Section 106 Consultation

Working with the State Historic Preservation Office
National Historic Preservation Act (NHPA)

- Enacted 1966
- Established NRHP
  - Formal process for identifying/recognizing historic places
  - Specific criteria
  - Primarily honorific
- Established ACHP
- Established SHPO / THPO network
  - Appointed
  - All states, territories, protectorates
  - THPO – tribal counterpart
- Section 106
  - Triggered by Federal Undertaking
  - Consultative

Source: sitemaker.umich.edu
Federal Undertaking

...a project, activity, or program either funded, permitted, licensed, or approved by a Federal Agency. Undertakings may take place either on or off federally controlled property and include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.
Section 4(f)

- Distinct from but bolsters Section 106
- Is specific to transportation agencies
- Is triggered by federal undertaking
- Is proscriptive
Identify

Project:
• Project limits
• Scope of work
• Area of Potential Effect

Historic Resources:
• Research to identify known historic resources
• Reconnaissance Level survey
• Intensive Level survey
Scope of Work

- Bridge – rehab, reconstruct, replace?
- Approach work?
- Associated roadwork?
- Sidewalks/non-motorized?
  - ADA compliance
  - Complete Streets policy
- Tree removal?
- ROW acquisition?
Stakeholders

- SHPO / THPO
- DOT (FHWA, FRA, FTA, FAA)
- MDOT
- Other state / fed agy’s
- ACHP
- MHPN, other advocacy groups
- Host Community
Public Involvement
Alternatives analysis

• No Build / No Action
  • Presumes routine maintenance
  • Establishes baseline for alternative analysis
  • Identifies consequences of inaction

• Practical Alternative(s)

• Preferred Alternative
Opening Consultation

- SHPO Form
- Supporting documentation
  - Maps
  - Photographs
  - Plans
  - Photos
Determination(s) of Eligibility / Effect

- The agency will submit Determinations of Eligibility and Determinations of Effect to SHPO
- SHPO is required to respond, either concurring or not concurring with agency determinations.
- SHPO can request additional information or clarifications before making a decision.
No Properties / No Effect

- Analysis determines no historic properties are effected:
  - There are no historic properties within the APE
  - Scope of work does not effect historic resources within APE

- If so, the Section 106 process is concluded.
No Adverse Effect

- CE an option, unless
  - There are other substantial enviro issues
  - Controversy
- Applicable to EA or EIS
- A possible complication:
  - ROW (fee or permanent easement) from resource needed

(*De minimis Impact*)
Project example – M-72 Bridge
M-72 Bridge
M-72 Bridge
De minimis Impact (Section 4(f))

- Requires notification of SHPO, THPO, and ACHP, if participating, of DOT intent to make a de minimis impact determination
- Requires No Adverse Effect or No Properties concurrence by SHPO, THPO, and ACHP if participating
- Agency Coordination
- Public Involvement
Project example – M-26, Ripley

- Project scope:
  - Reconstruction
  - Add shared use shoulder
  - Correct substandard curve
- Multiple alternatives developed

- Quincy Mining Co H D
- NPS Keweenaw National Historical Park close by
- Historical corridor
- Recreation / Tourism
M-26, Ripley
M-26, Ripley
M-26, Ripley
M-26, Ripley

• Public Meeting
• Stakeholder support/concurrence
• Agency Concurrence
  • SHPO
  • DNR
• Project classified as CE
Adverse Effect

- CE not an option
- Federal agency decides
  - EA
  - EIS
- ACHP invited to consult
- Stakeholder consultation
- Public Meeting(s) or Hearing

“ALTER, DIRECTLY OR INDIRECTLY, ANY OF THE CHARACTERISTICS THAT QUALIFY THE PROPERTY FOR INCLUSION IN THE NATIONAL REGISTER IN A MANNER THAT WOULD DIMINISH THE INTEGRITY OF THE PROPERTY’S LOCATION, DESIGN, SETTING, MATERIALS, WORKMANSHP, FEELING, OR ASSOCIATION. . . ADVERSE EFFECTS MAY INCLUDE REASONABLY FORESEEABLE EFFECTS CAUSED BY THE UNDERTAKING THAT MAY OCCUR LATER IN TIME, BE FAR FATHER REMOVED IN DISTANCE OR BE CUMULATIVE.”
M-32, Hillman
Memorandum of Agreement (MOA)

- Identify project, location and involved agencies
- Identify scope and associated impacts
- Identify avoidance/minimization/mitigation commitments
- Dispute resolution
- Termination clause
- Signatories and Concurring Parties
- MUST be fully enacted before FONSI or ROD can be issued.
A Few Last Comments...

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