.nps.gov/nr/listing.htm

Secretaries Standards for Historic Preservation:
http://www.cr.nps.gov/local-law/arch_stnds_8_2.htm