

PART 2, CHAPTER 8

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

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PART 2 CHAPTER 8

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

8.1 OVERVIEW

8.1.1 Purpose

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, the Florida Department of Transportation (FDOT) has assumed and Federal Highway Administration (FHWA) has assigned its responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

This chapter describes FDOT procedures for addressing historic and archaeological resources in the development and delivery of transportation projects. FDOT conducts surveys to locate, identify, and evaluate potential impacts on historic properties resulting from proposed projects. This assessment is prepared to comply with **Section 106** of the **National Historic Preservation Act (NHPA) of 1966**, as amended, **36 Code of Federal Regulations (CFR) Part 800**, and the **Florida Historical Resources Act, Chapter 267, Florida Statutes (F.S.)**, all of which require the lead agencies to take into account the effects of their undertakings on historic properties.

The process for compliance with **Section 106** and **Chapter 267, F.S.**, is implemented through the **Programmatic Agreement Among the Federal Highway Administration, the Florida Department of Transportation, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer Regarding Implementation of the Federal-Aid Highway Program in Florida [Section 106 Programmatic Agreement (PA)]** executed on September 27, 2023.

Section 106 applies to all federally funded, licensed, permitted, or approved undertakings, regardless of the Class of Action (COA) established by FHWA in **23 CFR Part 771** for compliance with **NEPA**, as amended. **Section 106** requires federal agencies to consider the effects of all federal undertakings and programs on historic properties in the planning and delivery of the proposed action or program. As a part of this effort, federal agencies must provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertakings.

Fulfillment of **Section 106** must be reflected in the **NEPA** documentation the Lead Federal Agency or the applicant produces. The **NEPA** process provides a framework for all federal environmental impact documentation, and the **Section 106** process provides the decision-making procedure for considering effects to historic properties for all federal undertakings. Therefore, all federally funded or approved projects must comply with **NEPA** and the **NHPA**.

In addition, permits from state and federal agencies also require compliance with the associated historic preservation laws. For example, most federal permits that FDOT must obtain for its projects include a documented record of compliance with the **NHPA**. For state permits, documentation of compliance with **Chapter 267, F.S.**, is included. Without that record, the permitting authority will be unable to permit the proposed activities.

The Florida Legislature charges each state agency of the executive branch to consider the effects of its undertakings on any historic resource that is eligible for inclusion or listed in the National Register of Historic Places (NRHP) prior to the expenditure of state funds on the undertaking. This consideration includes providing the Florida Department of State (FDOS), Florida Division of State Historical Resources (FDHR), an opportunity to comment on such an undertaking. The Director of the FDHR also serves as the Florida State Historic Preservation Officer (SHPO), as per the **NHPA**, and reviews federal-aid projects in this same capacity. **Section 267.031, F.S.**, specifies the authority and duties of the FDHR, and **Chapter 1A-46, Florida Administrative Code (F.A.C.)**, specifies the criteria under which the FDHR reviews **Cultural Resource Assessment Survey (CRAS) Reports** and the appropriate information required within the reports. **Section 267.12, F.S.**, and **Chapter 1A-32, F.A.C.**, provide the procedures to obtain a permit for archaeological investigations on state lands. In order to protect important or sensitive archaeological sites, **Section 267.135, F.S.**, provides for the non-disclosure of archaeological site locations.

In order to avoid costly delays in the later stages of project development, the CRAS identification and evaluation effort is initiated as early in the project development process as possible. This allows FDOT to avoid or minimize adverse effects to historic properties more quickly and easily. This chapter provides the procedures for planning and performing such work during the Project Development and Environment (PD&E) phase of project delivery. For additional clarification and guidance regarding the requirements outlined in this chapter, refer to FDOT's [Cultural Resource Management \(CRM\) Handbook](#). Compliance with historic preservation laws requires consideration of potential effects to historic properties and good faith consultation with all of the appropriate parties.

8.1.2 Definitions

Within this chapter, “cultural resources” is a term broadly used to include all archaeological sites, as well as historic buildings, structures, objects, and districts that are typically 50 years of age or older. In this chapter, the terms “cultural resources” and “historic resources” are used interchangeably. The terms “significant cultural resource” or “historic property” are used as meaning a historic resource included in, or eligible for inclusion in, the NRHP. For consistency, the definitions contained in the regulations implementing **Section 106** of the **NHPA (36 CFR Part 800)** are applicable to this chapter.

As used in this Chapter, the following definitions apply:

Advisory Council on Historic Preservation (ACHP) – An independent agency of the U.S. government whose members are charged with advising the President and the Congress on matters relating to historic preservation; recommending measures to coordinate activities of federal, state, and local agencies and private institutions and individuals relating to historic preservation; and advising on the dissemination of information pertaining to such activities. The ACHP reviews the policies and programs of federal agencies in regard to compliance with the **NHPA**.

Area of Potential Effects (APE) – The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Consultation – The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the **Section 106** process. The **Secretary of Interior's Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act** provide further guidance on consultation. Throughout this chapter, consultation and coordination are used interchangeably when referring to FDOT's responsibility under **NEPA** Assignment and does not refer to the government-to-government consultation responsibilities retained by FHWA.

Consulting parties – Persons or groups that the federal agency consults with during the **Section 106** process, including, but not limited to, the ACHP, the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers (THPOs) or tribal government officials or representatives, representatives of local governments, and individuals and organizations with a demonstrated interest in the undertaking.

Coordination – Refers to the actions, communications, collaborative efforts, and procedures that facilitate the consultation process. Throughout this chapter coordinate and coordination are used interchangeably with consult and consultation to describe the process of seeking, discussing, and considering the views of other participants during the **Section 106** process.

Cultural Resource Assessment Survey (CRAS) – The process of identification, documentation, and evaluation of archaeological, historical, architectural, and traditional cultural properties.

Effect/Affect – Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the NRHP.

Evaluation – The process of determining the eligibility of a cultural resource for listing in the NRHP.

Federally Recognized Native American Tribes (Tribes) – Indian tribes [as defined in **36 CFR § 800.16(m)**] are those tribes that possess certain inherent rights of self-

government (i.e., tribal sovereignty) and that are recognized as having a government-to-government relationship with the United States. This recognition is typically attained through treaties, acts of Congress, presidential executive orders, or other federal administrative actions or court decisions. A current list of Federally Recognized Native American Tribes (hereafter referred to as Tribes) is maintained by the U.S. Department of the Interior, Bureau of Indian Affairs. See [Section 8.4](#) for a link to the **Tribal Leaders Directory**.

Finding – The official result of the **Section 106** process when referencing project effects on historic properties, also commonly called a determination of project effects. **Section 106** findings are limited to: ‘No Potential to Cause Effects’, ‘No Historic Properties Affected’, ‘No Adverse Effect to Historic Properties’, and ‘Adverse Effect to Historic Properties’. The phrase ‘Historic Properties Affected’ may be utilized as a mid-process **Section 106** finding in **CRAS Reports** or documents, the use of which necessitates additional steps to determine whether the effects are adverse or not adverse to the historic property.

Florida Master Site File (FMSF) – A comprehensive listing of recorded cultural resources in Florida, including archaeological sites, historic structures, bridges, cemeteries, resource groups, and NRHP-listed sites. It also includes records for resources that are no longer extant.

Government-to-Government Tribal Consultation – The official process of consultation between U.S. Department of Transportation (USDOT) and tribal officials for **Section 106** related matters when officially requested by a Tribe. **Section 106** related government-to-government tribal consultation responsibilities are retained by FHWA per **NEPA** Assignment and therefore not addressed within this document beyond FDOT’s process for notifying FHWA.

Historic property – Defined in the **NHPA** as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior (also referred to as significant historic resources). This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to a Tribe which meet the NRHP criteria for historical significance.

Historic resource – As set forth in **Section 267.021, F.S.**, any prehistoric or historic district, site, building, structure, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources which may or may not meet the NRHP criteria and are generally 50 years of age or older. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.

Integrity – The authenticity of a cultural resource’s identity, evidenced by the survival of physical characteristics that existed during the resource’s historic or pre-contact period.

The seven aspects of integrity are location, design, setting, materials, workmanship, feeling, and association.

Memorandum of Agreement (MOA) – The document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

Minimization – Active attempts to reduce harm to the historic property.

Mitigation – Any actions that reduce or compensate for damage or adverse effect that an undertaking may have on a NRHP-listed or eligible property. Mitigation may include project redesign, relocation, documentation, etc.

National Register of Historic Places (NRHP) – The official list of the Nation’s historic properties deemed worthy of preservation per the NRHP criteria. The NRHP is maintained by the Secretary of the Interior.

NRHP criteria – The criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the NRHP (**36 CFR Part 60**).

NRHP eligible – A cultural resource that meets the criteria of eligibility for listing in the NRHP, but that has not been formally nominated to be listed. For the purpose of **Section 106** and **Chapter 267, F.S.**, compliance, eligible properties are treated the same as listed properties. Cultural resources determined to have **insufficient information**, where the significance has not or cannot be determined definitively, are considered potentially eligible until proven otherwise and are treated in the same manner as eligible and listed properties.

Native American – Of, or relating to, a Tribe, people, or culture that is indigenous to the United States.

No Adverse Effect – When an undertaking has an effect on a historic property, but the effect would not be harmful to those characteristics that qualify the property for inclusion in the NRHP.

No Effect – When an undertaking has no effect of any kind (either harmful or beneficial) on historic properties. This term is not an official **Section 106** finding or determination, but is sometimes used when discussing compliance with state regulation.

Programmatic Agreement (PA) – A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a federal agency program, complex undertaking or other situations in accordance with **36 CFR § 800.14(b)**. PAs allow federal agencies to govern the implementation of a particular agency program or the resolution of adverse effects from complex projects or multiple undertakings similar in nature through negotiation of an agreement between the agency and the ACHP. PAs can be developed on a national, statewide, or regional scope for similar or repetitive undertakings, for undertakings with repetitive effects on historic properties, or for situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking.

State Historic Preservation Officer (SHPO) – The official appointed or designated pursuant to **Section 101(b)(1) of the NHPA** to administer the State historic preservation program or a representative designated to act for the SHPO.

Tribal Historic Preservation Officer (THPO) – The tribal official appointed by the Tribe’s chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of SHPO for purposes of **Section 106** compliance on Tribal Lands in accordance with **Section 101(d)(2) of the NHPA**.

Undertaking – A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency [as defined in **36 CFR § 800.16(b)**], including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license or approval.

Chapter 267, F.S., does not define ‘undertaking,’ but **Rule 1A-46.002 (q), F.A.C.**, defines “State undertaking” as meaning “...a project, activity or program in which a state agency of the executive branch has direct or indirect jurisdiction; those in which a state agency provides financial assistance to a project or entity; and those in which a state agency is involved through the issuance of state permits or licenses.”

8.1.3 Legal Authorities

8.1.3.1 Federal Legislation

Section 106 of the **NHPA** of 1966, as amended, and its implementing regulations at **36 CFR Part 800 (Protection of Historic Properties)**, as amended, requires federal agencies to consider the effects of their undertakings and programs on historic properties in the planning and delivery of the proposed action or program. Subpart B of the regulations defines how federal agencies meet the statutory responsibilities in the **Section 106** process, and how the steps of this process can be coordinated with reviews under other federal laws. As a part of this effort, federal agencies must provide the ACHP a reasonable opportunity to comment on the undertakings. Coordination with ACHP is addressed throughout Subpart B, and **Appendix A to Part 800** outlines ACHP involvement in reviewing individual **Section 106** cases. In addition to **36 CFR Part 800**, ACHP has approved exemptions from the **Section 106** process and issued a number of official program comments addressing some broad topics. A summary of the ACHP issuances applicable to how FDOT complies with **Section 106** follows.

The **Section 106 Exemption Regarding Effects to the Interstate Highway System (ACHP, March 10, 2005)** presents guidance from ACHP for implementing the exemption from **Section 106** and **Section 4(f)** requirements created in the **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)** for the bulk of the Interstate System.

The **Program Comment for Common Post-1945 Concrete and Steel Bridges (ACHP, November 2, 2012)** relieves FHWA and other federal agencies from the requirement under **Section 106** of the **NHPA** to consider the effects of undertakings on certain common bridges and culverts constructed of concrete or steel after 1945. The federal

agencies using the Program Comment must still complete **Section 106** review for the undertaking, including the identification of historic properties and consideration of effects of the undertaking on historic properties other than the common bridge itself.

The ***Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way (ACHP, August 17, 2018)***, as amended June 10, 2019, relieves federal agencies from the requirement under **Section 106** of the **NHPA** to consider the effects of undertakings on historic rail properties within railroad and rail transit Right of Way (ROW). This program comment was prompted by the ***Fixing America's Surface Transportation (FAST) Act, (49 U.S.C. 24202, December 4, 2015)***, which required that the Secretary of the USDOT propose an exemption of railroad rights of way from review under **Section 106**, consistent with the exemption for interstate highways approved on March 10, 2005 [**70 Federal Register (FR) 11928**].

This Program Comment is comprised of an activity-based approach, and a property-based approach. The activity-based approach provides a list of activities for which no further **Section 106** review is required. The property-based approach establishes a process whereby project sponsors can opt to work with the relevant USDOT Operating Administrations and stakeholders to develop a list of excluded historic rail properties that would remain subject to **Section 106** review and exempt from review the effects of undertakings to all other historic rail properties within a designated area. The activity-based approach is immediately effective, but the property-based approach does not go into effect until USDOT publishes implementing guidance.

The ***Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment (ACHP, October 26, 2022)*** relieves FDOT from the requirement to conduct reviews under **Section 106** of the NHPA for effects on historic properties related to installation of certain electric vehicle supply equipment (EVSE) provided they meet the below conditions (**87 FR 66201**).

Except as noted below, all federal agencies are exempt from the **Section 106** requirements of taking into account the effects of the installation, maintenance, repair, or expansion of EVSE and Level 1, 2, or 3 [also known as Direct Current (DC) Fast Charging] charging stations, provided these:

1. Take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable;
2. Use reversible, minimally invasive, non-permanent techniques to affix the infrastructure;
3. Minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance;
4. Use the lowest profile EVSE reasonably available that provides the necessary charging capacity;
5. Place the EVSE in a minimally visibly intrusive area; and

6. Use colors complementary to surrounding environment, where possible.

Definitions applicable to this exemption presented in **87 FR 66201** are incorporated by reference herein.

This exemption shall not apply on Tribal Lands, or to activities that may affect historic properties located on Tribal Lands, unless the THPO, Tribe, or a designated representative of the Tribe has provided prior written notification to the ACHP that it agrees with the use of the exemption on its lands. ACHP shall provide notice on its website of any such agreements with Tribes.

While the ACHP does not expect that activities carried out consistent with this exemption will affect historic properties of religious and cultural significance to Tribes, the ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archaeological site, feature, or district, or any other property with known potential significance to Tribes, FDOT should coordinate with interested Tribes to determine whether they ascribe significance to the site or property. Should a Tribe ascribe significance to the site area, FDOT should undertake a **Section 106** review.

Section 110 of the **NHPA** requires federal agencies to develop historic preservation programs to identify, evaluate, and protect historic properties that are under federal agency jurisdiction and/or potentially affected by federal actions. **Section 110** also requires the recording of historic properties altered, damaged, or destroyed as a result of a federal action, and the deposition of these records in the Library of Congress or other designated repository for future use and reference. Federal agencies are also instructed to consult with other federal, state, and local agencies, Tribes, the public, and other stakeholders, and to integrate historic preservation into their plans and programs and address the treatment of National Historic Landmarks (NHLs) impacted by an agency's programs and undertakings (i.e., their projects).

36 CFR Part 61 (Procedures for State, Tribal, and Local Government Historic Preservation Programs) authorizes the Secretary of the Interior to establish professional standards, techniques, and methods for historic preservation, and to guide local governments, states, and Tribes in the preservation of "historic properties" (as defined by the **NHPA**) and the administration of historic preservation programs.

The **Archaeological Resources Protection Act (ARPA) of 1979** was enacted to secure the protection of archaeological resources and sites that are on public lands and Tribal Lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals.

The **Archaeological and Historic Preservation Act of 1974 [Public Law (Pub. L.) 93-291;16 U.S.C. § 469]** requires federal agencies to fund effects mitigation measures when their actions threaten to damage or destroy NRHP-eligible properties.

NEPA, as amended (**42 U.S.C. § 4321**) requires the examination and avoidance of potential impacts to the social and natural environment when considering approval of proposed transportation projects. In addition to evaluating the potential environmental

effects, the **NEPA** process prescribes interagency cooperation, public involvement, and documentation. **Section 102(c)** of the Act also requires the federal government to "...preserve important historic, cultural, and natural aspects of our national heritage." The level of required **NEPA** documentation depends largely upon the nature and degree of project impacts upon the human and natural environment. These impacts, then, determine a COA, which can include a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

Section 4(f) of the **United States Department of Transportation Act of 1966**, and its implementing regulations at **23 CFR Part 774** applies whenever a project incorporates land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of a historic site of national, State, or local significance into a transportation facility. Such incorporation is referred to as a "**Section 4(f)** use of the resource" and requires an approval under **49 U.S.C. § 303** and **23 U.S.C. § 138** prior to utilizing the land for the project.

The **American Indian Religious Freedom Act (AIRFA) of 1978 (Pub. L. 95-341; 42 U.S.C. § 1996)** establishes as federal policy the protection of the rights of Tribes to the free exercise of their religion, including access to sacred sites, and requires federal agencies to accommodate this policy. Amendments to **Section 106** of the **NHPA** in 1992 strengthened the interface with this **Act** by declaring that a federal agency must include the Tribes in the consultation process.

The **Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (Pub. L. 101-601; 25 U.S.C. § 3001)** addresses the proper treatment of Native American human remains and funerary and sacred objects located on federal or Tribal Lands.

Executive Order 11593: Protection and Enhancement of the Cultural Environment (1971) (3 CFR Part 154, reprinted in 16 U.S.C. § 470) requires all federal agencies to identify and take steps to avoid effects to archaeological and historic properties under their jurisdiction that are eligible for listing in the NRHP. It also requires complete documentation of NRHP-eligible properties that will be demolished as a result of the federal undertaking.

Executive Order 13007: Indian Sacred Sites (1996) requires federal agencies to protect Indian sacred sites by avoiding adverse effects to the physical integrity of such sites. It further accommodates access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and requires federal agencies to maintain confidentiality of information on such sites.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (2000) affirms and strengthens the federal government's commitment to meaningful consultation with Tribes concerning federal actions, renews federal commitment to recognition of tribal sovereignty, and recognizes the government-to-government relationship between Tribes and the U.S. government. In **September 2004, President Bush's Memorandum, Government-to-Government Relationship with Tribal Governments** reaffirmed the policy set forth in **Executive Order 13175**.

8.1.3.2 State Legislation

Chapter 267, F.S. is the principal state law regarding the protection of archaeological and historical resources. It contains requirements similar to those of the federal **NHPA**. **Chapter 267, F.S.**, declares the state policy that the historic properties in this state represent “an important legacy to be valued and conserved for present and future generations.” It requires that each state agency consider the effects of an undertaking on any historic property that is eligible for inclusion in the NRHP and to consult with FDHR to ensure that effects on historic properties are considered prior to the expenditure of state funds on the project.

Section 253.027, F.S., Emergency Archaeological Properties Acquisition Act of 1988 provides a procedure to purchase archaeological and historical resources of statewide significance that are endangered by development, vandalism, or natural events.

Section 872.05, F.S., Unmarked Human Burials (2011) accords equal treatment and respect for human burials and human skeletal remains regardless of ethnic origin, cultural background, or religious affiliation. This law pertains to any human burials, human skeletal remains, and associated burial artifacts on public or private lands within Florida. It is a third-degree felony to willfully and knowingly disturb, destroy, remove, or damage any unmarked human burials.

Chapter 1A-32, F.A.C., Archaeological Research (2014) provides the criteria, notification requirements, and prohibited practices associated with archaeological research conducted on state-owned lands, including submerged lands.

Chapter 1A-44, F.A.C., Procedures for Reporting and Determining Jurisdiction Over Unmarked Human Burials (1992) establishes the procedure to follow in the event that unmarked human burials are encountered during a project.

Chapter 1A-46, F.A.C., Archaeological and Historical Reports Standards and Guidelines (2002) specifies reporting and site recording requirements.

A more detailed list of authorities governing the CRM program is available in **Chapter 1** and Appendix A of the [CRM Handbook](#).

8.2 PROCESS

The guiding principle of FDOT’s CRM process is to identify, evaluate, and document historic resources and analyze the potential effects (if any) of its undertakings on the significant historic resources (also referred to as historic properties), whether they are federal or state-only actions. The detail and level of analysis varies depending on the type of historic property, potential for the project to affect them, and the degree or nature of the anticipated effects. Once FDOT completes this effort, FDOT develops practical ways to avoid or minimize identified effects. If the effects cannot be avoided or minimized, FDOT seeks ways to mitigate for identified adverse effects.

FDOT complies with applicable federal and state historic preservation mandates for its projects. Projects developed, funded, or assisted by FDOT, which involve a federal action, must adhere to the **Section 106** process. For state only funded projects that involve no federal approvals, funding sources, or actions, **Chapter 267, F.S.**, directs the CRM process. To avoid confusion, the FDHR incorporated the **Section 106** process into the state's uniform compliance review program. The Director of the FDHR also serves as the SHPO; so regardless of whether an FDOT project is a federal or state-only undertaking, the state's point of contact for consultation is the same.

The primary differences between the two review processes are the involvement of OEM and the ACHP and the role of tribal governments in the consultation process under **Section 106**. Since OEM has designed FDOT procedures to ensure compliance with both laws and regulations through a single process, the only difference of importance for FDOT projects is the broader and more specific consultative requirements of the federal process with entities other than FDHR/SHPO.

8.2.1 Section 106 Process

The **Section 106** process is contained in the implementing regulations, **36 CFR Part 800**, issued by the ACHP (incorporating amendments effective August 5, 2004). These regulations establish the four-step **Section 106** process. By following the four steps and applying the general requirements of **Section 106**, FDOT ensures compliance with the other related laws and requirements. The steps established by **36 CFR Part 800** form the core process FDOT follows to meet its cultural resources management responsibilities.

The four steps of the **Section 106** process are:

- **Step One: Initiate the Section 106 Process** ([Section 8.3.2.2](#))
- **Step Two: Identify Historic Properties** ([Section 8.3.2.3](#))
- **Step Three: Assess Adverse Effects** ([Section 8.3.2.4](#))
- **Step Four: Resolve Adverse Effects** ([Section 8.3.2.5](#))

The goal of the **Section 106** process as stated in **36 CFR 800.1** is to "... accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effect of the undertaking on historic properties...." As a result, final actions performed by federal agencies can range from avoidance to complete loss of the historic property without violating **Section 106**, as long as:

- the agency considers the effects of the action on the property;
- evaluates all available avoidance, minimization, and mitigation options; and
- offers the consulting parties an opportunity to comment on the effects of the undertaking on historic properties.

Consultation is a key element in the **Section 106** process. The **Section 106** regulations define consultation as “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the **Section 106** process.” FDOT serves as the Lead Federal Agency in most of the consultation required in this process, except for the government-to-government consultation required when requested by a Tribe affiliated with Florida. In those instances, OEM will inform FHWA of the Tribe’s request. However, the normal **Section 106** consultation process conducted by FDOT with the Tribes is not considered government-to-government consultation. When developing the **Section 106** consultation effort for a proposed highway project, FDOT works closely with SHPO to identify the appropriate consulting parties and, as appropriate, informs the appropriate Tribes of projects which may affect properties of religious and cultural importance to the Tribe. Generally, FDOT considers this to include historical or archaeological resources that have obvious ties to a Tribe, or archaeological sites that have a precontact component. For specific information about consulting parties, see [Section 8.2.1.1](#) and [Section 8.3.2.2.3](#).

The consultation effort must be appropriate to the size and scale of the proposed undertaking, as well as to the scope of the federal involvement. Often, the consultation effort may depend on the nature of the historic properties located in the APE of the proposed federal action.

Title 36 CFR Part 800 requires federal agencies to seek the views of the public during the **Section 106** process. Normally, FDOT’s public involvement process, described in [Part 1, Chapter 11, Public Involvement](#), satisfies **NEPA**, **Section 4(f)**, and **Section 106** compliance provided the timing of the identification, evaluation, and documentation of the historic properties is appropriately coordinated with the public review and comment opportunity. However, in some cases, where the historic properties are of great concern to the public, where the consultation involves large numbers of local citizens, where special considerations for Tribes must be examined, or where historic properties were identified late or were absent from the initial public review and comment opportunity, additional or different types of public involvement efforts may be necessary. The nature of the sites may also trigger additional consultations to meet the requirements of other laws such as the **NAGPRA**, **Chapter 872, F.S.**, or the **AIRFA**.

8.2.1.1 Participants in the Section 106 Process

The **Section 106** process, and therefore FDOT’s CRM process, involves several participants. The primary participants in the process include the following:

1. **FDOT** – The role of FDOT varies based upon its relationship to the proposed undertaking, the funding sources for the undertaking, and required approvals. These roles include: (1) the Lead Federal Agency per the **NEPA** Assignment Program, (2) being an applicant for non-FHWA federal-aid funds, (3) serving as the Lead Federal Agency for LAP projects receiving federal-aid funds for transportation projects, and/or (4) serving as the Lead State Agency for non-federal, FDOT-assisted or approved undertakings.

2. **Lead Federal Agency** – Under the **NEPA Assignment MOU**, FDOT assumes FHWA’s responsibility for **Section 106** for all highway transportation projects and serves as the Lead Federal Agency with the exception of government-to-government consultation with the Tribes. See [Section 8.2.1.2](#) for government-to-government specifics and other tribal coordination details. In addition, there may be instances where other agencies of the USDOT serve as the Lead Federal Agency or when other federal agencies serve as the Lead Federal Agency because they are granting a permit or approval.
3. **ACHP** – The ACHP issues the regulations to implement **Section 106**, provides guidance on compliance with **Section 106**, and oversees the **Section 106** process. The ACHP must be notified by FDOT when a project will have an adverse effect to historic properties, and the ACHP also may participate directly in the consultation process at its discretion or upon request from one of the consulting parties. The conditions under which the ACHP may participate directly in a specific circumstance are set forth in **Appendix A to Part 800, Title 36**.
4. **SHPO** – SHPO represents the interests of Florida and its citizens in the preservation of their cultural heritage. Florida’s SHPO is designated by the Florida Secretary of State, and reviews federal-aid projects, along with federal and state permitted projects. In Florida, the SHPO also serves as the Director of the FDHR, and in this capacity, reviews state-only undertakings and maintains Florida’s state historic preservation plans and programs.
5. **Federally Recognized Native American Tribes (Tribes)** – There are six Tribes with cultural associations in Florida: the Miccosukee Tribe of Indians of Florida, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Tribe of Florida, and the Seminole Nation of Oklahoma. The U.S. government has a unique relationship with the Tribes as codified in treaties, the U.S. Constitution, Supreme Court rulings, and federal law.
6. **Section 106 Consulting Parties** – These include the parties discussed above, as well as representatives of local governments, applicants for federal assistance, and other parties with a demonstrated interest in the effects of an undertaking on historic properties. For example, property owners and local historic preservation groups are usually specific to the project location. Projects involving NHLs normally involve the National Park Service (NPS). Projects involving publicly owned historic resources would need to include the agency owning or managing the resource.
7. **The Public** – The Lead Federal Agency must seek and consider the views of the public on the effects of its undertakings on historic properties.

8.2.1.2 Native American Consultation

Under **36 CFR Part 800** federal agencies must consult with Tribes regarding potential effects to historic properties that may be affected by a proposed undertaking and that may

be of religious or cultural significance to the Tribe regardless of whether the property is located on or off Tribal Lands. FDOT considers resources, both historic and archaeological, that have an obvious tie to a Tribe, or archaeological sites that have a precontact component, as having the potential for tribal interest. In accordance with **36 CFR § 800.2(c)**, consultation with a Tribe must recognize the government-to-government relationship between the federal government and Tribes. It is FDOT's responsibility to make a reasonable and good faith effort to identify the appropriate Tribes for coordination. FDOT must consult with representatives designated or identified by the tribal government, and consultation should be conducted in a manner sensitive to the concerns and needs of the Tribe. See [Section 8.3.2.2.3.2](#) for the considerations regarding the unique relationship of the Tribes to the consideration of historic properties in FDOT's CRM and project development programs.

While FHWA cannot assign its government-to-government tribal consultation responsibilities to FDOT under the **NEPA** Assignment Program, the requirements in **36 CFR § 800.2(c)** do not preclude direct communication between project applicants and Tribes, as long as the Tribe consents to such communication. As such, FDOT will continue to coordinate and meet with the Tribes regarding projects including notification of a proposed activity and the submittal of cultural resource reports or other appropriate documents. If, at any time, a Tribe requests government-to-government consultation with FHWA, OEM will notify FHWA. However, the **NEPA Assignment MOU** does not prevent FDOT, FHWA, and a Tribe from agreeing to allow FDOT to carry out consultation activities on behalf of FHWA; but, FHWA would remain legally responsible for government-to-government consultation.

8.2.2 Additional Requirements and Processes

The **Section 106** process encompasses compliance with other laws that touch upon the treatment of historic properties. Examples of such laws are:

Federal

NAGPRA

NEPA

Section 4(f) of the **USDOT Act of 1966** (as amended)

Archaeological Resources Protection Act of 1979

Executive Orders, such as **EO 13007** on Sacred Indian Sites

State

Chapter 267, F.S.

Chapter 872, F.S.

Chapter 1A-32, F.A.C.

Chapter 1A-46, F.A.C.

The process for compliance with **Section 106** is implemented through the **Section 106 PA** (executed, September 27, 2023). A **Letter of Agreement (LOA)** between FDOT and SHPO authorizes the processes and procedures outlined within the **Section 106 PA** to be utilized for compliance with **Chapter 267, F.S.**, as well as compliance with **Section 4(f)** when SHPO is the official with jurisdiction (OWJ). The **LOA** is referenced in and attached to the **Section 106 PA** and includes the provision that all consultative efforts between FDOT and SHPO requiring regulatory or procedural acknowledgements be referenced singularly as the **Section 106 PA** or **2023 PA**. The programmatic provisions address the requirements for the primary federal and state historic preservation laws only.

They do not apply to projects occurring on Tribal Lands nor do they fulfill the requirements for consultation with Tribes under **Section 106** or any other law. These provisions also do not exempt undertakings from meeting the requirements set forth for resources protected by other laws (such as those resources designated by the Florida Legislature as State Historic Highways) or for resources protected by laws that do not require listing on or eligibility for the NRHP.

Under the **NEPA** Assignment Program, FDOT assumes responsibility for compliance with **Section 106** of the **NHPA** and will continue coordination with the SHPO, other consulting parties, and the ACHP regarding cultural resource issues through formal assumption of **Section 106** responsibility. The District will continue to be responsible for activities stipulated in the **Section 106 PA**, including submittal and coordination of cultural resource surveys and other analyses to OEM and to other consulting parties as appropriate.

8.2.2.1 State-Designated Historic Highways

The Florida Legislature has designated certain highways as State Historic Highways, and a current list is maintained by the FDOS. Each highway is designated by a specific law that sets the standards and guidance for its preservation and treatment. This designation is not based upon the NRHP eligibility criteria nor any other standard evaluation method used to evaluate historic properties. Rather, the designation reflects a specific importance to the local community. For some of these highways, the designation prohibits alteration of roadway dimensions and immediate surroundings as well as the expenditure of state funds on any action involving the designated highway prior to coordination and agreement with FDHR on the proposed action. These resources are identified as part of the identification and evaluation of historic properties undertaken for a proposed action, as detailed in [Section 8.3](#).

8.2.2.2 Burials, Cemeteries, and other Sites Containing Human Remains or Associated Burial Artifacts

FDOT's CRM process includes compliance with Florida's **Unmarked Human Burials** law in **Section 872.05, F.S.**, which governs the treatment of human remains. For FDOT, this law usually applies to human remains encountered during project construction or during archaeological research associated with project development. When a potential for the occurrence of human remains or burial artifacts has been identified for a site or location within the construction area of a project, FDOT includes compliance with the provisions of **Section 872.05, F.S.**, in its project development and delivery conditions.

The **Unmarked Human Burials** law differentiates between human remains of an individual that has been deceased less than 75 years and those of an individual deceased for 75 years or more. For those less than 75 years, the human remains come under the jurisdiction of the appropriate medical examiner. For those that are 75 years or more, the remains come under the jurisdiction of the state archaeologist. If these older remains are located on federal lands and they are associated with the cultural history of Tribes, the federal agency owning or administering the land is informed in order to ensure compliance with **NAGPRA**. The requirements for the treatment of human remains are further addressed in FDOT's CRM procedures and in **Section 7-1.6** of FDOT's [Standard](#)

Specifications for Road and Bridge Construction. The ACHP's ***Policy Statement on Burial Sites, Human Remains, And Funerary Objects*** issued on March 1, 2023, established a set of standards and guidelines that FDOT will seek to implement in order to provide burial sites, human remains, and funerary objects the consideration and protection they deserve.

8.3 PROCEDURE

This section describes FDOT's procedures for considering historic and archaeological resources in the development of its projects and programs. FDOT's CRM responsibilities are vested in OEM at the state level, and the District Environmental Office at the District level. Project Managers (PMs), Environmental Managers, and Cultural Resource Coordinators (CRCs) in both OEM and the District Environmental Office have responsibility for maintaining compliance with appropriate state and federal historic preservation laws, regulations, rules, and Executive Orders (EO)s. OEM establishes overall guidance, procedures, training, and assistance in project reviews, and monitors the overall performance of FDOT's CRM program. OEM assists the District PMs, Environmental Managers, and CRCs with the **Section 106** process as requested by the Districts, SHPO, and any other consulting party.

The primary responsibility of the District Environmental Office during the **Section 106** analysis is to ensure that individual projects follow the established FDOT processes and procedures. The District CRCs apply the applicable laws, regulations and procedures to the individual projects and conduct the day-to-day consultations with the appropriate parties.

In addition to staff, FDOT contracts with consultants to provide cultural resource studies and perform other tasks that require meeting the professional qualifications standards established by the U.S. Secretary of the Interior (***FR, Vol. 62, 33708-33723***) to perform identification, evaluation, registration, and treatment activities for historic properties. Consultants identify archaeological sites and historic resources, evaluate the identified resources in accordance with the criteria for historic significance set forth by the NPS, and apply the Criteria of Adverse Effect as defined in **36 CFR § 800.5**. In all cases, the consultants' findings are professional recommendations.

FDOT staff or consultants performing actions to meet the requirements of historic preservation mandates must either meet or be supervised by individuals meeting the minimum criteria for archaeologists, historians, architectural historians, and other professionals as outlined in **36 CFR Part 61** and set forth in the Professional Qualifications Standards section of the ***Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (FR, Vol. 62, 33708-33723)*** (June 20, 1997). The professional qualifications required to perform cultural resource assessments for FDOT are further described in **Chapter 1** of the **CRM Handbook**.

All FDOT undertakings receive some level of cultural resources analysis, even if it is to determine there is 'No Potential to Cause Effects to Historic Properties' in the project area. This analysis is separate from, and must be made prior to, the final, **NEPA** decision. A project's level of involvement with historic properties has the potential to impact the

NEPA COA for the project. However, the anticipated **NEPA** COA does not dictate the expected level of effort necessary for **Section 106** compliance, nor does it substitute for an analysis of the project's potential to affect historic properties. Similarly, for state-only projects, the requirements of **Chapters 267** and **872, F.S.**, apply equally to Non-Major State Actions (NMSAs), as well as State Environmental Impact Reports (SEIRs). The level of analysis and documentation for compliance with historic preservation mandates vary based upon specific project activities, but it is the findings of the analysis that are used as a part of the **NEPA** COA decision.

As set forth in **36 CFR Part 800** and recognized in the **Section 106 PA**, the decision concerning the level of survey effort and detail necessary to meet the requirements of historic preservation laws are based upon the nature and scope of proposed projects and the location of these projects in relation to both known and unknown historic properties. Therefore, determining the appropriate level of survey requires a careful review of all activities associated with the project, as well as the potential for the occurrence of historic properties in the geographic area that the project may directly or indirectly affect.

FDOT uses the four-step process established in **36 CFR Part 800** as the core of its CRM compliance program for both federal and state actions. This process includes locating, documenting, evaluating, and assessing the effects on historic properties, as well as developing avoidance, minimization, and/or mitigation measures for adverse effects to significant cultural resources, all in consultation with the appropriate parties. Regardless of the funding source, similar requirements for the assessment of cultural resources apply.

For proposed federally funded or approved actions, if the undertaking includes an additional federal action [such as a U.S. Coast Guard (USCG) or U.S. Army Corps of Engineers (USACE) permit], then the federal agency taking that action must comply with **Section 106** of the **NHPA**; however, in these cases those agencies will typically adopt FDOT's **NEPA** analysis and associated findings including those under **Section 106** to fulfill their requirements. For proposed state funded only projects, if the undertaking includes a federal action (such as a USCG or USACE permit), then the federal agency must comply with **Section 106** of the **NHPA**. As permits are often granted only for the specific activity or location being permitted, the **Section 106** compliance in these situations may not relieve FDOT of its **Chapter 267, F.S.**, responsibilities for the remainder of the proposed project.

8.3.1 Early Consideration of Archaeological and Historical Resources

Section 106 and FDOT's CRM process require consideration of historic properties in the earliest stages of project development. FDOT's Efficient Transportation Decision Making (ETDM) screening process allows Districts to use the Environmental Screening Tool (EST) to review projects to determine if projects fall into the programmatic categories established in the **Section 106 PA**. See [Section 8.3.2.2.2](#) for additional procedures related to reviewing minor project activities.

Screening of qualifying transportation projects is required during the ETDM screening events (see [Part 1, Chapter 2, Class of Action Determination for Federal Projects](#)).

The early screenings for these projects include consideration of cultural resources and loosely correlate to steps one and two of the **Section 106** process. The Planning Screen and Programming Screen are conducted through the EST and are briefly described below (FDOT's [ETDM Manual, Topic No. 650-000-002](#)).

The screening evaluations are:

1. **Planning Screen** – This initial screening identifies possible issues/resources that need to be considered as the proposed project advances. This is the first opportunity for comments from other agencies with either responsibilities for, or consultative roles in, the **Section 106** process.
2. **Programming Screen** – This second screening event provides additional opportunity to scope the proposed project, identify potential project effects, and provide recommendations for technical studies, including the cultural resources survey and evaluation effort. This screening event may also present an excellent opportunity to establish contact with the interested parties for coordination of some of the early decisions regarding the CRM study, such as the identification of the appropriate consulting parties for the project and, more rarely, the delineation of the APE for the project.

Following the Programming Screen, the District produces a **Programming Screen Summary Report**. This report includes a summary of the comments provided by the resource agencies, FDOT's transportation partners, and other interested parties, including consulting parties under **Section 106**. The comments from those with a consultative role in the **Section 106** process are especially important for consideration as the District plans its PD&E Study for the proposed undertaking. In addition, comments from SHPO/THPO and the Tribes are used to develop the scope of services needed to complete the CRAS for the proposed project.

For screened projects, there may be enough information to determine if the project may affect any historic resources. In part, these screening events should be used as part of the first two steps of the **Section 106** process (see [Section 8.3.2.2](#) and [Section 8.3.2.4](#)).

8.3.2 Archaeological and Historical Resources Considerations Prior to and during PD&E

FDOT uses the **Section 106** process to ensure compliance with most state and federal historic preservation regulations.

8.3.2.1 Section 106

The **Section 106** process is set forth in **36 CFR Part 800**. As specified in [Section 8.2.1](#), there are four steps in the **Section 106** review process and, therefore, in FDOT's procedures.

[Figure 8-1](#) provides a flow chart of this four-step process and a listing of the activities associated with each of the steps. This process is also discussed in FDOT's [CRM](#)

Handbook. The **Chapter 267, F.S.**, requirements are similar to the **NHPA** requirements and this same four-step process is applicable to projects that do not require federal approvals or assistance, with the exception being that no coordination with federal agencies or the ACHP is required. If it is anticipated that a federal agency will become involved later in project development, the **Section 106** process should be followed to avoid unnecessary delays.

Regardless of whether a project qualifies for screening (see the [ETDM Manual, Topic No. 650-000-002](#)), a cultural resources evaluation is required. The level of effort involved in the **Section 106** evaluation is based on the potential for the project to affect historic properties, consideration of where the project occurs, and the nature of the proposed undertaking.

8.3.2.2 Step One: Initiate the Section 106 Process

This step involves the following four actions:

- Establish the undertaking
- Apply appropriate program alternative(s) and coordinate with other reviews
- Identify the consulting parties
- Create a plan to involve the public

8.3.2.2.1 Establish the Undertaking

In accordance with **36 CFR § 800.3**, establishing the undertaking consists of a determination as to whether the proposed action constitutes an undertaking as defined in **36 CFR § 800.16(y)**, and if so, whether it is a type of activity with a potential to cause effects to historic properties should any such properties be present. An undertaking consists of a project, activity, or program that is funded, sponsored, permitted or otherwise approved by a federal agency. Any federal involvement in this regard requires compliance with **Section 106**; state-only undertakings require compliance with **Chapter 267, F.S.** In some cases, an undertaking and its associated activities are so minor that it does not have potential to cause effects to historic properties, assuming historic properties are present. These actions are defined as non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation. In accordance with **36 CFR § 800.3(a)(1)**, if the District finds that the proposed project has 'No Potential to Cause Effects', FDOT has no further obligations under **Section 106** or under **Chapter 267, F.S.**, for that undertaking. Findings of 'No Potential to Cause Effects to Historic Properties' must be recorded in the appropriate Environmental Document for the proposed project, along with the basis for the finding. All construction-related actions with a federal nexus must comply with **36 CFR. §§ 800.4 to 800.6** including any maintenance, new construction, and all construction related actions. Questions about applicability of **36 CFR. § 800.3(a)(1)** should be referred to OEM.

The **Section 106 PA** establishes FDOT's CRM process in Florida and identifies activities which will result in a finding of 'No Historic Properties Affected' provided that the appropriate conditions specified in the **Section 106 PA** are met and SHPO does not object to the finding ([Section 8.3.2.2.2](#)). If the undertaking is a type of activity that has potential to cause effects to historic properties, then the project proceeds to the next step in the **Section 106** process.

8.3.2.2.2 Apply Appropriate Program Alternative(s) and Coordinate with Other Reviews

The **Section 106 PA** specifies two primary considerations that govern the required level of effort for the cultural resources study and review: (1) the project location in regard to the potential for cultural resources to be present in the area of the undertaking, and (2) the specific activities associated with the development, construction, and scope of the project and their potential to affect significant cultural resources, should such resources be present.

Regarding project location, some geographic areas are unlikely to contain historic resources, while other projects are so minor in scope that unless the specific project corridor itself contains, abuts, or is a historic resource, there is very little chance the undertaking could affect historic properties. Such circumstances may minimize the level of effort needed to fulfill the requirements for identifying historic properties in the project APE. However, if the basic historicity of the area is unknown, then a determination on the potential of the proposed project to affect historic properties, no matter how minor the project is, cannot be made with any certainty without a review of the structural and archaeological environment surrounding the project. Therefore, in order to reach an accurate decision, FDOT conducts the necessary level of review.

Regarding specific activities associated with a project, the **Section 106 PA** defines two categories of Minor Project Activities with either minimal potential to affect historic properties or which are considered unlikely to affect historic properties. The first group includes six project activity types that have minimal potential to affect historic properties and can result in a finding of 'No Historic Properties Affected', provided the following conditions are met:

1. The undertaking is a stand-alone project;
2. The undertaking does not occur on Tribal Lands;
3. The undertaking's activities are limited to those specified in Appendix 1 of the **Section 106 PA**;
4. The undertaking's APE does not include any historic resources; and
5. SHPO and OEM have been notified of the finding of 'No Historic Properties Affected' and the rationale for the finding via the form developed by OEM, and they have not objected to the finding within thirty (30) days of receipt of the notification.

The six project activity types specified in Appendix 1 of the **Section 106 PA** which may qualify for this category are:

1. Installation of fencing, signs, pavement markings, rumble strips, small passenger shelters, traffic signals, and railroad warning devices within the existing footprint of the roadbed, curbing, medians, swales, drainage structures or sidewalks where no substantial land acquisition or traffic disruption will occur
2. In kind replacement or ordinary repair of existing lighting, guardrails, traffic signals, curbs, and sidewalks
3. Activities included in the state's highway safety plan under **23 U.S.C. § 402**
4. Preventive maintenance activities such as joint repair, pavement patching, shoulder repair and the removal and replacement of old pavement structure that does not extend beyond the horizontal or vertical extent of the original construction footprint
5. Restoration, rehabilitation, and/or resurfacing existing pavement that does not extend beyond the horizontal or vertical extent of the original construction footprint
6. Restoration and rehabilitation of an existing bridge (including painting, crack sealing, joint repair, scour repair, scour counter measures, fender repair, bridge rail or bearing pad replacement, seismic retrofit, etc.)

The second category of Minor Project Activities are considered unlikely to affect historic properties but require desktop evaluation to either verify that the project will result in 'No Historic Properties Affected' or to determine what consultation or additional efforts are needed to meet the requirements of the historic preservation laws. The following conditions must be confirmed to be true for undertakings consisting of this group of 52 project activity types (see [Figure 8-2](#)):

1. The undertaking is a stand-alone project;
2. The undertaking does not occur on Tribal Lands;
3. The undertaking's activities are limited to those listed in Appendix 1 and/or Appendix 2 of the **Section 106 PA**;
4. The undertaking's activities do not involve ground disturbance within or adjacent to a cemetery;
5. The undertaking's APE includes one or more of the following situations:
 - i. There are no historic resources in the project APE;
 - ii. There are historic resources that have been evaluated by SHPO as ineligible for listing on the NRHP within the last ten (10) years;

- iii. There are resources that are exempt from **Section 106** review per the nationwide program alternatives listed in Attachment 1 of the **Section 106 PA**; or
 - iv. There are linear resource segments that have been evaluated by SHPO as non-contributing, ineligible segments of a larger resource determined eligible or potentially eligible for NRHP listing or which has insufficient information for a definitive NRHP determination for the whole resource.
6. The SHPO has been notified of the finding of 'No Historic Properties Affected', and the rationale for the finding via the form developed by OEM, and they have not objected to the finding within thirty (30) days of receipt of the notification.

See [Figure 8-2](#) for the list of 52 types of project activities identified in Appendix 2 of the **Section 106 PA**.

Reviewing Minor Project Activities

FDOT's procedure for reviewing the two categories of Minor Project Activities listed in the **Section 106 PA**, consists of an internal review and, as appropriate, an assessment of historic resources' NRHP eligibility determinations, and notification and coordination. The **Section 106 PA** specifies that the internal review be conducted by qualified cultural resource staff or consultants, including an archeologist and architectural historian or historian, meeting the **Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (36 CFR Part 61 and 48 FR 44716, September 29, 1983)**, and that they employ a multi-disciplinary approach to implement the following internal review process, as appropriate to the project:

- Determine if the project constitutes an undertaking as defined in **36 CFR Part 800**.
- Determine if the undertaking is the type of activity which has the potential to cause effects to historic properties if such properties are present.
- Determine the project's APE.
- Review existing information (including the FMSF) on recorded properties in the APE.
- Assess the likelihood that unidentified properties exist in the APE.
- Determine the degree of existing disturbance within the APE, performing a field inspection where warranted.
- Determine whether there are historic resources or properties within the APE. If there are historic resources within the APE which have not yet been documented and evaluated for NRHP eligibility, the minor project process cannot be used and the project should be processed according to the standard **Section 106** process outlined in Stipulation VII of the **Section 106 PA**.

- Assess the project's effects on any historic properties if any are present within the APE, by applying the definition of Effect in **36 CFR § 800.16** and the Criteria of Adverse Effect in **36 CFR § 800.5(a)**. Minor Projects must result in 'No Historic Properties Affected'. If the application of the criteria of adverse effect suggests a different finding, the project must be processed according to the standard **Section 106** process outlined in Stipulation VII of the **Section 106 PA**.

For projects that do not include historic resources or properties within the APE or that by their nature have minimal potential or are considered unlikely to affect historic properties, FDOT documents the finding in the StateWide Environmental Project Tracker (SWEPT) project file. This is accomplished by the District notifying SHPO of its finding of 'No Historic Properties Affected' on a **Section 106 Program Alternative Form** developed for minor project notifications. The State CRC must be copied on this notification, and it must be saved to the SWEPT project file. The **Section 106 Program Alternative Form** includes the project description, a map showing the location and area of potential effect, along with other information supporting the finding, as appropriate. Unless SHPO, OEM, or another consulting party objects to the finding, FDOT is not required to take any further action in the **Section 106** process.

If a Tribe expresses interest in a minor project, the District will provide the project information and supporting documentation via a **Notification Letter** in accordance with the communication preferences discussed on FDOT's [Native American Coordination Website](#). The Project Delivery Coordinator (PDC) and the State CRC must be copied in on these notifications and a copy of the notification and any tribal response must be saved in the SWEPT project file.

8.3.2.2.3 Identify the Consulting Parties

FDOT, in consultation with SHPO/THPO, determines which particular agencies, organizations, citizens, or tribal governments should be invited to be a consulting party for the purposes of **Section 106**, as set forth in **36 CFR Part 800**.

The consulting parties may be any of the following:

1. Tribes that attach traditional religious and cultural significance to historic properties that may be affected by the undertaking.
2. Other consulting parties, which may include:
 - Applicants for federal funding assistance, permits, licenses, or other approvals.
 - Representatives of local governments with jurisdiction over the area in which the effects of an undertaking may occur.
 - Parties with legal or economic interest in the undertaking or an affected historic property.
 - Those concerned with the undertaking's effects on historic properties, such as local preservation groups, historical societies, or individual tribal members with

special knowledge or expertise in identifying properties of traditional religious and cultural significance to that Tribe.

FDOT, in consultation with SHPO/THPO, makes the final decision regarding consulting party status. Note that the ACHP is a participant in the **Section 106** process and may enter into the consultations at any time, particularly if there is a disagreement between two or more consulting parties, or if requested to participate by the public or any other consulting party. In addition, in the case of NHLs, the lead agency must consult with the NPS in order to comply with **Section 110** of *NHPA*, as well as **Section 106**. Once the consulting parties are identified the following procedures must be followed.

8.3.2.2.3.1 General Consultation

The **Section 106** process seeks input from and coordination with a broad base of partners with the goal of achieving the best possible result for all involved. When distributing general notifications and/or project communications which include multiple entities such as the public, local government officials, or Tribes, the communication to the Tribes must be provided to each appropriate Tribe separately in accordance with their stated preferences available on the [Native American Coordination Website](#). Tribes are not part of the public and should not receive public notifications such as public hearings, public meetings, alternative meetings, etc., unless expressly requested by a Tribe. The following procedures apply to general notifications and tribal consultation is outlined in greater detail in [Section 8.3.2.2.3.2](#).

1. FDOT notifies potential consulting parties. The notification includes the project description, a discussion of efforts to identify historic properties, and an invitation to participate in the **Section 106** process.
2. FDOT submits documentation related to identification of and effects (or no effects) to historic properties to SHPO/THPO and the consulting parties, as appropriate. If SHPO/THPO requests additional information that will assist in completing their review of eligibility and effects, FDOT provides that information in a timely manner.
3. For projects where adverse effects to archaeological or historic properties have been identified, prior to initiating consultation with SHPO/THPO and other appropriate parties on the resolution of those adverse effects, the District coordinates with OEM.

8.3.2.2.3.2 Tribal Consultation

The objective of this coordination is to conduct a good faith effort to elicit information concerning properties of traditional, historical, or religious importance to the Tribes in a sensitive manner that is respectful of tribal sovereignty. To date, six major areas of concern to the Tribes have been identified:

1. Good faith consultation
2. Government-to-government relationships

3. Confidentiality
4. Human remains
5. Archaeological sites
6. Traditional Cultural Properties

Chapter 3 of the [CRM Handbook](#) provides additional information about the major issues of concern as well as expanded details for tribal consultation. The basic steps to follow when coordinating with Tribes are outlined below.

Step 1 – FDOT initiates coordination by providing the Advance Notification (AN) in the EST) or an early **Notification Letter** to each Tribe with interest in the project area. The AN or **Notification Letter** should be addressed to the Chief or Chair of each Tribe and submitted via their preferred tribal contact (see FDOT’s [Native American Coordination Website](#) for appropriate tribal contacts). These notifications should include the following:

1. A clear statement that the project is being conducted pursuant to **Section 106** of the **NHPA**
2. A brief description of the project and proposed improvements
3. A map showing the location of the project and proposed improvements
4. A statement that a CRAS will be conducted and a copy of the report will be forwarded to the Tribe
5. A request for comments from the Tribe
6. The name of FDOT’s designated contact for tribal comments

Two of the six Tribes, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida, retain sovereign Tribal Land in Florida, and are consulted for projects occurring on their Tribal Land. However, for projects not occurring on Tribal Lands, it is appropriate to include the Tribes culturally affiliated with Florida. Some of the Tribes with cultural affiliation with Florida have expressed areas of interest. The Mississippi Band of Choctaw Indians only wish to be contacted on projects occurring in the Florida Panhandle, west of the Apalachicola River to the Alabama state line (including Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, and Gulf Counties). If the project does not include resources located in that designated area, project information is not forwarded to the Mississippi Band of Choctaw Indians. In addition, the Muscogee (Creek) Indians geographic area of interest in Florida does not include Broward, Miami-Dade, Monroe and Collier counties. Therefore, information on projects wholly confined to those counties need not be provided to the Muscogee (Creek) Nation.

Any coordination with the Tribes on state-only projects is conducted through FDOT. The State CRC should be copied on transmittals to Tribes. If a federal permit is required for the state-only project, the Districts inform the federal permitting agencies when

consultation with the Tribes will be needed and assist those agencies in the coordination and consultation with the Tribes and SHPO/THPO, as appropriate.

Step 2 – Following initial notification, information provided by a Tribe relating to a project's historic and archaeological survey area must be considered when developing and conducting the CRAS and must be addressed as appropriate in the **CRAS Report**. Based on the nature of the response, tribal coordination will, in general, continue in one of three avenues.

1. If a Tribe previously expressed interest in the project and/or the CRAS in response to the early notification, the District may provide the requested information directly to the Tribe and copy the PDC and State CRC on the correspondence.
2. If no Tribe has previously expressed interest in the project **and** the survey does not result in the need to initiate tribal coordination, the resulting **CRAS Report** is submitted to SHPO and OEM. Note: The Muscogee (Creek) Nation and Mississippi Band of Choctaw Indians have requested to receive all **CRAS Reports** with significant ground disturbance within their areas of interest. Significant ground disturbance in this context is categorized as all **CRAS Reports** processed in accordance with the standard **Section 106** process outlined in Stipulation VII of the **Section 106 PA**. As with any **CRAS Report** anticipating adverse effects to an historic property, submittal to the appropriate Tribes is through OEM. Current areas of interest are maintained on the [Native American Coordination Website](#).
3. If no Tribe has previously expressed interest in the project **but** the survey does result in the need to initiate tribal coordination, the District will provide a draft **Transmittal Letter** and the final **CRAS Report** to OEM for distribution to the appropriate Tribes. Instances where this may be applicable are most typically with the discovery of human remains and/or funerary objects, when sensitive sites are under discussion regardless of NRHP eligibility, or when a project has the potential to 'Adversely Affect' significant pre-contact archaeological sites in which a Tribes may have an interest or claim cultural affinity. Post-contact sites without Native American cultural material or association are, generally, not within Tribes' areas of interest and would not require tribal coordination.

Sample **transmittal letters** for sending reports to a Tribe are provided in [Figure 8-3](#) and [Figure 8-4](#).

Step 3 – The final stage of tribal coordination is guided by the tribal interest expressed for the project and/or the nature of the tribal response received, if any.

1. If comments on the project or CRAS are received from the Tribes, the District CRC coordinates with the PDC, State CRC, and the Project Manager to address the comments, and then with the THPO or **Section 106** tribal representative.
2. If no comments are received, FDOT proceeds with the **Section 106** process.

FDOT coordination with the Tribes will be conducted electronically unless a request for hard copies has been made. The State CRC can provide direction and assistance to

assure that meaningful tribal coordination occurs throughout project development including, but not limited to, coordination on the determination of effects and any subsequent efforts to find an appropriate avoidance, minimization, or mitigation solution as appropriate. Should a Tribe request government-to-government Consultation at any point during the **Section 106** process, FDOT will notify FHWA per the **NEPA Assignment MOU**.

8.3.2.2.4 Create a Plan to Involve the Public

Under historic preservation laws, public involvement activities are dependent on the nature and complexity of the project and its potential to affect historic properties. The public includes elected officials, local property and business owners, historic preservation groups, and other concerned citizens with an interest in the undertaking. Efforts to involve the public should be initiated early in the project development process and comments from the public will be solicited throughout the **Section 106** process.

The **Section 106** process to engage the public is coordinated with the **NEPA** public involvement procedures established in [Part 1, Chapter 11, Public Involvement](#), in accordance with **36 CFR 800.2(d)**. Public involvement documents or presentations must mention any project involvement with archaeological and historic resources that are not exempt from disclosure. For projects involving a number of consulting parties, projects with a high degree of controversy, or projects that involve historic properties that are of a particular importance to the community, the public involvement needs may exceed those that are addressed by the procedures in [Part 1, Chapter 11, Public Involvement](#). In these cases, the Districts inform the PDC as well as the SHPO/THPO and should ensure that **Section 106** public involvement activities are influenced by the scale and nature of the undertaking and the historic properties involved. Districts may also consider establishing a cultural resources coordinating committee for these projects. This more organized group of affected party representatives focuses solely on the minimization and mitigation measures for adverse effects to an historic property. Typically, cultural resources coordinating committees have regular meetings to make decisions about, or get updates on, the affected historic property up to and beyond the signing of an MOA to the implementation of the mitigation stipulations and sometimes project completion.

There are times when the law requires that a particular historic property location, purpose, or nature must be kept confidential. It is the District's responsibility to ensure that sensitivities for these properties are fully respected in the public involvement efforts. To that end, the District Environmental Manager and/or CRC reviews all site information to ensure that FDOT does not inadvertently release information on sites that should remain confidential.

8.3.2.3 Step Two: Identify Historic Properties

The purpose of Step Two of the **Section 106** process is to identify all NRHP-listed, determined eligible, or potentially eligible archaeological sites and/or historic resources located within the project APE, as defined in **36 CFR Part 800** (see [Section 8.1.2](#)). This is accomplished through the completion of a CRAS and its associated report. Step Two of the **Section 106** process includes the following four actions:

1. Determine the scope of the resource identification effort.
2. Identify historic resources (for example, archaeological sites, buildings, objects of 50 years of age or older, as defined in **Section 267.021, F.S.**).
3. Evaluate the historic significance of the identified resources.
4. Document the historic and archaeological resources survey and evaluation effort.

8.3.2.3.1 Determine the Scope of the Resource Identification Effort

Identify the scope of the resource identification effort through the following activities:

1. Determine and document the APE.
2. Review existing information about historic properties within the project APE, including data concerning the potential for the occurrence of historic properties not yet identified. Much of these data are available at the FMSF and in the Florida Geographic Data Library (FGDL) database available in the EST.
3. Seek information from parties likely to have knowledge of, or concerns about, historic properties in the area.
4. Gather information from the appropriate Tribes about properties to which they attach religious and cultural significance while remaining sensitive to issues of tribal sovereignty, and any concerns they may have about the confidentiality of this information.

In order to meet the “reasonable and good faith effort” required by **36 CFR § 800.4**, these decisions must be based upon: (1) the activities associated with the proposed project and (2) the potential for the occurrences of historic properties within the project APE, as well as the types of resources that may be encountered. The level of effort required for the resource identification effort normally depends on ROW needs, the extent of ground-disturbing activities, size and scope of the proposed undertaking, the area of visual intrusion of the proposed project, and the potential for the occurrence of historic properties in the project APE.

The District PM and District CRC establish the project’s APE, and when necessary, it is done in coordination with OEM and SHPO/THPO. In practice, a recommended APE is developed by the CRM professionals conducting the CRAS effort in tandem with the District PM and the District CRC. This APE is then defined in the cultural resource document, with a justification for its geographic limits (see [Section 8.3.2.3.4](#) for cultural resource document types approved for FDOT use).

In defining the APE, the full range of possible project effects is considered that could directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, based on the scale and nature of the undertaking. Possible project effects include direct, indirect, and cumulative effects. Direct effects include ground-disturbing activities and destruction of the property or elements associated with the

property, as well as auditory and visual effects. Indirect effects are reasonably foreseeable effects which may result from the project such as changes in transportation patterns and demands, abandonment of historic properties, changes in access to or from historic properties, and other effects which may be further removed from the project in distance or time, or which may be cumulative in nature. FDOT has provided general guidance for considering cumulative effects under **NEPA** in FDOT's [Cumulative Effects Evaluation \(CEE\) Handbook](#). For historic properties, any analysis of such effects would be confined to those which may alter any of the character defining features that qualify the property for inclusion in the NRHP.

The identification of the APE should be based on the project scope and the potential to affect cultural resources; therefore, it should be sized to accommodate appropriate cultural resource investigations. Not all survey techniques are appropriate for the entire APE. For example, due to the nature of archaeological sites, how they can be affected, and the methods of identification and evaluation used, the survey efforts for these resources are different from the methods applied to other categories of historic properties. The survey effort for archaeological sites within the APE is usually focused on the area where ground disturbance may occur. In addition to the existing and proposed ROW, this includes potential temporary construction areas, staging areas, access roads, Stormwater Management Facilities (SMF), Floodplain Compensation Areas (FPC), and other project related activities which have the potential to affect historic properties. There also may be instances where proximity effects such as vibrations or destabilization of lands may affect archaeological resources beyond the proposed or existing ROW.

The survey effort for historic resources, such as historic structures, districts, and landscapes, takes into consideration direct effects like acquisition and demolition, but also factors such as potential visual and auditory effects, changes in vehicular access, and destruction of important landscapes resulting from equipment storage and other construction-related activities. Viewshed issues can be particularly important in guiding the outermost limits of the APE because above ground resources can be sensitive to alterations of their settings. The CRM professionals conducting the CRAS need to take into account both the view from the project looking outward, as well as the view from the outside looking towards the project. This is particularly appropriate in the case of elevated roadways and bridges, as well as projects that alter landscapes and approaches. As a result, the areas requiring survey and evaluation for above ground resources often extend beyond the geographic area identified for archaeological investigations. In all cases, the survey techniques and the geographic extent of these techniques within the APE must be identified in the cultural resource document.

If the scope changes during the project, the APE and the survey efforts may need to be revisited for archaeological sites and/or historic resources.

For most projects, the APE is determined by District cultural resource staff or consultants and documented in the cultural resource document. However, for multi-alternative, complex, and large projects, or for undertakings that may include a broad range of potential effects, consultation with the appropriate parties regarding the designation of the APE should be completed prior to initiating the CRAS. In cases where FDOT and SHPO, or other consulting parties, fail to agree on the establishment of the APE, OEM is

responsible for making the final determination. For additional details on delineating the APE for a proposed project, refer to **Chapter 5** of the [CRM Handbook](#).

As stated in [Section 8.3.2.2.2](#), the **Section 106 PA** provides two categories of minor project types, along with the criteria that govern the level of effort for the assessment. When the proposed undertaking fails to meet these criteria, a more intensive survey effort will be needed. For most minor project types with minimal potential to affect historic properties, the resource identification effort typically entails a desktop review (background research). As outlined in [Section 8.3.2.2.2](#), the first category of minor projects includes specified activities that are so minor they normally could affect only those historic properties directly involved or directly incorporated into the activity. When an undertaking comprised of these activities meets the program alternative conditions set forth in Stipulation V of the **Section 106 PA** and SHPO does not dispute the finding of 'No Historic Properties Affected', the undertaking may proceed with no further involvement of SHPO. If, however, the project activity does not meet the conditions, it should, as appropriate, be processed in accordance with either Stipulation VI or Stipulation VII of the **Section 106 PA**.

The second category of minor projects outlined in the **Section 106 PA** contains activities (see [Figure 8-2](#); Appendix 2 of the **Section 106 PA**) that are more involved than those listed in the first category. These project activities, due to their nature and definition, are considered unlikely to affect historic properties. However, the geographic area that could be affected by these activities may be broader than the areas for the first category. Therefore, it is necessary to confirm a lack of historic resources in the immediate vicinity of the proposed undertaking by completing an appropriate level of analysis and study.

If, as a result of this desktop analysis effort, FDOT finds that the project meets the program alternative conditions set forth in Stipulation VI of the **Section 106 PA** and in [Section 8.3.2.2.2](#), FDOT must inform SHPO of its finding of 'No Historic Properties Affected' and include sufficient supporting information. If SHPO does not object to the finding within 30 days of notification, the project may proceed with no further involvement of SHPO. If, however, the conditions are not met, or when SHPO or another consulting party (such as a local preservation group or a permitting agency) object to the finding, then further consultation with SHPO, and the appropriate consulting party must be undertaken accordance with Stipulation VII of the **Section 106 PA** to complete the **Section 106** process. Additionally, the **Section 106 PA** does not address separate decisions which may be required under **Section 106**, such as government-to-government consultation with federally recognized Tribes and FDHR review of State Historic Highways.

For projects meeting the criteria for either of the two program alternative categories set forth in Stipulations V and VI of the **Section 106 PA** between FDOT and SHPO (see [Section 8.3.2.2.2](#)) the notification to SHPO—with a copy to the State CRC—is provided using the **Section 106 Program Alternative Form** developed for these minor projects. This completed form serves as the documentation to support the finding related to historic properties contained within the undertaking. Minor projects which do not meet the criteria for those program alternatives should be processed according to the standard **Section**

106 process outlined in Stipulation VII of the **Section 106 PA** and **36 CFR § 800.4(d)**, as outlined in [Section 8.3.2.3.4](#).

Unlike the undertakings meeting the program alternatives, which are generally minor projects, most major projects have a greater potential to affect historic properties. As a result, identification and evaluation surveys require a more robust effort, including preliminary background research, field reconnaissance, historical/architectural field reviews, property examinations, and systematic archaeological testing, as appropriate.

8.3.2.3.2 Identify Historic and Archaeological Resources

The purpose of the CRAS is to identify, document, evaluate, and provide the boundaries of the historic and archaeological resources in the APE and discuss the historic properties that may be affected by the proposed undertaking.

The CRAS includes a review and assessment of all previously recorded and newly identified archaeological sites and historic resources located within the project APE. A CRAS includes the following activities:

1. Complete Background Research
2. Develop a Research Design
3. Conduct an Archaeological Field Survey
4. Conduct an Historic and Architectural Resources Field Survey
5. Conduct Artifact Processing and Analysis
6. Provide for Artifact and Record Curation
7. Prepare FMSF forms

Each of these activities is described in detail in **Chapter 5** of FDOT's [CRM Handbook](#).

For projects occurring on state-owned lands, a research permit from the Bureau of Archaeological Research is required in accordance with **Rule 1A-32.005, F.A.C.** A **Chapter 1A-32** permit is not required for archaeological survey within FDOT's ROW. Archaeological research on federal lands requires an **ARPA** permit from the land managing agency.

8.3.2.3.3 Evaluate the Historic Significance of the Identified Properties

Title 36 CFR Part 60 establishes the criteria for evaluating the significance of historic resources in terms of eligibility for the NRHP. **Title 36 CFR § 60.4** states that

. . .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 that meet at least one of the four criteria for evaluation:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history (e.g., events, developments); or
- B. That are associated with the lives of persons significant 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 (e.g., architecture, engineering, or cultural trends); or
- D. That have yielded, or may be likely to yield, information important in prehistory or history (e.g., research potential or value).

36 CFR § 60.4 also established a series of Criteria Considerations for evaluating the significance of resources which are not normally considered to have potential for historic significance (such as religious properties, cemeteries, properties that are not yet 50 years old, and properties that have been relocated).

The evaluation of each archaeological site and historic resource within the APE for an undertaking includes applying the NRHP Criteria for Evaluation. As indicated in the ***National Register Bulletin No. 15 (NPS, 1991, revised 1997)***, it is critical to address both significance and integrity when evaluating historic resources for eligibility and to develop specific reasons why a historic resource is or is not NRHP eligible and, if eligible, what criteria of eligibility apply to the property along with the property's character-defining features and associated elements. In order to comply with the provisions of ***Sections 106 and 4(f)***, justifiable boundaries for properties found to possess historic significance must be provided, along with any contributing landscape elements and associated structures or features that are located either within or near the proposed ROW for the project. In the case of historic districts, it is especially important to note the non-contributing features of the historic district contained within the existing and proposed ROW of the transportation corridor under study. See [Part 2, Chapter 7, Section 4\(f\) Resources](#) for guidance regarding evaluation of ***Section 4(f)*** resources for the purposes of compliance with ***Section 4(f) of the USDOT Act of 1966***, as amended. For further guidance on applying and reporting the NRHP Criteria for Evaluation in FDOT CRAS efforts, see ***Chapter 6*** of the [CRM Handbook](#).

In compliance with ***Section 106*** of the ***NHPA***, the information gathering and assessment effort includes parties with interests in and knowledge of the history of the area and the local value of the historic properties located in the APE. The special expertise of Tribes is included when assessing the eligibility of a property to which they may attach religious and cultural significance, even when it is not on Tribal Lands. Since Tribes may inform the OEM (or a lead federal permit agency) of their concerns directly, it is important for the

District to maintain communication with OEM (and the federal permitting agency) regarding potential tribal interests in proposed undertakings and their potential to affect historic and archeological properties. It is also important for the District to inform the CRM consultants assigned to any projects which a Tribe expresses an interest in, as appropriate, and in consideration of the confidentiality of tribal information, so that the CRM professionals completing the survey are aware of these concerns while completing the cultural resources survey efforts.

Previous determinations of eligibility and non-eligibility of historic resources from earlier surveys may need a reassessment due to the passage of time or other factors. In addition, not all eligibility determinations contained at the FMSF or summarized in the Geographic Information System (GIS) database for ETDM are accurate. Therefore, check SHPO concurrence letters and FMSF forms for accurate site evaluations prior to revisiting previously recorded cultural resources.

8.3.2.3.4 Document the Historic and Archaeological Resources Survey Effort

The approved cultural resources document types utilized by FDOT are: **Section 106 Program Alternative Forms, Notification Letters, Desktop Analysis and Effects Determination Letters (Desktop Analyses), CRAS Reports, CRAS Addendum Reports**, and **Section 106 Case Study Reports**. The District sends the appropriate cultural resource document to OEM or other Lead Federal Agency, SHPO/THPO, and the other consulting parties. The **Section 106 Program Alternative Form** is used to document compliance with Stipulations V and VI of the **Section 106 PA** and is addressed in [Section 8.3.2.3.1](#). For all undertakings processed in accordance with Stipulation VII of the **Section 106 PA**, the remaining approved document types, **Desktop Analyses, Notification Letters, CRAS Reports**, and **CRAS Addendum Reports** must:

- Identify, define, and justify the APE;
- Record historic resources evaluated as part of the survey effort (as appropriate), provide the cultural resources team's recommendations on the historic significance of the resources encountered in the project APE; and
- Provide a preliminary assessment of the potential effects of the proposed action on any identified historic properties only when the project description and activities are detailed enough to permit such an assessment.

The **CRAS Report** or **CRAS Addendum Report** may identify two kinds of historically significant properties: those properties already listed or determined eligible for listing in the NRHP, and those newly identified and assessed as potentially eligible for the NRHP. **Desktop Analyses** and **Notification Letters** identify and discuss only previously recorded and NRHP-evaluated historic properties and do not include the identification and NRHP assessment of new resources, with one exception (see [Section 8.3.2.8.2](#) for the exception).

Considerations for reporting the findings of the CRAS include the nature of the undertaking, the historic and archaeological sensitivity of its location, the findings resulting from the survey effort, the applicability of the provisions contained in the **Section 106 PA** (see [Section 8.3.2.2.2](#)), and the number and nature of the consulting parties. In accordance with **36 CFR § 800.4(d)**, at the conclusion of Step 2 of the **Section 106** process, the FDOT, as the lead agency, moves to Step 3 of the **Section 106** process and makes an effect determination for the proposed undertaking. This effect determination is based on the information provided in the cultural resource document. Districts may present effects determinations along with the **CRAS Report** submission in the **Transmittal Letter** or in a subsequent submission. The project specifics will determine which type of submission is appropriate.

If the undertaking anticipates affecting historic properties, and the effects analysis did not accompany the **CRAS Report**, it is presented within a **Section 106 Case Study Report**, **Desktop Analysis**, or tribal **Notification Letter**. Circumstances for the applicability of each document type is outlined in [Section 8.3.2.4](#). In cases where SHPO/THPO objects or disagrees with the determination of significance contained in the cultural resource document, or if the ACHP or Secretary of the Interior requests it, FDOT obtains a determination of eligibility from the Keeper of the NRHP as set forth in **36 CFR Part 63**.

There are two possible effects determinations:

1. 'No Historic Properties Affected', or
2. 'Historic Properties Affected'

If no historic properties are present or if historic properties are present but the undertaking will not affect them, the determination is 'No Historic Properties Affected'. If, however, historic properties are present and may be affected by the undertaking, the determination is 'Historic Properties Affected'.

The FDOT consults with SHPO/THPO and takes into account the views of any interested parties in order to meet the consultation requirements established by **Section 106**.

When making a determination of 'No Historic Properties Affected', FDOT must provide the following documentation to consulting parties per **36 CFR § 800.11(d)**:

1. A description of the undertaking, specifying the federal involvement, and its APE, including photographs, maps, drawings, as necessary;
2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information to identify historic properties within the APE; and
3. The basis for determining that no historic properties are affected.

If, as a result of the CRAS documentation and consultation efforts, FDOT finds that there will be 'No Historic Properties Affected' by the proposed project, then FDOT has fulfilled its **Section 106** responsibilities.

For undertakings where FDOT determines historic properties may be affected by the proposed project, and SHPO/THPO and appropriate consulting parties have been consulted, FDOT proceeds to Step Three of the **Section 106** process, as described in [Section 8.3.2.4](#). Regardless of the **Section 106** effect finding, if the proposed project involves the use of any land from within the site boundaries of any property listed or eligible for listing on the NRHP (even if the land in question already lies within FDOT-owned ROW) and it is a USDOT funded or permitted action, the **Section 4(f)** process must be initiated ([Part 2, Chapter 7, Section 4\(f\) Resources](#)).

For projects that may affect NHLs, consultation must include the NPS and the ACHP.

Combining Effect Determinations and Eligibility Recommendations

Eligibility determinations by FDOT for the NRHP are not final until the CRAS has been coordinated and accepted by SHPO/THPO and other appropriate consulting parties.

Combining a finding of 'No Historic Properties Affected' or 'No Adverse Effect to Historic Properties' with a recommendation on the eligibility of a historic or archaeological resource is only recommended if said eligibility recommendation is obvious. This is because project effects to historic properties cannot be final until the determinations on the eligibility of the identified historic resources have been made.

In certain circumstances, the survey findings may include District recommendations on potential effects and/or potential adverse effects of the undertaking on historic properties. The potential to affect historic properties occurs when a proposed undertaking may result in the "...alteration to characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register" [36 CFR § 800.16 (i)]. In these circumstances, it is important to provide sufficient information on the scope and activities of the proposed undertaking, along with the cultural resource document for the SHPO/THPO or OEM to make an effect finding or to understand and comment upon the survey and its findings.

The most common situations for which the effects and eligibility determinations are combined are where there are no historic or archaeological resources occurring in the project APE or where the project meets the criteria and conditions outlined in the **Section 106 PA**.

8.3.2.4 Step Three: Assess Adverse Effects

After determining that the proposed project may have an effect on historic properties, the next step is to apply the Criteria of Adverse Effect for the project and the involved historic properties. These criteria are defined at **36 CFR § 800.5(a)(1)** as follows:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility

for the NRHP. Adverse effects may include reasonably foreseeable effects caused by an undertaking that may occur later in time, be farther removed in distance or be cumulative.

Adverse effects on historic properties as listed at **36 CFR § 800.5(a)(2)** include:

- Physical destruction or damage to all or part of the property.
- Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties (see **36 CFR Part 68**) and applicable guidelines.
- Removal of a property from its historic location.
- Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.
- Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.
- Neglect of a property that causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to a Tribe or Native Hawaiian organization.
- Transfer, lease, or sale of property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

Ground-disturbing activities within significant historic properties are subject to the Criteria of Adverse Effect. Therefore, actions such as archaeological testing and excavation on NRHP listed or eligible archaeological sites, or on such sites that have previously been determined as eligible, should not be initiated without completing consultation with OEM, SHPO/THPO, and as appropriate, other consulting parties including the Tribes.

The application of the Criteria of Adverse Effect (**36 CFR § 800.5**) may result in a finding of either: (1) No Adverse Effect or (2) Adverse Effect. This determination is specific to the project, not to the historic properties. That is, where multiple historic properties are identified within a project APE, an adverse effect to one historic property is sufficient to determine an adverse effect for the project. Refer to **Chapter 6** of FDOT's [CRM Handbook](#) for more details about applying the Criteria of Adverse Effect.

As a rule, when a project may affect any historic properties identified in a cultural resource document (see [Section 8.3.2.3.2](#)), the District prepares a project effects determination document that discusses and documents these effects. More importantly, this report contains the information required by **36 CFR § 800.11(e)** to support a finding of Adverse Effect or No Adverse Effect. This report needs to contain sufficient detail and illustration to support the recommended finding regarding adverse effects and to allow the consulting parties to reach independent conclusions as to the effect finding.

Section 106 determinations of ‘No Adverse Effect’ can be presented in a **Desktop Analysis** or **Section 106 Case Study Report**. The document type chosen to present the information will depend on project specifics, the historic property(s) in question, and level of effort required to make a sound determination of project effects. Clear, uncomplicated arguments to justify an effect finding of ‘No Adverse Effect to Historic Properties’ may fit sufficiently in a **Desktop Analysis**. If the analysis is more complex leading up to the ‘No Adverse Effect’ determination, or FDOT concludes the project will have ‘Adverse Effects to Historic Properties’, the information must be presented in a **Section 106 Case Study Report**.

This **Case Study Report** is provided to OEM for its use in making and documenting a finding of Adverse Effect or No Adverse Effect. Once OEM makes its finding, it provides the **Case Study Report** and its finding to the SHPO/THPO and other consulting parties to seek their concurrence. In situations where there is an adverse effect, the **Case Study Report** should also enable the consulting parties to initiate discussion regarding the resolution of adverse effects.

The content and details of the **Case Study Report** depend on the level of involvement with historic properties, the degree of potential effects, and the complexity of the proposed undertaking and its relationship to historic resources. For projects involving the preparation of a **Section 4(f)** evaluation for the use of land from the affected historic property, information gathered and presented in the **Section 4(f)** evaluation is often used in the preparation of the **Case Study Report** or vice versa, language drafted for the **Case Study Report** may be used in the **Section 4(f)** document, as appropriate.

Generally, these reports are also used during the fourth step of the **Section 106** process (Resolve Adverse Effects) because information in the **Case Study Report** may be integrated into the agreement and/or commitment documents to avoid, minimize or mitigate for any adverse effects associated with the project. Finally, the **Case Study Report** functions as FDOT’s reporting mechanism for the ACHP’s project effects review assessment when this review is needed. See **Chapter 7** of the [CRM Handbook](#) for more detail concerning the purpose and objectives of the **Case Study Report** and the considerations it must address.

The **Case Study Report** contains graphics sufficient to illustrate the relationship of the proposed project (including all alternatives) to the affected historic property or properties, including the boundary of each NRHP listed or eligible property. It also contains enough information to illustrate all avoidance and minimization efforts that have been examined and why it is or is not practical to avoid the historic resource(s) or effects cannot be minimized further.

As set forth in **36 CFR § 800.5(b)**, a finding of No Adverse Effect is appropriate if:

1. The effects of the undertaking do not meet the Criteria of Adverse Effect.
2. The undertaking is modified to avoid adversely affecting historic properties. For example, in the case of an archaeological site that could have been adversely affected by the project or off-project related activities, effects are avoided by

shifting the project away from the site or by excluding all project-related activities inside the boundaries of the site.

3. Conditions are imposed on the undertaking to avoid adverse effects (such as rehabilitation of a historic bridge in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, **36 CFR Part 68**).

When FDOT finds that a project has 'No Adverse Effect to Historic Properties', the following procedure applies:

1. FDOT provides the No Adverse Effect finding along with the pertinent information to SHPO/THPO and consulting parties, pursuant to **36 CFR § 800.11(e)**.
2. SHPO/THPO has 30 days from receipt of the complete documentation to review the findings. Failure to respond within 30 days permits FDOT to assume concurrence, pursuant to **36 CFR § 800.5(c)(1)**.
3. If SHPO/THPO either agrees with or does not object to the findings of effect made by FDOT and no consulting party has objected, FDOT carries out the proposed undertaking based upon the effect finding and the action as proposed.
4. In cases where FDOT determines there is No Effect or 'No Adverse Effect to Historic Properties' and has received no objections to this finding, FDOT has fulfilled its responsibilities under **Section 106**. This completes the **Section 106** process.
5. In the event that SHPO or any consulting party disagrees within the 30-day review period, they must specify the reasons for disagreeing with the finding. FDOT must then consult with the party to resolve the disagreement, or request that the ACHP review the finding, pursuant to **36 CFR § 800.5(c)(3)**.
6. If the ACHP is asked to review the finding, it has 15 days to respond. If there is no response within 15 days, FDOT may assume concurrence and proceed with the undertaking.
7. If the ACHP provides comments, FDOT must consider them when reaching a final decision on its finding of effects.

If any agreements or commitments are made to reach a finding of No Adverse Effect, they are recorded according to [Procedure No. 650-000-003, Project Commitment Tracking](#) and [Part 2, Chapter 22, Commitments](#) and carried out as the project advances. If any changes occur that may alter the effect finding, consultation with the appropriate parties must be reinitiated.

All documentation pertaining to **Section 106** effect findings including FDOT findings, SHPO/THPO review and/or concurrence letter(s), and applicable comments from other consulting parties and the public, is included in the appropriate Environmental Document and uploaded into the SWEPT project file (see [Section 8.3.3.1](#)).

In the case of an Adverse Effect finding, FDOT documents this finding and the basis for the finding, and transmits the finding and documentation to SHPO/THPO, the ACHP, and other consulting parties. In accordance with **36 CFR § 800.6(a)(1)**, FDOT must notify ACHP of the Adverse Effect finding by providing the documentation specified in **36 CFR § 800.11(e)**. This notification and documentation package can be sent via the ACHP's **Electronic Section 106 Documentation Submittal System (e106)**. As the Lead Federal Agency, the **e106** submission needs to be transmitted by OEM. As such, Districts should prepare and send the form and all supporting materials to the PDC and State CRC. The submission should be in Microsoft Word format to allow for minor editing, as necessary. Following review, OEM will forward the documentation to ACHP, copying District personnel. Once documentation is received, an automated receipt will be generated and the ACHP will have 15 days to respond.

If SHPO/THPO disagrees with the finding or another consulting party objects to the finding within the 30-day review period, the disagreeing entity must provide the reasons for the disagreement or objection. In these cases, FDOT will either consult with the appropriate parties in order to resolve the disagreement or request the ACHP to review the finding in accordance with **36 CFR § 800.5(2)**. If no objections are received within the 30-day review period, FDOT may proceed to Step Four of the **Section 106** process.

8.3.2.5 Step Four: Resolve Adverse Effects

A finding of Adverse Effect requires further consultation among FDOT, SHPO/THPO, and the other consulting parties in order to resolve the adverse effects. This consultation brings together the parties to consider ways to avoid, minimize, or mitigate the adverse effects of the undertaking on the historic properties.

In conducting consultation, as well as in its efforts to engage the public, FDOT

1. Describes the proposed project and its purpose and need;
2. Clearly identifies any rules, processes, or schedules applicable to consultation;
3. Acknowledges the interests of others and seeks to understand them;
4. Develops and considers appropriate alternatives; and
5. Makes an effort to identify solutions that will leave all parties satisfied.

For most projects involving a finding of Adverse Effect, Steps Three and Four of the **Section 106** process are part of the same discussion(s).

In accordance with the **Section 106 PA** (see [Section 8.3.2.2](#)) and **36 CFR § 800.10**, the ACHP and the NPS must be consulted when the project activity involves potential effects to a NHL. The **Notification Letter** to the ACHP is accompanied by the same documentation required for a finding of No Adverse Effect or Adverse Effect, as called for in **36 CFR § 800.11(e)**, though for projects involving an NHL, the emphasis on preservation will be greater.

As appropriate, FDOT provides project documentation to the consulting parties. Particular care must be taken to comply with the confidentiality provisions of **Section 304** of the **NHPA** and **Section 267.135, F.S.**, regarding the protection of archaeological site locations within the project documentation, as applicable.

8.3.2.5.1 Minimize and Mitigate Adverse Effects

The procedures for resolving adverse effects include the following steps:

1. FDOT continues consultation with SHPO/THPO and other consulting parties to resolve the adverse effects by avoidance, minimization, or mitigation.
2. As appropriate, the ACHP is invited to participate or can decide to enter into consultation pursuant to **Appendix A to Part 800, Title 36**. Any consulting party or the public may contact the ACHP and request its participation. The ACHP has 15 days from receipt of a request to participate to notify FDOT and consulting parties whether it will participate in the resolution process.
3. If ACHP does not participate and FDOT and SHPO/THPO reach consensus on measures to resolve adverse effects, these measures are outlined in an **MOA**, pursuant to **36 CFR § 800.6(b)**. In these cases, continue to Step 4 through Step 8. If FDOT and SHPO/THPO fail to agree on measures, the process skips to Step 9.
4. The District prepares a draft **MOA** and is responsible for coordinating with all consulting parties for review. Additional guidelines for preparing agreements are provided in ACHP's **Guidance on Agreement Documents: Executing Agreement Documents** and FDOT's [CRM Handbook](#).
5. Once all consulting parties agree on the **MOA** contents, SHPO signs the **MOA** and routes it back to the District. The District coordinates the **MOA** signature process with any external partners and then the District Director of Transportation Development who sign the **MOA** as concurring parties. The agreement is then routed to the Director of OEM for approval. Signatures should be obtained digitally, circumstances permitting.
6. Once signed by OEM, the executed **MOA** will be returned to the District for distribution. The District saves the executed **MOA** to the SWEPT project file and provides all signatories with a copy of the executed **MOA**, including a copy to the State CRC for submittal to the ACHP.
7. If the ACHP is a consulting party, OEM will provide ACHP with the **MOA** after OEM Director signs the agreement. The ACHP will return the fully executed **MOA** to OEM for disbursement to the District and SHPO. The District will then disperse copies to any additional signatories.
8. If the undertaking proceeds according to the terms and stipulations of the **MOA**, and FDOT has met all of its obligations under **Section 106** of the **NHPA**, then the process skips to Step 11.

9. If FDOT and SHPO/THPO fail to agree on the terms of a MOA, FDOT shall request the ACHP to join the consultation and provide a copy of the documentation package pursuant to **36 CFR § 800.11(g)**. If ACHP doesn't join the consultation, FDOT must forward a copy of the documentation package and request comments.
10. The ACHP has 45 days from receipt to comment (FDOT should send the request electronically or by overnight mail). The ACHP provides its comments to FDOT with copies to all consulting parties.
11. FDOT is obligated to consider and take into account the comments of the ACHP. FDOT may choose whether or not to adopt the comments, or to proceed.
12. FDOT documents the final decision in accordance with **36 CFR § 800.7(c)(4)**, the ACHP and all consulting parties are notified, and the project proceeds.

The District is responsible for monitoring implementation of the conditions stipulated in the **MOA**. In cases where consulting parties do not reach agreement, FDOT, SHPO/THPO, or the ACHP may decide to terminate consultation pursuant to **36 CFR § 800.7**. Any party that terminates consultation must notify the other consulting parties in writing of their decision to and reasons for terminating consultation. Following this notification, the process varies depending on which consulting party terminated consultation [see **36 CFR §§ 800.7(a)(1)-(4)**].

8.3.2.5.2 ACHP Participation

SHPO/THPO, a Tribe, or any other consulting party may at any time request the ACHP to participate in the consultation. The ACHP will decide on its participation within 15 days of receipt of a request pursuant to **Appendix A to Part 800, Title 36 (Criteria for Council Involvement in Reviewing Individual Section 106 Cases)**. If a consulting party requests ACHP involvement, the District informs OEM prior to the initiation of this consultation.

If the ACHP decides to participate in the consultation process, it must notify FDOT (or the appropriate Lead Federal Agency) and the consulting parties. If the ACHP chooses to participate in the resolution of adverse effects, FDOT is responsible for coordinating consultation among all the parties, including SHPO/THPO.

New consulting parties may enter the consultation if FDOT and SHPO/THPO (and the ACHP, if participating) agree. If they do not agree and the ACHP is not a consulting party already, FDOT seeks the ACHP's opinion on the involvement of the consulting party. Any party, including applicants, licensees or permittees, that may have responsibilities under an agreement document must be invited to participate as a consulting party.

8.3.2.6 Exemption from Section 106 for Eisenhower Interstate Highway System

On March 10, 2005, the ACHP issued the Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System. The exemption removed

the majority of the Interstate Highway System from being considered as a historic property under **Section 106** of the **NHPA**, except for those elements of the Interstate Highway System identified by SHPOs, state Departments of Transportation (DOTs), and state divisions of FHWA as being of exceptional importance.

This exemption does not apply to archaeological sites or resources that are not elements of the Interstate Highway System, even though they may be located within the ROW of the Interstate or otherwise intersect the Interstate. As a result, any undertaking (including Interstate undertakings) that may affect these non-Interstate properties must comply with the requirements of **Section 106**.

In Florida, four (4) significant elements of the Interstate Highway System are excluded from the exemption when undertakings have the potential to affect them. These elements of the Interstate Highway System undergo the standard **Section 106** consultation and review processes. The four elements are:

1. Bob Graham/Sunshine Skyway Bridge, Pinellas and Manatee Counties
2. Alligator Alley, Collier and Broward Counties
3. I-75 Snake Wall, Alachua County
4. Myrtle Avenue Overpass, Downtown Jacksonville

8.3.2.7 Section 106 Program Comment on Post-1945 Common Bridge Types

At the request of FHWA, in November 2012, the ACHP issued a Program Comment that eliminates individual historic review requirements under **Section 106** for common post-1945 concrete and steel bridges and culverts (also referred to as post World War II common bridge types). The intent of the Program Comment is to ensure that historic bridges that are likely to be significant for preservation in place receive the attention, while the process is substantially streamlined for the more common bridge types (**77 FR 68790**). These common bridges were constructed in vast numbers after World War II using standardized plans. Although there has been little public interest in the preservation of these common bridges and culverts, FHWA was required under **Section 106** to consider and document the potential historic significance of any bridge approaching 50 years of age that might be affected by FHWA projects.

As part of this Program Comment, FHWA and ACHP requested the state DOTs and SHPOs submit a list of common, post-1945 bridges. FDOT, in consultation and coordination with Florida's SHPO and FHWA's Florida Division identified nineteen (19) bridges that still require evaluation and/or individual treatment under **Section 106** of the **NHPA**. These bridges are listed in [Figure 8-5](#).

While the Program Comment relieves the need to individually evaluate and consider the effects of the undertaking on these common bridges, these bridges located within the project APE still must be identified in the cultural resource document that is sent to SHPO.

This documentation should note that while the bridge is historic, it is exempt from further analysis in accordance with the Program Comment for Common Post-1945 Concrete and Steel Bridges (**77 FR 68790**). FMSF forms do not need to be completed for these bridges.

8.3.2.8 Contents and Routing of Documentation Related to the Section 106 Process

The results of all cultural resources identification and evaluation efforts in support of **Section 106** compliance are documented in a cultural resource document which must be uploaded into the SWEPT project file. Cultural resources document types utilized by FDOT are **Section 106 Program Alternative Forms**, **Notification Letters**, **Desktop Analyses**, **CRAS Reports**, **CRAS Addendum Reports**, and **Section 106 Case Study Reports**.

The standard components of cultural resource documents are provided in [Section 8.3.2.2.2](#), [Section 8.3.2.8.1](#) through [Section 8.3.2.8.4](#), and Chapter 7 of the [CRM Handbook](#). Routing of cultural resource documents is discussed in [Section 8.3.2.8.5](#) and [Section 8.3.6.6](#).

8.3.2.8.1 Section 106 Program Alternative Form and Notification Letters

For projects that meet the criteria for minor projects established in the program alternatives set forth in Stipulations V and VI of the **Section 106 PA** (see [Section 8.3.2.3.1](#) and [Section 8.3.2.2.2](#)), and result in 'No Historic Properties Affected', a notification is prepared using the **Section 106 Program Alternative Form** developed for those projects (see [Section 8.3.2.2.2](#)). The notification must inform SHPO that FDOT has determined the proposed project meets the applicability criteria and, therefore, there are 'No Historic Properties Affected' by the undertaking. This form outlines the project action, the project category, and an explanation of the project setting sufficient to verify that it meets the applicability criteria for that category of program alternative. This **Section 106 Program Alternative Form** is sent to SHPO by the District, copying the State CRC. Unless SHPO objects to this finding within 30 days of receipt of this notification, the project may proceed without further consultation under **Section 106**.

When minor projects that meet the criteria to be processed under Stipulation V and VI of the **Section 106 PA** involve a historic property which may be of religious or cultural importance to a Tribe (regardless of NRHP eligibility) or if a Tribe has expressed interest or requested participation in said minor project, a **Notification Letter** is the alternate document format used to present the project. Because the Tribes are not signatories to the **Section 106 PA**, all information included in the **Section 106 Program Alternative Form** such as the project description, the 'No Historic Properties Affected' finding, and the materials supporting this finding, must be provided to the Tribe using a **Notification Letter** (not to be confused with a **Transmittal Letter** which must accompany cultural resource documents submitted to either SHPO or THPO, with and without a signature block, respectively). **Notification Letters** sent to Tribes should present information for their review and comment and identify the avenue for them to respond, but they should

not include a concurrence signature block. Sufficient time must be allowed for a tribal response.

While the Tribes are most frequently the recipients of **Notification Letters**, such letters may also be used for providing project-related updates to any agency or group participating in a **Section 106** consultation, reporting archaeological monitoring progress, sharing any changes that are not otherwise documented in writing, and providing other communications that do not require a concurring signature.

If the proposed action changes in such a way that it may no longer meet the program alternative criteria set forth in Stipulations V and VI the **Section 106 PA** (see [Section 8.3.2.2.2](#)), the District will need to re-analyze the project and its potential to affect historic properties. When there are historic resources located within the APE, then consultation regarding the historic significance of these resources with SHPO and other appropriate consulting parties must be initiated. In both of these circumstances, the project should be evaluated in accordance with the standard program process as set forth in Stipulation VII of the **Section 106 PA**.

8.3.2.8.2 Desktop Analysis and Effects Determination Letter (Desktop Analysis)

For minor projects with a minimal APE and either no or minimal involvement with cultural resources, but which do not meet the criteria established for the Stipulation V and Stipulation VI program alternatives in the **Section 106 PA**, a **Desktop Analysis and Effects Determination Letter (Desktop Analysis)**, pursuant to **36 CFR § 800.4(d)(1)** is used to notify the SHPO/THPO, OEM, and other appropriate consulting parties of the determination of 'No Historic Properties Affected'. **Desktop Analyses** are most often used when the APE has been adequately previously surveyed or when there are historic properties in close proximity to the undertaking; both of these circumstances require additional discussion but no additional field work. The final purpose of the **Desktop Analysis** document is to present straightforward project effects analysis and proposed **Section 106** finding when the result is 'No Adverse Effects to Historic Properties'. **Desktop Analyses** sent to SHPO may include a signature block for concurrence, but if sent to a Tribe include language requesting review and comment and instructions on providing said feedback, not a concurrence signature block.

If the sole reason a project does not meet the conditions to be processed as a Stipulation V or VI project is the presence of an unrecorded segment of historic aged road, a **Desktop Analysis** may record and evaluate the road segment in question via remote resources, and the document may discuss the 'No Adverse Effect to Historic Properties' determination. This is the only circumstance where a historic resource can be newly documented and evaluated in a **Desktop Analysis**. If the application of the criteria of adverse effect suggests an Adverse Effect to the resource, the project must adhere to the standard **Section 106** process as outlined in Stipulation VII of the **Section 106 PA**.

8.3.2.8.3 CRAS Reports and CRAS Addendum Reports

The **CRAS Report** and **CRAS Addendum Report (Report)** provides the identification and evaluation of the significance or non-significance of all cultural resources located in the APE for the proposed undertaking. The **Report** must also include graphics clearly depicting the location and limits of the project and the boundaries of the APE for both archaeological and historical resources, as well as the rationale for these APE limits and the relationship of significant historic resources to the undertaking. It includes the boundaries of the resources identified as significant, highlights the features and characteristics that contribute to the significance of each historic property, and addresses the integrity of the property. Likewise, for those resources and sites identified as not eligible for the NRHP, the **Report** notes why the historic resource does not meet any of the four criteria of eligibility and/or explains how the property does not retain the aspects of integrity. In addition to the significance analysis, the **Report** includes the appropriate data from the background research, completed FMSF forms for all evaluated resources, and proposed determinations of eligibility and expanded FMSF forms for the properties recommended as NRHP-significant.

If no historic resources are present in the project APE, then the **Report** discusses the applicable circumstances and presents a conclusion regarding whether additional survey work is warranted. The accompanying **Transmittal Letter** includes the recommended finding of 'No Historic Properties Affected' (see [Figure 8-6](#) for a sample **Transmittal Letter**). If historic resources are located within the project APE, then findings on eligibility for the NRHP are made by FDOT, SHPO/THPO, and other appropriate consulting parties before a determination of effects on historic properties for the project can be made. There are some instances where eligibility findings and project effects determinations may be combined, but this should only be in instances where the findings are obvious (e.g., for a NRHP-eligible canal that will not be altered). If FDOT finds that none of the evaluated resources represents significant historic properties, SHPO/THPO concurs, and the consulting parties agree, then by definition, the project cannot have an adverse effect on historic properties.

The cover page for CRAS Reports, CRAS Addendum Reports, and Case Study Reports for federal projects must include the following NEPA assignment standard statement:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.

The standard components of the **CRAS Report** are:

1. Executive Summary
2. Introduction (including project description and alternatives)

3. Environmental, Archaeological, and Historical Overviews
4. Research Considerations and Methodology (including definition and justification of the project APE)
5. Survey Results (archaeological and historical/architectural) and Resource Evaluations
6. Conclusions
7. References
8. Appendices, including FMSF forms, Survey Log Sheet (each FMSF form or log must be submitted as stand-alone documents in addition to being appended)

When appropriate, an abbreviated **CRAS Report** may be used when minor projects have a minimal APE, and the undertaking has either no or minimal involvement with cultural resources. An abbreviated **CRAS Report** may elect to truncate or omit sections from the above outline that are not applicable to the undertaking. Intensive Environmental, Archaeological, and Historical Overviews, item 3 above, are the components most frequently abbreviated in these instances in favor of a more targeted or project-specific content. The report must still function as a stand-alone document and any report content abbreviations or omissions must be acknowledged and justified within the document.

The **CRAS Addendum Report** may be used in cases such as projects where changes, expansions, or updates to the APE have occurred after concurrence was received on a **CRAS Report**. These projects may include alignment alterations, proposed pond siting, ROW transfers, PD&E re-evaluations, and historic resources survey updates. For projects where a **CRAS Report** has already been prepared, the **CRAS Addendum Report** must reference this document, and not repeat information such as the environmental and cultural overviews.

The **CRAS Addendum Report** should include the following information:

1. Introductory information (e.g., project name, location, description, purpose, and need; purpose of the CRAS; definition of the project; justification for APE)
2. Results of background research for the project APE and vicinity, including the findings of the previous study, if applicable
3. Survey expectations vis-à-vis cultural resource potential
4. Archaeological and historical/architectural field survey results (including resource evaluations)
5. Conclusions
6. References

7. Appendices, including FMSF forms, Survey Log Sheet (each FMSF form or log must be submitted as stand-alone documents in addition to being appended)

In circumstances where consultation for a project under **Section 106** must be revisited due to project changes or other reasons that either change the APE for the project or change the potential historical value of the surrounding resources, a **CRAS Addendum Report** must be completed by FDOT, and coordinated with the consulting parties.

8.3.2.8.4 Case Study Reports

When a Project may affect historic properties identified in a CRAS, the District prepares an effects determination document in order to assist the consulting parties in determining if the proposed action will have an adverse effect (see [Section 8.3.2.4](#)). **Desktop Analyses** and **Section 106 Case Study Reports** are the available document types to present the **Section 106** effects determination. Use of **Desktop Analyses** for this situation is discussed in [Section 8.3.2.4](#) and [Section 8.3.2.8.2](#). The **Case Study Report** contains the supporting documentation as set forth in **36 CFR § 800.11(e)**:

1. A description of the undertaking, including all viable alternatives and the preferred Build Alternative, specifying the federal involvement, and the project APE, including photographs, maps, and drawings, as necessary;
2. A description of the steps taken to identify historic properties;
3. A description of the affected historic properties, including information on the characteristics that qualify them for the NRHP (as well as historic property boundaries);
4. A description of the undertaking's effects on historic properties;
5. An explanation of why the Criteria of Adverse Effect were found applicable or not, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
6. Copies of summaries of views provided by consulting parties and the public (including public meeting agendas, handouts, newsletters, relevant slides).

FDOT is responsible for distribution to SHPO/THPO, the appropriate consulting parties, the ACHP (when participating), and the NPS (for NHLs). Whenever there is a finding of 'Adverse Effect to Historic Properties', the ACHP must be notified and provided with the finding and the **Case Study Report**, even when the ACHP is not participating in the consultation. This documentation should be prepared by the District but sent by OEM via the ACHP's **Electronic Section 106 Documentation Submittal System (e106)**.

8.3.2.8.5 Routing

With the exception of the minor project **Section 106 Program Alternative Form** or **Notification Letter**, cultural resource documents submitted to the SHPO/THPO for review are accompanied by a **Transmittal Letter**. The **Transmittal Letter** is prepared by

the District and includes standard summary information such as the project description, the APE, the survey findings and recommendations, and any consultation, coordination, or other related actions that may be needed should SHPO/THPO concur with the report (Example letter provided in [Figure 8-6](#)). Normally, FDOT uses a concurrence signature block for CRAS transmittals containing signature and concurrence lines for SHPO (see [Figure 8-6](#)). If appropriate, the signature block also informs SHPO that FDOT may apply a **Section 4(f) de minimis** approval for the use of the historic property if: (1) the project entails a use of the subject property and (2) SHPO/THPO concurs with a finding of No Adverse Effect to the historic property (see [Part 2, Chapter 7, Section 4\(f\) Resources](#) for more information on *de minimis* approvals). Signature blocks may also be used for **Desktop Analyses**, when appropriate, in which case an accompanying **Transmittal Letter** is not necessary.

Transmittal Letters sent to the Tribes should not contain signature blocks. Pertinent information regarding FDOT's submission and requests for tribal review and comment should be contained within the body of the letter. For cultural resource documents requiring distribution to the Tribes, see [Section 8.3.2.2.3.2](#) and, as appropriate [Section 8.3.2.2.2](#).

The routing path of the final cultural resource document, from initial submittal by the consultant through review by SHPO/FDHR, is as follows:

1. The consultant prepares the cultural resource document and submits it to the District PM and/or District CRC for review.
2. The District PM/CRC reviews the report and requests changes if needed. If adverse effects to historic properties are anticipated, the District PM/CRC also provides a copy to OEM for concurrent review.
3. Once the report is acceptable to FDOT, the cultural resource document is submitted by the District CRC with a **Transmittal Letter** and appropriate documentation, to SHPO and other consulting parties. For cultural resource documents that require tribal comment, see [Section 8.3.2.2.3.2](#). For other consulting parties, the District may provide copies of the cultural resource document directly to them electronically and copy the PDC and the State CRC. There may be circumstances where OEM provides copies of the cultural resource document directly to consulting parties such as the ACHP, NPS, or SHPO. **Chapter 1A-46, F.A.C.**, requires that the final deliverables from the consultant must include the requested number of copies of the report (which may vary, depending on the project), a **Survey Log**, and a set of original FMSF forms. For historic resources and resource groups, digital photographs are included on the FMSF forms continuation sheets and are submitted as jpeg files (or current acceptable media files). The FMSF office requires paper copies of the final products for retention and a copy must be made available upon request to other consulting parties.
4. Once SHPO/THPO has reviewed and commented, the SHPO/THPO response is provided to FDOT. SHPO typically returns a signed **Transmittal Letter** and THPO

typically provides comments under separate cover. If SHPO/THPO objects to the findings on the significance of a historic resource, FDOT (District and OEM) discusses the finding with SHPO/THPO to resolve the objection. If the objection cannot be resolved, then information on the historical value of the resource must be submitted to the Keeper of the NRHP for a final determination of eligibility.

5. If FDOT, and SHPO/THPO (as well as other consulting parties) have concurred that historic properties occur within the APE, FDOT initiates Step 3 of the **Section 106** process, Assess Adverse Effects (see [Section 8.3.2.4](#)). As mentioned above, submission of the cultural resource document and the effects analysis may be combined into one step, when appropriate.
6. If SHPO/THPO, FDOT, and, as appropriate, the other consulting parties concur with a finding that no historic properties occur within the APE, or with a combined finding on eligibility and 'No Historic Properties Affected' or 'No Adverse Effect to Historic Properties', this finding is retained in the SWEPT project file along with the basis for the finding and the **Section 106** process is complete.
7. If SHPO/THPO, FDOT, and, as appropriate, the other consulting parties concur with a finding of an 'Adverse Effect to Historic Properties', FDOT initiates Step 4 of the **Section 106** process, Resolve Adverse Effects (see [Section 8.3.2.8.5](#) for additional routing and content information).

8.3.2.8.6 Archaeological and Historical Resources Considerations for State-Funded Projects

The same considerations used to determine the potential to affect historic properties for federal actions are used to determine effects of non-federal actions. Therefore, the criteria established in the **Section 106 PA** for determining the level of assessment, review, and consultation apply to state-funded projects.

For state-funded major transportation projects, a SEIR is prepared. FDOT is the Lead State Agency, and the District is responsible for the development, review, and approval of the SEIR. The CRAS for SEIR projects follows the standard procedures established by **Chapter 267, F.S.**, and **Chapter 1A-46, F.A.C. Chapter 267, F.S.**, largely mirrors the requirements of **Section 106**, but contains no requirement for consultation with Tribes beyond the normal considerations of public participation. Nonetheless, the Districts should inform the Tribes whenever a project may affect an historic resource that could be of cultural or religious importance to them. If the project changes from a state-only project to a federally funded or approved project, tribal comment will be required. See [Section 8.3.2.2.3.2](#) regarding Native American consultation for state-funded projects requiring a federal permit.

For state-funded projects, FDOT consults with FDHR to make determinations of eligibility for inclusion in the NRHP. For projects that do not include historic properties within the APE or where the undertaking has no potential to affect historic properties, FDOT documents the finding in accordance with the **Section 106 PA** and the standard procedures for SEIRs or NMSAs, as appropriate. FDOT notifies FDHR of its finding within

30 calendar days of completing its review. The documentation package must include a map showing the project location and APE, along with sufficient information to support and explain the finding. In accordance with the **Section 106 PA**, unless FDHR objects within 30 days of receipt of notification, FDOT is not required to take any further action unless there is a dispute.

For projects that may adversely affect historic properties, FDOT and FDHR consult to determine the significance of the historic resources within the APE. It is important to consider the additional property types protected under **Chapter 267, F.S.** If significant historic resources occur within the APE, then FDOT and FDHR must consult on the extent and nature of these effects and develop ways to avoid, minimize, or mitigate these effects. Generally, for state-only projects, FDOT and FDHR record these commitments through an agreement between SHPO and the District Secretary outlining the effects of the project on the resource(s) in question and the measures adopted to minimize or mitigate these effects.

The findings of the CRAS are detailed in the cultural resource document and summarized under the appropriate headings in the SEIR. In addition, the potential effects of the proposed project on the archaeological sites and historic resources within the project APE are summarized and discussed in the appropriate sections (e.g., Cultural Resources, Commitments) of the SEIR. The cultural resources document and SEIR are transmitted to the Director of the FDHR for review and comment.

The **Non-Major State Action Checklist** is prepared in SWEPT and provided as a visual in [Part 1, Chapter 10, State, Local or Privately Funded Project Delivery](#), and sample language for the SEIR is provided in [Section 8.3.3.1](#). The **Transmittal Letter** prepared by the District is essentially the same as the letter provided as outlined in [Section 8.3.2.8.5](#) and [Figure 8-6](#). However, the letter is addressed to the Director of the FDHR and only requires the Director's signature. In addition, the term "SHPO" is replaced with "Director, Division of Historical Resources" in the body of the letter.

As mentioned above, NMSA projects also require an historical and archaeological impact evaluation. Typically, detailed evaluations are not warranted because these projects are generally small in scope with minimal effects. These decisions cannot be made until the District documents the presence or absence of historic properties in the project APE. Just as the **NEPA** COA for a project does not dictate the level of analysis needed for historic properties, neither does the criteria for determining whether a project is a SEIR or a NMSA.

If the state-funded or assisted undertaking involves a federal permit, approval, or license, then FDOT initiates coordination with the appropriate federal agency as early in this process as possible. In some cases, it may be necessary to inform the permitting agency of any programmatic approaches applicable to the project. For the purposes of **Section 106** of the **NHPA**, the permitting agency becomes the Lead Federal Agency for the permitted action.

8.3.3 Coordinating NEPA and Section 106

The regulations that implement **Section 106** of the **NHPA [36 CFR § 800.3(b)]** specifically encourage the coordination of **Section 106** responsibilities with the steps taken to satisfy other historic preservation and environmental laws. FDOT has adopted a streamlined approach to satisfy **Section 106** and **NEPA** compliance so that approvals are received concurrently. The ACHP's regulations **[36 CFR § 800.8(a)]** provide guidance on how the **NEPA** and **Section 106** processes can be coordinated. In addition, the flow chart in [Figure 8-7](#) illustrates coordination between **NEPA** and **Section 106**.

NEPA documents, including an Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) or a Final Environmental Impact Statement/Record of Decision (FEIS/ROD), include the information and results of the **Section 106** compliance efforts. This information includes a general presentation of the survey effort, a brief description of the historic properties identified, the consulting parties, the determinations of effect for the project, the consultation leading to the resolution of any adverse effects, and all commitments and agreements that supported the effect finding or the resolution of adverse effects. Any MOA developed under **Section 106**, or (when applicable) the final comments of the ACHP, are addressed in the ROD. Under normal circumstances, the MOA is executed before the ROD is issued, and the ROD provides for the implementation of the MOA's terms and stipulations. Details concerning the information and results to be included in the **NEPA** documents are provided in the following section.

8.3.3.1 Reporting Cultural Resources Findings in Environmental Documents

For Type 1 and Type 2 CEs, FDOT summarizes the findings of the CRAS, as presented in the cultural resource document, in the appropriate section of the Environmental Document. In the case of Type 2 CEs, the findings and approvals related to the CRAS are submitted with the **Type 2 Categorical Exclusion Determination Form**. For Type 1 CEs the finding of 'No Historic Properties Affected' or 'No Adverse Effect to Historic Properties', and related approvals if any, are kept with the completed **Type 1 Categorical Exclusion Checklist** for the proposed project. The cultural resource document is incorporated by reference into the Environmental Document and is uploaded into SWEPT along with consulting party correspondence, if necessary. It is recommended that these documents be placed within the Archaeological and Historical Resources folder in SWEPT. Any SHPO/THPO concurrence letters or MOA must be attached to the Environmental Document. In addition, commitments are documented in accordance with [Part 2, Chapter 22, Commitments](#).

Categorical Exclusions

For Type 1 and Type 2 CEs, FDOT summarizes the findings of the CRAS, as presented in the cultural resource document, in the appropriate section of the Environmental Document. The cultural resource document is incorporated by reference into the Environmental Document and is uploaded into SWEPT along with consulting party correspondence, if necessary. It is recommended that these documents be placed within

the Archaeological and Historical Resources folder in SWEPT. Any SHPO/THPO concurrence letters or MOA must be attached to the Environmental Document.

EA and DEIS

The EA and Draft Environmental Impact Statement (DEIS) also contain a summary of the CRAS. The description and evaluation of archaeological sites and historic resources identified within the project APE are included in the Environmental Analysis section. Once OEM approves the document for public availability, the District sends it to the appropriate agencies and consulting parties for review and comment. Include commitments related to the treatment of, effects upon, or disposition of historic properties in the Commitments section of these documents according to [Part 2, Chapter 22, Commitments](#). Concurrence letters and draft MOA should be included in the Appendix.

EA with FONSI or FEIS/ROD

If NRHP-listed or eligible archaeological sites and/or historic resources are identified within the project APE, the decisions made to resolve issues are addressed in the final Environmental Document. The Environmental Analysis section summarizes the potential effects (e.g., direct use, visual, noise) on NRHP-listed or eligible historic properties, as well as potential mitigation measures for the anticipated effects associated with the preferred alternative. Included in the Environmental Analysis section and/or the Comments and Coordination section, is a chronological discussion of agency coordination efforts, the determination of effects, the development of mitigation measures, and public outreach activities. Reference to all correspondence related to the **Section 106** process is also included. The Commitments section of both the EA with FONSI and FEIS/ROD or FEIS contains a description of the measures FDOT will use to minimize and mitigate adverse effects to the NRHP-listed or eligible historic properties. If the resolution of adverse effects includes any formal agreement such as an MOA or Conditional No Adverse Effect agreement (a finding of No Adverse Effect with conditions imposed or agreed to by the consulting parties), this document is included as an appendix in the EA with FONSI, FEIS/ROD, or FEIS.

The correspondence providing FDOT's finding on effects to historic properties; SHPO/THPO opinion on this finding; and any correspondence related to the avoidance, minimization, or mitigation of effects to historic properties, as well as the opinions of the other consulting parties, should be included in the Appendix of the Environmental Document.

SEIR

For SEIRs, the results of the CRAS are included in the Cultural Resources section, and the Commitments section discusses all commitments made in regard to cultural resource issues. The SEIR must include FDOT's determination of effects to historic resources and the FDHR's opinion as to this determination. The correspondence providing FDOT's finding on effects to historic properties; SHPO/THPO opinion on this finding; and any correspondence related to the avoidance, minimization, or mitigation of effects to historic

properties, as well as the opinions of the other consulting parties, should be included in the Appendix.

Example CRAS Summaries

The EA, EIS, and SEIR documents must include standard language describing the nature and intensity of the CRAS, a definition of the project APE, the survey methods and findings, and a description and evaluation of all archaeological sites and historic resources identified within the project APE. In the case of the SEIR, FDHR becomes the consulting agency. For state-only projects, reference state legal authorities and only FDHR is consulted unless there is a specific reason to include other consulting parties [for example, on state-owned land, the Florida Department of Environmental Protection (FDEP) should be included in the decision making].

The following are examples of text for the CRAS summary to be included in the Environmental Document. Typically, this summary language is contained in the **CRAS/CRAS Addendum Report's** Executive Summary and is used in the **CRAS Transmittal Letter**.

1. Include the Project Name, Purpose of the CRAS, and applicable laws, regulations, and standards, for example:

A Cultural Resource Assessment Survey (CRAS) of the proposed [project name], including background research and field survey, has been performed. The purpose of the survey was to locate, identify, and bound any cultural resources within the project Are of Potential Effects (APE) and to assess their significance in terms of eligibility for listing in the National Register of Historic Places (NRHP). This CRAS was conducted in compliance with Section 106 of the National Historic Preservation Act (NHPA) (Pub. L. 89-665, as amended), as implemented by 36 Code of Federal Regulations (CFR) Part 800 (Protection of Historic Properties); National Environmental Policy Act (NEPA) [Public Law (Pub. L.) 91-190]; and Chapter 267, Florida Statutes (F.S.), revised. This study was conducted in accordance with Chapter 1A-46, Florida Administrative Code (F.A.C.), Part 2, Chapter 8 of the Florida Department of Transportation (FDOT) Project Development & Environment (PD&E) Manual, and the standards contained in the Florida Division of Historical Resources (FDHR) Cultural Resource Management (CRM) Standards and Operational Manual (FDHR 2003).

2. Summarize the research methods used, for example:

Research methods included preliminary background research, the preparation of a research design for review and approval by FDOT, State Historic Preservation Officer

(SHPO), and/or Tribes, if applicable, archaeological and historical/architectural field surveys, artifact analysis, and preparation of draft and final reports. The fieldwork was conducted between [month and year to month and year].

As appropriate, this statement includes the level of analysis for proposed or potential SMF/FPC locations.

3. Summarize the results of the background research for both archaeological sites and historic resources, for example:

The initial review of the Florida Master Site File (FMSF), NRHP listings, and the ETDM Summary Report (Project # [xxxx]) for this project indicated that xx previously recorded archaeological sites ([FMSF numbers]) are located within or adjacent to the project APE, with another [xx] known sites located within 0.5 miles. Of the [xx] archaeological sites, [FMSF number(s)] was/were evaluated by SHPO as potentially eligible for inclusion in the NRHP; the other [xx] sites [FMSF numbers] were not evaluated by SHPO. The background research suggested a variable probability for archaeological site occurrence within the project APE.

Background research indicated that [xx] historic resources ([FMSF numbers]) had been recorded previously within the project APE. These include [xx] [add architectural styles and composite build date range]. [Add SHPO evaluation]. A review of the relevant USGS quadrangle maps and property appraiser's website data revealed the potential for [xx] historic (*pre-circa* [date]) resources.

4. Summarize the results of the archaeological and historical/architectural field surveys, including a brief description and evaluation of all NRHP-listed or eligible historic properties identified within the project APE. Address the appropriate NRHP criteria and the relevant aspects of integrity. For example:

As a result of archaeological field survey, cultural materials associated with [xx] of the previously recorded sites ([FMSF numbers]) were recovered. No evidence of the other [xx] sites was found. [xx] new archaeological site(s) ([FMSF numbers]) was/were identified. The total of [xx] previously recorded and newly identified sites are classified as lithic and artifact scatters. All were evaluated as not eligible for listing in the NRHP given the common nature, low research potential, and lack of any significant historical associations.

Historical/architectural field survey resulted in the identification and evaluation of [xx] historic buildings ([FMSF

numbers]). With one exception [Site name, FMSF number], a [add build date, type, and style] all are Masonry Vernacular and Frame Vernacular style residences constructed between circa (ca.) 1945 and ca. 1960. These historic buildings represent commonly occurring types of architecture for the locale, and available data did not indicate any significant historical associations. In addition, alterations to the historic structures and/or lack of concentrated density appear to preclude their eligibility for the NRHP either individually or collectively as a district.

For any resources determined eligible, provide the basic information on the site by extracting statements from the Determination of Eligibility or FMSF form for the property. Note the reasons the site is eligible, the characteristics that make it significant, its boundaries, etc. Include measures that have been incorporated into the proposed undertaking to avoid, minimize, or mitigate effects to the property. Example language for findings of No Involvement with Cultural Resources/'No Historic Properties Affected' ([Section 8.3.3.1.1](#)) and both No Adverse Effect and Adverse Effect ([Section 8.3.3.1.2](#)) follows.

8.3.3.1.1 No Involvement with Cultural Resources/No Historic Properties Affected

If the CRAS shows an absence of archaeological sites and/or historic resources within the project APE, or if the CRAS has identified archaeological sites and/or historic resources within the project APE but FDOT and SHPO agree that none of the sites or historic resources are eligible for inclusion in the NRHP, provide one of the following standard statements below, as applicable. The statement is included in the Cultural and Historic Resources section of the Environmental Analysis section of the EA with FONSI, FEIS/ROD, FEIS, or in other appropriate locations for other COAs:

A Cultural Resource Assessment Survey (CRAS), conducted in accordance with 36 CFR Part 800, was performed for the project. No archaeological sites or historical resources were identified, and FDOT, in consultation with SHPO/THPO, has determined that the project will result in No Historic Properties Affected. Concurrence from SHPO/THPO was received on [date].

-OR-

A Cultural Resource Assessment Survey (CRAS), conducted in accordance with 36 CFR Part 800, was performed for the project, and the resources listed below were identified within the project Area of Potential Effect (APE). FDOT found that these resources do not meet the eligibility criteria for inclusion in the National Register of Historic Places (NRHP), and SHPO/THPO concurred with this determination on [date].

Therefore, FDOT, in consultation with SHPO/THPO, has determined that the proposed project will result in No Historic Properties Affected.

Follow this paragraph with a description of the identified sites and their eligibility status.

For the SEIR, include the findings in the Cultural Resources section. Reference FDOT as the lead agency making the findings and identify the FDHR (instead of SHPO) as the concurring/consulting party.

8.3.3.1.2 No Adverse Effect or Adverse Effect to NRHP Properties

In the case where the CRAS results identify NRHP-listed or eligible archaeological sites and/or historic properties within the project APE, and where the Criteria of Adverse Effect pursuant to **36 CFR § 800.5(a)(1)** have been applied and the project does not meet the criteria, summarize the effects and describe the finding in the Cultural and Historic Resources section of the Environmental Analysis section of the EA with FONSI, FEIS/ROD, or FEIS, or in other appropriate locations for other COAs. The following statement is provided in the **Type 2 Categorical Exclusion Determination Form** or should be included in the EA with FONSI, FEIS/ROD, or FEIS:

A Cultural Resource Assessment Survey (CRAS), conducted in accordance with 36 CFR Part 800, was performed for the project, and the resources listed below were identified within the project Area of Potential Effect (APE). FDOT found that some of these resources meet the eligibility criteria for inclusion in the National Register of Historic Places (NRHP), and SHPO/THPO has concurred with this determination. After application of the Criteria of Adverse Effect, and in consultation with SHPO/THPO, FDOT has determined that the proposed project will have No Adverse Effect on these resources.

Follow this paragraph with a description of the sites, their eligibility status, and any commitments made for the project that contributed to the No Adverse Effect finding.

In the case where project development will result in adverse effects to NRHP-listed or eligible historic resources, summarize FDOT's commitments to minimize effects in the Commitments section of the EA with FONSI, FEIS/ROD, or FEIS, as applicable. The following statement is provided in the **Type 2 Categorical Exclusion Determination Form** or should be included in the EA with FONSI, FEIS/ROD, or FEIS:

The proposed project will result in unavoidable adverse effects to the resource(s) listed below, which [is/are] [listed in/eligible for listing in] the National Register of Historic Places (NRHP). FDOT and the SHPO/THPO [will execute/have executed] a Memorandum of Agreement (MOA) which outlined conditions to minimize and mitigate adverse effects

resulting from the project. Consequently, FDOT commits to the stipulations provided below as outlined in the MOA.

Follow this paragraph with a list of the specific stipulations developed.

8.3.4 Coordinating Section 106 and Section 4(f)

Often, when a project has the potential to have an adverse effect on a historic property, it also requires approval under **Section 4(f)** of the **USDOT Act of 1966**, as amended.

The properties protected under **Section 4(f)** include significant public parks and recreational resources, wildlife and waterfowl refuges, and historic sites. For historic resources, the word “significant” means that the resource is listed in or eligible for listing in the NRHP, and these are also the resources protected by **Section 106** of the **NHPA**. As a result, FDOT often combines its **Section 106** compliance effort with a **Section 4(f)** analysis. The level of the **Section 4(f)** analysis depends upon the type of **Section 4(f)** evaluation or approval that is required for the use of the property in question. There are two types of **Section 4(f)** evaluations (programmatic and individual) and the level of effort and coordination is different for each. There is also a third **Section 4(f)** approval option that requires only a finding by FDOT that the proposed project has a minor, non-adverse effect on the protected property. This is referred to as a **Section 4(f) de minimis** finding. In these cases, no **Section 4(f)** evaluation is required because the effects of the project on the resource are inconsequential as a matter of the law.

Districts should endeavor to schedule the **Section 106** and **Section 4(f)** identification and evaluation so that historic properties, and anticipated project interactions with them, are accurately presented to the public as part of the planned public involvement opportunities. The guidance for compliance with the requirements of **Section 4(f)** for historic properties is provided in [Part 2, Chapter 7, Section 4\(f\) Resources](#).

8.3.5 Treatment of Human Remains

Historic and prehistoric human remains are protected under **Chapter 872, F.S.** The treatment of human remains encountered during project construction or any other FDOT project-related activity must conform to **Chapter 872.05, F.S.**, the provisions of **36 CFR Part 800.13** and Post Review Discoveries in Stipulation X of the **Section 106 PA**, as well as **Chapter 3** of the [CRM Handbook](#) and **Section 7-1.6** of FDOT’s [Standard Specifications for Road and Bridge Construction](#). If human remains are encountered during project-related activities (other than during an archaeological investigation), all work ceases in the area of the human burial and necessary measures are taken to secure and protect the remains, including, as appropriate, stabilization and covering. The individual(s) making the discovery [the District Project Construction Engineering Inspector (CEI) or the PM] should immediately contact the appropriate Medical Examiner. If the Medical Examiner finds that the burial may be involved in a legal investigation or represents the burial of an individual who has been dead less than 75 years, the Medical Examiner assumes jurisdiction. If the Medical Examiner finds that the burial is not involved in a legal investigation and represents the burial of an individual who has been dead 75

years or more, he or she notifies the State Archaeologist, and the FDHR assumes jurisdiction over and responsibility for the burial.

In addition, FDOT'S Native American Coordinator is notified so that the Tribes, the SHPO/THPO, as well as other appropriate consulting parties, receive the proper information and are included in the determination of effects, if applicable. For Native American human remains discovered on federal lands, the federal land managing agency is responsible for consultation under **NAGPRA**. Also, see [Sections 8.2.2.2](#) and [8.3.6](#) for related procedures.

8.3.6 Archaeological and Historical Resources Considerations Following PD&E

Commitments developed under **Section 106** and all other associated federal and state laws governing the treatment or consideration of historic resources and properties are recorded in the Environmental Document. [Part 2, Chapter 22, Commitments](#) provides the process that must be followed to ensure commitment compliance for FDOT projects. Tracking project commitments follows FDOT's [Procedure No. 650-000-003, Project Commitment Tracking](#).

If either the Design or Construction Office cannot meet a commitment, they inform the District Environmental Office as soon as they are aware of that situation so that the District Environmental Office can inform the appropriate consulting parties and re-initiate the consultation.

8.3.6.1 Re-evaluations

Re-evaluations are prepared as outlined in [Part 1, Chapter 13, Re-evaluations](#). The commitments and required coordination are updated and documented in the Commitment Status section of the **Re-evaluation Form** and tracked according to [Procedure No. 650-000-003, Project Commitment Tracking](#). Because the status of historic properties can change over time, CRM evaluations or **CRAS Reports** may need to be updated, as appropriate, before advancing a proposed project into a new phase of development. For example, if the previous CRAS was completed more than ten years ago, a supplementary survey and **CRAS Addendum Report** may be necessary. Whenever there is a change to a project's potential to affect historic properties, consultation with SHPO/THPO and other appropriate parties is revisited and updated, as necessary. There are times when this may necessitate a change to the **Section 106** documentation or findings for the project, amendments to an MOA, or other changes to the commitments.

8.3.6.2 Design Considerations

Prior to making commitments concerning design elements during consultation with SHPO/THPO, the Tribes, and/or other consulting parties, the District Environmental Office must coordinate with the District Design and Construction Office to review the feasibility of such elements which may be proposed during the consultation.

In some instances, consultation results in design considerations specifically related to the project such as avoidance or minimization treatments; whereas, other instances result in mitigation activities including, recordation, as well as educational or commemorative efforts related to specific sites or types of sites, specific historical periods, specific historic communities, or research efforts to promote more robust avoidance alternatives for the future. The specific measures required for these efforts are often contained in a MOA prepared for the project (see **Chapter 8** of the [CRM Handbook](#)).

8.3.6.3 Permitting

Environmental permits obtained by FDOT may include provisions for the protection or consideration of historic properties. These provisions arise from the general permit conditions requiring compliance with state or federal laws. However, if a commitment is made during the PD&E phase to avoid, minimize, or mitigate harm to a significant historic resource, this commitment may be contained in the permit conditions as well. Occasionally, a permitting agency may conduct its own consultations under **Section 106** or under **Chapter 267, F.S.**, and include specific conditions in the permit.

8.3.6.4 Cultural Resources Considerations during Construction

If a contractor requires the use of a borrow pit, offsite staging area, or an area for offsite construction activity not proximal to the project, the contractor is required to consult with the SHPO or FDHR to ensure that no historic properties will be affected by the use of these areas (**Section 120-6.2, Furnishing of Borrow Areas** of FDOT's [Standard Specifications for Road and Bridge Construction](#)). A sample form for clearing an off-project construction activity is provided in [Figure 8-8](#). If previously unidentified historic properties are discovered during construction, or if unanticipated impacts to known or previously unidentified historic properties occur during construction, all construction-related activity in the vicinity of the discovery must stop, and the procedures set forth in Stipulation IX of the **Section 106 PA** must be followed.

8.3.6.5 Review and Compliance Requirements

Prior to the approval of the construction plans and any design modifications proposed during construction, the Construction Office reviews the plans and/or the modifications to verify that the commitments associated with the project's relationship to or effects upon historic properties, as well as federal and state regulations, are incorporated into the design and plans. These reviews require the involvement of the District Environmental Office (see [Section 8.1](#)).

In addition to the plan notes and specifically outlined conditions provided with the project construction plans, the Contractor follows the provisions set forth in the most recent version of FDOT's [Standard Specifications for Road and Bridge Construction](#).

8.3.6.6 Emergency Repair Actions

To maintain compliance with **Section 106, Chapter 267, F.S.**, and **Section 4(f)** for emergency repair actions, the following guidelines should be adhered to. These

procedures apply only if a disaster or emergency has been declared by the President, Governor, or tribal government, or if responding to other immediate threats to life or property. In accordance with **36 CFR § 800.12(d)**, immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of **Section 106**, and work can proceed without performing the notification procedures listed below.

Repair actions are categorized either as “emergency” or “permanent.” Emergency repairs are made during and immediately following a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Permanent repairs to restore the highway to its pre-emergency condition normally occur after the emergency repairs have been completed. For emergency repairs, compliance with **Section 106**, **Section 4(f)**, and other related environmental laws occurs concurrent with or after the emergency repairs have been completed. For permanent repairs, compliance is undertaken as part of the normal **NEPA** project development process.

1. Project forms, notifications, and other appropriate documentation should be completed at the project level, which may be based on individual or multiple **Detailed Damage Inspection Reports (DDIRs)**.
2. The standard **Section 106 Program Alternative Form** may be used, if appropriate, to notify SHPO (with a copy to OEM) of the emergency repair action. Be sure to identify these actions as emergency repairs on the form. Where a District has a large number of emergency projects, provide SHPO the notification using a table, list, or spreadsheet of the emergency repair actions, and clearly identify those projects where follow-up or additional coordination will be needed in regard to archaeological or historic resources and properties. If properties that may be of religious and cultural importance to a Tribe are present within the APE, the appropriate Tribe must be notified of the action.
3. In certain situations, the proposed emergency or permanent repair may consist of an action or actions which have no potential to cause effects to historic properties when assuming historic properties are present in the project area as set forth at **36 CFR § 800.3(a)(1)**. In these situations, see [Section 8.3.2.2.1](#), and document the finding as appropriate.
4. For all emergency repair actions not involving a historic or archaeological site (e.g., improvements within a non-historic roadway or roadway features), Stipulation V of the **Section 106 PA** should be used. Stipulations VI and VII can also be applied, as appropriate.
5. **Section 106** documentation can be completed concurrent with or after the action, but must be provided to SHPO within six months of the completion of the action. If no cultural resources are identified within the APE of the emergency repair action, **Section 106** obligations are fulfilled by the standard SHPO **Transmittal Letter**.
6. If previously unidentified cultural resources are uncovered, or if unanticipated impacts to known historic properties are discovered as a result of the action, FDOT

still complies with **Section 7-1.6** of FDOT's [Standard Specifications for Road and Bridge Construction](#), the procedures for inadvertent discovery of human remains contained in **Chapter 872.05, F.S.**, (see [Section 8.3.5](#)), the provisions of **36 CFR Part 800.13**, and the provisions regarding Post-Review Discoveries in Stipulation X of the **Section 106 PA**.

7. To the maximum extent possible, Districts should avoid using land which may be protected by **Section 4(f)** or **Section 106** for emergency repair actions. Districts should avoid using land which may be protected by **Section 4(f)** or **Section 106** for debris storage and/or materials staging areas. If using a known historic or archaeological site, restoration or mitigation may be required as appropriate.
8. Although the purpose of **Section 4(f)** (to evaluate feasible and prudent avoidance alternatives) cannot be fulfilled after an emergency repair is completed, appropriate documentation may still be required if an activity requires the use of a **Section 4(f)**-protected resource. If using potential **Section 4(f)** resource (public park, recreational area, historic property, or wildlife or waterfowl refuge), initiate appropriate consultation to ensure that the conditions of the site being utilized are restored to the same level, or better than, they were prior to the emergency event, as appropriate (see [Part 2, Chapter 7, Section 4\(f\) Resources](#)).
9. Related emergency repair documentation is uploaded into the SWEPT project file upon SHPO concurrence or, as appropriate, when FDOT makes its final determination. If the action or any additional cultural resources coordination is completed under a new Financial Management number for the subsequent permanent repair, make a note to the original emergency repair SWEPT project file that describes where the documentation is located.

8.4 REFERENCES

- ACHP, Consultation with Indian Tribes in the Section 106 Review Process: A Handbook, November 2008.
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahUKEwji9aXc8qTgAhUEGt8KHtSaAf4QFjABegQICBAC&url=https%3A%2F%2Fwww.fcc.gov%2Ffile%2F14538%2Fdownload&usg=AOvVaw0LhhpFB3cs46ly33y7u1tz>
- ACHP, Electronic Section 106 Documentation Submittal System (e106).
<https://www.achp.gov/e106-email-form>
- ACHP, Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment, October 26, 2022.
https://www.achp.gov/program_alternatives/exempted_categories/EVSE_info
- ACHP, Guidance on Agreement Documents: Executing Agreement Documents.
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ACHP, Policy Statement on Burial Sites, Human Remains, And Funerary Objects, March 1, 2023. <https://www.achp.gov/digital-library-section-106-landing/achp-policy-statement-burial-sites-human-remains-and-funerary>

ACHP, Program Comment Issued for Common Post-1945 Concrete and Steel Bridges, November 16, 2012. <https://www.achp.gov/digital-library-section-106-landing/program-comment-actions-affecting-post-1945-concrete-and-steel>

ACHP, Program Comment to Exempt Consideration of Effects to Rail Properties Within Rail Rights-of-Way, August 24, 2018. <https://www.achp.gov/digital-library-section-106-landing/program-comment-exempt-consideration-effects-rail-properties>

ACHP, Section 106 Exemptions Regarding Historic Preservation Review process for Effects to the Interstate Highway System, March 10, 2005. <https://www.achp.gov/digital-library-section-106-landing/exemption-regarding-historic-preservation-review-process>

American Antiquities Act of 1906, as amended, Public Law Number 34-209

American Indian Religious Freedom Act of 1978, 42 U.S.C. §1996. <https://www.gpo.gov/fdsys/granule/USCODE-2010-title42/USCODE-2010-title42-chap21-subchapl-sec1996/content-detail.html>

Archaeological and Historical Preservation Act of 1974, Title 54 (54 USC Chapter 3202) by Public Law 113-287. <https://www.nps.gov/subjects/archeology/national-historic-preservation-act.htm>

Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-mm and 54 U.S.C. § 302107. <https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter1B&edition=prelim>

Chapter 1A-32, Florida Administrative Code (F.A.C.), Archaeological Research. <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=1A-32>

Chapter 1A-46 F.A.C, Historical and Archaeological Report Standards and Guidelines. <https://www.flrules.org/gateway/chapterhome.asp?chapter=1A-46>

Chapter 125, Florida Statutes (F.S.), County Government. http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0125/0125ContentsIndex.html

Chapter 163, F.S., Intergovernmental Programs. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0163/0163ContentsIndex.html

Chapter 253.027, F.S., Emergency Archaeological Properties Acquisition Act of 1988.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0200-0299/0253/0253.html

Chapter 258, F.S., State Parks and Preserves.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0258/titl0258.htm&StatuteYear=2004&Title=-%3E2004-%3EChapter%20258

Chapter 267, F.S., Florida Historical Resources Act.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=Ch0267/titl0267.htm

Chapter 337.274, F.S., Authority of Department Agent or Employee to Enter Lands, Waters, and Premises of Another in the Performance of Duties (FDOT Agency Access to Private Property).

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0337/SEC274.HTM&Title=->2004->Ch0337->Section%20274#0337.274

Chapter 373, F.S., Water Resources.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0373/titl0373.htm&StatuteYear=2004&Title=%2D%3E2004%2D%3EChapter%20373

Chapter 403, F.S., Environmental Control.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0403/0403ContentsIndex.html&StatuteYear=2016&Title=%2D%3E2016%2D%3EChapter%20403

Chapter 556, F.S., Underground Facility Damage Prevention and Safety.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0556/0556ContentsIndex.html&StatuteYear=2016&Title=%2D%3E2016%2D%3EChapter%20556

Chapter 872, F.S., Offenses Concerning Dead Bodies and Graves.

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EO 11593: Protection and Enhancement of the Cultural Environment, May 13, 1971; 36 FR 8921, 3 CFR 1971-1975, Comp., p559, unless otherwise noted

<https://www.archives.gov/federal-register/codification/executive-order/11593.html>

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EO 13175: Consultation and Coordination with Indian Tribal Governments, 2000.
<https://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf>

FDOS, Division of Historical Resources, The Historic Preservation Compliance Review Program of the Florida Department of State, Division of Historical Resources Standards and Operational Manual, n.d.
<https://dos.fl.gov/historical/preservation/compliance-and-review/regulations-guidelines/>

FDOT, Cultural Resource Management Handbook, November 2013.
<https://www.fdot.gov/environment/pubs/cultmgmt/cultmgmt1.shtm>

FDOT, ETDM Manual, Topic No. 650-000-002.
<https://www.fdot.gov/environment/pubs/etdm/etdmmanual.shtm>

FHWA list of individual elements of the Interstate Highway System that are excluded from Section 106 Exemption Regarding Effects to the Interstate Highway System. http://www.environment.FHWA.dot.gov/histpres/highways_list.asp

First Renewal of the Memorandum of Understanding Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. § 327, May 26, 2022.
https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/nepa_assign/fdot-327-first-renewal-mou-for-comment.pdf?sfvrsn=202c70b4_2

National Preservation Institute, NEPA and Section 106 of the NHPA, 2008.
<http://www.npi.org/nepa/sect106>

NAGPRA of 1990, 25 U.S.C. § 32
<https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title25-chapter32&edition=prelim>

NEPA of 1969, 42 U.S.C. §§ 4321-4347
<https://www.nps.gov/subjects/nepa/policy.htm>

NHPA of 1966, as amended, 54 U.S.C. § 300101 *et seq.*
<https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf>

NPS, How to Apply the National Register Criteria for Evaluation, National Register Bulletin No. 15, 1991, revised 1997.
https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf

Programmatic Agreement Among the Federal Highway Administration, the Florida Department of Transportation, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer Regarding Implementation of the Federal-Aid Highway Program in Florida, 2023.
<https://www.fdot.gov/environment/cultmgmt/cultural-resources>

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<https://www.gpo.gov/fdsys/pkg/PLAW-109publ59/pdf/PLAW-109publ59.pdf>

Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, September 29, 1983.

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Title 36 CFR Part 61, Procedures for State, Tribal and Local Government Historic Preservation Programs.

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Title 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register.

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Title 36 CFR Part 65, National Historic Landmarks (NHLs) Program.

<https://www.ecfr.gov/current/title-36/chapter-I/part-65>

Title 36 CFR Part 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties.

<https://www.ecfr.gov/current/title-36/chapter-I/part-68>

Title 36 CFR Part 79, Curation of Federally Owned and Administered Archaeological Collections.

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title36/36cfr79_main_02.tpl

Title 36 CFR Part 800, Protection of Historic Properties.

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title36/36cfr800_main_02.tpl

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USDOT Act of 1966, 49 U.S.C. § 303

<https://www.law.cornell.edu/uscode/text/49/303>

U.S. Department of the Interior, Bureau of Indian Affairs. Tribal Leaders Directory- Federally Recognized Native American Tribes <https://www.bia.gov/bia/ois/tribal-leaders-directory/>

8.5 HISTORY

1/12/1999, 9/7/2016, 6/14/2017: NEPA Assignment and re-numbered from Part 2, Chapter 12, 1/14/2019, 7/1/2020, 7/1/2023

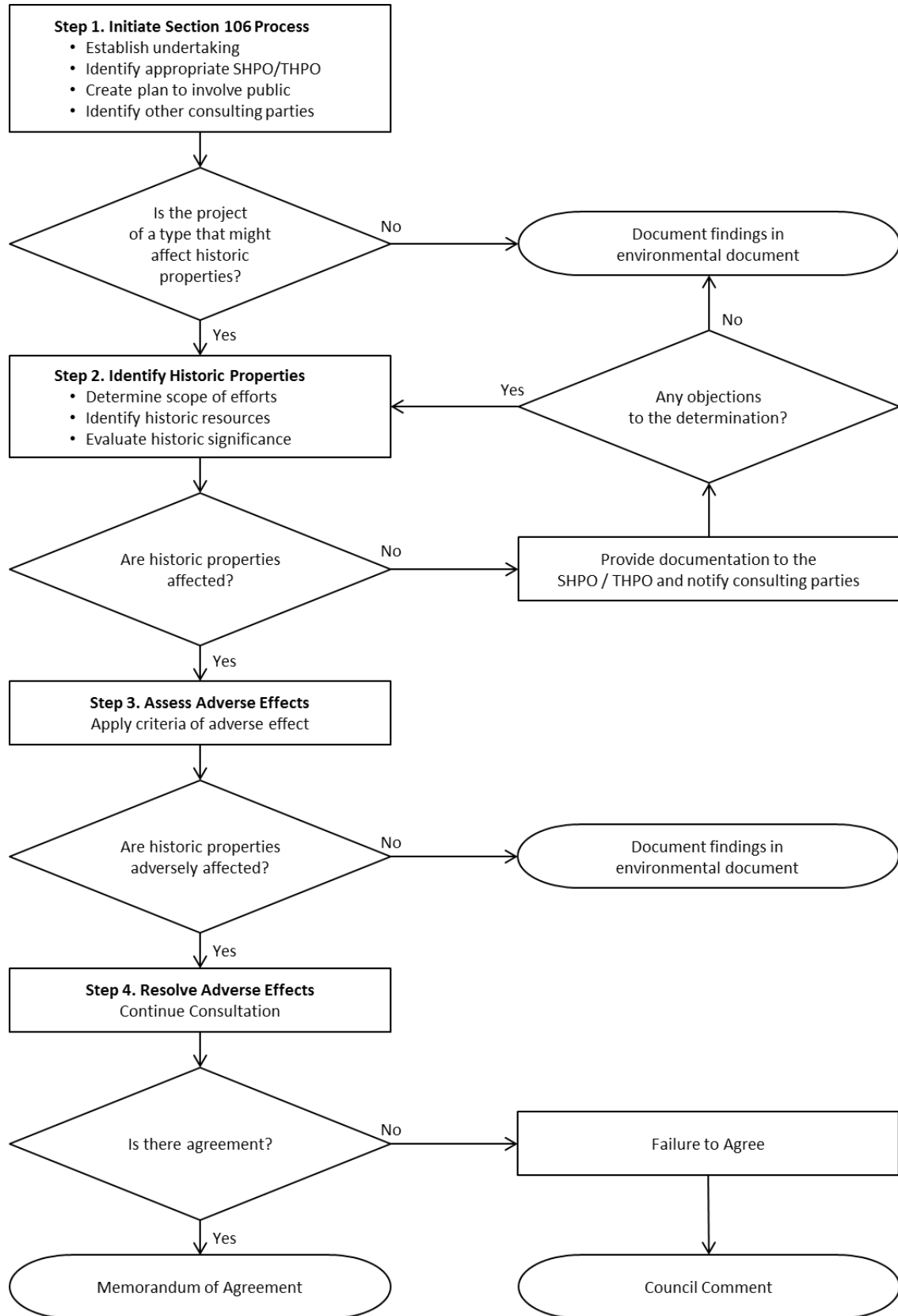


Figure 8-1 Section 106 Process

Appendix 2, Minor Project Activities Considered Unlikely to Affect Historic Properties

1. Approval of utility installations along or across a transportation facility.
2. Construction of bicycle and pedestrian lanes, paths, and facilities.
3. Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
4. The installation of noise barriers, or alterations, to existing publicly-owned buildings to provide for noise reduction.
5. Landscaping within the horizontal and vertical extent of previous ground disturbance and/or the original construction footprint.
6. Emergency repairs under 23 U.S.C. 125.
7. Acquisition of scenic easements.
8. Determination of payback under 23 CFR, Part 480 for property previously acquired with Federal-aid participation.
9. Minor improvements to existing rest areas and truck weigh stations.
10. Ride-sharing activities.
11. Bus and rail car rehabilitation.
12. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
13. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
14. Track and rail-bed maintenance and improvements when carried out within the existing ROW.
15. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
16. Adding or lengthening turning lanes (including continuous turn lanes), intersection improvements, channelization of traffic, dualizing lanes at intersection and interchanges, auxiliary lanes, and reversible lanes.

Figure 8-2 Project Activity Types Identified for Stipulation VI of the Section 106 PA, Appendix 2

17. Flattening slopes; improving vertical and horizontal alignments.
18. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
19. Restore, replace, and rehabilitate culverts, inlets, drainage pipes, and systems including safety treatments.
20. Widening, adding roadway width and/or roadway reconstruction shoulders without adding through traffic lanes.
21. Roadway skid hazard treatment.
22. Upgrade, removal, or addition of guardrail.
23. Upgrade median barrier.
24. Install or replace impact attenuators.
25. Upgrade bridge end approaches/guardrail transition.
26. Upgrade railroad track circuitry.
27. Improve railroad crossing surface.
28. Improve vertical and horizontal alignment of railroad crossing.
29. Improve sight distance at railroad crossing.
30. Railroad crossing elimination by closure, and railroad overpass removal within ROW.
31. Clear zone safety improvements, such as fixed object removal or relocation.
32. Screening unsightly areas.
33. Freeway traffic surveillance and control systems.
34. Motorist aid systems.
35. Highway information systems.
36. Preventive maintenance activities such as joint repair, pavement patching, shoulder repair and the removal and replacement of old pavement structure.
37. Restore, rehabilitate, and/or resurface existing pavement.

Figure 8-2 Project Activity Types Identified for Stipulation VI of the Section 106 PA, Appendix 2 (Page 2 of 3)

38. Computerized traffic signalization systems.
39. Widening of substandard bridge to provide safety shoulders without adding through lanes.
40. Replacement of existing bridge (in same location) with current design criteria.
41. Transportation enhancement projects involving acquisition of historical sites and easements, or historical preservation.
42. Preservation of abandoned railway corridors, including the conversion and use for pedestrian, equestrian, or bicycle trails.
43. Rehabilitation and operation of historic transportation buildings, structures, or facilities, including railroad facilities and canals.
44. Mitigation of water pollution due to highway runoff.
45. Bridge removal.
46. Approvals for disposal of excess ROW or for joint or limited use of ROW, where the proposed use does not have significant adverse impacts.
47. Rehabilitation or reconstruction of existing rail and bus transit buildings and ancillary buildings where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.
48. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks, and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
49. Acquisition of land for hardship or protective purposes for a particular parcel or a limited number of parcels; advance land acquisition loans under section 3(b) of the Urban Mass Transportation Act.
50. Animal crossings.
51. Changes in access controls.
52. Minor ROW acquisition for roadway and bridge projects without the addition of through traffic lanes.

Figure 8-2 Project Activity Types Identified for Stipulation VI of the Section 106 PA, Appendix 2 (Page 3 of 3)

[DATE]

[TRIBAL CONTACT NAME]
[TITLE]
[ADDRESS]

Re: [PROJECT NAME]
COUNTY: [Name]

Dear [TRIBAL CONTACT NAME]:

Please find enclosed one copy of the Cultural Resource Assessment Survey (CRAS) Report for the [PROJECT NAME] for your review and comment. This report documents the cultural resource survey conducted pursuant to *Section 106* of the *National Historic Preservation Act (NHPA) of 1966* (Public Law 89-665, as amended) and its implementing regulations (36 CFR Part 800: *Protection of Historic Properties*, incorporating amendments effective August 5, 2004). The objectives of this survey were to identify cultural resources within the project corridor and assess their eligibility for inclusion in the *National Register of Historic Places (NRHP)*. As noted in the [INSERT DATE] letter from the Florida Department of Transportation (FDOT) to the [INSERT TRIBE NAME] that initiated *Section 106* consultation (see attached), this report is being forwarded to you as part of the project-specific consultation.

No archaeological sites were identified during the survey of [PROJECT NAME]. If you have any questions, please feel free to call the Director of OEM at (850) 414-4316 or State Cultural Resources Coordinator at (850) 414-5269. You may also contact [NAME, TITLE, PHONE NUMBER] for project-specific information if so desired.

Sincerely,

[NAME]
Director, Environmental Management

Enclosures

cc: [Additional tribal contacts]
[District Engineer]
[District specific contacts]
[State Cultural Resource Coordinator]

Figure 8-3 Sample Transmittal Letter to Tribes (Without Cultural Sites)

[Date]

[TRIBAL CONTACT NAME]
[TITLE]
[ADDRESS]

Re: [PROJECT NAME]
COUNTY: [Name]

Dear [TRIBAL CONTACT NAME]:

Please find enclosed one copy of the Cultural Resource Assessment Survey (CRAS) Report for the [PROJECT NAME] for your review and comment. This report documents the cultural resource survey conducted pursuant to *Section 106* of the *National Historic Preservation Act (NHPA) of 1966* (Public Law 89-665, as amended) and its implementing regulations (36 CFR Part 800: *Protection of Historic Properties*, as revised January 2001 and incorporating amendments effective August 5, 2004). The objectives of this survey were to identify cultural resources within the project corridor and assess their eligibility for inclusion in the *National Register of Historic Places (NRHP)*. As noted in the [INSERT DATE] letter from the Florida Department of Transportation (FDOT) to the [INSERT TRIBE NAME] that initiated *Section 106* consultation (see attached), this report is being forwarded to you as part of the project-specific consultation.

A total of [INSERT NUMBER] archaeological sites were identified during the survey of [PROJECT NAME]. [NOTE TYPE OF SITES AND THEIR NRHP ELIGIBILITY RECOMMENDATION, IF APPLICABLE]

We welcome any comments you may have pertaining to this project and seek your concurrence with the finding. [DETAIL FINDINGS IF APPROPRIATE] We look forward to continuing the consultation process and working with you.

If you have any questions, please feel free to call the Director of OEM at (850) 414-4316 or State Cultural Resources Coordinator) at (850) 414-5269. You may also contact [NAME, TITLE, PHONE NUMBER] for project-specific information if so desired.

Sincerely,

[NAME]
Director, Office of Environmental Management

Enclosures

cc: [Additional tribal contacts]
[District Engineer]
[District specific contacts]
[State Cultural Resource Coordinator]
[PDC]

Figure 8-4 Sample Transmittal Letter to Tribes (with Cultural Sites)

Bridge Number and Name	County	Bridge Type and Year Built	Brief Description of Significance
054015 C.R. 721A / Harney Pond Canal	Glades	Prestressed Concrete slab 1958	Very early or particularly important example of its type in the state or the nation.
910001 S.R. 70 / Kissimmee River	Okeechobee/ Highlands	Steel girder 1966	Has distinctive engineering or architectural features that depart from standard bridge designs.
910009 S.R. 78/ Kissimmee River	Okeechobee	Steel girder 1964	Has distinctive engineering or architectural features that depart from standard bridge designs.
720075 SR 109 / SR 10A	Duval	Concrete Tee beam 1952	Has distinctive engineering or architectural features that depart from standard bridge designs.
720087 U.S. 1 / Miami Road	Duval	Continuous Steel girder 1968	Has distinctive engineering or architectural features that depart from standard bridge designs.
720100 S.R. 115A Flyover / S.R. 10A	Duval	Concrete Box beam 1961	Very early or particularly important example of its type in the state or the nation.
760002 S.R. 19 / Proposed Cross Florida Barge Canal	Putnam	Continuous Steel girder 1967	Associated with an event or individual. Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
580951 S.R. 399 / ICWW	Santa Rosa	Steel girder 1960	Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
460019 U.S. 98 (S.R. 30) / ICWW	Bay	Concrete girder 1965	Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
570034 U.S. 98 (S.R. 30) / ICWW	Okaloosa	Steel girder 1964	Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
880005 James H. Pruitt Memorial / S.R. A1A over Sebastian Inlet	Indian River	Prestressed concrete girder 1964	Very early or particularly important example of its type in the state or the nation.
364040 C.R. 316 / Proposed Cross Florida Barge Canal	Marion	Continuous steel girder 1969	Associated with an event or individual. Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.

Figure 8-5 Florida Post-1945 Bridges Requiring Evaluation and/or Individual Treatment under Section 106

Bridge Number and Name	County	Bridge Type and Year Built	Brief Description of Significance
360055 S.R. 40 / Ocklawaha River	Marion	Continuous steel girder 1972	Associated with an event or individual. Features spans of exceptional length or complexity. Displays other elements that were engineered to respond to a unique environmental context.
904603 Bimini Drive/ Sam's Canal	Monroe	Prestressed concrete channel beam 1955 / 1982	Associated with an event or individual. Has distinctive engineering or architectural features that depart from standard bridge designs.
904604 Harbour Drive / Joe's Canal	Monroe	Prestressed concrete channel beam 1955 / 1982	Associated with an event or individual. Has distinctive engineering or architectural features that depart from standard bridge designs.
904606 Seaview Drive / Un-Named Canal	Monroe	Prestressed concrete channel beam 1955 / 1982	Associated with an event or individual. Has distinctive engineering or architectural features that depart from standard bridge designs.
870078 S.R. 826 SB Flyover to S.R. 836	Miami-Dade	Prestressed concrete box beam 1967	Very early or particularly important example of its type in the state or the nation.
None Florida Kennels Rock Bridge / driveway over Red Canal	Miami-Dade	Concrete and rock culvert 1947	Has distinctive engineering or architectural features that depart from standard bridge designs.
None Rock Bridge over Red Road Canal	Miami-Dade	Concrete and rock culvert 1947	Has distinctive engineering or architectural features that depart from standard bridge designs.

Figure 8-5 Florida Post-1945 Bridges Requiring Evaluation and/or Individual Treatment under Section 106 (Page 2 of 2)

The following is a sample **Transmittal Letter** to SHPO. The sample **Transmittal Letter** is followed by examples of the different signature blocks required for different situations.

The **Transmittal Letter** includes a date and is addressed to:

[DATE]

[NAME]

Director and State Historic Preservation Officer
Florida Division of Historical Resources
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

Attention: Transportation Compliance Review Program

In the subject lines, provide the project name and limits, project phase (e.g., PD&E Study, pond siting), the Financial Management Number, and the Federal-Aid Project (FAP) Number, as applicable:

Cultural Resource Assessment Survey
Project Development and Environment (PD&E) Study
[PROJECT NAME]
[COUNTY], Florida
Financial Management No.: XXXXXX X XX XX
Federal Aid Project No.: XXXXXX

Description of the project:

A Cultural Resource Assessment Survey (CRAS) was conducted within the Area of Potential Effects (APE) for the above-referenced project as part of the Florida Department of Transportation's (FDOT's) proposed widening of [length] miles of [project road and limits]. The proposed improvements involve widening [road] from the existing two lanes to a four-lane, divided facility along the existing alignment. The Build alternative will require xx feet of additional right of way and will include associated curb and gutter improvements and bringing the pedestrian facilities up to the standards established in the Americans with Disabilities Act (ADA).

[Insert description of the project APE for both archaeological sites and historic resources]. This APE was defined, in consultation with the State Historic Preservation Officer (SHPO), as the existing right of way for the archaeological survey. The historical APE [insert description].

Regulatory authorities:

This CRAS was conducted in accordance with the requirements set forth in the National Historic Preservation Act of 1966, as amended, and Chapter 267, Florida Statutes (F.S.). The investigations were carried out in accordance with Part 2, Chapter 8 of FDOT's Project Development and Environment Manual, FDOT's CRM Manual, and the standards contained in the Florida Division of Historical Resources (FDHR) CRM Standards and Operations Manual. In addition, this survey meets the specifications set forth in Chapter 1A-46, Florida Administrative Code.

Figure 8-6 Sample Transmittal Letter to SHPO with Signature Blocks

Summary results of the background research:

Background research revealed that no previously recorded archaeological sites were present within the APE, and suggested that the project corridor had a generally low potential for archaeological site occurrence. No historic period archaeological sites were expected. Therefore, the corridor was subjected to a pedestrian survey and appropriate judgmental subsurface testing.

Eight previously recorded historic structures and one resource group were identified within the project APE. These resources include [describe with site names, FMSF Numbers, build dates, NRHP status, etc.]. None of the recorded residential and commercial structures were listed or determined eligible for listing in the NRHP; the resource group has not been evaluated by SHPO.

Summary results of the field surveys, including evaluations of NRHP eligibility:

No archaeological sites were identified as a result of field survey. The historical/architectural field survey indicated that four [FMSF Numbers] of the previously recorded historic structures and the resource group [FMSF Number] have been demolished. Two previously recorded [FMSF Numbers] and 14 newly recorded [FMSF Numbers] historic resources were evaluated for eligibility for listing in the NRHP. None of these resources are considered potentially eligible for listing in the NRHP.

In cases where a preliminary analysis of proposed ponds is conducted as part of the CRAS for a PD&E Study, with the results summarized in a Technical Memorandum included as an appendix to the CRAS Report, the following standard language may be added to the letter:

A preliminary analysis of 14 proposed ponds was conducted as part of this CRAS; the Technical Memorandum summarizing the results of this analysis, is included as Appendix [X]. No fieldwork was performed. A CRAS, including fieldwork, will be prepared after the preferred pond sites are selected.

If previously or newly recorded resources are found to be either listed in or determined eligible for listing in the NRHP, the transmittal letter should provide the Criteria of Eligibility (for example, "Criterion A: associated with events that have made significant

contribution to the broad patterns of our history"), along with the primary character of the property (for example, a rare example of a pre-Contact village site, a contact-period trading site, a unique or important engineering achievement, the home of an important person, or the location of an important event, an excellent representative of an important architectural style, and so on). If any of the Criteria considerations established by the NRHP are applicable to the property, provide those as well.

Summary of potential project effects to historic properties (if there is enough project and/or site detail to allow this):

Based on the results of background research and field survey, no historic properties are located within the project APE. Therefore, the project will have no involvement with any archaeological sites or historic resources that are listed, determined eligible, or considered potentially eligible for listing in the NRHP.

Or, in the case of potentially eligible resources:

Background research and field survey revealed one resource [FMSF Number and site name] which was evaluated as potentially eligible for listing in the NRHP, in accordance with Section 106 of the NHPA, as amended, and its implementing regulations. Should SHPO/THPO concur with this finding, we look forward to further consultation with SHPO/THPO to evaluate the effects of the proposed undertaking (preferred alternative) on the potentially NRHP-eligible [Property Name].

Figure 8-6 Sample Transmittal Letter to SHPO with Signature Blocks (Page 2 of 4)

Closing statement:

The CRAS Report is provided for your review and concurrence. If you have any questions, please do not hesitate to call me at [TELEPHONE NUMBER and EMAIL ADDRESS].

In cases where the survey encountered or evaluated sites or resources that could be of cultural or religious importance to the Tribes, include a statement to that effect, along with a statement about coordination conducted with SHPO and the Tribes. Forward sufficient numbers of the CRAS and associated documents for tribal review, including the cover letters for tribal coordination. Note that the cover letter for the Tribes will not include the signature blocks.

List of enclosed documents:

Enclosed are two copies of the CRAS Report [DATE], [NUMBER] FMSF forms [list the FMSF NUMBERS], a Survey Log Sheet, and a CD with pdf files of the CRAS Report, FMSF forms, and Survey Log Sheet.

Figure 8-6 Sample Transmittal Letter to SHPO with Signature Blocks (Page 3 of 4)

Use the following signature block to SHPO for federal actions:

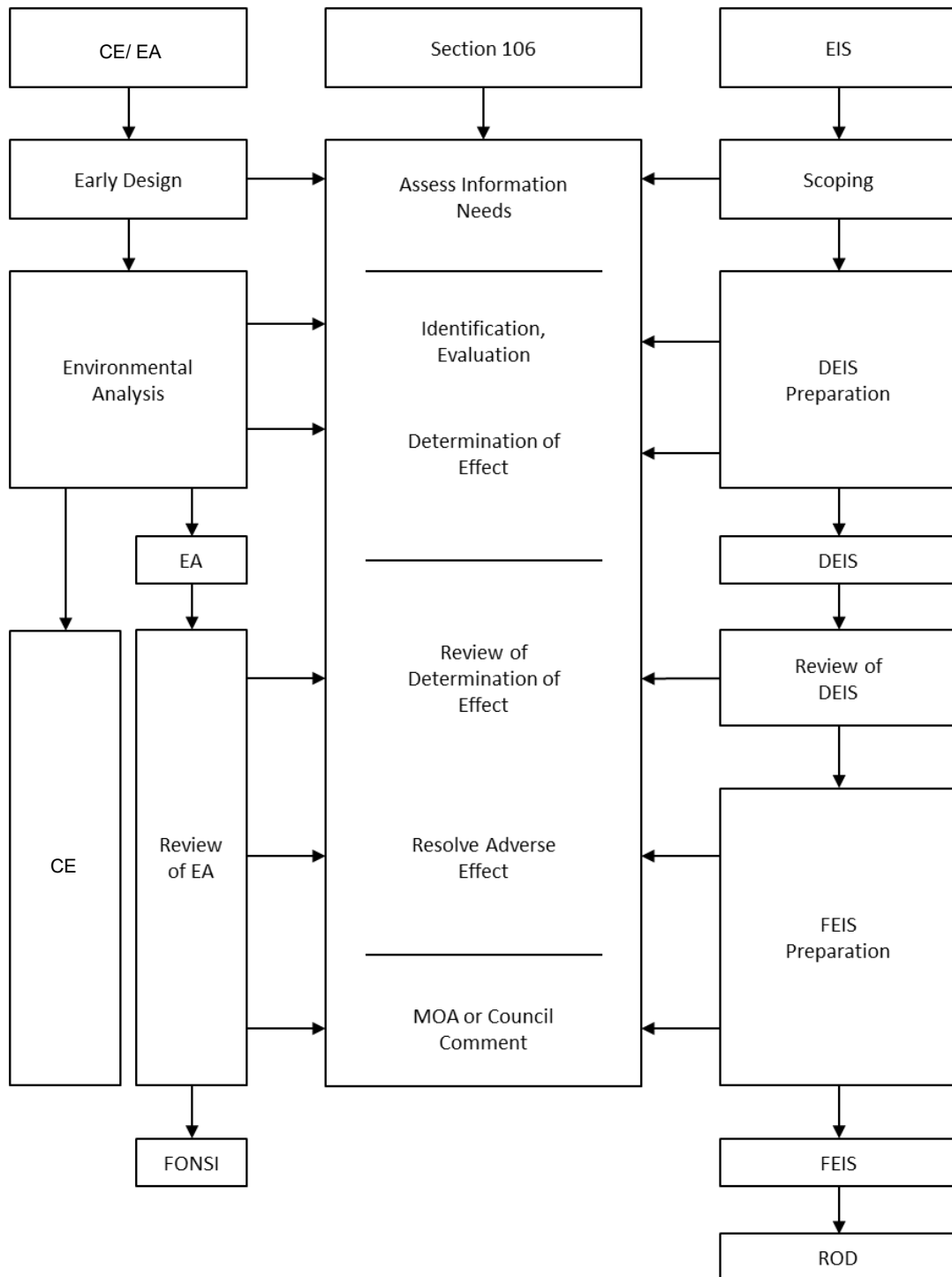
<p>The Florida State Historic Preservation Officer finds the attached Cultural Resource Assessment Survey Report complete and sufficient and <input type="checkbox"/> concurs/ <input type="checkbox"/> does not concur with the recommendations and findings provided in this cover letter for SHPO/FDHR Project File Number _____. Or, the SHPO finds the attached document contains _____ insufficient information.</p> <p>In accordance with the Programmatic Agreement among the FHWA, the FDOT, the ACHP, and the SHPO Regarding Implementation of the Federal-Aid Highway Program in Florida (2023 PA), and appended materials, if providing concurrence with a finding of No Historic Properties Affected for a whole project, or to No Adverse Effect on a specific historic property, SHPO shall presume that FDOT may pursue a <i>de minimis</i> use of the affected historic property in accordance with Section 4(f) as set forth within 23 CFR. Part 774 and its implementing authorities, as amended, and that their concurrence as the official with jurisdiction (OWJ) over the historic property is granted.</p>	
SHPO Comments:	
[NAME], Director, and State Historic Preservation Officer Florida Division of Historical Resources	[DATE]

Use the following signature block to FDHR for state actions:

<p>The Florida Division of Historical Resources finds the attached Cultural Resource Assessment Report complete and sufficient and <input type="checkbox"/> concurs/ <input type="checkbox"/> does not concur with the determinations of historic significance provided in this cover letter and <input type="checkbox"/> does not find applicable the determinations of effects provided in this cover letter for SHPO/FDHR Project File Number _____. _____.</p>	
SHPO Comments:	
[NAME], Director Florida Division of Historical Resources	[DATE]

Figure 8-6 Sample Transmittal Letter to SHPO with Signature Blocks (Page 4 of 4)

COORDINATION BETWEEN NEPA AND SECTION 106



The Public and Consulting Parties must be notified and given the opportunity to comment during each step of the Section 106 review process.

Figure 8-7 NEPA and Section 106

[Date]

[Name and Title]

Division of Historical Resources
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250
ATTN: Transportation Compliance Review Program

Re: Project Name, Financial Management Number XXXXX-XXXX
Contract Number XXXXXXXXXX
XXX County, Florida

Dear XXX:

We propose to conduct off project highway construction activities [ADD BRIEF DESCRIPTION] for the above-referenced Department of Transportation project. The proposed off project area, which covers (ACREAGE OR DIMENSIONS), is depicted on the attached map and is located as follows:

County	_____	Township	_____	Range	_____
Section	_____	¼ Section	_____	¼ ¼ Section	_____

Please initiate an assessment of the proposed off project area to determine the possible effects of our operations on archaeological, architectural, or historic sites or properties. Please advise at your earliest convenience as to whether the project may proceed without further involvement with your agency or if a cultural resources field survey is required.

If you have any questions concerning this request, contact (CONTRACTOR'S REPRESENTATIVE) at (TELEPHONE NUMBER).

Sincerely,

NAME
ABC Construction Company
[ADDRESS]

Attachment

CC: [NAME], Director
Office of Environmental Management Florida Department of Transportation
605 Suwannee Street, MS 37
Tallahassee, Florida 32399-0450

[NAME], District Project Manager
[NAME], District Environmental Manager
[NAME], District Cultural Resource Coordinator

Figure 8-8 Contractor's Request for a Cultural Resource Assessment