**FHWA Indiana Division**

**Sample Format for a Section 106 Recommendation**

**for Area of Potential Effect, Eligibility Determination(s), and Effect Finding**

**and Section 4(f) Compliance Requirements for Historic Properties**

**Revised October 2019**

Instructions

Per the Section 106 procedures, and the *Programmatic Agreement (PA) Among the Federal Highway Administration, the Indiana Department of Transportation, the Advisory Council on Historic Preservation and the Indiana State Historic Preservation Officer Regarding the Implementation of the Federal Aid Highway Program in the State of Indiana* (also known as the “Minor Projects PA”), the Area of Potential Effects (APE), eligibility determinations, and effect findings must be approved by the INDOT, when acting on FHWA’s behalf, for undertakings with determinations of “no adverse effect” or “no historic properties affected”.  FHWA approves undertakings with “adverse effect” determinations after INDOT has reviewed them.

Per the terms of the *Programmatic Agreement Regarding Management and Preservation of Indiana’s Historic Bridges* (also known as the“Historic Bridges PA”*)*, the FHWA will satisfy its Section 106 responsibilities involving “Select” and “Non-Select” bridges through the Project Development Process (PDP) of the Historic Bridges PA (Stipulation III). As such, findings of effects for impacts to historic bridges are not required. This template should still be used for historic bridge projects with the information regarding the historic bridge incorporated as indicated.

All recommendations should be sent to the Cultural Resources Office in Environmental Services in INDOT’s Central Office. INDOT and/or FHWA approval and signature(s) must occur before submitting the finding and documentation to Section 106 consulting parties.  The applicant or their consultant should submit their recommendations to INDOT for the APE, properties within the APE they believe are eligible for the National Register of Historic Places (National Register), and an effect finding for the project.  The eligibility recommendations should also list any property that is included in the National Register that is within the APE.

The template below must be used to submit the eligibility recommendations. FHWA also will utilize this template to determine the Section 4(f) compliance requirements for historic properties and, if applicable, satisfy the coordination requirements for a "de minimis" finding for historic properties, pursuant to SAFETEA-LU provisions. Project specific information should be inserted where each instance of (\*\* . . . \*\*) in blue text appears.

The recommendations for the APE definition, eligibility determinations, and effect finding may be submitted as separate findings, or combined, as shown on the template, if information is available.  Typically for CE level projects, the information is combined and the forms are submitted near the conclusion of the Section 106 consultation process. If the recommendations are made separately, simply delete the appropriate sections of the template.  Subsequent recommendations to INDOT and FHWA need only address the areas not covered by previously approved determinations or findings.

Any time an approved effect finding is distributed to consulting parties, the appropriate support documentation must be attached so the consulting parties may understand the basis for the finding.  For "no historic properties affected" finding, the documentation specified at 36 CFR 800.11(d) should be attached. For "no adverse effect" and "adverse effect" findings, the documentation specified at 36 CFR 800.11(e) should be attached. Please follow the appropriate templates for documenting “no historic properties affected,” “no adverse effect,” or “no adverse effect” findings.

This template also incorporates a Section 4(f) compliance requirement that includes language for potential Section 4(f) scenarios. While Section 4(f) compliance is not required to conclude the Section 106 process, the Section 106 findings are necessary for determining Section 4(f) requirements. Further, SHPO concurrence to the Section 106 findings is required for some Section 4(f) approvals. Therefore, this form is used to convey the appropriate Section 4(f) approval required based on the results of the Section 106 process.

FHWA-funded projects vary in complexity and the template below may not be appropriate for all projects.  Please consult with INDOT regarding any questions. The following types of Section 4(f) compliance requirements for historic properties are listed in the template. As indicated in the template, a statement must be made to describe the Section 4(f) compliance requirement for each historic property.

1. **No historic properties present** – no Section 4(f) evaluation required.

2. **Historic properties are present, but no conversion to a transportation use will occur** – no Section 4(f) evaluation required.

3. **Historic properties are present and FHWA intends to issue a Section 4(f) “de minimis” finding.** Applicable when land within a historic property is converted to a transportation use, but the Section 106 finding is "no historic properties affected" or “no adverse effect”.

**4. Historic properties are present and land within a historic property is temporarily occupied**. Per 23 CFR 774.13(d), a temporary occupancy of land (such as temporary right of way) that is so minimal may not constitute a use within the meaning of Section 4(f). For a temporary occupancy to be exempted, the following conditions must be satisfied:

 (1) Duration must be temporary, *i.e.*, less than the time needed for construction of the project, and there should be no change in ownership of the land;

(2) Scope of the work must be minor, *i.e.*, both the nature and the magnitude of the changes to the Section 4(f) property are minimal;

(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;

(4) The land being used must be fully restored, *i.e.* , the property must be returned to a condition which is at least as good as that which existed prior to the project; and

(5) There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

The appropriate template as indicated below should be used. The fulfillment of conditions 1-4 must be detailed in Section 4 of the accompanying documentation, “Describe the Undertaking’s Effects on Historic Properties.” The transmittal letter to the State Historic Preservation Officer should explain the temporary occupancy and ask for their written concurrence.

5. **Historic property affected is a bridge and the impacts to the bridge will not be adverse–** no Section 4(f) evaluation required.

6. **Historic property affected is a bridge** **and the impact to the bridge will be adverse-** a Section 4(f) evaluation must be completed. A “Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the use of Historic Bridges” (see <http://environment.fhwa.dot.gov/projdev/4fbridge.asp>) may be used in lieu of an individual Section 4(f) evaluation. For bridge projects processed through the Historic Bridge PA, completion of the Historic Bridge Alternatives Analysis Layout (<http://www.in.gov/indot/files/ES_BridgeAnalysisTemplate.pdf>) will satisfy the Programmatic Section 4(f) evaluation requirements.

If the project consists of transportation enhancement work or mitigation activities where the use of the bridge is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the bridge for Section 4(f) protection and the State Historic Preservation Officer agrees that is the case, the FHWA may determine that the bridge work qualifies for the Section 4(f) exception in 23§774.13(g) (<http://environment.fhwa.dot.gov/4f/4fpolicy.asp#addex17>). The appropriate template as indicated below should be used. The transmittal letter to the State Historic Preservation Officer should explain the Section 4(f) exception and ask for their written concurrence.

7. **Historic properties (other than historic bridge) are present and conversion to a transportation use will occur.** This is applicable when the Section 106 finding is “adverse effect”. An individual Section 4(f) evaluation is required if the project does not result in a “net benefit.” The application of “net benefit” in lieu of an individual Section 4(f) evaluation is spelled out through the “whereas” clauses of the Memorandum of Agreement (MOA) outlining the mitigation for the “adverse effect” to the historic property. See the sample MOA template for more information.

8. Section 4(f) applies to **archaeological sites** eligible for or included in the National Register of Historic Places that warrant preservation in place and therefore a Section 4(f) evaluation must be completed. If the archaeological site that is eligible for or included in the National Register of Historic Places is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place (National Register Criterion D), no Section 4(f) evaluation required.

Upon receipt of the recommendations, if FHWA agrees with the recommendations, INDOT and FHWA will review, approve, and return the findings and determinations to the applicant or the applicant's consultant for distribution to consulting parties.

The applicant or the applicant’s consultant shall provide consulting parties with a copy of INDOT’s (acting on FHWA’s behalf), or FHWA's findings and determinations, in accordance with INDOT’s and FHWA's current Section 106 procedures. The finding signature page should be the first page of the packet so that consulting parties can clearly see that INDOT or FHWA has approved the document. Comments will be accepted for 30-days upon receipt of the findings.

Concurrent with distribution of the Section 106 findings and determinations, the applicant or the applicant’s consultant shall publish a legal notice for 30 days of public comment on the materials. If a consultant is conducting the Section 106 process for an INDOT project, the consultant is responsible for publishing the legal notice. The appropriate Section 106 Public Notice [template](https://www.in.gov/indot/crm/2341.htm) should be utilized.

**FEDERAL HIGHWAY ADMINISTRATION'S**

**SECTION 4(F) COMPLIANCE REQUIREMENTS (for historic properties) AND**

**SECTION 106 FINDINGS AND DETERMINATIONS**

**AREA OF POTENTIAL EFFECT**

**ELIGIBILITY DETERMINATIONS**

**EFFECT FINDING**

**(\*\**insert project description here*\*\*)**

**DES. NO.: (\*\**insert des. no. here*\*\*)**

**AREA OF POTENTIAL EFFECTS**
**(Pursuant to 36 CFR Section 800.4(a)(1))**

(\*\**Insert description of APE here and/or include a map clearly marking the area of potential effect. For complex APE descriptions, a textual description is not required. Simply reference the APE map attached to the recommendation. In either case, reference where a map of the APE can be found.*\*\*)

**ELIGIBILITY DETERMINATIONS**
**(Pursuant to 36 CFR 800.4(c)(2))**

(\*\**Insert a brief description of each property within the APE that is recommended to be eligible for or currently listed in the National Register of Historic Places. Each property listed should include the National Park Service criterion, or criteria, that renders the property eligible for/listed in the Register. For properties already listed in the Register, also note the date it was listed in the Register.*\*\*)

**EFFECT FINDING**

(\*\*In this section, list each historic property that is within the APE and indicate the effect the undertaking has on the property ("No Effect" or "No Adverse Effect" or "Adverse Effect").

*For historic bridge projects, please include the following language to explain why an effect finding is not being made for the bridge itself:*

Per the terms of the “Programmatic Agreement Regarding Management and Preservation of Indiana’s Historic Bridges” (Historic Bridges PA), the Federal Highway Administration—Indiana Division (FHWA) will satisfy its Section 106 responsibilities involving “Select” and “Non-Select” bridges through the Project Development Process (PDP) of the Historic Bridges PA (Stipulation III). (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*) has been classified as a [\*\*Select/Non-Select\*\* (choose correct option)] Bridge by the INDOT Historic Bridge Inventory and, thus, the procedures outlined in Stipulation III.[\*\*A/B\*\* (choose correct option)] of the Historic Bridges PA will be followed to fulfill FHWA’s Section 106 responsibilities for the bridge.

Therefore, the finding for this project only applies to other resources located within the APE and not (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*). This document will satisfy the Section 106 responsibilities for other resources located in the APE. Regarding other resources located in the project area, [\*\*INDOT, acting on FHWA’s behalf, or FHWA *(whichever is applicable)* has determined a ("No historic properties affected" or "No adverse effect" or "Adverse Effect"] finding is appropriate for this undertaking.

After all historic properties and their individual effect findings are listed, insert a concluding statement that declares the effect finding for the entire undertaking. Include the following statement:

(\*\*INDOT, acting on FHWA’s behalf, or FHWA *(whichever is applicable)* has determined a ("No historic properties affected" or "No adverse effect" or "Adverse Effect") finding is appropriate for this undertaking.

The strongest effect finding determines the effect finding for the entire undertaking. For example, several historic properties may not be affected at all by the undertaking, however, if one property is adversely affected, then the undertaking's effect finding for the project is "Adverse Effect".\*\*)

*After this concluding effect statement, include the following statement asking for SHPO concurrence:*

*If the effect finding for each property and the overall effect finding are the same, use this statement:*

(\*\*INDOT or **FHWA (*whichever is applicable)* respectfully requests the Indiana State Historic Preservation Officer provide written concurrence with the Section 106 determination of effect.\*\*)**

***Or use this statement if individual property effect findings differ from overall effect finding:***

(\*\*INDOT or **FHWA (*whichever is applicable*) respectfully requests the Indiana State Historic Preservation Officer provide written concurrence with the Section 106 determination of effect for each property and the project’s overall effect finding.\*\*)**

**SECTION 4(F) COMPLIANCE REQUIREMENTS (for historic properties)**

*For each historic property, a statement must be made to describe the Section 4(f) compliance requirements. Listed below are the seven (7) potential Section 4(f) conclusions that can be made for historic properties and one (1) conclusion for archaeological sites that are eligible for/listed in the National Register of Historic Places but do not warrant preservation in place. Edit and insert the appropriate statement for each historic property.*

1.  (\*\*NO NATIONAL REGISTER ELIGIBLE OR LISTED PROPERTIES ARE PRESENT IN THE APE\*\*) - This undertaking will not convert property from any Section 4(f) historic property to a transportation use; the INDOT, acting on FHWA’s behalf, has determined the appropriate Section 106 finding is “No Historic Properties Affected”; therefore no Section 4(f) evaluation is required.

2. (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*) - This undertaking will not convert property  from (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*), a Section 4(f) historic property, to a transportation use; (\*\*INDOT, acting on FHWA’s behalf, or FHWA *whichever is applicable\*\**) has determined the appropriate Section 106 finding is (\*\*"No Adverse Effect" or "Adverse Effect"\*\*); therefore no Section 4(f) evaluation is required for (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*).

3. (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*) - This undertaking will convert property from (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*), a Section 4(f) historic property, to a transportation use; the (\*\*INDOT, acting on FHWA’s behalf, or FHWA *whichever is applicable\*\**) has determined the appropriate Section 106 finding is (\*\*"No Historic Properties Affected" or "No Adverse Effect"\*\*); therefore FHWA hereby intends to issue a "de minimis" finding for the (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*), pursuant to SAFETEA-LU, thereby satisfying FHWA's responsibilities under Section 4(f) for this historic property.

4. (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*) - This undertaking will temporarily occupy land from (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*), a Section 4(f) historic property. (\*\*INDOT, acting on FHWA’s behalf, or FHWA *whichever is applicable\*\**) has determined the appropriate Section 106 finding is "No Adverse Effect". FHWA believes that the temporary occupancy will not constitute a Section 4(f) use because all of the conditions listed in 23 CFR 774.13(d) are satisfied:

1.     Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

2.     Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;

3.     There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;

4.     The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and

5.     There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

The fulfillment of conditions 1-4 are detailed in Section 4 of the attached documentation, “Describe the Undertaking’s Effects on Historic Properties.” **With regard to condition 5, FHWA** respectfully **requests the Indiana State Historic Preservation Officer provide written concurrence** that they are in agreement that the above criteria have been met and that the impacts to (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*) constitute a temporary occupancy.

5. (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*) -- This resource is used for transportation purposes and no Section 4(f) conversion will take place with this project; therefore no Section 4(f) evaluation must be completed for (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*).

6. (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*) - This resource is used for transportation purposes. (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*) will be evaluated through the *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges*.

--OR—

(\*\*INSERT NAME OF HISTORIC BRIDGE\*\*) **–** This resource is used for transportation purposes. This undertaking will have an “adverse effect” on the (\*\*INSERT NAME OF HISTORIC BRIDGE\*\*), a Section 4(f) historic property. FHWA believes that the bridge work qualifies for the Section 4(f) exception in 23§774.13(g), which applies to:

(g) Transportation enhancement projects and mitigation activities, where:

(1) The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and

(2) The official(s) with jurisdiction over the Section 4(f) resource agrees in writing to paragraph (g)(1) of this section.

FHWA respectfully requests that the Indiana State Historic Preservation Officer provide written concurrence that they are in agreement with paragraph (g) (1) above and that the project qualifies for the Section 4(f) exception.

7. (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*) - This undertaking will convert property from (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*), a Section 4(f) historic property, to a transportation use; the FHWA has determined the appropriate Section 106 finding is "Adverse Effect"; and therefore a Section 4(f) evaluation must be completed for (\*\*INSERT NAME OF HISTORIC PROPERTY\*\*).

8. (\*\*INSERT NAME OF ARCHAEOLOGICAL PROPERTY\*\*) – This undertaking will have an adverse effect on (\*\*INSERT NAME OF ARCHAEOLOGICAL PROPERTY\*\*). FHWA has determined the appropriate Section 106 finding is “Adverse Effect.” In consultation with the Indiana State Historic Preservation Officer, it has been determined that preservation-in-place is not warrant for (\*\*INSERT NAME OF ARCHAEOLOGICAL PROPERTY\*\*); therefore Section 4(f) does not apply.  FHWA respectfully requests the Indiana State Historic Preservation Officer provide written concurrence with the determination that the archaeological site does not warrant preservation-in-place.

***For undertakings with “No Historic Properties Affected” and “No Adverse Effect” findings:***



Anuradha V. Kumar, for FHWA
Manager

INDOT Cultural Resources



Approved Date

***For undertakings with “Adverse Effect”:***



Jermaine R. Hannon
Division Administrator

FHWA-IN Division



Approved Date