

PART III

CHAPTER 2

**The Indiana Historic Preservation Review Board and
Certificates of Approval**

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2-1.0 Overview- Alteration of historic sites or structures requiring certificate of approval (IC 14-21-1-18)

IC 14-21-1-18 (a) and (b) require that a Certificate of Approval (COA) be obtained from the Indiana Historic Preservation Review Board (Review Board) before using state funds to alter, demolish, or remove an historic site or historic structure, if it is owned by the state or if it is listed in either the Indiana Register of Historic Sites and Structures or the NRHP. The term “property,” as defined in IC 14-21-1-18, refers to both above-ground structures and archaeological sites.

2-2.0 Dual Review-Synching Section 106 and IC 14-21-1-18

Gaining a COA under state law IC 14-21-1-18 does **not** satisfy federal Section 106 requirements (16 USC 470f) – nor does completion of Section 106 satisfy IC 14-21-1-18. Consequently, if a project utilizes both state and federal money, it must comply with both laws. In August 2013, a permanent rule ([312 IAC 20-4-11.5](#)) was passed for projects that are subject to both Section 106 and IC 14-21-1-18. Previously, projects had to complete Section 106 and obtain a COA as separate processes. The Dual Review rule synchs these two processes.

The primary obligation of INDOT and/or its consultants to follow the Dual Review process is to provide a letter to the DHPA with “Dual Review Project” in the subject line. This signifies to the DHPA to review the project under both Section 106 and state law concurrently. The request for a Dual Review must be made at the beginning of the consultation process. Sending early coordination letters, consulting party invitations, and/or distribution of Historic Property/Archaeology Reports could be the appropriate mechanism for initiating the Dual Review process. It is also recommended to indicate in the body of the letter that the Dual Review Process is being invoked. Sample language is provided below:

Please note that per the permanent rule issued by the Indiana Department of Natural Resources effective August 14th, 2013 (IAC 20-4-11.5), INDOT is requesting that this project be subjected to “dual review”; that is, reviewed by the Division of Historic Preservation and Archaeology simultaneously under 16 USC 470f (Section 106) and IC 14-21-1-18 (Indiana Preservation and Archaeology Law dealing with alterations of historic sites and structures requiring a Certificate of Approval). Pursuant to Section 1(f) of this rule, at the conclusion of the review process, we anticipate that the Division Director would issue a letter of clearance exempting this project from obtaining a certificate of approval under IC 14-21-1-18.

Under the Dual Review procedures, DHPA will acknowledge receipt of the transmittal letter. In addition to any notification required under 16 U.S.C. 470f and 36 CFR 800, DHPA shall provide notification of the commencement of a Dual Review to the following:

- (1) Interested persons.
- (2) Members of the Review Board.
- (3) By posting on the DHPA's website.

The DHPA Division Director shall issue a letter of clearance for a project and exempt the entity from obtaining a COA under IC 14-21-1-18 if a submission results:

- (1) in a finding under 36 CFR 800 of “no historic properties affected” or “no adverse effect” on historic properties; and
- (2) the Indiana State Historic Preservation Officer (SHPO) concurs in the finding.

If a submission results in a finding of “adverse effect” on historic properties under 36 CFR 800, and a memorandum of agreement (MOA) is executed under 36 CFR 800, the Division Director shall consider the terms of the MOA. If the Division Director concludes the objectives and purposes of IC 14-21-1-18 have been achieved, the Division Director shall issue a letter of clearance and exempt the entity from obtaining a COA.

With regard to projects involving a bridge covered by the July 17, 2006, *“Programmatic Agreement among the Federal Highway Administration, the Indiana Department of Transportation, the Indiana State Historic Preservation Office, and the Advisory Council for Historic Preservation Regarding the Management and Preservation of Indiana's Historic Bridges” (“Historic Bridges PA”)*, in the case of a finding of “adverse effect” on historic properties under 36 CFR 800, the Division Director shall consider the mitigations prescribed for the adverse effects under the Historic Bridges PA. If the Division Director concludes the objectives and purposes of IC 14-21-1-18 are achieved, the Division Director shall issue a letter of clearance and exempt the entity from obtaining a COA.

The Division Director shall provide notice to interested persons and members of the Review Board of the intention to issue any letters of clearance. Any member of the Review Board may request review by the Review Board for the purpose of acting upon a COA for the project. If a request for review is made, the DHPA shall place the completed application on the agenda of the next meeting of the Review Board for a determination.

If a Dual Review results in a finding of “adverse effect” on historic properties under 36 CFR 800, and a MOA is not executed, the entity making the submission shall obtain a COA regarding the project from the Review Board before taking action that would alter the historic significance or character of the historic property involved.

A copy of the Dual Review rule can be found at the following link:
<http://www.in.gov/legislative/iac/title312.html>

2-3.0 Projects Utilizing 100% State Funds

Projects utilizing 100% state funds may be “cleared” one of the following ways:

(1) If consultation with INDOT-CRO staff determines that no historic sites or structures are located in/near the project area and that no archaeological work is required because the project takes place in previously disturbed soils, no further coordination is required. An appropriate summary explanation should be prepared for inclusion in the State Categorical Exemption (CE) document.

(2) If consultation with INDOT-CRO staff determines that historic sites or structures are located in/near the project area, but they will not be adversely impacted, and that no archaeological work is required because the project takes place in previously disturbed soils, no further coordination is required. An appropriate summary explanation should be prepared for inclusion in the State CE document.

(3) If consultation with INDOT-CRO staff determines that no historic sites or structures are located in/near the project area or that historic sites or structures are located in/near the project area, but they will not be adversely impacted, but the project takes place in previously undisturbed soils and an archaeological report has been prepared, the report should be conveyed to DHPA for review and approval (after INDOT-CRO review and approval). An appropriate summary explanation should be prepared for inclusion in the State CE document and the document should not be approved without the approval letter from DHPA for the archaeological report.

Letter of Clearance

In some situations, INDOT-CRO may request that DHPA issue a Letter of Clearance ([312 IAC 20-4-11](#)) to support the determination that the project does not adversely impact a historic site or structure. For these requests, a letter of explanation and a completed COA application, along with any archaeology reports, should be conveyed to DHPA.

(5) If consultation with INDOT-CRO staff determines that historic sites or structures are located in or near the project area, and they will be adversely impacted (altered, demolished, or removed), a letter of explanation and 13 copies of the COA application should be conveyed to DHPA. Additionally, if an archaeological report has been prepared, the report should be conveyed to DHPA for review and approval (after INDOT-CRO review and approval). An appropriate summary explanation should be prepared for inclusion in the State CE document and the document should not be approved without the DHPA letter indicating the Review Board has approved the COA.

2-4.0 How to Apply for a Certificate of Approval

When a COA is required, a COA application must be submitted to the Indiana Department of Natural Resources (“DNR”), Division of Historic Preservation and Archaeology (“DHPA”), and heard by the Indiana Historic Preservation Review Board (“Review Board”). A completed COA application must be filed with DHPA on the appropriate DHPA form at least 40 days prior to the Review Board meeting at which the application is to be considered. A COA application may be downloaded at: <http://www.in.gov/dnr/historic/files/certapproval.doc>.

To be deemed filed, thirteen (13) duplicate copies of the application must be received at the DHPA office no later than 4:45 PM on the day that is 40 days prior to the date of the meeting. The Review Board typically meets on a Wednesday in the last half of January, April, July, and October. Applicants should check with DHPA to ascertain the date of the next meeting and the date on which the 40-day deadline falls (<http://www.in.gov/dnr/historic/2785.htm>).

The principal contact person and/or another representative of the COA applicant who is knowledgeable about the details of the project should plan to attend the Review Board meeting. Typically, an applicant is given a few minutes to explain the project or to highlight key points, and the Review Board members often ask questions about the application².

Based on the COA application, the DHPA’s recommendations, and any discussion during the meeting, the Review Board will take a vote on granting the COA. Typically, the COA is granted at its initial vote. However, in certain cases, the Review Board may request additional information prior to granting the COA.

INDOT’s National Register Eligible and Listed Properties

A list of state-owned National Register eligible and listed bridges can be found on the Historic Bridge Inventory website (<http://www.in.gov/indot/2531.htm>).

A list of INDOT’s garages determined eligible for the National Register can be downloaded here:

<http://www.in.gov/indot/files/HistoricContextReport.pdf>.

2-5.0 Guidelines for Emergency Work Using State Funds

Where an emergency exists and the reduction or elimination of the risk would require that a historic property be altered, demolished, or removed using, in whole or in part, state funds, then action may be taken to reduce or eliminate the risk without the actor’s previously having

¹ Legislative Services Agency website: <http://www.in.gov/legislative/iac/20090930-IR-312090774ERA.xml.pdf>

² DHPA website, <http://www.in.gov/dnr/historic/>

obtained a COA pursuant to IC§ 14-21-1-18. For the purposes of these guidelines, an “emergency” is a situation involving a state-owned historic property, where there exists either:

- (1) a demonstrable risk of harm to the health or safety of persons, or
- (2) a demonstrable risk of damage to property; and

The following conditions apply to these emergency work guidelines:

- (1) as soon as feasible after the emergency is discovered and the need to reduce or eliminate the risk is identified, the actor shall notify the DHPA in writing or by email of the emergency and the need to take action;
- (2) the actor limits the alteration, demolition, or removal of a historic property to the minimum level of action necessary to reduce or eliminate the risk posed by the emergency;
- (3) to the extent feasible, and as determined through consultation between INDOT and DHPA, character-defining historic materials and features shall be preserved by stabilization; if necessary, they shall be repaired; if they cannot be repaired, they shall be replaced with the materials of the same kind and design; if they cannot be replaced with materials of the same kind and design, then either easily-removed materials shall be substituted temporarily or materials as similar as possible to the original materials in kind and design shall be used to replace the character-defining historic materials;
- (4) after the action has been taken and prior to the next regularly scheduled Review Board meeting, the actor shall submit to the DHPA written and photographic documentation of the emergency that existed and of the nature and extent of the emergency action that was taken to alter, demolish, or remove the historic property, which the DHPA shall forward to the Review Board members; and
- (5) the actor or his, her, or its representative shall attend the next regularly scheduled Review Board meeting and shall be prepared to explain the emergency and the action taken.