



TRANSPORTATION SYMPOSIUM 2019

Cultural Resources Coordination

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Objectives

- Section 106 of the National Historic Preservation Act of 1966 (NHPA)
- Section 4(f) of the USDOT Act of 1966
- Cultural Resources terminology
- Section 106 Process
- Agency's obligations under Section 106



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National Historic Preservation Act of 1966

Section 1 of the NHPA, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515:

(b) The Congress finds and declares that—

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

Cultural Resources vs Historic Properties

- HISTORIC PROPERTY is any CULTURAL RESOURCE (prehistoric or historic district, site, building, structure, or object) that **is included in, or eligible for inclusion in, the National Register of Historic Places** (National Register/NRHP) [36 CFR § 800.16(l)(1)]
 - “Historic” = 50+ years old
- The National Register, established by the NHPA and maintained by the Secretary of the Interior, is the official list of the Nation’s historic resources deemed worthy of preservation [36 CFR § 800.16(q)]



Section 106 of the NHPA

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking. [16 U.S.C. 470f]



Advisory Council on Historic Preservation (ACHP or Council)

- ADVISES the President and Congress on historic preservation
- RECOMMENDS measures to coordinate agency activities
- DEVELOPS and INTERPRETS Section 106 regulations (36 CFR Part 800)
- ENTERS in Section 106 consultation, if necessary
- COMMENTS on Federal Agency compliance with Section 106

Initiate [36 CFR § 800.3]

- Initiate the Section 106 Process

Identify [36 CFR § 800.4]

- Identify Historic Properties

Assess [36 CFR § 800.5]

- Assess Adverse Effects

Resolve [36 CFR § 800.6]

- Resolve Adverse Effects

The Section 106 Process [36 CFR Part 800]

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

- Establish undertaking
- Coordinate with other reviews
- Initiate consultation
- Create public involvement plan
- Notify SHPO/THPO

EXIT POINT:

- No “undertaking,” or
- no potential to cause effects to historic properties

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

Establish undertaking

- Federal funds
- Carried out by, or on behalf of Federal agency
- Federal permit, license, or approval
- Potential to cause **effects**
 - change a building, structure, or landscape in any way;
 - disturb the ground;
 - alter noise levels in an area, or change its visual characteristics; or
 - change traffic patterns or land use of an area.

EXIT POINT:

- No “undertaking,” or
- no potential to cause effects to historic properties



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

Coordinate with other reviews

National Environmental Policy Act (NEPA)

Archaeological Resources Protection Act (ARPA)

American Indian Religious Freedom Act (AIRFA)

Archaeological and Historical Preservation Act (AHPA)

Native American Graves Protection and Repatriation Act (NAGPRA)

Section 4(f) of the USDOT Act

NO DUPLICATIVE EFFORTS!

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

Initiate Consultation & Involve Public

- Identify Participants
- Clarify their roles
- Consulting parties: State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Native American Tribes, local govts, applicants for the Federal assistance or permit.

Consultation is “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” [36 CFR § 800.16(f)].

Step 2: Identify Historic Properties [36 CFR § 800.4]

- **Determine APE**

- Identify historic properties
- Consult with SHPO/THPO
- Involve the public

EXIT POINT:

- No Historic Properties present
- No Historic Properties affected

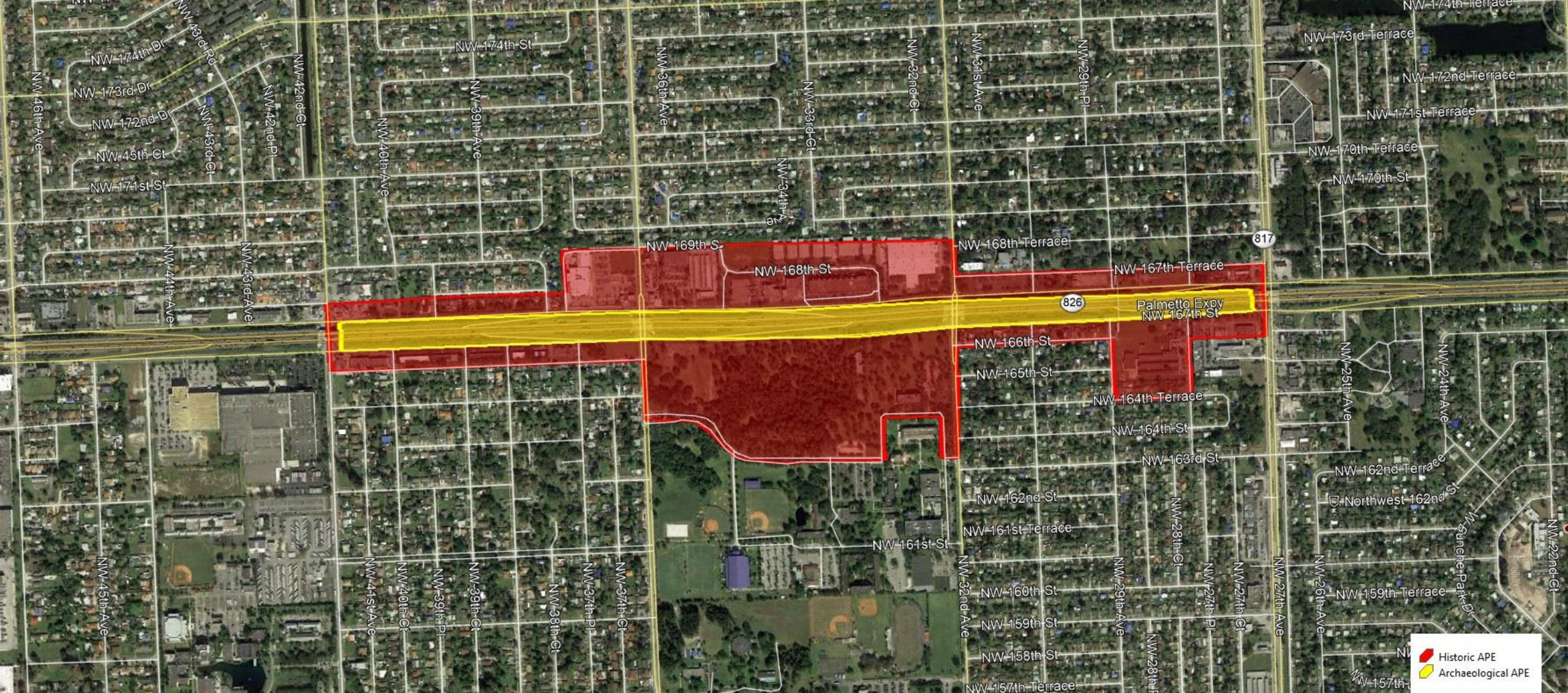
Step 2: Identify Historic Properties [36 CFR § 800.4]

Determine the APE

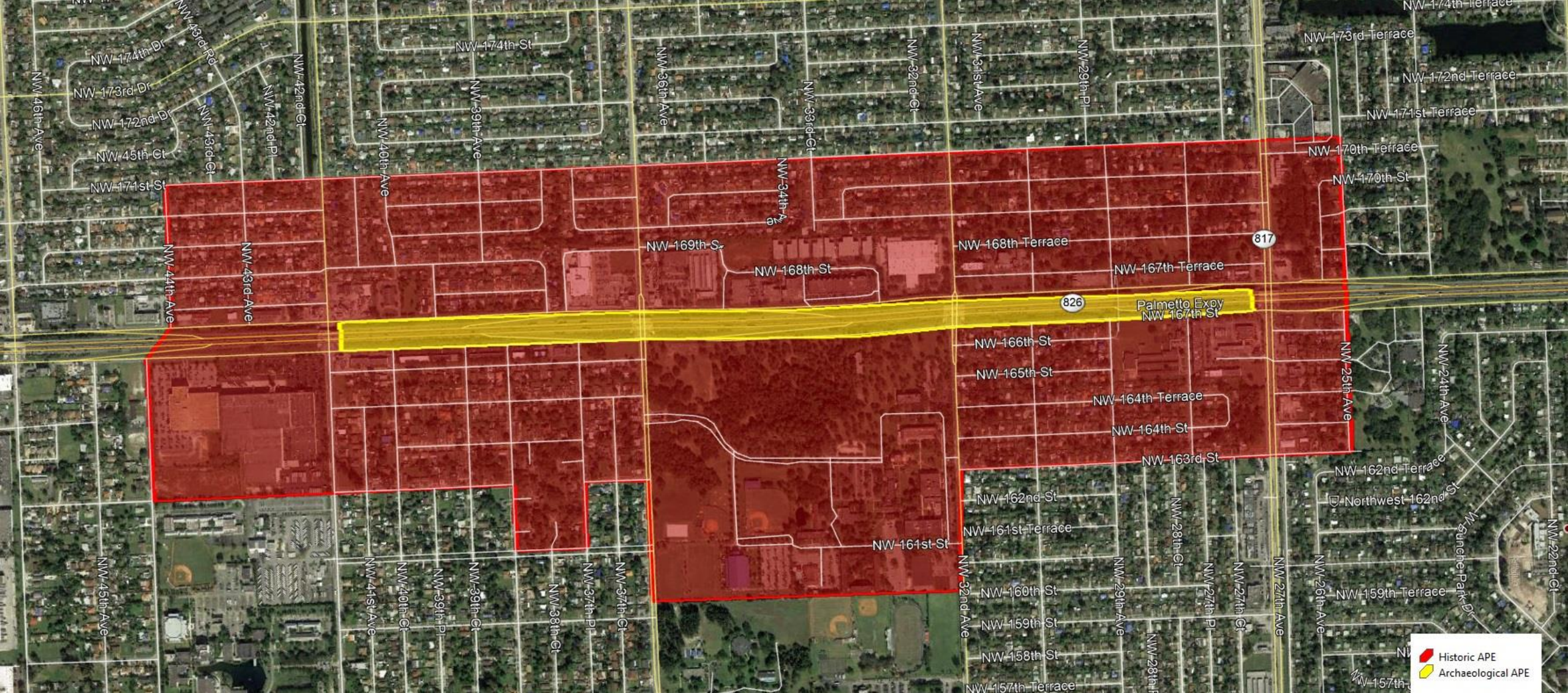
Include:

- All alternatives
- Staging or storage areas
- Stormwater pond locations
- Locations from which elements of proposed undertaking may be visible/audible
- Areas of direct/indirect effects
- Archaeological vs historic APE

The APE is “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” [36 CFR § 800.16(d)].



Determine APE



Determine APE

Step 2: Identify Historic Properties [36 CFR § 800.4]

Identify Historic Properties

- Conduct background research to identify previously recorded resources in the APE
- Conduct field survey to locate previously unrecorded resources
- Evaluate resources for **significance** (are the resources Historic Properties?)



National Register Criteria for Evaluation

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess **INTEGRITY** of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with **events** that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of significant **persons** in our past; or
- C. That embody the **distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded or may be likely to yield, **information** important in history or prehistory.



National Register Criteria for Evaluation

A: That are associated with **events** that have made a significant contribution to the broad **patterns** of our history

USS Arizona, Pearl Harbor, Hawaii



National Register Criteria for Evaluation

B: That are associated with the
lives of significant **persons** in our
past

Ford's Theatre, Washington, DC



National Register Criteria for Evaluation

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

Art Deco District, Miami, Florida



National Register Criteria for Evaluation

D: That have yielded or may be likely to yield, **information** important in history or prehistory.

Cahokia Mounds, St. Louis, Missouri



Integrity

Authenticity of a property's historic identity, based on surviving physical characteristics

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association



Step 3: Assess Adverse Effects [36 CFR § 800.5]

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

EXIT POINT:

- No historic properties adversely affected

The Criteria of Adverse Effect [36 CFR § 800.5(a)(1)]

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 National Register in a manner that would **diminish the integrity** of the property's location, design, setting, materials, workmanship, feeling, or association. . . .

Examples of adverse effects [36 CFR § 800.5(a)(2)]:

- (i) Physical destruction or damage
- (ii) Alteration of a property (including restoration)
- (iii) Removal of the property from its historic location
- (iv) Change of the character of a property's use
- (v) Introduction of visual, atmospheric, or audible elements
- (vi) Neglect
- (vii) Transfer, lease, or sale of a property out of Federal ownership or control

Finding of No Adverse Effect

- Project's effects don't meet criteria of adverse effect
- Conditional No Adverse Effect
- SHPO/THPO agreement/30-day review period
- Agency maintains a record of finding
- Agency makes info available to public

- Objection?

Resolve with the consulting parties who raised the objection

OR

Contact ACHP and allow them to review

Step 4: Resolve Adverse Effects [36 CFR § 800.6]

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

EXIT POINT:

- Memorandum of Agreement (MOA) or other appropriate agreement document

Notify ACHP

[36 CFR 800.6(a)(1)]

- Notification is a request for ACHP participation in consultation
- Documentation standards provided in 36 CFR § 800.11(e)
- Use ACHP's Electronic Section 106 Documentation Submittal System (*e106*)
 - Send documentation package to e106@achp.gov
 - Must come from "federal agency official"
- Once the automated receipt is received, the 15-day clock starts
- If no response after 15 days, the ACHP has chosen not to participate in consultation, and consultation to resolve adverse effects may proceed



Preserving America's Heritage

ACHP Electronic Section 106 Documentation Submittal System

Instructions for completing the ACHP e106 form

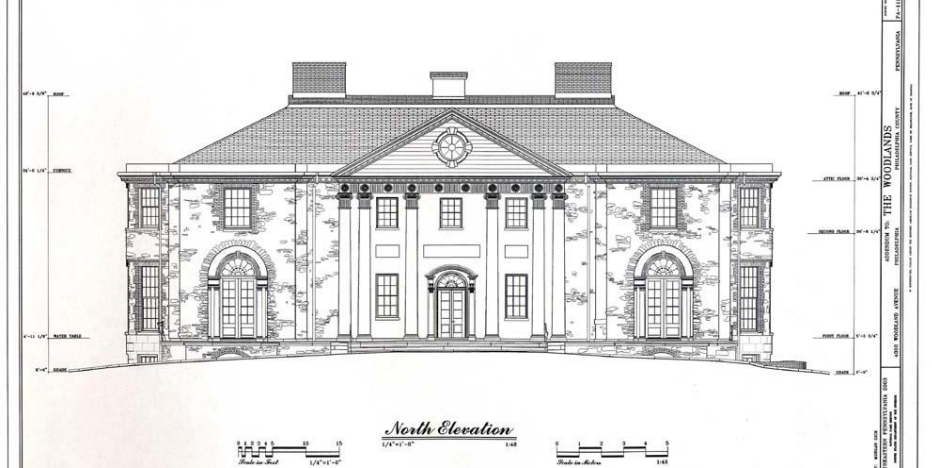
When to Use: Use the *Electronic Section 106 Documentation Submittal System (e106) Form* (attached below) to meet the regulatory requirement (36 C.F.R. 800.6(a)(1)) to formally notify the ACHP when federal agencies:

- notify the ACHP of a finding that an undertaking may adversely affect historic properties, and/or
- invite the ACHP to participate in a Section 106 consultation, and/or
- propose to develop a project Programmatic Agreement (project PA) for complex or multiple undertakings in accordance with 36 C.F.R. 800.14(b)(3).

The documentation required to accompany such a notification is listed at section 800.11(e) of the regulations implementing Section 106. Use of this form will help ensure that federal agencies provide the ACHP with the information needed to review agency adverse effect findings.

The form does not require any additional documentation beyond what is required in section 800.11(e). Rather, the ACHP is offering this as a tool to better assist agencies to meet their current responsibilities under the regulations, improve consistency and completeness in submissions, and expedite the compliance process. Use of this form and electronic submittal of project information is optional; agencies may continue to notify the ACHP of adverse effect findings via hard copy mailings if they so choose.

How to Use: The regulations (at 800.6(a)(1)) require the "federal agency official" to notify the ACHP. The email to the ACHP could come from this official or his/her office. The form should be filled out, saved as an MS Word document, and sent as an email attachment to e106@achp.gov. Federal agencies should copy the SHPO/THPO or other consulting parties when using this system to submit information. Reference additional attached material in the appropriate space on the form. Once the form is received, an automated receipt confirmation message will be sent to the e-mail address of the sender, and the 15-day



Avoid, minimize, mitigate

- Recordation according to National Parks Service standards
 - Historic American Buildings Survey (HABS)
 - Historic American Engineering Record (HAER)
 - Historic American Landscapes Survey (HALS)
- Public Education Programs
 - Interpretive signage
 - Presentations
 - Mixed media publications
- Data recovery (excavation)
 - Artifact analysis
 - Curation/storage
 - Publication of data



GRANTS



LOANS



Concluding the process

-in consultation with SHPO/THPO and other consulting parties
- Document outcomes
- Record consensus and mitigation measures in a Memorandum of Agreement (MOA)
 - Legally binding
 - Evidences compliance with Section 106
 - Guidelines for project implementation

**MEMORANDUM OF AGREEMENT
BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE US 98/JOHN SINGLETARY BRIDGE PROJECT
(FDOT BRIDGE NO. 160064) OVER THE PEACE RIVER,
POLK COUNTY, FLORIDA**

WHEREAS, the environmental review, consultation, and other actions required by applicable federal environmental laws for this undertaking 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 (the NEPA MOU) dated December 14, 2016 and executed by the Federal Highway Administration (FHWA) and FDOT; and

WHEREAS, the U.S. Department of Transportation, FHWA and FDOT propose to provide financial assistance for the US 98/John Singletary Bridge Project over the Peace River, Federal Aid Project Number (No.) 1801-006-P and Financial Project Identification Number 434886-1-22-01 (the undertaking); and

WHEREAS, this undertaking was initiated by FDOT in partnership with FHWA and is now assigned to FDOT as the lead federal agency in accordance with the provisions of the NEPA MOU; and

WHEREAS, the undertaking consists of replacing the existing two-lane John Singletary Bridge (FDOT Bridge No. 160064 and Florida Master Site File No. 8PO5440), a significant historic property eligible for listing in the National Register of Historic Places (NRHP), with a new two-lane bridge thereby requiring removal of the existing, historic John Singletary Bridge; and

WHEREAS, FDOT has established the Area of Potential Effects (APE) to historic properties for the undertaking as 200 feet (ft.) to either side of the existing centerline of US 98, 200 ft. to the west of the US 98/Washington Avenue intersection, and 200 ft. east of the US 98/Fort Meade Recreation Area Entrance intersection. This APE includes the proposed right of way for the undertaking and the adjoining areas where project effects could be reasonably foreseen (see Exhibit A for the APE and the proposed alignment for the undertaking). Background research and historic resources survey was carried out for the entire APE while archaeological testing was undertaken only for the portion of the APE where ground disturbing activities are anticipated such as in the proposed right of way; and

WHEREAS, the FDOT has consulted with the Florida State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S. Code § 470(f) (NHPA)) and has determined that the undertaking will have an adverse effect on the John Singletary Bridge; and

WHEREAS, FDOT District One has participated in the consultation for the undertaking and on its effects on historic properties, and has been invited to sign this agreement as a concurring party; and

A lighthouse on a grassy field with palm trees, reflected in water.

Final Thoughts

- Maintain a record of all correspondence, decisions, and documents in a project file
- Consultative process
 - Everything happens in consultation with SHPO/THPO, consulting parties, Tribes, public
 - Up to participants to work towards the best result
- **Exit points** at each step of the process
- When in doubt, consult with agency subject matter experts, SHPO, ACHP

SECTION 4(f) & CULTURAL RESOURCES

Roy Jackson



**Okeechobee Battlefield Park
Okeechobee FL**

What is Section 4(f)?



Senator Ralph Yarborough (TX)

- 49 U.S.C. § 303 & 23 U.S.C. § 303 :

“It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.”

Okay – that is
the intent
Congress,
But, what does
that mean for
us?

It Means that the Secretary (of USDOT)

May approve a transportation project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—



(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use

OR

the Secretary determines that a transportation program or project will have a *de minimis* impact on the area in accordance with the requirements set forth in the law.

Not again, what does *de minimis* mean?

Caesar does not concern himself with Trifles!



Trifles?

SECTION 4(f) PROPERTIES

1. Public Parks and Recreational Areas

2. Wildlife and Waterfowl Refuges

3. Historic and Archaeological Sites



HISTORIC AND ARCHAEOLOGICAL SITES

- Protects privately and publicly owned sites
- Site must be listed or eligible for listing the National Register of Historic Places (or... / except for...)



Historic and Archaeological Sites (continued)

- or – “otherwise significant”
- except for- significant archaeological sites that are important chiefly for their research value



Re-enactment of a Seminole War Battle at a battlefield site

State Historic Highways



Traditional Cultural Properties

Officials with Jurisdiction for Historic Properties:

- State Historic Preservation Officer or Tribal Historic Preservation Officer (SHPO/THPO)
- National Park Service
- Advisory Council on Historic Preservation (AHCP or Council)
- Tribal Cultural Resources Officials
- Official of agency managing the property (when publicly owned)

Types of Cultural Resources for Section 4(f) Purposes

- **Historic Transportation Facilities**
- **Individually Significant Historic Sites**
- **Historic Districts**
- **Archaeological Sites**
- **Historic Properties co-located with other protected properties**



Historic Transportation Facilities

- Listed or Eligible for Listing
- Determining “Use”



Exceptions and Exemptions for Historic Transportation Facilities



Restoration & Repair

Common Post WW II Bridges

Interstate Exemption

Rail & Transit Lines Exemption



Programmatic Evaluation for Historic Bridges

1. The bridge is to be replaced or rehabilitated with Federal funds.
2. The project will require the use of a historic bridge structure which is on or is eligible for listing on the National Register of Historic Places.
3. The bridge is not a National Historic Landmark.
4. The OEM Administrator determines that the facts of the project match those set forth in the sections of this document labeled Alternatives, Findings, and Mitigation.
5. Agreement among the OEM, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) has been reached through procedures pursuant to Section 106 of the NHPA.

INDIVIDUALLY SIGNIFICANT PROPERTIES



Much like all other protected properties.

Except:
Boundaries May Extend into DOT Right of Way





HISTORIC DISTRICTS

Similar to Historic
Transportation Facilities:

No acquisition = no use
No Adverse Effects = No Use

However, NR Districts May
Contain Individually Eligible
Properties

And
An Acquisition of a
Contributing Property is a
Use



ARCHAEOLOGICAL SITES

**SIGNIFICANT UNDER MORE THAN
CRITERION D:**

**“That have yielded or may be
likely to yield, information
important in history or
prehistory”**



Historic Properties co-located with other protected properties



Chapters 7 and 8 of Part 2, PD&E Manual

Section 106 of the NHPA
Section 4(f) of the USDOT Act

▪ **Section 4(f)**

▪ **Section 106**

▪ **Chapter 267, *F.S.***



Section 4(f)

- No Use = finished
- Use = Need Approvals
 - de minimis
 - Programmatic
 - Individual
 - Draft
 - Final

Section 106

- No Historic Properties = finished
- Significant Properties?
 - No Effect = finished
 - No Adverse Effects = finished*
 - Adverse Effects = further consultation and an MOA
- For 267 Only Projects, No MOA as such, and No Council Copy