

## Quick Guide to Section 106 (Cultural Resources) Compliance

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

**Why does MoDOT conduct cultural resources investigations** – To comply with federal and state laws. Failure to obtain Section 106 clearance may jeopardize Federal funding. The primary legislation that requires cultural resources investigations is Section 106 of the National Historic Preservation Act of 1966. Compliance with this law requires three things:

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

**What jobs require cultural resources work** – Any job that involves:

- 1) ground disturbance within existing or proposed MoDOT right-of-way or easements;
- 2) modifications to a bridge or culvert; and/or
- 3) destroys, relocates, or encroaches upon a building(s).

If a job does not meet these criteria in the design stage, but later the contractor or maintenance have tasks that would meet one of these criteria the job can become a Section 106 undertaking.

**Different levels of cultural resources investigations that the District may require:**

- 1) *Screening/Recon* – Background research that identifies known cultural resources in a proposed job area, usually conducted during the Conceptual/Location study stage. MoDOT should identify historic properties that will require a Section 4(f) Evaluation before Preliminary Plans are approved;
- 2) *Investigation for Section 106 clearance* (should begin before preliminary plans are approved):
  - a) A Phase I survey (an intensive, systematic investigation to identify all cultural resources that may be affected by the proposed job) of the right-of-way and easement limits will be required. A Phase II site testing will be needed if any potential National Register eligible archaeological sites are encountered. The Phase II is a limited archaeological excavation of a site to determine its significance and whether it meets National Register eligibility criteria. A Phase II investigation takes approximately 1-2 weeks per site.
  - b) If National Register eligible resources are identified and will be adversely affected by the proposed job, a Memorandum of Agreement (MOA) spelling out mitigation measures and responsibilities is required. The MOA will be prepared by Historic Preservation (HP) staff and signed by the Federal Highway Administration (FHWA), MoDOT, and the State Historic Preservation Officer (SHPO) at the Missouri Department of Natural Resources. Indian tribes may participate in the development of the MOA and could be a signatory of the MOA. Tribal participation is initiated by FHWA. It can take several months to negotiate a MOA; and
  - c) The mitigation of the adverse effects to National Register eligible resources (a Phase III excavation for archaeological sites) may take several weeks or months to complete the fieldwork. Job construction can proceed following the completion of the mitigation fieldwork.
- 3) *Special Provisions* – Some jobs may require special provisions to the construction contract to address cultural resources concerns. These provisions may guarantee that the stipulations agreed to in the MOA will be completed before the National Register eligible resource(s) is/are adversely affected by construction, or to protect cultural resources from collateral damage that may occur during construction (e.g., monitoring construction or avoidance of certain areas within the job boundaries). The HP staff will draft the special provisions.

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

**A RES for cultural resources investigation for Section 106 clearance should contain:**

- 1) A simple map indicating the location of the project (this can be a topographic map or county highway map). [NOTE: This is usually the only additional data required for a RES requesting Screening/Recon];
- 2) Preliminary plans that indicate the maximum footprint of the project (including proposed ROW and easements) and any proposed borrow pits; and
- 3) Landowner permission allowing MoDOT HP crews’ access to their portion of their property in the proposed project limits. [NOTE: After the district has made the initial landowner contacts, HP staff can make follow-up calls if a property owner has specific questions, requests, or concerns].

OPTIONAL: Photographs of buildings and bridges in the job area can assist in the Section 106 review. Photographs of buildings should consist of an oblique view or if the buildings are recent (<50 year old) commercial development, a basic streetscape shots will do. Bridge shots should consist of a roadway view and a side view. Photographs should not be mounted or labeled on the front. Digital images are fine with electronic submittals (JPEG format 600 dpi).

**Timelines** – Most of the cultural resources' work should be conducted during the preliminary design stage of plan development. Upon the completion of the cultural resources investigations, a report is submitted to the SHPO summarizing MoDOT’s effort to identify historic properties and determine the effects the proposed job would have on these properties. SHPO has 30 days to comment on these findings. Below are several important cultural resources' milestones from the Right of Way and Construction Program database:

- During the "Conceptual/Location Study," the HP staff should be consulted to determine if the project requires Section 106 clearance, and if so, initiated the Section 106 investigations;
- By the "Preliminary Plans Approved" date, HP staff should have identified any historic property that requires a Section 4(f) Evaluation\* for the FHWA and the Department of the Interior; and
- By "Right of Way Plans Approved" date, HP staff should have an approved final Section 4(f) Evaluation, if needed, so an A-date can be set for right of way purchase.

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

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

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

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