

Guide to Section 106 of the National Historic Preservation Act Compliance

A *cultural resource* is any archaeological site, building, structure (e.g., bridge), object, or district. Not all cultural resources are historically significant, but all have to be considered.

Why does MoDOT conduct cultural resources investigations? – To comply with federal and state laws. Failure to obtain Section 106 clearance may jeopardize Federal funding and permits. The primary legislation that requires cultural resources investigations is Section 106 of the National Historic Preservation Act. Compliance with this law requires three things:

- 1) *Identify Historic Properties* – Determine project’s area of potential effects (APE), identify cultural resources within the APE, and evaluate historic significance of these cultural resources to determine if any are Historic Properties [i.e., a cultural resource that is eligible for listing on the National Register of Historic Places (NRHP)];
- 2) *Assess Adverse Effects* – Assess if the project will have an adverse effect on historic properties; and
- 3) *Resolve Adverse Effects* – Avoidance, minimization, and/or mitigation of the adverse effect on historic properties.

What jobs require Section 106 Compliance? – Any job that receives Federal funds and permits, and involves:

- 1) ground disturbance within existing or proposed MoDOT right-of-way or easements;
- 2) modifications to a bridge or culvert; and/or
- 3) destroys, relocates, or encroaches upon a building(s) or other features on a property, including sidewalks, fences, gateposts, entrance gates, and walls that may be contemporary with the building.

If a job does not meet these criteria in the design stage, but during construction or maintenance there is an activity that would meet one of these criteria the job can become a Section 106 undertaking.

How does the District initiate cultural resources work – The cultural resources investigations are initiated through the Request for Environmental Services (RES). Early involvement by MoDOT’s Historic Preservation (HP) staff provides an opportunity to identify and attempt to avoid significant cultural resources, which will minimize the time and cost of addressing Section 106 concerns during the design process.

Different levels of cultural resources investigations:

- 1) *Screening/Recon* – Background research that identifies known cultural resources in a proposed job area, which is usually conducted during the Conceptual/Location project development stage. MoDOT should identify historic properties that will require a Section 4(f) Evaluation* before the Preliminary Plans are approved. If the District has concerns about a property possibly being historically significant, they should make the Historic Preservation Section aware of the property as early as possible.

2) *Investigation for Section 106 clearance* (should begin before the Preliminary Plans are approved):

- a) A Phase I survey (an intensive, systematic investigation to identify all cultural resources that may be affected by the proposed job) of the right-of-way and easement limits will be required. District staff will need to acquire landowner permission to allow MoDOT HP crews' access to their portion of their property in the proposed project limits, and to photograph buildings on the property (NOTE: After the district has obtained the initial landowner agreement, HP staff can make follow-up calls if a property owner has specific questions, requests, or concerns). A Phase II site testing will be needed if any potential NRHP eligible archaeological sites are encountered. The Phase II is a limited archaeological excavation of a site to determine its significance and whether it meets NRHP eligibility criteria. A Phase II investigation takes approximately 1-2 weeks per site.
- b) If NRHP eligible resources are identified and will be adversely affected by the proposed job, a Memorandum of Agreement (MOA) spelling out mitigation measures and responsibilities is required. The MOA will be prepared by the HP staff and signed by the Federal Highway Administration (FHWA), MoDOT, and the State Historic Preservation Officer (SHPO) at the Missouri Department of Natural Resources. Indian tribes and other interested parties may participate in the development of the MOA. Tribal participation is initiated by FHWA. It will take several months to negotiate a MOA.

If the adversely affected resource is architectural or a bridge, a Section 4(f) evaluation will need to be prepared. Information for an alternatives analysis will need to be provided by the district. A Section 4(f) Evaluation can take 6-12 months to complete for non-bridge resources.

- c) The mitigation of the adverse effects to NRHP eligible resources (e.g., a Phase III excavation for archaeological sites) may take several weeks or months to complete the fieldwork. If the adversely affected resource is an architectural resource, the building will need to be photographed (interior and exterior) after it has been acquired by MoDOT, and it must be acquired with architectural features intact. The photographs must be approved by the SHPO before the letting date; a measured floor plan may also need to be prepared for the building. Job construction can proceed following the completion of the mitigation fieldwork.
- 3) *Special Provisions* – Some jobs may require special provisions to the construction contract to address cultural resources concerns. These provisions may guarantee that the stipulations agreed to in the MOA will be completed before the NRHP eligible resource(s) is/are adversely affected by construction, or to protect cultural resources from collateral damage that may occur during construction (e.g., monitoring construction or avoidance of certain areas within the job boundaries). The HP staff will draft the special provisions.

Timelines – Most of the cultural resources' work should be conducted during the preliminary design stage of plan development. Upon the completion of the cultural resources investigations,

a report is submitted to the SHPO summarizing MoDOT's effort to identify historic properties and determine the effects the proposed job would have on these properties. SHPO has 30 days to comment on these findings. Below are several important cultural resources' milestones from the Right of Way and Construction Program database:

- During the Conceptual/Location stage, the HP staff should be consulted to determine if the project is a Section 106 undertaking, and if so, initiate the Section 106 process.
- During the Preliminary Plans stage and after the district has obtained land owner permission for the HP fieldwork, HP staff should identify any historic properties, assess the project's affects upon them, resolve any adverse effects, and obtained SHPO's concurrence with MoDOT's finding (i.e., the standard Section 106 process). HP staff should also identify any historic Section 4(f) properties.
- By the Right of Way Plans stage, HP staff should have completed the standard Section 106 process (the preferred method) or notified FHWA and SHPO that a "Phased" Section 106 process is being used.

The "Phased Section 106 process is used when access to enough property is restricted to prevent a standard investigation to complete the Section 106 process before the ROW stage of project development. This allows the release of Federal funds for the purchase of properties with MoDOT making a commitment to complete the Section 106 process, which might lead to selling previously acquired property and the purchase of additional property in able to avoid an adverse effect to a historic property determined later in the project development process. An A-date for property acquisition can be set upon SHPO accepting the initial Phased Section 106 submittal or by SHPO not responding within 15 days of their having received the submittal.

- By the completion of the Final Design stage, the "Phased" Section 106 process should be completed if being used.

By meeting these milestones, the HP staff should have opportunities to identify and attempt to avoid significant cultural resources, not delay purchase of right of way, and complete the Section 106 process well before the job's plan completion date.

* *Section 4(f) of the Department of Transportation Act of 1966* states that a transportation project requiring the use of publicly owned land of a public park, recreation area, wildlife and waterfowl refuge, or a publicly or privately owned historic site (i.e., "historic property" as defined by Section 106) may be approved only if:

- 1) There is no prudent and feasible alternative to using that land; and
- 2) The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from its use.

HP staff will develop the Section 4(f) Evaluation document, with sections created by the Districts. The District design staff needs to provide design alternatives that avoid the Section 4(f) property and the cost of each alternative. It takes approximately 6 to 12 months to complete the Section 4(f) Evaluation process.