

PART 2

CHAPTER 4

**Initiation of Section 106/Identification of Consulting
Parties**

August 2021

REVISIONS

August 2021	Updated links throughout document and updated list of potential consulting parties for historic bridge projects (Section 2.0)
September 2019	Section 2.0 added three potential consulting parties for historic bridge projects
August 2019	Sections 2.0 and 3.0 added Chamber of Commerce list of potential consulting parties and updated ECL submission procedures (shapefiles and providing reason project doesn't meet MPPA)
March 2019	Sections 1.0 – 3.0 updated ECL procedure, updated guidance re identifying consulting parties, other minor edits throughout
December 2017	Section 2.0 and 3.0 updated text to reflect changes in the ECL procedure, updated footnote links.

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4-1.0 Overview

The following two steps are necessary before initiating Section 106 consultation:

Step 1 - Determine if the project is a federal undertaking

An undertaking refers to a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including:

- those carried out by or on behalf of the agency;
- those carried out with federal financial assistance;
- those requiring a federal permit, license, or approval; and
- those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

Even if no federal funding is used for a project, Section 106 may apply if the project requires a federal permit, license, or approval. For example, a locally funded project requiring a permit from the Army Corps of Engineers is a federal undertaking. The procedures laid out in this Manual are specifically for Section 106 projects where FHWA is the lead federal agency. Section 106 compliance where another federal agency is lead will require coordination with that federal agency to determine their procedures.

Step 2 - Reference the Minor Projects PA to determine if the project is consistent with a Minor Projects category

If a project is consistent with a Minor Projects category then full Section 106 is not required. (Please see Chapter 3 for coordinating projects that fall under the Minor Projects categories.)

If it has been determined that a project is an undertaking and that the Minor Projects categories of the PA do not apply, then initiation of the regular Section 106 process and identification of consulting parties should commence.

Once the consultant has determined that the project is a federal undertaking and does not fall under the MPPA, the Section 106 consultation process should begin. The following steps should be followed in order:

1. Identify consulting parties (see below).
2. Prepare and submit Section 106 early coordination letter (ECL) to CRO (see below).
3. Once the ECL has been sent to consulting parties, above-ground and archaeological identification efforts can begin (see following chapters).

4-2.0 Identification of Consulting Parties

Section 106 requires that federal agencies, or their federally delegated authorities, actively consult with individuals and organizations throughout the Section 106 process. 36 CFR Section 800.2(c)(5) defines consulting parties as follows: “Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal and economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties.”

The first step in consultation is identifying and inviting the appropriate participants. Early consultation with groups or individuals who have a demonstrated interest in historic properties that may be affected by a proposed project is ideal. Inviting groups or individuals at the beginning of the process may defuse controversy and encourage communication and negotiation. These groups or individuals, known as Section 106 consulting parties, are given the opportunity to comment on the identification and evaluation of historic properties, as well as to provide their views on effects to these properties and proposed strategies to avoid, minimize, or mitigate “adverse effects.”

For transportation projects in Indiana involving FHWA funding, the following entities must be invited to become consulting parties:

- State Historic Preservation Officer (SHPO)¹
- Indian Tribes: In 2017, an agreement among FHWA, Indiana SHPO, INDOT, and Federally Recognized Tribes interested in Indiana Lands Regarding Tribal Consultation Requirements for the Indiana Federal Transportation Program was executed stipulating INDOT’s procedures for Tribal consultation (Tribal MOU). Specific consultation procedures with the Tribes are the responsibility of INDOT-CRO, though general guidance for Tribal consultation and a list of federally recognized Tribes to be invited by county are located in the [Document Section](#) of the INDOT-CRO webpage (<https://www.in.gov/indot/2521.htm>).
- Representatives of local governments with jurisdiction over the area in which the effects of an undertaking shall occur (mayors, town councils, etc.-whichever is applicable)²
- County Commissioners (all three commissioners must be invited)
- For projects with a National Historic Landmark (NHL) located within the APE, invite the Midwest Regional Office of the National Park Service. INDOT-CRO will provide current contact information when applicable.
- Metropolitan planning organizations (MPOs) with jurisdiction over the area in which the effects of an undertaking shall occur³

¹ In Indiana, the Director of the DNR is designated as the SHPO. Most of the day-to-day work of the Indiana SHPO is performed by the staff of the DHPA.

² Contact information for local governments can be found in the most recent Indiana LTAP *Directory of Indiana State, County, City, and Town Officials Responsible for Road and Street Work*: <https://docs.lib.purdue.edu/inltapdirectory/>

³ A list of the agencies that house the MPOs in Indiana can be found at http://indianampo.com/inmpo_regions.html

- Indiana Landmarks⁴
- County historian⁵
- County/city/regional/local historical societies⁶
- Other regional or local preservation organizations and related organizations;⁷
- Specialized historical organizations when resources in which they have interest are located within the APE (such as the Canal Society of Indiana, the Indiana Covered Bridge Society, etc.)⁸
- Neighborhood organizations/associations that represent historic districts within the project area
- County Highway Superintendent/Engineer
- Local Chamber of Commerce when a project takes place in a downtown commercial historic district
- Members of the public with a demonstrated legal, economic, or preservation interest
- Historic property owners when direct property impacts or planned acquisition of right-of-way occurs (regardless of effect finding) or if a finding of “adverse effect” is anticipated
- For historic bridge projects:
 - Historic Spans Task Force (Paul Brandenburg, Chair)
 - [Historic Hoosier Bridges](#)
 - [HistoricBridges.org](#)
 - [Historic Bridge Foundation](#)⁹

Individuals or organizations that have a demonstrated interest in the undertaking or a concern regarding the undertaking’s impact on historic properties may request consulting party status. The request should clearly state the applicant’s interest in the project. INDOT/FHWA practice is to grant consulting party status to any group or individual expressing legitimate interest in the Section 106 process. Granting consulting party status to a person or organization obligates the federal agency to involve the party in the Section 106 process. This includes--but is not limited to--historic property identification and effects analysis. Most importantly, if “adverse effects” to historic resources are found, then the consulting party may be consulted in the development of a Memorandum of Agreement (MOA) to minimize or mitigate these impacts.

⁴ The appropriate regional office of Indiana Landmarks can be identified at the following website: <http://www.indianalandmarks.org/regionallandmarks/regionaloffices/pages/default.aspx>.

⁵ The appropriate historian can be identified at the following website: <https://indianahistory.org/across-indiana/hometown-resources/find-who-you-need-by-county/>.

⁶ The appropriate County/City/Regional/Local Historical Societies can be identified at the following website: <https://indianahistory.org/across-indiana/hometown-resources/find-who-you-need-by-county/>.

⁷ Appropriate organizations can be identified at the following website: <http://www.indianalandmarks.org/resources/pages/indianapreservationdirectory.aspx>.

⁸ The appropriate organizations can be identified at the following website: <https://indianahistory.org/across-indiana/hometown-resources/find-who-you-need-by-county/>.

⁹ Current contact information for Mr. Brandenburg and representatives for Historic Hoosier Bridges, HistoricBridges.org, and the Historic Bridge Foundation can be obtained from CRO staff.

It should be noted that consulting parties are not decision makers—they provide information that should be considered where feasible and prudent. In fact, members of the public or Tribal representatives may know more about the cultural resources within an APE than anyone else, and they can be of great assistance in identifying historic properties. Consulting parties should be invited early in the Section 106 process, and they should be kept informed and up-to-date about changes to a project throughout the development process.

As consulting party lists are developed, please keep in mind that the resources to identify consulting parties as provided in links in this chapter are the best-known resources at the time of publication and may not be up-to-date. Other resources, as available, should also be used. A good faith effort must be made to identify and reach out to potential consulting parties.

4-3.0 Invitation to Consulting Parties / Early Coordination Letters

The next step in consultation is making contact with the consulting parties and inviting them to participate in the process in a Section 106 Early Coordination Letter (ECL). The ECL is the first piece of correspondence sent to potential consulting parties and should be distributed as early in the project development process as possible. Templates that must be used in preparing ECLs are located in Part 5-Forms (<http://www.in.gov/indot/crm/2341.htm>) of the Cultural Resources Manual.

Section 106 consultation should be initiated as early in project development as possible and before a final transportation alternative is approved. The ECL should be submitted prior to the initiation of above-ground and archaeological surveys. Preparing and submitting an ECL to CRO should be the first step that a consultant takes after they determine that the project needs Section 106 consultation and they identify potential consulting parties. Consultants should begin preparing Historic Property Reports (HPRs) and archaeological reports after they have submitted the ECL to INDOT-CRO, but they should not submit a report to INDOT-CRO until after the 30-day ECL comment period has ended. This will allow potential consulting parties—especially Tribes—to indicate if there are properties or locations of concern in the project area before an HPR or archaeological report is completed.

The early submission of an ECL is also required by the Tribal MOU, which states, “Consultation with Tribes shall begin when Section 106 consultation is initiated and before a final transportation alternative is approved.”

The amount of information conveyed at various points in the process, including the ECL, will depend upon the complexity of the project.

See Part 5- Forms for the ECL template: <http://www.in.gov/indot/crm/2341.htm>

A GIS polygon shapefile or KMZ file (shapefile preferred) of the project area should accompany all ECL submissions to INDOT-CRO. Files should contain the following text attribute field: DES_NO. The project des. no. should be entered in this field.

When emailing an ECL submission to INDOT-CRO, the consultant should state the reason(s) why the project cannot meet the conditions of the MPPA.

Once approved by INDOT, the consultant will be directed to post the ECL on INDOT's Section 106 electronic coordination website, IN SCOPE.

The early submission of the ECL generally shortens Section 106 timelines by allowing CRO to provide assistance during the identification phase and flag problematic projects early on.

ECL Consultation Procedures at a Glance:

1. Consultant prepares ECL following consultation template for all FHWA projects not exempted from Section 106 consultation through the Minor Projects PA. Consultant submits ECL to INDOT-CRO (cc'ing both the INDOT-CRO Manager and both Team Leads). INDOT-CRO reviews ECL within five (5) business days. Consultant completes all revisions requested by INDOT-CRO.
2. After approval by INDOT-CRO reviewer, consultant uploads ECL to IN SCOPE and INDOT-CRO releases document to IN SCOPE.
3. Once notified of release, consultant sends ECL to all Section 106 consulting parties (CPs) except Tribes using Section 106 Consultation Email Template and cc'ing the INDOT-CRO reviewer and both Team Leads. A copy of the ECL should be attached to the email. One email can be sent to all consulting parties. Individual emails are not necessary. A hard-copy of ECL is to be sent to SHPO at this time.¹⁰
4. INDOT-CRO reviewer or Team Lead will forward ECL notification email to Tribes. All Consulting Parties, including the Tribes, will have 30 calendar days to respond to email/IN SCOPE notifications.
5. INDOT-CRO will forward responses from Tribes to consultant for Section 106 documentation. Consultant will forward responses from non-tribal consulting parties to INDOT-CRO.

Remember:

SHPO is always a consulting party. FHWA and INDOT are not considered consulting parties. FHWA is the federal agency and INDOT is either the project sponsor (for state projects) or is providing administrative oversight (local projects).

See Part 5- [Forms \(https://www.in.gov/indot/crm/2341.htm\)](https://www.in.gov/indot/crm/2341.htm) for ECL templates and email template communicating with consulting parties.

ECLs must include a labeled topographic map clearly depicting the project area.

If project is confined to previously disturbed soils, an archaeological assessment prepared by a QP archaeologist must be included in the ECL or the HPR distribution letter.

¹⁰ All submittals to SHPO must include a DHPA review request form.

Additional parties may come forward during the Section 106 process and request to be consulting parties. Per 36 CFR § 800.3(f)(3), if the applicant agrees with the request, they shall be added to the list of consulting parties and notified accordingly. As mentioned earlier, INDOT/FHWA practice is to grant consulting party status to any group or individual with a legitimate interest who makes a formal request to become a consulting party.

As noted above, CRO will forward responses from Tribes to the consultant to include in the Section 106 documentation per 36 CFR § 800.4(d)(1), or 36 CFR § 800.5(c) or 36

CFR § 800.6(a)(3). Consultants must forward to the CRO reviewer all correspondence received from consulting parties. Consulting party correspondence should be forwarded to CRO as soon as it is received by the consultant so that CRO staff can provide guidance on any necessary responses. All correspondence to consulting parties subsequent to the ECL should be reviewed by CRO first. CRO oversight in all coordination and correspondence with consulting parties will help ensure the Section 106 process unfolds as smoothly as possible.

Please note that when preparing the appropriate documentation per 36 CFR § 800.4(d)(1), or 36 CFR § 800.5(c) or 36 CFR § 800.6(a)(3), you must provide a list of all consulting parties--including SHPO--and indicate which parties accepted consulting party status. Copies of all correspondence to and from SHPO, other consulting parties, and the public must be included. It is important to include not just the responses received from the consulting parties, but also copies of the correspondence sent by the consultants/agencies in order to show the most complete record of the consultation process. This includes all emails sent to consulting parties.

A good method of ensuring that interested members of the public have the full opportunity to become consulting parties is to devote a portion of any public information meetings/hearings to Section 106, especially for major projects. Additionally, interested members of the public can be provided ACHP's brochure, *Protecting Historic Properties: A Citizen's Guide to Section 106 Review*, which is available online at <https://www.achp.gov/sites/default/files/documents/2017-01/CitizenGuide.pdf>.

Email correspondence

While FHWA and INDOT encourage the use of email to notify consulting parties of IN SCOPE postings, if a recipient requests a hard-copy of the document or an email is not identified, then hard-copy correspondence is necessary.