PROCESSING PROJECTS FOR SECTION 106 COMPLIANCE

Presenter: Roy A. Jackson
State Cultural and Recreational Resources Coordinator
FDOT Office of Environmental Management
Cultural Resources

• Any historic site (resource): building, object, structure, landscape, district, or archaeological site
• Historic = 50+ years old
• Cultural resource = Historic resource
Cultural Resources vs Historic Properties

- HISTORIC/CULTURAL RESOURCE is any prehistoric or historic district, site, building, structure, or object that is 50+ years old.

- HISTORIC PROPERTY is any CULTURAL RESOURCE that has been determined SIGNIFICANT.

- SIGNIFICANT means it is included in, or eligible for inclusion in, the National Register of Historic Places (National Register/NRHP).

[36 CFR § 800.16(l)(1)]
Outline

• Definitions
• Legal Authorities
• General Section 106 Process
• National Register Criteria
• FDOT’s Section 106 Process
• Section 106 PA Stipulations
• Sample documentation
• Final Notes on Qualifications and Public Involvement
Legal Authorities (for federal projects)

• National Historic Preservation Act (NHPA) of 1966, as amended
  • Section 106 of the NHPA, as codified in 36 CFR Part 800

• Programmatic Agreement (PA) among the FHWA, Advisory Council on Historic Preservation (ACHP), Florida Division of Historical Resources (FDHR), State Historic Preservation Officer (SHPO), and the FDOT Regarding Implementation of the Federal-Aid Highway Program in Florida
  • Or “Section 106 PA”
  • FDOT’s process for compliance
Consultation Protocols

Section 106 Regulations Flow Chart

COORDINATION

Initiate the Section 106 Process
- Establish undertaking
- Identify appropriate SHPO/THPO
- Plan to involve the public
- Identify other consulting parties

Undertaking may affect historic properties

COORDINATION

Identify Historic Properties
- Determine scope of efforts
- Identify historic properties
- Evaluate historic significance

Historic properties are affected

COORDINATION

Assess Adverse Effects
- Apply criteria of adverse effect

Historic properties are adversely affected

COORDINATION

Resolve Adverse Effects
- Continue consultation

No undertaking/
No potential to cause effects

No historic properties affected

No historic properties adversely affected

Memorandum of Agreement

FAILURE TO AGREE

COUNCIL COMMENT
Step 1: Initiate the Section 106 Process [36 CFR § 800.3]

- **Establish undertaking** (funding, approval) & “potential to cause effects” (assuming historic properties are present)
- Coordinate with other reviews
- Initiate consultation
- Create public involvement plan
- Notify/consult with SHPO* & Appropriate Parties
  
  *State Historic Preservation Office

**EXIT POINT:**

- No “undertaking,” or
- no potential to cause effects to historic properties
Step 2: Identify Historic Properties

- Determine APE
- Identify historic properties
  - Identify cultural resources
  - THEN evaluate for significance
- Consult with SHPO (& other appropriate parties)
- Involve the public

EXIT POINT:
- No Historic Properties present
- No Historic Properties affected
The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess INTEGRITY of location, design, setting, materials, workmanship, feeling, and association, and:

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

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

C. That 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. That have yielded or may be likely to yield, information important in history or prehistory.
Step 3: Assess Adverse Effects

- Apply the criteria of adverse effect
- Consult with SHPO
- Involve the public

EXIT POINT:
- No historic properties adversely affected
Step 4: Resolve Adverse Effects

- Notify ACHP
- Avoid, minimize, or mitigate adverse effects
- Consult with SHPO
- Involve the public

[36 CFR § 800.6]

EXIT POINT:
- Memorandum of Agreement (MOA) or other appropriate agreement document
FDOT’s Section 106 PA & Process

Used for State-Only as well as Federal-Aid Projects

*Stipulation V – Unlikely to Impact

*Stipulation VI – Unlikely to Adversely Affect

*Stipulation VII – Standard Review
Section 106
PA Process

Stipulation VI—Review of Projects Considered Unlikely to Affect Historic Properties

Less documentation required for compliance

• The activity must meet the following conditions:
  • Stand-alone project
  • Does not occur on Tribal lands
  • Listed in Exhibit 1 or 2 (Exhibit 2, #57 Recreational Trails)
  • The desktop and/or field review results in No Historic Resources within the APE
  • SHPO is notified of the finding and does not object within 30 days of notification

Stipulation VII—Standard Review for Program Undertakings

Section 106 Minimal Impact Determination Form

- Project Information
- Classification
- Stipulations V or VI
- Stipulation V details
Minimal Impact Potential Determination Form

Additional Stipulation V info

Stipulation VI Details
- Exhibit 2 Activity (57 Rec Trails)
- Conditions
Section 106 Minimal Impact Determination Form

- APE Description and Justification
  - INCLUDE MAPS (Location and APE, etc.)
- Description of desktop and field review methodologies used to confirm conditions
- Signature
- Submission instructions

Area of Potential Effect (APE) Description and Justification: Based on the scale and nature of the activities, the project has a limited potential for any indirect (visual or audible) or cumulative effects outside the immediate footprint of construction. Therefore, because of the project type and location of the proposed work, the Area of Potential Effect (APE) for the project was limited to the footprint of proposed activities within the existing ROW.

Description of the desk top and field review methodologies used to confirm the conditions set forth in Stipulation VI: On behalf of FDOT District One, Atkins conducted a desktop review for the project in June 2018. Project plans were reviewed to determine the scope and to establish an appropriate APE based on project type and location. The Florida Master Site File (FMSF) and Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) were consulted to identify previous cultural resources surveys, as well as any previously recorded or potential cultural resources. Additional sources of information included county property appraiser data and Google Earth/StreetView.

Based on the review summarized above, FDOT has determined that the MD5 (SR 63) at SR 681 Landscaping (438568-1.52-01) project will not cause effects to historic properties.

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

Signature: ____________________________
Environmental Manager, or designee

Date: 3/19/2019

Processing Instructions: To notify the State Historic Preservation Officer and the Florida Division of Historical Resources of minor projects having no effects to historic properties under stipulations V and VI of Florida's Section 106 Programmatic Agreement, email the completed form to the Compliance and Review Section of the Bureau of Historic Preservation at CompliancePermits@dos.myflorida.com. Use the following standard text in the subject line:

Notification of Minor Project per Stipulations V and VI of the statewide Section 106 Programmatic Agreement

Link to Section 106 PA:
http://www.fdot.gov/environment/noticeSection%20106%20PA%20Exempt%20Version%202016%2012%2003.pdf
Stipulation VII—Standard Review for Program Undertakings

(CFR §§ 800.3 – 800.7)

• Cultural Resource Assessment Survey (CRAS) and Report
  • Should identify and evaluate any resources in the APE
  • Should NOT assess adverse effects
  • Make formal determination:
    • No Historic Properties Affected; OR
    • Historic Properties Affected
  • Receive SHPO concurrence

• Section 106 Case Report
  • Assess adverse effects to historic properties
  • Make formal determination:
    • No Historic Properties Adversely Affected; OR
    • Historic Properties Adversely Affected
  • Same submission instructions
  • Receive SHPO concurrence

FDHR’S Module Three: Guidelines for Use By Historic Preservation Professionals
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Appendix A: 1A-32 Archaeological Research Permit; ARPA Permit  
Appendix B: Field Specimen (FS) Log  
Appendix C: FMSF Resource Forms  
Appendix D: FDHR Survey Log Sheet
Step 4: Resolve Adverse Effects (?)  [36 CFR § 800.6]

A determination of Adverse Effect to Historic Properties disqualifies a project from being processed as a Type 1 CE
Final Notes

Professional Qualifications
36 CFR Part 61, Appendix A
(a) History
(b) Archaeology
(c) Architectural History

Public Involvement
Must provide the public an opportunity to comment
Can be satisfied by existing Public Involvement procedures, if in place
Resources

- Section 106 PA
- 36 CFR Part 800
- Part 2, Chapter 8 of the PD&E Manual
  - CRM Handbook
  - FDHR Module 3
- AASHTO Practitioner’s Handbook
- Each FDOT District has a Cultural Resources Coordinator

My contact info:
roy.jackson@dot.state.fl.us
(850) 414-5323