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## SECTION 1800.00 – HISTORICAL, ARCHAEOLOGICAL AND CULTURAL RESOURCES

### SECTION 1810.00 - INTRODUCTION

This section includes information needed for projects that need to comply with cultural resource laws and regulations. Requirements often overlap with those for projects affecting public lands ([Section 1700.00](#)). See also [Section 2100.00](#) for related information on visual quality impacts.

**1810.01 Abbreviations and Acronyms.** Abbreviations and acronyms used in this section are listed below. Others are found in the list in [Exhibit 1800-1](#).

ACHP	Advisory Council on Historic Preservation
Highway Archaeologist	ITD HQ Section Cultural Resource Specialist
HAER	Historic American Engineering Record
ISOCD	Idaho State Office of Community Development
ISHS	Idaho State Historical Society
ISHPO or SHPO	Idaho State Historic Preservation Office/Officer
THPO	Tribal Historic Preservation Office/Officer
TCP	Traditional Cultural Property
MOU/MOA	Memorandum of Understanding/Memorandum of Agreement
NBNR	Noted But Not Recorded
NHPA	National Historic Preservation Act
NEPA	National Environmental Policy Act

### SECTION 1820.00 - APPLICABLE STATUTES AND REGULATIONS

Projects that involve federal land, money, and/or permits are subject to the principle state and federal regulations summarized below.

**1820.01 National Environmental Policy Act.** The National Environmental Policy Act (NEPA), 42 USC Section 4231, requires that all actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations such as impacts related to historic and cultural resources are given due weight in project decision-making. Federal implementing regulations are 40 CFR 1500-1508 (CEQ). CEQ rules include sections on urban quality, historical and archaeological cultural resources, and the design of the built environment. For details see Section 200.

**1820.02 National Historic Preservation Act, Section 106 and Implementing Regulations (NHPA).**

The National Historic Preservation Act of 1966, as amended (16 USC 470f, Section 106), requires federal agencies including FHWA to take into account the effects of a project on historic properties included in or eligible for inclusion in the National Register of Historic Places and, to the maximum extent possible, complete planning and actions necessary to minimize harm to any National Register eligible property. Prior to approving the project, the agency must give the Advisory Council on Historic Preservation a reasonable opportunity to comment. Finally, mitigation must be completed to resolve adverse effects to historic properties if they exist as a result of project actions

This “Section 106 process” is designed to identify potential conflicts between the historic preservation concerns and the needs of federal agency undertakings, and to resolve such conflicts. The agency official must consult with the State Historic Preservation Officer (SHPO), the Tribal Preservation Officer (THPO), and other interested persons and parties during the process. Historic properties must be adequately identified and considered. The implementing regulations of the Advisory Council on Historic Preservation, Protection of Historic Properties (36 CFR 800), focus on preservation options including avoidance, rehabilitation, modified use, marking, and relocation. New regulations took effect January 11, 2001. (<http://www.achp.gov>)

**1820.03 Department of Transportation Act, Section 4(f) and Implementing Regulations.**

Protection of certain public lands and National Register eligible or listed historic and prehistoric properties was originally mandated in Section 4(f) of the 1966 Department of Transportation Act. This section was repealed in 1983 and later codified without substantive changes as 49 USC 303. However, it is still referred to as Section 4(f) in the FHWA Environmental Procedures (23 CFR 771) and by ITD staff. Section 4(f) declares it a national policy to preserve, where possible, “the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” Highway projects can use these special lands only if there is no feasible and prudent alternative and the sponsoring agency demonstrates that all possible planning to minimize harm has been accomplished. Federal implementing regulations are at 23 CFR 771.135.

**1820.04 DOT Design, Arts, and Architecture Program.** To further implement NEPA, Sections 106 and 110 (16 USC 470(f)(h-2)) and Section 4(f), the U.S. Department of Transportation inaugurated its Design, Arts, and Architecture in Transportation Program in 1978. Outlined in DOT Order 5610.1C, revised Attachment 2, the program requires that environmental impact statements document the consideration of design quality in projects which involve public use areas or sensitive locations such as parks or historic districts.

**1820.05 Inter-modal Surface Transportation Efficiency Act (ISTEA).** ISTEA (1991) established a Transportation Enhancement Program (23 U.S.C. 101(g)-133(b)), which offers broad opportunities and federal dollars to take unique and creative actions to integrate transportation into communities and the natural environment. Eligible activities include: acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation,

preservation of abandoned railway corridors (including the conversion and use for pedestrian or bicycle trails), control and removal of outdoor advertising.

**1820.06 TEA-21 Transportation Equity Act for the 21st Century (TEA-21).** The Transportation Equity Act for the 21st Century (TEA-21) continues the national transportation policy directions established by ISTEA. TEA-21 was enacted June 9, 1998 as Public Law 105-178. TEA-21 authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period 1998- 2003. The TEA 21 Restoration Act, enacted July 22, 1998, provided technical corrections to the original law. ISTEA also mandated creation of a Scenic Byways Program (23 U.S.C. 101(g)-133(e). FHWA has set criteria for designating scenic byways, based upon their scenic, historic, recreational, cultural, archaeological, and/or natural intrinsic qualities. Click for online details, [FHWA Environmental Guidebook](#).

**1820.07 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).** On August 10, 2005, the President signed into law the SAFETEA-LU. With guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion, SAFETEA-LU represents the largest surface transportation investment in our Nation's history. The two landmark bills that brought surface transportation into the 21st century—the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21)—shaped the highway program to meet the Nation's changing transportation needs. SAFETEA-LU builds on this firm foundation, supplying the funds and refining the programmatic framework for investments needed to maintain and grow our vital transportation infrastructure.

SAFETEA-LU addresses the many challenges facing our transportation system today – challenges such as improving safety, reducing traffic congestion, improving efficiency in freight movement, increasing intermodal connectivity, and protecting the environment – as well as laying the groundwork for addressing future challenges. SAFETEA-LU promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national significance, while giving State and local transportation decision makers more flexibility for solving transportation problems in their communities.

**1820.08 Archaeological Resources Protection Act (ARPA).** The Archaeological Resources Protection Act of 1979 (ARPA) applies to archaeological resources on tribal lands and non-tribal lands under federal jurisdiction; for example: the Bureau of Land Management (BLM), National Park Services, or U.S. Army Corps of Engineers (COE). Under this legislation, ITD must apply for and obtain a permit when artifacts will be excavated or removed from Federal or Tribal lands as part of a transportation project.

#### **1820.09 Graves Protection Act.**

TITLE 27 IDAHO STATUTES  
CEMETERIES AND CREMATORIIUMS  
CHAPTER 5 - PROTECTION OF GRAVES  
27-502. PROHIBITED ACTS.

1. Except as provided in section 27-503, Idaho Code, no person shall willfully remove, mutilate, deface, injure or destroy any cairn or grave. Persons disturbing graves through inadvertence, including by construction, mining, or logging, shall cause the human remains to be re-interred. The expense for such re-interment shall be at least partially borne by the state historical society.
2. No person shall:
  - a. Possess any artifacts or human remains taken from a cairn or grave on or after
  - b. January 1, 1984, in a manner other than that authorized under section 27-503, Idaho Code.
  - c. Publicly display or exhibit any human remains.
  - d. Sell any human artifacts or human remains taken from a cairn or grave.
3. The provisions of this section do not apply to:
  - a. The possession or sale of artifacts discovered in or taken from locations other than cairns or graves or artifacts that were removed from cairns or graves by other than human action; or
  - b. Actions taken in the performance of official law enforcement duties.

**1820.10 Other Related Federal Statutes.** For references on the following federal statutes relating to historic, cultural, and archaeological resources, see the glossary, [Exhibit 1800-1](#).

- American Indian Religious Freedom Act (1978) (AIRFA)—there are currently no implementing regulations for this act. Issues must be covered by the consultation process.
- Antiquities Act (1906)
- Archaeological Resources Protection Act (1979), (ARPA)
- Native American Graves Protection and Repatriation Act (NAGPRA)

## **SECTION 1830.00 - TECHNICAL GUIDANCE**

**1830.01 FHWA.** FHWA Idaho Division has developed procedures related to Section 106 regarding their oversight and review role and required involvement/coordination with ACHP. FHWA Idaho Division has delegated authority to ITD for initial identification and evaluation of cultural resources and consultation with SHPO/THPO for compliance with Section 106 of the NHPA, in accordance with 36 CFR 800.2(a). ITD will obtain opinions of project effect to historic properties from SHPO/THPO, prepare the findings of affect, and transmit this information to FHWA for review of conformation with 36 CFR 800.

**1830.01.01 FHWA Technical Advisory.** FHWA Technical Advisory T6640.8A gives guidelines for preparing environmental and Section 4(f) documents. For guidance on

format and content of Section 4(f) evaluations for historic and archaeological sites, see the Technical Advisory on FHWA's web site at <http://www.fhwa.dot.gov/>.

**1830.01.02 FHWA Policy Paper.** FHWA Section 4(f) Policy Paper revised March 1, 2005 gives specific information on section 4(f) including a historic background and guidance on applicability, format and content. The Policy Paper can be found in the Environmental Guidebook on FHWA's web site at <http://www.environment.fhwa.dot.gov/guidebook/index.asp>.

### **1830.02 Idaho Transportation Department.**

**1830.02.01 ITD Policy.** It is ITD policy to avoid adverse impacts, where possible, to historic properties in planning, constructing, operating, or maintaining the state's transportation system. If it is not possible to avoid adverse impacts, ITD will minimize and mitigate the impacts. Unless otherwise approved by the ITD HQ cultural resources staff, the ITD policy will be implemented by the federal Section 106 and 4f review process or, in the case of state-funded projects, by an equivalent process (no Section 4(f) review will occur for projects with no federal nexus). The following procedures summarize the compliance process and may also be used for guidance by consultants preparing documents for compliance. Except where noted, these procedures apply to all projects regardless of funding source.

**1830.02.02 ITD Cultural Resource Investigations.** Consult with ITD HQ cultural resources staff early in the project development process to determine if the project meets the criteria outlined in the Programmatic Agreement (PA) updated August 2009, between the FHWA/ITD/ISHS and ACHP to determine if the project meets the exemption. If the project is included in one of the types of exempted activities listed in the PA, the ITD HQ cultural resources staff will document this determination with an ITD-1502 form. The District should coordinate with affected/interested federal, state and local agencies, tribe(s) and interested parties on the project.

If the project does not fall under the Programmatic Agreement the full Section 106/4(f) process must be followed. Early in the project development process, the District (with input from the ITD HQ cultural resources staff) can hire a qualified cultural resources consultant to complete the necessary work if HQ cultural resources staff are unavailable. The work must be conducted by a professional (consultant or in-house staff) meeting the U.S. Secretary of the Interior's standards. The District provides the professional with a full description of the proposed project and its limits—staked on the ground and mapped, if possible—so that the work can be conducted accurately. Pre-field background research through the records at the ISHS and other appropriate state and federal agencies is required.

The professional most often prepares an Archaeological and Historic Survey Report (AHSR) of the findings which:

1. Includes a description of the proposed project.
2. Identifies the project location, both in narrative and on maps, preliminary design sheets, photos and any other documentation necessary to show the boundaries of

- the area of potential effects (APE – which is determined by the HQ cultural resources staff ).
3. Describes the historic/ethnographic/prehistoric background of the area, as appropriate.
  4. Incorporates tribal input and comments if project occurs on tribal or ceded lands or involves TCPs off tribal lands.
  5. Describes the geographic setting, including topography, land use, vegetation, ground surface conditions, and soil types.
  6. Identifies any previously recorded historic and archaeological properties including TCPs within a set radius (which is determined by the HQ cultural resources staff ) of the physical disturbance of the project that are listed or eligible for listing on the National Register of Historic Places and other inventories.
  7. Identifies, documents and maps any cultural properties found as a result of the survey and includes maps, sketches, photos and other pertinent records addressing the location, scope and eligibility of identified resources. The professional completes all forms necessary for resources identified during the survey and for previously identified/reassessed sites.
  8. Provides a description of each cultural resource and its specific location, an opinion on its National Register eligibility, the project's effects on it, and, in the case of archaeological sites, whether there is a need for further testing or evaluation to determine eligibility.
  9. Identifies cultural properties less than 50 years old within the APE and Notes But Not Records (NBNR) them.
  10. Recommends possible avoidance treatment, mitigation and measures to reduce adverse effects to listed/eligible historic properties.
  11. Provides bibliographic references.
  12. Specifies types of study tasks performed (e.g., archival research, ground survey methods) and the date of the survey.

If the inventory and report have been completed by a consultant, the consultant submits three final paper copies of the Archaeological and Historic Survey Report as well as electronic copies of all documents (i.e. site forms) on a CD to the appropriate District. The District then forwards the documents copies to the HQ cultural resources staff for review. All cultural resources related documents are forwarded to ITD's HQ cultural resources staff for review and approval before submittal to SHPO/THPO. SHPO/THPO will not act on reports submitted directly by any other party. If tribal participation and input has occurred, the tribe(s) will receive copies for review and comment. The HQ cultural resources staff will coordinate the review process within federally-specified timeframes and incorporate any tribal comments received therein. Ongoing consultation throughout the 106 process and post-106 processes will ensure ITD acknowledgement of tribal concerns.



The HQ cultural resources staff reviews the survey report for accuracy and completeness. If there are revisions required, a cover letter outlining the revisions is attached to the report and returned to the consultant via the District. Copies of the cover letter are routed to the District, and internally. Re-review commences upon receipt of the revised report. The HQ cultural resources staff will review the cultural resource report in a timely manner. Should there be a request for revisions; the review period is reinstated when the revised report is received by the HQ cultural resources staff. Reviews continue until a satisfactory final report is submitted.

For state-funded projects without federal nexus (i.e., funding, permits, land use, etc.), the HQ cultural resources staff is notified. The HQ cultural resources staff reviews the project plans and determines whether a cultural resource survey is required. If a cultural resource survey is required and it is determined that significant cultural resources are present and affected, the SHPO/THPO will be consulted and, if necessary, an MOA developed. This action indicates ITD's good faith effort to identify and avoid significant cultural resources regardless of the projects 'federal-undertaking' status. Section 4(f) is not triggered by state-sponsored projects because no US DOT funds are involved

Once the SHPO/THPO and the appropriate tribes have reviewed and commented on a project, the report is forwarded to any federal agency that may be involved in the project.

**1830.02.03 Findings of Eligibility and Effect (1502).** When a report is approved, the HQ cultural resources staff evaluates the identified cultural resources for National Register eligibility using the criteria of eligibility set forth in the Section 106 regulations. Site eligibility and the extent of the project's impacts are documented on the ITD-1502 form. There are three possible effect determinations set forth in the Section 106 regulations (36 CFR 800.4 and 800.5):

1. No historic properties affected: either there are no significant properties present or there are significant properties present but the undertaking will have no effect upon them.
2. There is an effect on a historic property, but the effect is not considered adverse.
3. Historic properties are adversely affected: the project will adversely affect one or more historic properties.

The ITD-1502 form and the cultural resources report are then sent to the SHPO/THPO for review and comment. Each has 30 days to review the document and offer comments. Should either request further information or revisions from the consultant via the HQ cultural resources staff, the 30-day review period is reinstated at the time they receive the revisions.

**1830.02.04 Determination of Adverse Effect.** If listed or eligible properties will be adversely affected by the project, a Determination of Adverse Effect document is written. ITD HQ cultural resources staff will determine who completes preparation of this document (i.e. in-house, district, or consultant). While the 1502 reports the eligibility of the resources and the effect of the project upon them, the Determination of Adverse Effect elaborates on these points in a narrative and explores alternatives that avoid or minimize harm to the affected resource. This document fulfills the requirements of 36 CFR 800.6 which states that the federal agency must "consult with the SHPO/THPO and



other consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” The Determination of Adverse Effect is sent to the ACHP via the FHWA as an invitation for the ACHP to participate.

**1830.02.05 Memorandum of Agreement.** If there is an adverse effect, if the Advisory Council on Historic Preservation objects to a determination of no adverse effect, or if any consulting party and the ITD agree on stipulations placed on the project, the HQ cultural resources staff consults with the District, the FHWA, the SHPO/THPO, interested parties, and the Council to resolve these issues by means of a Memorandum of Agreement (36 CFR 800.6). In the case of an archaeological site, mitigation of adverse effects usually involves excavation of the site and preparation and publication of a report of excavation. In the case of a historic architectural property, mitigation measures can be more complex. Other measures may be appropriate and would be developed, case-by-case, in consultation with the SHPO/THPO and interested parties. Should the work not be performed by the HQ cultural resources staff, the District may initiate a request to that office for supplemental consultant work that will require additional funds and an extension of the consultant’s schedule and scope of work.

In the Determination of Adverse Effect document, ITD (Headquarters Environmental Manager and HQ cultural resources staff), FHWA, SHPO/THPO, interested parties, and the Advisory Council on Historic Preservation confer to find ways to avoid, minimize, or mitigate adverse effects. In the Memorandum of Agreement (MOA), the measures that ITD will take to minimize, avoid, or mitigate the adverse effect are outlined. ITD HQ cultural resources staff, SHPO/THPO, the Council, interested parties, and the District, prepares the MOA. The Headquarters Environmental Manager signs the MOA for ITD; it then goes to SHPO/THPO and any designated interested parties for signatures; and is then sent to FHWA to forward to the ACHP for its possible participation. The ACHP can accept the MOA, request changes, or opt to issue written comments. When the MOA is executed, ITD proceeds with the project under the terms of the MOA. The executed MOA becomes part of the project’s environmental documentation. FHWA forwards copies of the fully-signed MOA to ITD and decides if there is a need for completion of the 4(f) document. Once the 4(f) document is completed, it is forwarded to FHWA, and to other parties, as appropriate.

For state-funded projects with federal permits, ITD HQ cultural resources staff consults with SHPO and considers SHPO’s comments when determining review procedure. Determinations of Adverse Effects and MOAs made under the Section 106 review process satisfy cultural resource mitigation.

The Section 106 review process is concluded unless unexpected cultural materials are located during project construction activities. If unexpected cultural materials are located, work is halted, the area secured, and the ITD HQ cultural resources staff /SHPO/THPO is immediately contacted.

**1830.02.06 Section 4(f) Evaluation.** The Section 4(f) evaluation (required by US Department of Transportation/FHWA) is a separate analysis of impacts to cultural resources on or eligible for the National Register that could result from one or more alternatives being considered for a transportation project. The 4(f) evaluation must

identify the resources being used by the project and present and examine alternatives that avoid that use. Avoidance alternatives that do not meet the purpose and need can be discarded. **The preferred alternative must be proven to be the most prudent and feasible alternative that causes the least harm to cultural resources.**

For such projects, a **Section 106 conclusion of “no adverse effect” or “no historic properties affected” does not waive the need to prepare Section 4(f) documentation.** However, FHWA may consider this a de minimis impact under the SAFETEA-LU provisions. Applicability of ‘use’ determines the need for 4f documentation. Use occurs when land is permanently incorporated into a transportation facility, when there is a temporary occupancy of land that has an adverse effect or when the proximity of the project substantially impairs the attributes that qualify the resource for listing on the National Register of Historic Places.

For projects having a minor impact on certain types of properties or requiring the use of historic bridges, Section 4(f) requirements may be met using FHWA’s nationwide Programmatic 4(f) evaluation and approval documents. The full text of the 4(f) programmatic evaluations as well as guidance on their use can be found in the Environmental Guidebook on FHWA’s website.

These programmatic evaluations lessen the time necessary for coordination. They do not undergo the 45 day legal sufficiency review or the 45 day review by the Department of the Interior. However, the amount of documentation required to prove the necessity of use is equivalent to that required for a “regular” 4(f) evaluation.

The four Section 4(f) Programmatic types are as follows:

Historic Sites – Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites (December 23, 1986).

Historic Bridges – Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges (July 5, 1983).

Bikeways—Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects.

Public Parks—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.

### **1830.02.07 ITD Historic Bridge Procedure**

#### **Introduction**

Bridge replacement projects, like other ITD projects, must undergo the 106 and 4(f) processes. Alternatives to demolition are covered for situations where on-site preservation is not possible. The bridges covered by procedures contained herein are either listed in or eligible for listing in the National Register of Historic Places, and are part of either a federal aid highway system or a state or local highway system or are making use of Federal Aid Highway Bridge Replacement and Rehabilitation Funds. The

ITD HQ cultural resources staff maintains the Historic Bridge Inventory that is periodically updated by the Idaho SHPO.

ITD policy is to follow the principles and guidelines provided herein even when no federal funds, permits, or other assistance is required.

Many Idaho bridges are significant for their historical, architectural, or engineering features. The FHWA encourages preservation under the Intermodal Surface Transportation Efficiency Act where federal funds are available to states to rehabilitate and otherwise preserve bridges of historical and engineering significance.

In the 1980's, the Idaho State Historical Society in cooperation with ITD and the Historic American Engineering Record (HAER) of the Department of the Interior, conducted a systematic inventory of historic bridges built prior to 1945 throughout the Idaho. The inventory, which was authorized by the Surface Transportation Act of 1978 (Public Law 95-599), was funded by ITD and SHPO. An update to this initial inventory was conducted by SHPO in 2002.

### **Legislative Background**

The following laws and regulations apply directly to federal agency actions and to state or local projects that involve federal funds or permits, especially as they relate to historic bridge preservation.

*National Historic Preservation Act of 1966 (NHPA), as amended (16 USC 470, et seq.)*

*National Environmental Policy Act (NEPA), 23 CFR Part 771.*

*Section 4(f) of the Department of Transportation Act (49 USC 303)*

FHWA has developed a nationwide programmatic Section 4(f) evaluation. Details for using the programmatic Section 4(f) are contained in ITD's EP Manual Section 455.

*Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Public Law 100-17)*—This Act mandates that states give special consideration to rehabilitating, reusing, and preserving historic bridges. STURAA legislation makes funds which otherwise would have been used for bridge demolition available for actions to preserve a historic bridge or reduce the impact of a project on the historic bridge.

If a historic bridge can no longer be used on a public road, reasonable costs associated with preservation could include modification for recreational use, relocation, etc. FHWA will determine the reasonable level of funding not to exceed the estimated cost of demolition.

STURAA legislation also requires that, prior to demolition of a historic bridge, the state shall make an effort to market (sell or donate) the bridge to a state or local government agency or responsible private entity. Specifics for marketing are covered later in this section.

NOTE: Refer to Engineering Publication 2601 Right-of-Way for further guidance pertaining to any transfers or marketing of surplus historic bridges.

*Intermodal Surface Transportation Efficiency Act of 1991*

Historic bridge preservation and rehabilitation projects qualify for federal funding under several enhancement categories. Funding may be used for specific transportation projects and also for preservation activities. This legislation provides for more flexible design standards in order to preserve historic structures.

### **Preservation Alternatives**

Many historic bridges have become or are becoming structurally deficient, physically deteriorated, or functionally obsolete. In order to maintain the transportation network, these bridges must be replaced with new bridges or rehabilitated to carry out their intended function safely. Sometimes it is feasible to build a replacement bridge on a new alignment, thereby bypassing the old bridge. However, when replacement bridges must be built on an existing alignment, the old bridge is either demolished or moved to another location. Some bridges can be rehabilitated to meet modern structural standards and traffic requirements.

If a bridge remains in place, it may receive preservation treatment, it may be converted to an alternative use, or it may continue to deteriorate (the latter two scenarios may constitute an adverse effect under 36 CFR FR 800.5). Bridges can be converted to non-vehicular intermodal transportation uses such as pedestrian walkways or bikeways, or non-transportation uses such as craft centers, museums, restaurants, housing, and other architectural conversions.

Demolition should be considered the last resort. In pursuing bridge demolition, a Determination of Adverse Effect, a Memorandum of Agreement, and a 4(f) evaluation must be completed. Under Section 106, mitigation of the adverse effect of demolition can be accomplished through procedures (such as photos, historic context narratives, models, etc.) agreed upon in consultation with SHPO/THPO and the ACHP through execution of the Determination of Adverse Effect and the Memorandum of Agreement. However, under 4(f), it must be proven that demolition of the bridge is required, and that there are no feasible and prudent alternatives to its removal.

### **Basic Rehabilitation Concepts**

Each historic bridge should be evaluated on its own merits. The following concepts summarize features of rehabilitation included in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the Transportation Research Board's (TRB) Guidelines for Rehabilitation of Historic Bridges. Copies of these publications are available through ITD HQ cultural resources staff. Consider other alternatives only when on-site rehabilitation is neither feasible nor prudent.

1. Make every reasonable effort to maintain the historic bridge in useful transportation service. Give primary consideration to on-site rehabilitation.
2. Respect the historically significant qualities of a bridge, its site, and its environment. Avoid removing, concealing, or altering any historic material when possible. Avoid proposed alterations that have no historical basis and that seek to create a false historical appearance. Wherever possible, make additions or alterations in such a manner that their subsequent removal will not impair the essential form and integrity of the bridge.

3. Changes that may have taken place in the course of time may be evidence of the history and development of a bridge, its site, and its environment. Recognize and respect that these changes may have acquired significance in their own right.
4. Repair rather than replace deteriorated structural members and architectural details. If a structural replacement is a necessary, match new material to original materials being replaced in design, color, texture, and other visual qualities. Use surface cleaning techniques that will not damage historic materials.
5. If rehabilitation is not possible, consider a non-vehicular (intermodal) transportation use of the structure at its original site or at a new location. This may involve marketing the structure to a responsible party for such an adaptive use. The marketing process is required in cases where demolition is proposed as an alternative. This transfer is an adverse effect unless a contract for continued preservation is signed by SHPO/THPO and the purchaser and periodic inspection of the bridge is arranged to ensure compliance with the contract. Bridges that continue to serve transportation purposes on less demanding public roads may continue to be eligible for federal highway funding.
6. If the existing structure cannot be rehabilitated and reused, then it must be documented and replaced. Consider contemporary designs for new bridges located in historic regions and contemporary designs for proposed additions and alterations to historic bridges: these designs shall be compatible with the size, scale, visual quality, and character of the historic bridges, and environment.

### **Guidelines for Rehabilitation**

The following are guidelines for the rehabilitation of historic bridges for structural upgrading, geometric modification, and materials repair and maintenance. Budgetary constraints, geographic location, and good judgment will determine which apply.

### **Structural Upgrading**

- A. Identify the structural system and its historically significant features. Use nondestructive testing techniques.
- B. Explore passive solutions that limit the live load by restricting vehicles. Examples include load posting, signaling, and channelization.
- C. Respect the structural system and retain its visual characteristics if modifications are necessary.
  1. If possible, retain the load-carrying system in its original configuration.
  2. If possible, reduce the dead load by providing a lighter deck system.
  3. If the load-carrying system must be altered, retain the character-defining visual qualities of the original structural system. The visual impact to systems that are modified can be minimized by using structure continuity and king post truss beam reinforcement; changing the configuration of isolated members or adding helping structures; adding supplemental members under the deck of the structure.

- D. When more visually intrusive structural modifications are required, keep them as inconspicuous as possible, and try to preserve the primary view and impact only secondary views.
  - 1. Roadway travelers see traffic carrying bridges from afar, in elevation, and while traveling on the bridge deck. Make modifications with this in mind.
  - 2. Where the primary view is from below the bridge (e.g., canal bridges no longer in vehicular service), make modifications accordingly.
- E. Design modifications with the least possible loss of historic material. Do not obscure, damage, or destroy the historically significant features of the bridge.
- F. Clearly differentiate structural modifications or helping structures from the historic bridge. The design should be compatible in terms of mass, materials, scale, and detail but should not dominate the historical portion.
- G. Design and install traffic railings, or safety barriers, to avoid or minimize visual impacts to the character-defining features of the bridge.
- H. Replace deteriorated structural elements in kind or with a material that duplicates the visual appearance of the original element.

### **Geometric Modifications**

- A. Determine realistic needs for geometric parameters in light of connecting highways, projected traffic volumes, accident history, and the nature of future traffic needs.
- B. Explore passive (off-bridge) solutions.
  - 1. Adjust alignment of the approaches and/or, restrict the bridge to one-way traffic.
    - a. Create holding lanes for traffic at the approaches to a one-lane bridge with appropriate provisions for safety.
    - b. Leave the historic bridge in place for one lane of traffic and move another visually compatible historic bridge to an adjacent site to carry the second lane.
    - c. Leave the historic bridge in place for one lane of traffic and construct a visually compatible new bridge on an adjacent site for the second lane.
  - 2. Adjust the flow of approaching traffic by restricting vehicles, restricting speed, or installing signs and traffic signals.
- C. Alter the geometric configuration of the bridge to remedy geometric deficiencies.
  - 1. To increase the vertical clearance on through bridges, reduce the depth of the portal frames and sway frames, with minimal destruction of the historic materials.
  - 2. To increase the vertical clearance on grade-separation structures, raise the superstructure or lower the roadway.

3. To increase the roadway width, some types of structures can be modified (e.g., multi-girder, some concrete and stone bridges). Design modifications to be compatible with the appearance and scale of the original bridge.
  - a. Provide sidewalks external to the bridge for pedestrian safety.
  - b. Widen the bridge by cantilevering a new deck from either side of the existing structure, where structurally feasible and aesthetically and historically appropriate.

### **Materials Repair and Maintenance**

- A. Identify features that are important in defining the overall historic character of the bridge. Consult an ITD architectural historian or similar professional with expertise in historic bridge preservation/rehabilitation.
- B. Repair historic materials, if possible. If replacement of a feature is necessary, replace in kind or with a compatible substitute material.

1. Concrete: Superstructure and substructure

- a. Damage caused by drainage and vegetation

- (1) Provide proper deck drainage systems that do not damage or promote deterioration of the superstructure or substructure.
    - (2) Remove vegetation growing on bridge superstructure or substructure.

- b. Cleaning

- (1) Clean concrete only when necessary to halt deterioration or to remove heavy soiling.
    - (2) Clean concrete with the least destructive method possible.
    - (3) Use proposed cleaning method on test patches to determine long-range detrimental effect of cleaning.

- c. Crack sealing

- (1) Remove deteriorated concrete by carefully hand raking cracks to avoid damaging sound areas.
    - (2) Material used to seal cracks should match old concrete in composition, color and texture.

- d. Repair of deteriorated sections

- (1) Replace extensively deteriorated or missing features in kind or with a compatible substitute material.
    - (2) Avoid applying non-historic coatings, such as stucco, gunnite, and sealants to concrete surfaces.

2. Metals



- a. Cleaning -Identify metallic composition prior to cleaning then test in patches for least destructive cleaning method. Use the least destructive cleaning methods possible to remove paint buildup and corrosion. For example, if hand scraping and wire brushing prove ineffective, low pressure dry grit blasting may be used as long as it does not damage the structural integrity of the bridge.
  - b. Repaint with colors appropriate to the history of the bridge.
  - c. Replace deteriorated or missing decorative elements in kind or with compatible substitutes.
3. Wood
  - a. Repair historic wood features by patching or reinforcing, using recognized preservation techniques.
  - b. Replace irreparable historic wood features in kind. If replacement in kind is not possible, use substitute materials that are compatible in texture and form, and that convey the same visual appearance as the original.

### **Project Assessment, Selection of Alternatives, and Documentation**

Section 300.00 and Section 500.00 and Exhibit 300-3 of this manual provide guidance on various aspects of project scoping and development, including the environmental process and preparation of environmental documents. This process should be an effective tool for decision-making. Additional information related specifically to historic bridges follows. Contact the ITD HQ cultural resources staff for assistance.

#### ***Preliminary Assessment***

Historic bridge rehabilitation and replacement projects can be complex and sometimes controversial. A preliminary planning meeting among representatives from the offices named below may facilitate the planning process.

- A. ITD Environmental Office
- B. Bridge Section
- C. Idaho SHPO
- D. FHWA (when the project involves federal funds)
- E. Tribal Historic Preservation Officer (THPO) or other Tribal representatives

The meeting should occur after the need for the project and a proposed budget are identified. The purpose of the meeting is to discuss appropriate alternatives for the prospective project and eliminate all those that are not prudent or feasible.

#### ***Review of Alternatives***

A management review of possible alternatives, as previously discussed, should be performed to determine whether sufficient information is available to reject some alternatives. If an alternative is selected that does not adversely impact historic features of the bridge, the process is greatly simplified because Section 4(f) procedures do not apply.

A. Alternatives with adverse impacts to the historic bridge:

1. The existing bridge is demolished and replaced with a new bridge at the same location.
2. The existing bridge is marketed, bought and moved to a new location or used for an incompatible purpose.
3. The existing bridge is left in place, but the new bridge is built within view, impairing its visual characteristics.
4. Rehabilitation to the existing bridge impairs its historical integrity, as determined by procedures implementing National Historic Preservation Act.

B. Alternatives that avoid adverse impacts to the historic bridge:

1. Do nothing.
2. Build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing NHPA.
3. Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by procedures implementing NHPA.

***Determination of Adverse Effect***

Known historic properties: Conduct a cultural resource analysis of alternatives to determine the effect of the project on known historic property or properties. For historic bridges, the ITD HQ cultural resources staff assesses potential effects to the bridge according to the criteria of adverse effect.

Historic structure discovered during study: The ITD HQ cultural resources staff evaluates identified historic structures using the criteria of eligibility and effect, and consults with the SHPO/THPO and the District to consider ways to avoid or mitigate adverse effects.

The ITD HQ cultural resources staff makes a determination of effect and requests concurrence from SHPO/THPO. If the effect is adverse and there is no prudent or feasible alternative, the ITD HQ cultural resources staff, FHWA, SHPO/THPO and other interested parties develop a Memorandum of Agreement (MOA) to identify appropriate measures to mitigate adverse effects.

Determination of adverse effect: If it is determined and documented that project alternatives adversely effect the historic integrity of the bridge, a Determination of Adverse Effect detailing the effect, alternatives to that affect and why the effect cannot be avoided must be prepared. Following this, an MOA will be executed specifying measures to mitigate the adverse effects of the project on the historic bridge. The MOA will become part of the environmental document. The 4(f) completes the process, proving that there is no prudent or feasible alternative to the adverse effect.

If the decision is made to select an alternative that has no effect on the historic bridge, document the conclusion in the Final Environmental Impact Statement.

## Marketing

When a bridge must be demolished, or when rehabilitation of it will impair its historic integrity and it is listed or eligible for inclusion in the National Register of Historic Places, appropriate environmental documentation (Draft EIS or Environmental Assessment [EA], Section 4(f), Section 106) must be prepared (see [Section 1700.00](#)).

Where demolition is being considered as the preferred alternative, prepare a marketing plan (in coordination with, SHPO/THPO, FHWA, and Council) to describe availability of the bridge for other uses including nonpublic or non-motorized vehicular transportation. Incorporate provisions of the marketing plan in a proposed Memorandum of Agreement (MOA). After obtaining approval from OSC Real Estate Services, SHPO/THPO, and the Attorney General's Office, submit the MOA to FHWA for approval and forwarding to the Council. The marketing effort will normally be concurrent with preparation of the Final EIS or EA and 4(f) evaluation and should be completed at the same time as the beginning of the Final EIS. The approved MOA and results of the marketing effort are included in the revised EA and Finding of No Significant Impact (FONSI), or the Record of Decision (ROD).

The marketing plan shall:

- A. Be prepared by the current owner and contain a summary statement of the historic significance of the structure, existing structural conditions and needed repairs, estimated costs for rehabilitation alternatives, potential traffic or non-traffic uses and what preservation work is needed, structural dimensions, maintenance requirements, and location map.
- B. Describe public funding available to the recipient for relocation and/or rehabilitation work. Reasonable rehabilitation and/or relocation costs, when the bridge is to serve other than motorized public traffic, are reimbursable up to the estimated cost of demolition. Any additional cost will be the responsibility of the recipient. In other words, the FHWA and the current owner of the structure are responsible to provide funds up to the estimated cost of demolition, rehabilitation, and/or relocation. If the recipient proposes to relocate the structure for motorized use and would be eligible for federal aid, reimbursement can be made without reference to demolition.
- C. State that recipients must agree to:
  1. Provide a comprehensive plan for the preservation and future use of the structure, including any desired modification and estimated cost of rehabilitation.
  2. Maintain the structure and the features that give it historic significance according to prescribed standards.
  3. Assume all future legal and financial responsibility for the structure, including "hold harmless" agreements to the current owner, ITD, and FHWA, and the posting of a performance bond.
  4. Provide proof of their ability to assume the financial and administrative responsibilities of bridge ownership throughout its existence.

- D. Note that any bridge preserved with federal funding shall thereafter not be eligible for any other highway funds pursuant to Public Law 100-17, Section 123(f) (Historic Bridges).
- E. Provide for advertising the availability of the bridge to interested parties for at least 60 days prior to decision to remove or demolish the structure. Within the time period, potential recipients should forward proposals on the structure to the bridge owners. Longer response periods may be considered for more complex projects. Shorter periods may be possible with approval by SHPO/THPO, ITD, and FHWA.
  - 1. Develop advertisements to be placed in newspapers and other media. They should include the structure location, type, dimensions, existing condition and needed repairs, and a date by which interested parties should present their proposed plan. All ads should state the estimated cost of demolition, the availability of public funds, potential options for rehabilitation or relocation, and maintenance responsibilities.
  - 2. Submit the ad copy to ITD/FHWA for approval prior to publication in order to ensure compliance with requirements.
  - 3. Place the ads in newspapers that cover a regional area. Transportation or historic publications, trade or planning journals and electronic media should also be considered. Advertising for a minimum of three newspaper circulations, including one Sunday, and also in the area legal paper, is recommended. Send letters soliciting interest to state and local agencies, historical societies, and individuals who have expressed interest. Identify the length of time during which formal proposals will be accepted.
  - 4. In the event that no acceptable recipient is found by a good faith effort and within the established response period, the marketing requirements will be considered satisfied.

### ***HAER Recording***

The level of recordation will be determined in consultation with SHPO/THPO. For many bridges, recordation will consist of several black and white photos. However, bridges that are historically or architecturally important may need to be documented to a higher standard. HAER recordation has several levels of intensity. Again, SHPO/THPO, in consultation with the ITD HQ cultural resources staff will determine which level is appropriate. The bridge owner is responsible for providing the recordation material. That material mainly consists of the photographs, historic documentation, and plans requested by SHPO/THPO. Recording must be complete and documentation must be reviewed and accepted by SHPO prior to the beginning of construction.

### **Final Disposition**

The final disposition of the bridge will be one of the following:

- 1. Preservation in place through repair, rehabilitation, and/or adaptive reuse.
- 2. Sale/donation to a responsible party.

### 3. Documentation and demolition

#### **1830.02.08 Material Source Testing: Assessment for Cultural Resource Potential.**

Sources identified for testing will be submitted to the ITD HQ cultural resource staff for an overview prior to drilling or testing.

District Materials will submit:

- a. USGS map precisely identifying the location (Section, to the ¼, ¼, ¼, Township and Range) and haul/access road;
- b. photos of the source location including any structures (canals, bridges, buildings, etc) abutting the proposed source perimeter, and
- c. any additional narrative useful for in-house evaluation

ITD HQ Cultural Resource staff will research and evaluate:

- a. SHPO site maps for known cultural resources recorded on-site or abutting the location as well as the proposed haul/access road;
- b. photos and accompanying narrative provided by the District.

All cultural resource surveys conducted for material source sites and/or material source expansions must be submitted to the HQ Cultural Resource Office by the District Materials Engineer. Cultural resource survey reports submitted directly to the HQ Cultural Resource Office by a private material source owner will not be accepted.

**1830.02.09 Material Source Expansion.** Expanding a material source outside of or beyond its originally surveyed boundary may require a cultural resources clearance and SHPO/THPO concurrence for the area of proposed expansion. Check first with ITD HQ cultural resource staff to determine if a cultural resources survey is necessary.

**1830.02.10 Staging Areas: Section 106 Cultural Resource Survey.** *All staging, wasting, and construction areas require cultural resource clearance.* The contractor is obligated to obtain clearance once the contract has been let. Any land use involving federal funding or permitting is considered a ‘federal undertaking’ and as part of any federally-funded or permitted project, requires clearance under Section 106 and FHWA regulations. Cultural resource clearance may be issued through the existing ITD Programmatic Agreement. References National Historic Preservation Act of 1966, as amended (16 USC § 470), and the implementing regulations of the Advisory Council on Historic Preservation (ACHP), “Protection of Historic Properties” (36 CFR § 800); Section 4(f) of the U.S. Department of Transportation Act (23 USC § 138; 49 USC § 303) and its implementing regulations (23 CFR 771.135); NEPA (42 USC 4371, 40 CFR 1500). The regulations governing Section 106 are included in Appendix A.

**1830.30 Local Plans and Policies.** City and county comprehensive plans and parks and recreation plans may contain policy and plan guidance on historic resources, sites, and/or structures of local importance. Local governments may also maintain inventories of historic sites. These documents should be considered in preparing the cultural resources section of environmental documents.

## SECTION 1840.00 - TRIBAL CONSULTATION COORDINATION

Early in scoping, prior to starting the cultural resources process, ITD coordinates with the SHPO/THPO and appropriate Tribe(s) to determine potential effects to cultural properties within the project area. Meetings held on-site with the Tribes and Districts are an effective way establish tribal involvement and thereby expedite the Section 106 process.

The District provides a copy of the project documentation for each identified tribe containing a detailed project description, legal description, vicinity map, and a list of the Tribes that should be included as potential consulting parties.

If a response from the Tribe(s) is not received within thirty (30) days after the delivery date of the initiation-of-consultation letter, project development (i.e. compliance procedures preceding the cultural resources study) will be allowed to move forward. At each stage of the project, Tribes, like SHPO/THPO, have 30 days to respond regarding whether they wish to participate. They DO have the option, however, of entering consultation at a later date. *Consultation with the Tribe(s) is initiated early and continues throughout the project.* Therefore, continue to keep them informed of the project, unless they have indicated they have no interest and do not wish to be updated further.

It is federally-mandated that ITD makes a “good faith effort” to involve tribes early and continuously in the process.

36 CFR 800 stipulates tribal notification and as of 1/2001, has reiterated and considerably reinforced its earlier language that consultation take place with federally-recognized Tribes impacted by federal undertakings, not only on reservation lands, but also on ceded and aboriginal lands (Advisory Council on Historic Preservation’s website: [www.achp.gov/regs-rev04.pdf](http://www.achp.gov/regs-rev04.pdf)).

Consultation takes place for projects on and off of tribal lands, i.e., reservation, ceded, and aboriginal. Early consultation with tribes is the opportunity to identify tribal properties of importance on and off current tribal lands. Many of these sites are unknown to those outside the tribes and therefore it is important to collect information in order to determine any impact or possibility of avoidance. Further, tribal evaluation of the Section 106 report is critical prior to SHPO/THPO review. All efforts to solicit input collect information and consult must be documented and attached to the final report when it is sent to SHPO/THPO.

Federally-recognized Indian tribes are regarded as sovereign nations under federal law. FHWA initiates and carries out initial consultation with tribes. FHWA relies on the ITD to carry out day-to-day and project-specific consultation. However, FHWA still retains responsibility for the overall consultation, including conflict resolution, and adherence to all Federal requirements and related laws. Therefore, following initial ‘government-to-government’ consultation between a tribe and FHWA, ITD is responsible for initiating and maintaining a “good faith effort” (per federal language) to consult and coordinate with appropriate tribes throughout project duration.

The ITD District staff is primarily responsible for ongoing project coordination with tribes whose interests are affected by ITD projects. The STIP process is one of the first consultation avenues between ITD and tribes. Thereafter, establishing and maintaining line and technical staffing relationships for the project’s duration elevate tribal

coordination above ‘special interest group’ to that of a sovereign entity empowered with considerable legal authority,

Because each tribal government is unique in its structure and delegation of authority, there is no single protocol for tribal consultation. Satisfying the legal intent of tribal consultation prescribed by law is augmented and reinforced by developing ongoing working relationships characterized by person-to-person, face-to-face communication between districts and tribes. Once initial introduction is made by FHWA, contact is established by district officials with their tribal counterparts. District and tribal officials then identify technical staff who will work together on a project-specific or an ongoing basis. The best means of communication is negotiated according to tribal or staff preference. Again, satisfying the legal intent of tribal consultation is accomplished through mandate procedure as well as ‘good faith effort’

If Native American cultural resources are to be adversely impacted by a proposed project, the affected tribe may be invited to participate in the subsequent MOA, Determination of Adverse Effect, and FHWA 4(f) documentation. They are ‘consulting parties’ under 36 CFR 800.2 and are offered at the time of the MOA signing and again at the DOAE signing, the option to participate or not. They are constrained to the 30-day timeframe, as are all signatories.

Although every tribe is different and consultation with each will be different, the following guidelines set the course:

***1. Apply NEPA early in the process***

Both NEPA and the Code of Federal Regulations require early application of the regulations. This may be achieved in many ways. For example, annual meetings with each relevant tribe discussing general project plans for the upcoming year and/or project specific meetings at the beginning of each project are both effective ways to involve the tribes early in the process.

***2. Invite comments***

During the project, the tribes must be consulted at every step, regardless of the location of tribal cultural properties. An initial meeting with the tribes may be held, discussing the particulars of the project. On site discussions are also effective in getting tribal input.

***a. Identify historic properties (36 CFR 800.4)***

The first step in the 106 process, this is part of the cultural resources report. Results from the initial meetings and/or on-site discussions can be incorporated into the report, and the report sent to them for review and concurrence.

***b. Assess adverse effects (36 CFR 800.5)***

As with the identification step, the opinion of the tribes on the effects of the project can be gained during the on-site discussion/project meeting. Their opinion of effect can then be incorporated into the report, and the report sent to them for review and concurrence.



**c. *Resolution of adverse effects (36 CFR 800.6)***

The tribes must be included in the resolution of adverse effects. The consultation to resolve adverse effects between ITD, FHWA, SHPO/THPO, the tribes and any other consulting party is accomplished via the Determination of Adverse Effect. A longer discussion than the 1502 (Determination of Eligibility and Effect), this document details the eligible property and the nature of the adverse effect, and seeks ways to avoid or minimize the adverse effect. If avoidance is not possible, it describes the ways in which that effect will be mitigated. Like the cultural resources report, the Determination of Adverse Effect must be sent to the relevant tribes for review and concurrence.

**d. *Memorandum of Agreement [36 CFR 800.6(c)]***

In this step, the role of the tribes differs according to the location of the cultural resources. When historic properties are located on Tribal lands, the tribes must be consulted in addition to and on the same basis as SHPO/THPO. This gives them the rights of a signatory, and they must be invited to sign the memorandum of agreement. When properties important to a tribe are located off tribal lands, they are a consulting party, and, although they must be consulted at every step of the project, they are not required to sign the memorandum of agreement. They may be invited to sign if the District so wishes.

At each step, the tribes receive 30 days to review and comment. Whether or not tribes choose to respond, the District keeps a record of its attempts to contact the tribes. Copies of letters, phone logs and signed documents (if any) are necessary to establish the “good faith effort” carried out by the District.

**3. *Implementing Laws***

**a. *National Environmental Policy Act of 1969, 40 CFR 1500***

**1501.2 Apply NEPA early in the process:**

**(d)(2):** “The Federal agency consults early with appropriate State and local agencies and Indian tribes...” Since 1969, NEPA has required earliest possible *tribal* notification of projects occurring on reservation land.

**1502.16 Environmental consequences:**

**(c):** Environmental impact statements must include a discussion on “Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (*and in the case of a reservation, Indian tribe*) land use plans, policies and controls for the area concerned.”

**1503.1 Inviting Comments:**

**(a)** “After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall: **(2)** request the comments of: **(ii)** Indian tribes, when the effects may be on a reservation.”

**b. The National Historic Preservation Act 1966 Section 101**

**(d)(2):** “a tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3) of this section, with respect to tribal lands”

**(d)(6)(A):** Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

**(d)(6)(B):** In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

**Section 110(a)(2)(D):** The agency’s preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector;

- c. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA):** establishes consultation requirements (43 CFR 10) that may affect or be affected by consultation pursuant to section 106 of the NHPA concerning activities on Federal and Tribal lands that could affect human remains and cultural items. The Archaeological Resources Protection Act of 1979 and its uniform regulations also require consultation with tribes and provide a formal process of notification (16 U.S.C. 470cc-dd);

**d. 36 CFR 800—Protection of Historic Properties:**

**36 CFR 800.2 Participants in the Section 106 process (c)(2)(B): Tribes that have not assumed THPO functions:** When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

**(c)(2)(B)(ii): Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations:** Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or native Hawaiian organization shall be a consulting party.

**(c)(2)(B)(ii)(A):** The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

**(c)(2)(B)(ii)(D):** When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process.

**36 CFR 800.3 Initiation of the Section 106 process:**

**(d): Consultation on tribal lands:** Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO.

**(f)(2):** Involving Indian tribes and Native Hawaiian organizations: The agency official shall make a reasonable and good faith effort to identify any Indian Tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

**36 CFR 800.4 Identification of historic properties:**

**(f)(4):** Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to Sec 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.

**36 CFR 800.5 Assessment of adverse effects:**

**(a):** Apply criteria of Adverse Effect. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

**(c)(2)(ii):** The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it

attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

**36 CFR 800.6 Resolution of adverse effects:**

**(a):** Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties

**(c)(2)(ii):** The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

**(3):** Concurrence by others: The agency official may invite all consulting parties to concur in the memorandum of agreement. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

- e. **Executive Order #13175 (11/2000)** also calls for “regular and meaningful consultation and collaboration” with Indian tribal governments. In cases where a THPO is in authority, all cultural resource review for ITD projects taking place on that THPO’s reservation are subject to the THPO’s authority: THPO authority will replace that of the Idaho SHPO.

***References***

‘General Procedural Guidance for Native American Consultation’, BLM 1994. These two federal agencies have long been active in tribal consultation and offer time-tested definitions of ‘line officer’, ‘technical staff’, and their functional parallels among tribal staff.

‘National Resource Book on American Indian and Alaska Native Relations’ USFS 1997  
FHWA Idaho Division Office’s 1/19/2000 letter—defines the tribal consultation role among transportation entities in Idaho

‘Consultation with Indian Tribes in the Section 106 Review Process’, ACHP website. The Advisory Council on Historic Preservation’s website, <http://www.achp.gov/>, offers bulletins and guides specifically pertaining to consultation issues.

**SECTION 1850.00 - TRANSPORTATION ENHANCEMENT (TEA) ACTIVITIES**

These projects must undergo the 106 process, however, because most projects advanced as enhancement activities should benefit the preservation of historic properties, their process can be expedited. The National Programmatic Agreement among the Federal Highway Administration (FHWA), National Conference of State Historic Preservation Officers (SHPOs), and the Advisory Council on Historic Preservation (ACHP) for

Implementation of Transportation Enhancement Activities (June 11, 1997), describes the cultural resource review process applied to transportation enhancement activities. This agreement is intended to reduce the time spent by state transportation agencies in implementing transportation enhancement activities, including historic preservation projects. However, the agreement is not mandatory, and state agencies are authorized to develop their own agreements.

### **SECTION 1860.00 - PERMITS**

#### **1. Archaeological Resources Protection Act Permit**

This permit may be needed for cultural resource survey actions on both federal and tribal lands. Check with ITD HQ cultural resources staff to see if this permit is needed.

#### **2. Historic Resources (Historic Structures)**

No specific permits are required; however, close agency coordination is required on studies, documentation of impacts, possible mitigation, and project construction. (Note: ARPA includes cultural resources).

### **SECTION 1870.00 - NON-ROAD PROJECT REQUIREMENTS**

Rail, airport, or non-motorized transport systems are generally subject to the same policies, procedures, or permits that apply to road systems.

## SECTION 1880.00 - EXHIBITS

### ***Exhibit 1800-1 Glossary of Historic and Archaeological Cultural Resources***

**Adverse Effect** – Occurs when an undertaking alters, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the property’s integrity. [Criteria of Adverse Effect: 36 CFR 800.5(a)1.]

**Advisory Council on Historic Preservation** – An independent federal agency, established under the NHPA, which: (1) advises the President and Congress on matters of historic preservation; (2) carries out Section 106 reviews; and 3) provides technical assistance in historic preservation actions.

**American Indian Religious Freedom Act** – Requires federal agencies and their representatives to consult with native groups (American Indians, Eskimos, Aleuts, and Native Hawaiians) “to protect and preserve Native American religious cultural rights and practices.” [PL 95-341, 1978; 92 Stat. 469.]

**Antiquities Act** – Protects archaeological resources on federal lands, and establishes a permitting system for legal removal of materials. Most provisions have been superseded by the Archaeological Resources Protection Act; thus “antiquities” permits have become “ARPA” permits. [Antiquities Act: 16 USC 431, 1906.]

**Archaeological and Historic Preservation Act** – Addresses mitigation for cultural resources to be lost due to federal actions. Most often invoked after decisions for a federal project are reached through the Section 106 process, that is in “late discover” situations whereby the Secretary of the Interior may prescribe mitigation measures without consulting the Advisory Council. The Act also authorizes federal agencies to spend up to 1% on cultural resources work of the total cost of a construction project. [16 USC 469; PL 93-291, 1974.]

**Archaeological Resources Protection Act** – Establishes permitting process for archaeological excavation on federal land. Required “ARPA” permit applicants to demonstrate: (1) qualifications; (2) activity to be done to further archaeological knowledge; (3) curation plan for recovered artifacts. Requires the federal land manager to notify Indian tribes of possible harm to sites having religious or cultural importance. Prohibits unauthorized excavation, removal, or defacement of archaeological resources, and sets civil penalties. [16 USC 470; PL 96-95 1979; Implementing regulations: 43 CFR 3.]

**Area of Potential Effects (APE)** – The geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. APE should be defined before historic properties are identified. APE is not defined on the basis of land ownership, and should be determined based upon the potential direct and indirect effects of a project. [36 CFR 800.16 (d).]

**Certified Historic Structure** – A depreciable building or structure which is either listed in the National Register or located in a National Register Historic District, or in a state-

or local designated historic district, and certified by the Secretary of the Interior as being of historical significance to (i.e., a contributing element in) the district. [36 CFR 67.2.]

**Certified Local Governments (CLGs)** – Local government historic preservation entities participating in the national historic preservation program, certified by the SHPO.

Existence may afford property owners in the CLG jurisdiction the opportunity to participate in local (state, county, etc.) preservation incentives (e.g., tax incentives).

**Certified Rehabilitation** – On a certified historic property, work that is certified by the Secretary of the Interior as being consistent with the historic character of the property and, where applicable, with the district in which it is located. [36 CFR 67.2.]

**Contributing Element (or Resource)** – A building, site, structure, or object that adds to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because: (a) it was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding important information about the period; or (b) it independently meets the National Register criteria. See National Register Bulletin 16A, p. 16.

**Council (Advisory Council on Historic Preservation)** – An independent federal agency that administers the Section 106 review process.

**Criteria for Evaluation (National Register Eligibility Criteria)** – Standards used for determining the eligibility of properties for inclusion in the National Register of Historic Places. [36 CFR 60.4(a-d)]. See National Register Bulletin 15, section II.

**Cultural Landscape** – Also known as Rural Historic Landscape or Historic Landscape. A geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features. See National Register Bulletin 30 and C.A. Birnbaum and C.C. Peters, The Secretary of the Interior's Standards for the Treatment of Historic Properties, with Guidelines for the Treatment of Cultural Landscapes, NPS, GPO, Idaho, D.C., 1996.

**Cultural Resource** – A place, object, or event that is important to a community or region's history, traditions, beliefs, customs, or social institutions.

**Cultural Resource Specialist** – A ITD employee at the HQ Environmental Section who conducts regulatory compliance procedures and advises department staff on policies relating to items of historic/archaeology significance that may be affected by a project.

**Cultural Resources Management** – The body of laws and regulations pertaining to historic, archaeological, and cultural properties, and the manner in which those directives are implemented.

**Data Recovery Plan** – A plan developed in consultation with the SHPO and interested parties for conducting research, gathering information, and documenting an historic property that will be adversely affected by an ITD project.

**De minimis Section 4(f) Impact** - The de minimis impact criteria and associated determination requirements specified in Section 6009(a) of SAFETEA-LU are different for historic sites than for parks, recreation areas, and wildlife and waterfowl refuges. De



minimis impacts related to historic sites are defined as the determination of either “no adverse effect” or “no historic properties affected” in compliance with Section 106 of the National Historic Preservation Act (NHPA). De minimis impacts on publicly owned parks, recreation areas, and wildlife and waterfowl refuges are defined as those that do not “adversely affect the activities, features and attributes” of the Section 4(f) resource.

**Department of Transportation Act – Section 4(f)** - A Federal regulation stating that FHWA may not approve the use of land from a significant publicly owned public park, recreation area or wildlife and waterfowl refuge, or any significant historic or prehistoric site unless it is determined that there is no prudent and feasible alternative and the action includes all possible planning to minimize harm. [49 USC 303, 1966, recodified 1983.]

**Designed Historic Landscape** – A landscape that has significance as a design or work of art; that was consciously designed and laid out to a design principle or recognized style or tradition; that has an historical association with a significant person, trend, or event in landscape architecture; or that has a significant relationship to the theory or practice of landscape architecture. See National Register Bulletin 18.

**Determination of Adverse Effect** – A finding, by a federal agency in consultation with SHPO, pursuant to compliance with Section 106, that a proposed undertaking will have an effect on historic properties. If an effect is identified, the Criteria of Adverse Effect is applied to determine potential adverse effects. Other possibilities are determinations of No Effects and No Adverse Effect.

**Determination of Eligibility** – Formal recognition (by the SHPO, state Advisory Council, the Keeper of the National Register, or an agency) of a property’s eligibility for inclusion, but not actual listing, in the National Register of Historic Places.

**District** – A significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. May be an archaeological or historic district, or may contain elements of both.

**Easement (Preservation Easement)** – An agreement between a private property owner and a public body obligating the owner and future owners to preserve historic features of the property. The owner surrenders opportunities for development potential at “fair market value” for income, estate, and gift tax benefits of equal value.

**Economic Recovery Tax Act of 1981 (ERTA)** – Establishes the Investment Tax Credit (ITC) program for rehabilitation of older buildings, including certified historic buildings (see definition). [PL 97-34] Amended by the Tax Reform Act of 1986.

**Effect** – Occurs when an undertaking may alter characteristics that qualify a property for inclusion in the National Register. [Criteria of Effect: 36 CFR 800.5(a)1.]

**Eligible** – A property is eligible for inclusion in the National Register of Historic Places if it meets the National Register Criteria (see How to Apply the National Register Criteria for Evaluation, NR Bulletin 15).

**Environmental Impact Statement (EIS)** – Required by NEPA, to include identification of known cultural resources in a federal or Idaho State project area and disclosure of potential impacts.

**Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** – Requires federal agencies to identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Section 6-606 requires consultation with federally recognized tribes to “coordinate steps” to pursue compliance with this executive order. [42 USC 4321.]

**Executive Order 13006** – Requires federal government to “utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central business areas ... when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts.... Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties.” (1996)

**Executive Order 13007** – Requires federal agencies, “to the extent practicable, [to] (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.” (1996)

**FONSI** – Finding of No Significant Impact.

**Historic American Building Survey (HABS) and Historic American Engineering Record (HAER)** – The historical architectural and engineering programs of the National Park Service that promote preservation through documentation of significant structures. HABS/HAER documentation can be sponsored by NPA, individuals, or organizations, but often is completed by agencies pursuant to Sections 106 or 110(b) of the National Historic Preservation Act. Those HABS/HAER mitigation projects record properties to be demolished or substantially altered as a result of agency action or assisted action.

**Historic Context** – A body of information about historic properties organized by theme, place, and time. It is the organization of information about prehistory and history according to the states of development occurring at various times and places. See NR Bulletin 15 section V.

**Historic Preservation** – Identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities relating to historic properties. [16 USC 470w(8)]

**Historic Property** – A property or cultural resource that is listed in or eligible for listing in the National Register or in state and local historic registers. Historic properties may be buildings or other structures, objects, sites, districts, archaeological resources, landscapes or traditional cultural properties.

**Integrity** – The authenticity if a property’s historic identity, evidenced by the survival of physical characteristics that existed during the property’s historic or prehistoric period. Historic integrity is the composite of seven qualities: location, design, setting, materials, workmanship, feeling and association. (See National Register Bulletin 15, Section VIII).

**Investment Tax Credit (ITC)** – Credit granted by the federal government against tax liability for the certified rehabilitation of buildings for income-producing purposes. Made available by the **Economic Recovery Tax Act of 1981**.

**ISTEA (Intermodal Surface Transportation Efficiency Act of 1991)** – A national act that provides funding for historic bridge preservation and rehabilitation projects and provides for more flexible design standards in order to preserve historic structures.

**Keeper of the National Register** – Maintains the **National Register of Historic Places**, and makes final decisions on listing of properties nominated to the National Register.

**Management Plan** – Typically addresses appropriate treatments and preservation strategies for managing historic properties. Often included as an item in a Programmatic Agreement.

**Memorandum of Agreement (MOA)** – A formalization of the means of resolving adverse effects agreed upon by the consulting parties, serving to specify mitigation, identify responsibility, render Advisory Council comment, and acknowledge effects of the undertaking on historic properties. May also be a Programmatic Agreement (PA).

**Mitigation Measures** – Actions required to mitigate the adverse effects of a project on historic properties. Usually stipulated in an MOA/PA.

**Multiple Property Nomination** – A registration of several significant properties linked by a common property type or historic context. Submitted to SHPO and NPS on National Register Multiple Property Documentation Forms (NPS 10-900-b), known as “MPDs.” See National Register Bulletin 16B.

**National Environmental Policy Act (NEPA)** – Creates a national policy for environmental protection to include the cultural environment. Requires federal agencies sponsoring projects to identify cultural resources and disclose potential impacts in Environmental Assessments (EA) or Environmental Impact Statements (EIS). Requires that all federal laws and regulations “be interpreted and administered in accordance with the policies set forth in this chapter; triggers Section 106 compliance.” [PL 91-190, 42 USC 4321-4347, 1969.]

**National Historic Landmark** – Historic properties of national significance, established by the Historic Sites Act of 1935 [PL 74-292]. NHLs are also listed in the National Register. [National Historic Landmark Program, 36 CFR 65.]

**National Historic Preservation Act (NHPA)** – Establishes a national policy for historic preservation, the National Register of Historic Places, SHPOs, the Advisory Council on Historic Preservation, CLGs, and other programs. Contains Sections 106 and 110 (see definitions). [16 USC 470, PL 89-655, 1966, amended 1976, 1980, 1992.]

**National Register of Historic Places** – The nation’s official listing of properties significant in national, state and/or local history, meeting one or more criteria for evaluation (36 CFR 60.4). Listing is commemorative, but may require compliance by property owners with federal/state/local laws and regulations. May also provide private property owners with opportunities to take advantage of preservation incentives, such as easements and tax relief.

**Native American Graves Protection and Repatriation Act (NAGPRA)** – Provides American Indians, Native Hawaiians, and Native Alaskans a formal role in activities occurring on federal and tribal lands that may affect archaeological resources. Mitigation actions developed pursuant to Section 106 of the NHPA, and the disposition of human remains, must meet with the approval of appropriate tribal authorities. Inadvertent discovery of human remains and other cultural materials requires immediate “reasonable” protection of the items and a 30-day suspension of project-related activities. NAGPRA also sets forth a process for repatriation of human remains, and: funerary and sacred objects, and items of “cultural patrimony” and provides penalties for illegally trafficking in same. [PL 101-601; 104 Stat. 3048.]

**Nomination** – Official request to have a property listed in the National Register. Documentation is placed on a National Register of Historic Places Registration Form (NPS 10-900) and submitted to the CLG (if appropriate), the SHPO, and the Keeper of the National Register.

**Non-contributing Element** – A building, site, structure, or object that does not add to the historic architectural qualities, historic associations or archaeological values for which a property is significant because: (a) it was not present during the period of significance; (b) due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period, or (c) it does not independently meet the National Register criteria. (See National Register Bulletin 16A, Part III).

**Not Eligible** – A property is not eligible for inclusion in the National Register of Historic Places if it does not meet the National Register Criteria (see How to Apply the National Register Criteria for Evaluation, NR Bulletin 15).

**Object** – A construction primarily artistic in nature or relatively small in scale.

**Patent** – Legal title to real property. Granted by the federal government for parcels of the public domain when alienation occurs as the result of homesteading or similar action.

**Preservation** – the act or process of applying measures necessary to sustain the existing form, integrity and materials of a historic property.

**Programmatic Agreement (PA)** – An agreement typically developed for a large or complex project or types of undertakings that would otherwise require a number of individual actions under Section 106, especially when effects on historic properties are repetitive or multi-state or national in scope; or when effects cannot be fully determined prior to project approval; or when effects consist of routine maintenance of historic properties. Management Plans are often stipulated in PAs. [36 CFR 800.13(a).]

**Property Type** – Historic properties sharing physical or associative characteristics.

**Protection of Historic and Cultural Properties (36 CFR 800)** – Federal regulations implementing Section 106 of the National Historic Preservation Act.

**Reconstruction** – The process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

**Registration Requirements** – Attributes of significance and integrity qualifying a property for listing in the National Register; especially important in establishing eligibility for each property type in Multiple Property submissions.

**Rehabilitation** – The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values. [36 CFR 67.2]

**Request for Proposal (RFP)** – Issued by agencies soliciting contracted cultural resource studies.

**Restoration** – The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

**Rural Historic Landscape** – A geographic area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features.

**Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)** – A national act which promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national significance, while giving State and local transportation decision makers more flexibility for solving transportation problems in their communities.

**Secretary of the Interior's Standards (for Preservation, Rehabilitation, Restoration or Reconstruction)** – Sets of general rules outlining the appropriate methods to use on historic properties under each level of treatment.

**Section 4(f)** – Requirement in the Department of Transportation Act of 1966 that federally-funded highway projects may use publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site only if: no prudent and feasible alternatives exist and the project includes all possible planning to minimize harm. [Also appeared in the Federal-Aid Highway Act of 1968; recodified in 49 USC 303, 1983.] See EPM, [Section 1700.00](#).

**Section 106 Review** – Section 106 of the Advisory Council's regulations (36 CFR Part 800), which implements the National Historic Preservation Act of 1966, as amended. This is the federal review process that ensures that historic properties are considered during federal aid project planning and execution. Section 106 applies to historic properties that are listed and those that have not yet been listed or formally determined to be eligible for listing; even properties that have not yet been discovered (such as archaeological sites) are subject to Section 106 review.

**Section 110** – Section in the National Historic Preservation Act of 1966 assigning broad responsibilities to federal agencies to designate an agency preservation officer, locate and nominate properties to the National Register, record historic properties that must be altered or destroyed and undertake preservation as well as other responsibilities. [16 USC 470h-2.]

**Section 304** – Section of the National Historic Preservation Act of 1966, as amended in 1992, directing federal agencies or other public officials receiving federal grant assistance to withhold from disclosure to the public, information regarding the location, character, or ownership of an historic resource if that disclosure may: (1) cause invasion of privacy; (2) risk harm to the resource; or (3) impede the use of a traditional religious site by practitioners. Section 304 serves as an exemption from disclosure requirements of the Freedom of Information Act.

**Section 404 Permit** – Requirement of the Clean Water Act of 1977, as amended, for modification of wetlands, and for dredging and filling of navigable waterways. [33 USC 1344.] Requires compliance with Section 106 of the National Historic Preservation Act.

**Setting** – Quality of integrity applying to the physical environment of an historic property.

**Site** – The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure.

**State Historic Preservation Officer (SHPO)** – Coordinates preservation activities in each state; one SHPO per state is appointed, usually by the governor. SHPO is charged with reflecting the interests of the state and its citizens in preserving their cultural heritage, which involves a variety of responsibilities. [36 CFR 61.4(b).] In Idaho State, SHPO is housed in the Office of Archaeology and Historic Preservation (ISHS).

**Structure** – Functional constructions made usually for purposes other than creating shelter.

**STURAA (Surface Transportation and Uniform Relocation Assistance Act of 1987)**  
A national act that mandates states to give special consideration to rehabilitating, reusing, and preserving historic bridges.

**Tax Reform Act (TRA) of 1986** – Amended the Economic Recovery Tax Act of 1981 (see definition) reducing: (1) to 20% of the ITC (see definition) allowable for rehabilitation costs for certified historic structures (see definition); and (2) to 10% of the ITC allowable for buildings first placed in service before 1936. [PL 99-514.]

**TEA 21** – Transportation Equity Act for the 21st Century (PL 105-178), continues national transportation policy directions established by ISTEA. (1998)

**Traditional Cultural Property** – A place eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that are (a) rooted in that community's history, and (b) important in maintaining the continuing cultural identity of the community. The concept is based upon the introductory section of the National Historic Preservation Act, which states "the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people." [16 USC 470(b)(2)] See National Register Bulletin 38. Authorized by the 1992 Amendments to the National Historic Preservation Act. [Section 101(d)(6)(A).]

**Tribal Historic Preservation Officer (THPO)** – Authorized by the 1992 Amendments to the national Historic Preservation Act. When approved by NPS, Tribal HPO replaces SHPO in compliance process on “tribal” lands. [Section 101(d)(2).]

**Undertaking** – Undertaking means 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 a Federal 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. [36 CFR 800.16]

**Universal Transverse Mercator (UTM) Grid System** – Method for locating historic properties using USGS maps and measurements cited in linear, decimal units. Measurements are referred to as “UTMs.”

**Use** – A 4(f) term that occurs when land is permanently incorporated into a transportation facility, when there is a temporary occupancy of land that is adverse or when there is a constructive use of land.



**Exhibit 1800-2 FHWA Memo - Guidance for Determining De minimis**

# Memorandum

**Sent Via E-mail**

Subject: **ACTION:** Guidance for Determining *De Minimis*  
Impacts to Section 4(f) Resources

Date: December 13, 2005

**Original Signed by:**

From: Cynthia J. Burbank  
Associate Administrator, Planning, Environment  
and Realty, FHWA  
Brigid Hynes-Cherin, Associate Administrator  
for Planning and Environment, FTA

Reply to  
Attn. of:  
HEPE

To: FHWA Division Administrators  
FTA Regional Administrators

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, amended existing Section 4(f) legislation at Section 138 of Title 23 and Section 303 of Title 49, United States Code, to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This is the first substantive revision of Section 4(f) legislation since passage of the U.S. Department of Transportation Act of 1966. This revision provides that once the U.S. Department of Transportation (DOT) determines that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete.

Section 6009(c) of SAFETEA-LU requires the U.S. DOT to conduct a study and issue a report on the implementation of the new Section 4(f) provisions. The study will include evaluation of: 1) the implementation processes developed and the resulting efficiencies; 2) the post-construction effectiveness of any impact mitigation and avoidance commitments adopted as part of the projects; and 3) the number of projects determined to have *de minimis* impacts, including information on the location, size, and cost of the projects. The initial study and report will address the first three years of implementation. The Federal Highway Administration (FHWA) Division and Federal Transit Administration (FTA) Regional Offices should maintain a record of the projects for which *de minimis* findings were made and track the progress of those projects in order to facilitate the future evaluation of the post construction effectiveness of any commitments of mitigation made as part of the *de minimis* finding. Additional guidance and information regarding the study and report will be provided in the future.



## Exhibit 1800-3

### FIRST AMENDED (APPENDIX A REVISED 8/09) PROGRAMMATIC AGREEMENT

Among the Federal Highway Administration,  
The Idaho Transportation Department,  
The Advisory Council on Historic Preservation,  
And the Idaho State Historic Preservation Office  
Regarding Minor Highway Improvement Projects

WHEREAS, the Federal Highway Administration (FHWA) provides funding for various transportation projects under the Federal-Aid Highway Program, administered throughout the State of Idaho by the Idaho Transportation Department (ITD), as authorized by 23 USC 101, et seq.; and

WHEREAS, in order to streamline consultation under Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470f), a Programmatic Agreement (PA) for minor highway improvement projects was executed among the FHWA, ITD, Idaho State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) on December 22, 2000; and

WHEREAS, the parties to the PA have agreed to amend the minor projects PA to clarify its procedural requirements and to revise the list of minor transportation projects that will be exempt from review by the Idaho SHPO, FHWA, and the ACHP; and

WHEREAS, to execute this amendment, the FHWA and ITD have consulted with the Idaho SHPO and the ACHP pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA; and

WHEREAS, the parties agree that undertakings covered by this PA have no potential to affect properties of traditional religious and cultural significance to Indian tribes, and in the unlikely event that such properties are identified or discovered in the area of potential effects for an undertaking, FHWA shall consult with Indian tribes and other parties in accordance with 36 CFR Part 800;

NOW THEREFORE, the FHWA, ITD, the ACHP, and the Idaho SHPO agree that minor transportation improvement projects shall be administered in accordance with the following stipulations to satisfy the FHWA's Section 106 responsibility for all individual projects of the program.

#### **Stipulations**

The FHWA shall ensure that the following measures are carried out:

- I. For all Federal-Aid projects, ITD will initiate the section 106 process by determining whether the undertaking has the potential to cause effects to historic properties, and carry out the requirements of 36 CFR 800.4 to identify historic properties that might be affected by the undertaking.
- II. Certain minor highway improvement projects, as defined in Appendix A, Section III, have been determined unlikely to effect to historic properties.

Those undertakings identified in Appendix A, Section III will not require review by FHWA, the Idaho SHPO, or the ACHP, except as noted in Section I of Appendix A.

- III. The ITD Headquarters (HQ) Cultural Resources staff will review all projects to determine whether they meet the requirements in Appendix A for exemption from review. If ITD HQ determines that the undertaking does not meet the requirements for exemption, it will so notify FHWA and FHWA shall carry out the requirements of 36 CFR Part 800 for that undertaking.
- IV. All other federally-funded projects not listed in Appendix A attached to this Agreement shall be subject to Section 106 and its implementing regulations, 36 CFR Part 800.
- V. The ITD will prepare an annual summary report of cultural resource projects completed during the previous calendar year. Those projects considered under this Agreement, but handled through 36 CFR Part 800 as exceptions under Section III of the Appendix A, will also be included. ITD shall submit the report to FHWA and SHPO no later than the close of each calendar year, and this report may be contained with ITD's Annual Report presently submitted to SHPO. The report shall include for each project a brief project description, location including county, highway district and map position, and a description of any cultural resources inventory completed, historic properties identified, and National Register evaluations completed.
- VI. The ITD will monitor a minimum of 10% of the projects carried out under this Agreement to ensure that actual construction was the same as that proposed under the project description. If monitoring indicates that certain types of projects may not warrant inclusion in this Agreement, their status may be reviewed by the parties to this Agreement.
- VII. The Council and the SHPO may monitor activities carried out pursuant to this Agreement, and the Council will review such activities if so requested. The FHWA will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.
- VIII. Any party to this Agreement may request in writing that it be amended, whereupon the parties will consult to consider such amendment.
- IX. Any party to this Agreement may request a revision to Appendix A. Revisions to Appendix A may be made and will go into effect upon the written agreement of the signatories to this PA. Such revisions do not require that this PA be formally amended; however, ITD shall provide a clean copy of the revised Appendix A, clearly identifying the date it became effective, to the signatories for their files.
- X. Should the SHPO or Council object to any actions proposed pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall request the views of the Council pursuant to 36 CFR 800.2(b)(2) or 800.9(a). Any Council comment provided in response to such a request



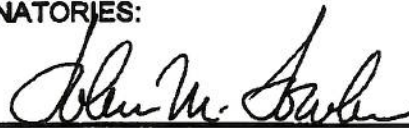
will be taken into account by the FHWA with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

- XI. Any party to this Agreement may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreements or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR Part 800 with regard to individual undertakings covered by this Agreement.
- XII. In the event the FHWA does not carry out the terms of this Agreement, the FHWA will comply with 36 CFR Part 800 with regard to individual undertakings covered by this Agreement.

This amended PA encompasses the entire agreement among the parties and replaces the PA regarding minor transportation projects executed among the FHWA, ITD, SHPO and ACHP on December 22, 2002.

EXECUTION AND IMPLEMENTATION of this amended PA evidences that the FHWA has afforded the ACHP a reasonable opportunity to comment on the undertakings subject to this PA and that the FHWA has taken into account the effects of its subject undertakings on historic properties.

SIGNATORIES:

  
\_\_\_\_\_  
Advisory Council on Historic Preservation  
John M. Fowler, Executive Director


8/4/06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Federal Highway Administration

8/2/06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Idaho State Historic Preservation Officer

7/28/06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Idaho Transportation Department

7-21-06  
\_\_\_\_\_  
Date

## **APPENDIX A**

### **I. Project Review – Minor Transportation Projects**

The majority of ITD Minor Transportation Projects are unlikely to affect historic properties. In general, these projects have a limited Area of Potential Effects (APE), are unlikely to contain historic properties, occur largely at-grade within the existing roadway prism, do not introduce new structural or visual elements, or require only nominal ground disturbance.

Minor Transportation Projects will be reviewed for Section 106 purposes by qualified ITD HQ Cultural Resources staff, without further review by the Council, the SHPO, or FHWA, provided that:

- A. Proposed projects meet criteria outlined in Section IV below; and
- B. ITD bases its review upon information adequate to identify historic properties and assess project effects on historic properties consistent with 36 CFR Part 800; and
- C. ITD consults with the SHPO pursuant to 36 CFR 800.4(c) on all properties which are considered potentially eligible for inclusion to the National Register of Historic Places; and
- D. ITD finds that there are no properties that may be affected by the undertaking or that the undertaking by its nature will have no effect on historic properties.

### **II. Project Description**

A project description, map(s), and photo(s) of the APE are provided by the District to the ITD HQ Cultural Resources staff for review prior to their determination whether the project is exempt from review in accordance with this PA.

### **III. Minor Transportation Projects requiring standard review pursuant to 36 CFR 800**

- A. FHWA, with the assistance of ITD, shall carry out the requirements of 36 CFR Part 800 for all Federally funded or approved minor transportation projects not listed in Section IV below.
- B. FHWA, with the assistance of ITD, shall carry out the requirements of 36 CFR Part 800 for all Federally funded or approved minor transportation projects included in Section IV that do not meet the requirements of Section I: A., B., C., and D.
- C. If at any time, ITD determines that an undertaking reviewed under this PA may affect a historic property, it will so notify FHWA and FHWA will initiate appropriate actions consistent with the requirements of 36 CFR 800.



#### **IV. Projects exempted from standard review**

The following Minor Transportation Projects will be reviewed by qualified HQ ITD Cultural Resources staff.

##### **A. Curb, Gutter, and Sidewalk Improvements**

Project actions include installation, replacement/reconstruction (with similar design), and/or rehabilitation of curbs, gutters, and sidewalks, or installation of ADA compliant ramps where sidewalks already exist, insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

##### **B. Roadway Guardrail Replacement and Upgrades**

Project actions include replacement and upgrades of safety barriers and non-historic guardrail, including guardrail posts, within existing roadway prism or previously surveyed segments of right-of-way. Guardrail installation or replacement involving a National Register eligible bridge or crossing structure is not exempt from standard review.

##### **C. Improvement of Existing Railroad Crossings**

Project actions include minor improvements to approaches, signals, signage, and railroad crossing reconstruction where the highway alignment crosses an at-grade railroad alignment. All ground disturbing activities are confined to the existing railroad or railroad bed prism.

##### **D. Intersection Improvement**

Project actions include intersection improvement, maintenance, and installation of traffic signals, signs, pavement markings, interconnection devices, railroad warning devices, improved crossing surfaces, and landscaping maintenance, insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

##### **E. Roadway Signage Installation**

Project actions include improvement, maintenance, and installation of roadway signage insofar as such activities occur within existing roadway prism or previously surveyed segments of right-of-way, insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

##### **F. Bridge Deck Rehabilitation and Stabilization**

Project actions include minor bridge rehabilitation (replacement of bridge decking and expansion joints), bridge rail repair or replacement, scour protection, or substructure alterations for bridges less than 50 years old, insofar as the bridge is not considered potentially eligible for the National Register, determined eligible for, or listed in the National Register.

**G. Pavement Rehabilitation**

Project actions include pavement rehabilitation such as overlay, sealcoats, milling, grooving, or resurfacing, including Cement Recycled Asphalt Base Stabilization (CRABS), of ramp, roadway, or parking lot surfaces within existing roadway prism. In addition, brooming or other mechanical road cleaning may occur. Some rehabilitation projects may include shoulder flattening and minor safety work within existing roadway prism.

**H. Paving or Minor Widening of Gravel Shoulders**

Project actions include laying road surface over sub-base gravel within the existing roadway prism and shoulders where less than 1.5m (5 feet) of right-of-way on either side is required to widen the existing road surface. These projects may involve slight shoulder widening or flattening for safety purposes.

**I. Bike / Pedestrian Pathways**

Project actions include construction of bicycle and pedestrian lanes, paths, and facilities within existing rights-of-way, insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**J. Landscaping**

Project actions include installation and maintenance of minor landscaping, insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**K. Improvement to Interstate Rest Area and Weigh Stations**

Project actions include improvements to existing rest areas and truck weigh stations located along both the Interstate Highway System and the State Highway System insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**L. Minor Drainage Improvements**

Project actions include minor safety related drainage improvements adjacent to roadways, such as:

- a. installation, replacement, or removal of non-historic culverts and headwalls that do not require the addition of fill material or surface grading outside of the existing roadway prism;
- b. installation, replacement, and extension of pipes;
- c. addition of pipe end section or traversable grates;
- d. rip-rap in drainages associated with non-historic culverts and features;
- e. mechanical and manual ditch cleaning for maintenance purposes;
- f. stream bank stabilization and restoration.



**M. Roadway Lighting**

Project actions include installation of roadway lighting on roadways, insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**N. Equipment Staging and Material Stockpiling in Disturbed Areas**

Project actions include staging of equipment and/or machinery, temporary or long-term stockpiling of gravels and waste materials, and disposal of waste materials in areas where extensive ground disturbance has occurred, including but not limited to previously disturbed material source locations, graveled or paved parking areas, or other previously disturbed locations.

Staging area or temporary waste locations may be approved insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**O. Use of Previously Reviewed Material Sources**

Project actions include the use of previously reviewed material sources for the same use insofar as no new expansion will occur laterally outside the previously reviewed areas.

**P. Fence Improvements**

Project actions include installation, replacement, and/or upgrading of fencing within the existing transportation right-of-way insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**Q. Installation of Utilities**

Project actions include installation of underground utilities (i.e. fiber optic cables, gas lines, etc), Highway Advisory Radio systems, etc., in previously disturbed right-of-way locations insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**R. Rock Scaling & Slope Work**

Project actions include rock scaling (the manual and mechanical removal of rocks, vegetation, and other debris on steep slopes adjacent to roadways) and blast scaling (using small charges of explosives to dislodge or reduce the size of larger rocks that cannot be dislodged manually). These actions can take place insofar as such activities cause only minimal ground disturbance, are not located on natural, previously undisturbed slope faces, and historic properties are not located within the APE.



**S. Maintenance Facility Operations**

Project actions include various continuing activities that occur at ITD maintenance facilities. These include, but are not limited to material stockpiling activities, vehicle and equipment washing, vehicle and equipment fueling, and liquid tank storage. These actions can take place insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.

**T. Geotechnical Investigation**

Project actions include minimally disruptive subsurface exploration methods to obtain information on the physical properties of soil and rock in a specific location such as auger, rotary, or core drilling methods of nominal 8-inch diameter or less. These actions can take place insofar as such activities cause only minimal ground disturbance and historic properties are not located within the APE.