CHAPTER 1:

INTRODUCTION

PURPOSE OF THE MANUAL

The Ohio Department of Transportation (ODOT), Office of Environmental Services (ODOT-OES), in consultation with the Ohio Historic Preservation Office (OHPO) and the Federal Highway Administration (FHWA), designed this manual as guidance on procedures for scoping, identifying, evaluating, and documenting cultural resources for projects on ODOT’s transportation improvement program. The manual also recognizes cultural resource management as a process along the project development path which affords opportunities to avoid, minimize and/or mitigate impacts to historic properties. The manual is designed for ODOT project managers, project planners and environmental staff, as well as ODOT prequalified cultural resource consultants, environmental professionals, Local Public Agencies (LPAs), and others involved in ODOT’s Project Development Process (PDP). Their use of this manual will result in efficient and streamlined compliance with existing federal and state laws, with ODOT’s Section 106 Programmatic Agreement, and with ODOT’s State Funded and State/Local Funded Project Agreement.

The PDP is a phased process (see below). It is similar to the cultural resource management process, with a logical sequence of steps, although some steps may overlap in practice. The level of documentation required for processing cultural resources depends upon the type and magnitude of the project, as reflected in the PDP path for a project. The PDP defines the steps when cultural resource concurrence documents must be prepared to ensure the timely completion of the NEPA documentation and initiation of project construction. This manual links ODOT’s PDP, Section 106 Programmatic Agreement, Section 106 Training, and State Project Agreement, and serves as the cultural resource management process for transportation projects. The PDP is a dynamic, fluid, process and users of guidance in this manual must use professional judgment. Sound project management practices must guide any decisions made regarding effects to cultural resources throughout the PDP process.

For this manual, a “cultural resource” is any prehistoric or historic site, district, building, structure, or object. A “historic property,” as defined in the regulations at 36 CFR Part 800 (referenced below), is any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places (NRHP), including artifacts, records, and remains related to and located within such properties. The phrase “eligible for inclusion in the National Register of Historic Places,” includes properties that meet the National Register Evaluation Criteria (referenced below) and have been formally determined as eligible by the Secretary of the Interior and/or the OHPO.

AUTHORIZING LEGISLATION

National Historic Preservation Act (§ 54 U.S.C. 300101 et seq.)

Enacted in 1966, the National Historic Preservation Act (NHPA) (see www.achp.gov/NHPA.pdf) mandates that the federal government shall foster productive harmony between modern society and historic resources, provide preservation leadership, encourage preservation and use of historic built environment, and assist State and local governments and the National Trust for Historic Preservation in their historic preservation activities. The NHPA provides for the expansion and maintenance of the National Register of Historic Places (NRHP) (see below) and created the Advisory Council on Historic Preservation (ACHP).
Section 106 of the NHPA (54 U.S.C. 300101 et seq.)*

Section 106 of the NHPA is a consultation process (i.e., it is a consultative procedural requirement under the NHPA) which requires federal agencies to take into account the effects of their activities and programs on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). In order to do so, agencies must identify historic properties before proceeding with any undertaking. For an overview of the process, refer to http://www.achp.gov/106summary.html; for the flow chart of the process, refer to the Section 106 process flow chart.

*(Effective December 19, 2014, the NHPA was moved in the US Code from Title 16 to Title 54. Note in the US Code citation link on the previous page that the Advisory Council on Historic Preservation intends to keep using “Section 106” since that refers to the section in the original public law that enacted the NHPA, as opposed to its legal citation in the U.S. Code. It is also a reference that has been in constant use for almost 50 years.)

Protection of Historic Properties- 36 CFR Part 800

This is the part of the federal code that is commonly referred to as the “Section 106 regulations”. These are the federal regulations that implement Section 106 of the National Historic Preservation Act (NHPA) and codify the historic preservation review process. The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings. The Advisory Council on Historic Preservation (ACHP) issues these regulations. A major revision was completed in May 1999, with another revision in 2004. The regulations are codified at 36 CFR Part 800 (refer to (http://www.achp.gov/regs-rev04.pdf)). For an overview of the Section 106 process, see Appendix A of this manual.

National Environmental Policy Act of 1969 (NEPA)

Enacted in 1970, this federal legislation requires federal agencies to document the social, economic, and environmental impact of their proposed actions. (Refer to https://ceq.doe.gov/). Generally for ODOT, the U.S. Department of Transportation (USDOT) is the federal agency with the jurisdiction for ensuring the NEPA requirements are met prior to obligating funds for transportation projects.

Section 4(f) of the Department of Transportation Act of 1966

Section 4(f) of the Department of Transportation Act of 1966 is codified at Title 49, United States Code, Section 303(c) which is implemented through regulations found at 23 CFR 774 and applies only to the agencies of the US Department of Transportation (USDOT): Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, Federal Aviation Administration, Maritime Administration, and others. Section 4(f) protects public parks, recreation areas, wildlife and waterfowl refuges, and historic sites included in or eligible for inclusion in the NRHP.

Section 4(f) is a substantive law, which means that there is a specific standard that must be met to demonstrate compliance with the law. It is more than a process; it requires an outcome. This is in contrast to procedural laws like the NHPA and NEPA, where it must be demonstrated that the proper process was followed. A procedural law considers the process used to make the decision and no specific outcome is required. However, there is an overlap between Section 4(f) and Section 106. Each should be taken into consideration during the transportation project planning process. Please refer to FHWA’s Section 4(f) Policy Paper.

Also refer to the AASHTO practitioner’s handbook on complying with Section 4(f): http://environment.transportation.org/pdf/programs/pg11-1%20lowres.pdf.
National Register of Historic Places (NRHP)

Cultural resource types included in or eligible for inclusion in the NRHP are classified as sites, buildings, structures, objects or districts significant in American history, architecture, archaeology, engineering or culture at a national, state, or local level. The criteria used to determine the significance of cultural resources are called the National Register Evaluation Criteria, hereinafter referred to as the “National Register Criteria.” How to evaluate a property using the National Register Evaluation Criteria is explained in the National Register Bulletins that are available online at http://www.nps.gov/nr/publications/index.htm.

Cultural resources that meet one or more of the four National Register Criteria (and/or meet one or more of the Criteria Considerations) and retain sufficient integrity to convey their historic significance are eligible for inclusion in the NRHP. An overview of the National Register Criteria and Criteria Considerations can be found at http://www.achp.gov/nrcriteria.html.

An overview of the National Register Criteria and the seven aspects of integrity can be found at NR Criteria and Integrity and in Appendix B of this manual.

IMPLEMENTING AGREEMENTS

The following agreements are executed to facilitate the cultural resources review and evaluation process in Ohio:

Section 106 Programmatic Agreement

The Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the State Historic Preservation Office, and the State of Ohio, Department of Transportation Regarding the Implementation of the Federal-Aid Transportation Program in Ohio (Agreement No. 16734) was executed November 30, 2011. This agreement is in its second iteration, replacing an earlier version from 2006. This agreement defines the Section 106 process followed by the FHWA, OHPO, and ODOT. It establishes the process by which FHWA, with the assistance of ODOT, meets its Section 106 responsibilities, implements the governing regulations (see below), documents effects to historic properties and sets the standards for notification and consultation. This agreement is referred hereinafter to as the “Section 106 PA.”

Click to view the Section 106 PA.

State Funded and State/Local Funded Project Agreement

ODOT-OES and the OHPO executed this letter agreement on August 29, 2012. In compliance with Section 149.53 of the Ohio Revised Code (ORC), ODOT-OES and OHPO process State-funded and State/Local-funded transportation projects in a manner consistent with the Section 106 PA. This agreement is referred hereinafter to as the “State Project Agreement.”

Click to view the State Project Agreement.
Nationwide Programmatic Agreement for TEA Activities

The Nationwide Programmatic Agreement among the Federal Highway Administration, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation, for Implementation of Transportation Enhancement Activities was executed May 1, 1997. This Nationwide Programmatic Agreement applies to projects funded under FHWA’s TEA program. The purpose of the agreement is to expedite the Section 106 review for transportation enhancement activities beneficial to historic preservation, and thereby encourage the use of transportation enhancement funds for historic preservation purposes.

THE ODOT PROJECT DEVELOPMENT PROCESS

ODOT has developed and implemented a Project Development Process (PDP) that includes regular communication among technical disciplines, results in quality plans, and minimizes cost overruns during project planning, right-of-way acquisition and project construction. Depending on their size, complexity, and/or potential impact to the environment, ODOT transportation projects are categorized as one of five paths (Path 1–5). All projects must advance through five sequential phases: Planning, Preliminary Engineering, Environmental Engineering, Final Engineering and Construction. During project advancement, project managers have the flexibility to adjust scope activities within the phases to better support decision-making.

The PDP is a project management and transportation decision-making tool that outlines project development from concept through completion. Each PDP activity is timed to facilitate informed decision making based on an appropriate level of project development and risk management. The PDP encourages communication among disciplines, requires documentation of the reasoning behind project decisions, eliminates duplicated effort among disciplines, and provides for early identification of potential issues. Involvement of all disciplines during the early stages of project development ensures that issues affecting project type, scope, development schedule and costs can be correctly anticipated and evaluated.

The PDP manual and associated tools provide guidelines to identify activities required during each phase of project development. The project scope determines the amount of work performed within the phases. The process requires coordination of people and tasks between phases to ensure continued review and study of the best possible options.