Chapter 8 – Resource Specific Public Involvement

Depending on the results of technical and environmental studies conducted, and the context and intensity of anticipated project impacts to the human and natural environment, it may become necessary to incorporate resource specific PI activities during any phase of any project path level of the Ohio Department of Transportation’s (ODOT) Project Development Process (PDP). These activities can occur during the earlier phases of the PDP and also after approval of the environmental document.

8.1 Section 106

Section 106 of the National Historic Preservation Act (NHPA) of 1966 requires Federal agencies to take into account the effects of their actions on historic properties. The Section 106 process seeks to incorporate historic preservation principles into project planning through consultation between ODOT, the Federal Highway Administration (FHWA), and other parties with an interest in the effect a project may have upon historic properties.

Existing regulations require that Section 106 consultation be “appropriate to the scale of the undertaking and the scope of Federal involvement in the undertaking”. This is a requirement for all federally-funded projects that may affect properties listed on or eligible for listing in the National Register of Historic Places (NRHP). As public involvement is ongoing through the Section 106 process, it is essential that District Environmental Staff, the Project Manager (PM), or the Project Management Team incorporate the intent of Section 106 into the PI process.

Public outreach conducted for purposes of NEPA can be used to satisfy the PI requirements of Section 106. For ODOT to use NEPA PI procedures in lieu of having a separate Section 106 PI process, the requirement for Section 106 consultation is integrated (regardless of its PDP path) in order to identify consulting parties that may have an interest in impacts upon cultural resources within a proposed project’s Area of Potential Effect (APE).

Depending on a project’s type and complexity, and the potential impact a project may have on known or potential historic properties, it may become necessary to reach out to potential consulting parties and conduct PI specific to Section 106. This process can begin at any time, especially if it becomes known early in the Planning Phase of the PDP that impacts to an historic property or properties are anticipated.

8.1.1 Consulting Parties

Individuals and groups or organizations are entitled to be consulting parties and will come forward on their own accord when presented the opportunity. On occasion, ODOT, on behalf of FHWA, can identify and invite parties to participate. Pursuant to 36 CFR 800.2(c), individuals and organizations that “demonstrate an interest in the undertaking” will be identified and invited to participate as consulting parties in the Section 106 process.
Furthermore, **36 CFR 800.2(d)** states “The views of the public are essential to informed...decision-making... The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties...”

The majority of projects will not require participation of consulting parties. For those projects that require Section 106 PI, consulting parties are documented or identified in a PI Plan (if one is required). A reasonable and good faith effort to identify consulting parties is conducted by District Environmental Staff, the PM, or the Project Management Team, with assistance from ODOT-OES Cultural Resource Staff. Consulting parties may include, but are not limited to:

- State Historic Preservation Officer
- Federally recognized Native American Tribes
- Representatives of local governments
- Applicants for federal assistance
- Individuals and organizations with a demonstrated interest on a project’s effect upon historic properties
  - Property owners, local historical groups or museums, neighborhood organizations, historic bridge organizations, or other parties
- The public

Information on the Section 106 process and applications to become Section 106 consulting parties should be made available at public meetings or through other means if a public meeting is not required. The project sponsor forwards all requests to be consulting parties for processing by ODOT’s Office of Environmental Services (OES) on behalf of FHWA.

On-going communication with consulting parties may be conducted via email, one-on-one meetings, or through Section 106 consultation meetings. District Environmental Staff, the PM, or the Project Management Team and the Cultural Resources Section of ODOT-OES facilitate this process. Controversy related to a project’s potential effects on historic properties is identified early in the process. If you anticipate controversy related to Section 106 impacts, contact OES Cultural Resources Staff.

For more information on how to involve the public in the Section 106 process, refer to ODOT’s Office of Environmental Services (OES) *Cultural Resources Manual*. Additional information and examples can be found on the [Section 106 Toolkit](#).
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8.2 Section 4(f)

Section 4(f) of the Department of Transportation Act of 1966 (DOT Act) is codified at Title 49, United States Code, Section 303(c) and applies only to the agencies of the US Department of Transportation (USDOT). Section 4(f) protects public parks, recreation areas, wildlife and waterfowl refuges, and historic sites included in or eligible for inclusion in the National Register of Historic Places (NRHP).

As discussed in the ODOT Section 4(f) Manual, and in compliance with the Section 4(f) regulations at 23 CFR 774, most Section 4(f) determinations do not have specific PI requirements. However, when Section 4(f) specific PI is required, those actions can be combined with other National Environmental Policy Act (NEPA) PI activities. If no specific PI requirements are required for a specific Section 4(f) determination, then normal project development and NEPA PI requirements should be followed in accordance with 23 CFR 771.111.

However, public involvement is specifically required to address certain Section 4(f) impacts, so that the public has the opportunity to review and comment regarding impacts on the protected activities, features or attributes of a Section 4(f) property.

The list below clarifies when and what type of public involvement may be required to address Section 4(f) impacts.

- **No Section 4(f) properties**
- **No Use of identified Section 4(f) properties**
- **Exceptions** (under 23 CFR 774.13)
  - No Section 4(f) specific public involvement is necessary for these three. However, please refer to the Minimum PI Requirements table in Chapter 1 of the Public Involvement Manual for guidance on PI requirements under NEPA.

- **De minimis impacts**: The public notice and opportunity for comment, as well as the concurrence(s) for a de minimis impact determination, may be combined with similar actions undertaken as part of the NEPA process as long as the proposed impacts and findings related to the Section 4(f) properties have been adequately disclosed. If a proposed action does not normally require public involvement, an opportunity for the public to review and comment on the proposed de minimis impact determination must be provided. The OWJ(s) over the property must be informed of the intent to make a de minimis impact determination and must be provided the public feedback for consideration.

  - For parks, recreation areas, or wildlife and waterfowl refuges, a more direct contact approach may be used (including but not limited to direct mailings, public meetings, and posting information within a park on a kiosk). Public notices and opportunities for public comment must illustrate and describe the Section 4(f) property(s). The effects on the protected activities, features, or attributes of the property(s) must also be disclosed to the public (23 CFR 774.5 (b)(2)(i)).
For historic properties, compliance with 36 CFR Part 800 satisfies the public involvement and agency coordination requirement for de minimis impact findings for historic properties (23 CFR 774.5 (b)(1)(iii)). Members of the public who expressed an interest in the project’s effect on historic properties via the NEPA public involvement process, and all identified Section 106 consulting parties, must be provided an opportunity to review and comment on the Section 106 effect finding.

"The public involvement requirements associated with specific NEPA document and process will, in most cases, be sufficient to satisfy the public notice and comment requirements for the de minimis impact finding (23 CFR 774.5(b)(2))" (FHWA Policy Paper Q&A #11C). This is, of course, dependent upon clear documentation that the NEPA public involvement clearly discloses and solicits input on the Section 4(f) use as well.

Programmatic Evaluations:

- “Section 4(f) Statement and Determination for Independent Bikeway and Walkway Construction Projects”: No additional public involvement is required for Section 4(f).

- “Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges”: Follow Section 106 regulations at 36 CFR Part 800 for public involvement.

- “Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property”: No Section 4(f) specific public involvement is required. However, please refer to the Minimum PI Requirements table in Chapter 1 of the Public Involvement Manual for guidance on PI requirements under NEPA. If public outreach (public meeting/public hearing/etc.) is held for the project, according to policy, impacts to Section 4(f) properties must be included in the discussion.


- “Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges”: No Section 4(f) specific public involvement is required. However, please refer to the Minimum PI Requirements table in Chapter 1 of the Public Involvement Manual for guidance on PI requirements under NEPA. If public outreach (public meeting/public hearing/etc.) is held for the project, according to policy, impacts to Section 4(f) properties must be included in the discussion.

(These last two programmatic evaluations are rarely used - the addition of the de minimis impact determination has simplified Section 4(f) with minor uses of Section 4(f) public parks, recreation areas, and wildlife and waterfowl refuges, and historic sites.)
**Individual Section 4(f) Evaluation:** During a project’s environmental process, the Environmental Assessment (EA) or the Draft Environmental Impact Statement (DEIS) is the primary vehicle for meeting public notice and comment requirements for the Section 4(f) properties, which will be carried forward from the DEIS into the Final Environmental Impact Statement (FEIS).

## 8.3 Noise

Noise PI is typically conducted after the Noise Analysis is prepared and approved and after the environmental document has been approved. Results of preliminary studies conducted may be shared, if available, during PI conducted in the early stages of the PDP. Once final studies are complete, specific PI meeting(s) are typically held for each proposed noise barrier project per [OBC 5517.05](#). Outreach with property owners and residents of the benefited receptors are conducted by ODOT when noise barriers are offered as noise abatement. As other forms of Noise PI are available, technical assistance is provided by OES.

The overall project, as well as noise barrier material type, textures and colors are discussed and preferences documented (this is one of the only forums in which the public can vote on items related to a project). Coordination with the local political authorities may be done at a separate meeting or concurrently during the PI meeting. Concerns of local officials will be considered in the noise abatement design, but will not be a determining factor regarding noise barrier construction. This provides the opportunity to obtain input to indicate whether or not they want noise abatement. If noise abatement is feasible and reasonable, the affected receptors may choose the aesthetic appearance of the receptor side of the noise barrier.

For more information on PI specific to noise, refer to the [ODOT Highway Traffic Noise Analysis Manual](#).

## 8.4 Aesthetic Design

The objective of Aesthetic Design is to incorporate principles of project planning and development into a collaborative and interdisciplinary approach (that includes identified stakeholders and the public) to develop a transportation facility that compliments its surrounding natural and human environment. Incorporating Aesthetic Design into the PI process may occur when concerns arise in how a project will complement the surrounding community or local stakeholders and officials see an opportunity to incorporate a design that identifies or represents their community.
Aesthetic Design considers the total context within which a project will exist, and includes early, continuous and meaningful PI throughout the PDP. Typically, PI specific to Aesthetic Design will occur on Path 4 and Path 5 projects. These higher level projects involve greater visual impacts and involve major changes to transportation functions, in which a high level of public involvement will take place.

Depending on a project’s type and complexity, design workshops may be conducted, where the goal is to offer an opportunity for stakeholders and the public to share ideas and explore viable aesthetic options to incorporate. For additional information refer to the Design Aesthetics Public Involvement Update and the Community Participation section of the ODOT Aesthetic Design Guidelines.