Section 106 of the National Historic Preservation Act

The purpose of Section 106 of the National Historic Preservation Act is to evaluate the effects of any *federal* undertaking on cultural resources as early in the NEPA process as possible. Section 106 must be complete before the project can be approved. An archaeological evaluation and/or study must be completed for the proposed project and submitted to the State Historic Preservation Officer (SHPO) for review and concurrence. Historic resources and any potential impacts to them must also be identified via the following process:

Preliminary APE, Eligibility, and Effect Letter:

The area of potential effect (APE) is the area in which the proposed project may cause alterations in the character or use of historic resources. The APE includes all alternative locations for all elements of the project; all locations where the project may result in disturbance of the ground; all locations from which elements of the project may be visible or audible; all locations where the activity may result in changes in traffic patterns, land use, or public access; and all areas where there may be direct or indirect effects.

The potential eligibility of any historic resources for the National Register of Historic Places must be identified. A property may meet the criteria for the Register with one of the following characteristics: association with historic events, association with historic people, distinctive design/construction, or potential for historic data. A historic property must be a preservable entity that still communicates what makes it significant.

Three types of effects are possible for a project. No historic properties affected is appropriate for projects that have no historic properties in the APE, or projects which have historic properties present but will not be altering the characteristics of the historic property which qualify it for inclusion in or eligibility for the National Register. No adverse effect is appropriate when anticipated effects do not meet the criteria of adverse effect and will not alter, directly or indirectly, any characteristics of the historic resource qualifying it for inclusion in or eligibility for the National Register. An adverse effect is appropriate when *any* aspect of the project meets the criteria of adverse effect. Examples of adverse effects are:

(1). Physical destruction or damage to all or part of the property
(2). Alteration of a property including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access
(3). Removal of property from its historic location
(4). Change of the character of property's use or of physical features within the property's setting that contribute to its historic significance
(5). Introduction of visual, atmospheric or audible elements that diminish the integrity of property's significant historic features
(6). Neglect of a property which causes its deterioration
(7). Transfer, lease, or sale of property out of Federal ownership or control without adequate conditions to ensure long-term preservation of the property's historic significance

The APE, Eligibility, and Effect letter (http://www.fhwa.dot.gov/indiv/finding.htm) should be submitted to FHWA for signature. Graphics should be included with the letter showing the location of the project on a topographical map, a map of the APE with potential historic properties identified, and pictures of any properties listed on or potentially eligible for the National Register.

Coordination with 106 Consulting Parties

Following the approved Preliminary APE, Eligibility, and Effect letter an early coordination letter must be sent to all the Section 106 consulting parties. The letter should include the existing and proposed project descriptions, purpose and need of the project, the results of the archaeological study if available, and any impacts to potentially historic resources. Consulting parties receiving coordination should be identified and include: SHPO, Historic Landmarks Foundation of Indiana, the county historian, the county historical society, and any relevant local historic groups and Indian tribes. A thirty day comment period is given. Attached should be a copy of the Preliminary APE, Eligibility, and Effect letter including its graphics as well as any other support documentation.

Agencies to be contacted for coordination:

Mr. Kyle Hupfer
State Historic Preservation Officer
Indiana Dept. of Natural Resources
402 W Washington St, Rm W274
Indianapolis, IN 46204

County Historians:
http://www.indianahistory.org/resources.php?page=22

County Historical Societies:
http://indianahistory.org/resources.php?page=20

Historic Landmarks Foundation:
http://www.historiclandmarks.org/aboutus/offices.html

Other local preservation organizations:
http://www.historiclandmarks.org/help/IPD/ipdstate.html

If the project will require approval (such as permitting) from another federal agency, the agency issuing that approval should be invited to be a consulting party.

Historic Bridges

If a historic bridge is proposed to be removed, it must be posted on the INDOT website. A broad range of alternatives must be considered for federally funded projects involving bridges eligible for or included on the National Register of Historic Places. These include but are not limited to the following:

1. Do Nothing Alternative: The original owner does nothing to the existing bridge and it remains in its existing condition. If the bridge is currently closed to traffic, or it has a posted weight restriction, document the detour route around the bridge.

2. Rehabilitation Alternatives (in its existing location)

a. Rehabilitate the bridge for vehicular use, in accordance with the treatment approaches recommended by the Secretary of Interior's Standards for Rehabilitation.
b. Rehabilitate the bridge and retrofit the structure to carry legally loaded vehicles.
c. Either the owner or another party rehabilitates the bridge for vehicular use, with size/weight limitations, or rehabilitate the bridge for non-vehicular use.
d. Either the owner or another party avoids the bridge only and closes the bridge for possible future rehabilitation at its existing location.

3. Bypass Alternatives
   a. Build a bridge next to the existing bridge, forming a one-way couplet, using both bridges for vehicular use.
   b. Either the owner or another party bypasses the historic bridge and maintains the historic bridge for either light vehicular use or non-vehicular use.
   c. The owner bypasses the historic bridge and leaves the historic resource at its existing location for future potential re-use, either by the owner or by another party.

4. Relocation Alternatives
   a. The bridge is relocated and rehabilitated, by either the owner or another party, for the purpose of serving vehicular or non-vehicular traffic, at a public location.
   b. Another party relocates and rehabilitates the bridge at a location not available to the public.
   c. The owner retains ownership and the bridge is stored for possible future rehabilitation and use.
   d. The owner sells the bridge to another party for storage and possible future rehabilitation and use.
   e. The bridge is photo documented and then demolished.

National Historic Landmarks

Per Section 110(f) of the National Historic Preservation Act, agencies must maximize planning to minimize harm to National Historic Landmarks. The Advisory Council and the Secretary of the Interior must be invited to be consulting parties.

800.11(d) and (e) Effects Finding

Following coordination with Section 106 consulting parties, 800.11(d) for no historic properties affected or 800.11(e) for no adverse effect or adverse effect must be prepared.

Included in the 800.11(d) documentation (http://www.fhwa.dot.gov/indiv/nhpafndg.htm) is a description of the project; efforts to identify historic properties; the basis for the finding; the APE, Eligibility, and Effect letter plus graphics; and correspondence from consulting parties. It must be submitted to FHWA for approval and then distributed to SHPO and the other coordinating agencies for a 30 day comment period.

Included in 800.11(e) documentation (http://www.fhwa.dot.gov/indiv/hpafndg.htm) is a description of the project; efforts to identify historic properties; a description of affected historic properties; a description of the project's effects on historic properties; an explanation of why the criteria of adverse effect was found applicable or inapplicable including avoidance alternatives, minimization efforts, and mitigation; a summary of 106 consulting parties and public views; the APE, Eligibility, and Effect letter plus graphics, and correspondence from 106 consulting parties. For adverse effects, two copies of the document must be sent to the FHWA to then be forwarded to the Advisory Council. Section 106 coordination parties receive a copy of 800.11(e) documentation and are given a 30 day comment period.

Public Involvement

Information must be made available to the public via a public hearing, meeting, or legal notice, as appropriate. Section 106 is not complete until public involvement requirements are met.

Resolution of Adverse Effects

A consulting party meeting should be held to discuss 800.11(e) documentation and resolve outstanding issues. A Memorandum of Agreement (MOA) (http://www.fhwa.dot.gov/indiv/moatempt.htm) must be developed in agreement with SHPO, INDOT, and FHWA and submitted to all three for review and signature. Local projects are signed by a county official.

If SHPO is in agreement, the MOA and 800.11(e) documentation must be submitted to the Advisory Council. Copies of the executed MOA should be distributed to consulting parties and Section 106 is then complete.

If SHPO is in disagreement, information requested in 800.11(g) must be submitted to the Advisory Council. If the Council agrees to be a consulting party, adverse effects will attempt to be resolved. If the adverse effects fail to be resolved (see Sec 800.7), the Council issues formal comment on the undertaking which must be considered in reaching a final decision. FHWA makes that final decision and Section 106 is complete.

Completion of Section 106 Requirements

Section 106 is considered completed when there is no objection from consulting parties after the 800.11(d) or (e) 30 day comment period, the MOA is signed (if applicable), and public involvement requirements are completed.