# FHWA Indiana Division

## Sample Format and Guidance for Documenting

## FHWA's NO ADVERSE EFFECT or ADVERSE EFFECT finding

As per Section 106 regulations at 36 CFR Section 800.11(e)

Revised October 2019

Instructions

Per FHWA-IN Section 106 procedures and per 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”), applicants or their consultants may submit recommendations for “no adverse effect” findings to INDOT, which is acting on FHWA’s behalf, for review, approval, and signature. While FHWA will still review, approve, and sign “adverse effect” findings, the findings and their documentation must first be sent to INDOT for review. When INDOT finds them satisfactory, they will forward these to FHWA.

These recommendations should be sent to the Cultural Resources Office in Environmental Services in INDOT’s Central Office. Each recommendation must be accompanied by support documentation meeting the requirements in the Section 106 regulations at 36 CFR Section 800.11(e). Use the template below for guidance when preparing the support documentation for either a recommended "no adverse effect" or "adverse effect" finding. Project specific information should be inserted where each instance of (\*\* . . . \*\*) in blue text appears.

INDOT will review the recommendation and the support documentation upon receipt. If INDOT disagrees with the recommendation, requires further information before reaching a decision, or requires revisions to the documents, INDOT will advise the applicant or their consultant to update the documentation or the finding as appropriate. After INDOT is satisfied the documentation is adequate to support the finding, INDOT, who is acting on FHWA’s behalf, will sign “no adverse effect” findings and will forward “adverse effect” findings to FHWA for review and approval. The signed finding will then be returned to the applicant or their consultant, along with the support documentation.

The applicant or their consultant, upon receipt of the approved finding and support documentation, should distribute copies of the finding and the support documentation to the SHPO and consulting parties, consistent with current Section 106 procedures.

**FEDERAL HIGHWAY ADMINISTRATION**

**DOCUMENTATION OF SECTION 106 FINDING OF**

**NO ADVERSE EFFECT** *or* **ADVERSE EFFECT**

**SUBMITTED TO THE STATE HISTORIC PRESERVATION OFFICER**

**PURSUANT TO 36 CFR Section 800.5(c)**
*for no adverse effect findings include this citation*

**PURSUANT TO 36 CFR Section 800.6(a)(3)**
*for adverse effect findings, include this citation*

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

**DES. NO.: (\*\**insert Des. No. here*\*\*)**

**1. DESCRIPTION OF THE UNDERTAKING**

(\*\**Describe the undertaking and discuss the federal involvement in the project. Typically, the federal involvement is funding received from FHWA. Describe the area of potential effects (APE), including both the above-ground APE and archaeological APE, and attach a map that clearly delineates the boundaries of the APE. Include any photographs, maps, plan sheets, as necessary to provide a complete description of the project. Reference the location of this information in the appendices.*\*\*).

**2. EFFORTS TO IDENTIFY HISTORIC PROPERTIES**

(\*\**Describe all of the steps taken to identify historic properties and include, as appropriate, efforts to seek information pursuant to 36 CFR Section 800.4(b). Discuss resources checked, such as county interim reports, the Indiana Register of Historic Places, and the National Register of Historic Places. Discuss site visits that were conducted. Discuss what type of historic property report (HPR) was prepared and the results of the report. Discuss any archaeological work that was done, including archaeological reports and recommendations, or explain why archaeological work was not required. Discuss any input received from the State Historic Preservation Officer (SHPO) on the HPR and archaeology report and indicate when the SHPO concurred with the reports. Indicate that the abstract and summary/conclusions pages from the reports are located in the appendix.*

*Discuss any input received from other consulting parties about the HPR and/or that resulted in the identification of historic properties. Copies of all letters received from consulting parties should be included in the appendix* *and their location there should be referenced here*.\*\*)

**3. DESCRIBE AFFECTED HISTORIC PROPERTIES**

(\*\**Describe each of the historic properties affected and include information on the characteristics that qualify it for the National Register of Historic Places. The National Register Criterion or Criteria that qualify each property for the Register should be identified. The Eligibility Determination signed by INDOT or FHWA should be included as the first page of the documentation. For properties already listed in the Register, include a brief property description, list the Criterion or Criteria under which the property is listed, and note the date it was listed in the Register.*\*\*)

**4. DESCRIBE THE UNDERTAKING'S EFFECTS ON HISTORIC PROPERTIES**

(\*\**Describe the extent to which each property will be affected by the project. Will right-of-way be acquired from the property (either permanent or temporary)? Will any part of the property be demolished or disturbed? Will any landscape features be removed, etc.? Will new roadway features be modified and/or newly installed on/adjacent the historic property? If the project does not affect a historic property, that should also be noted in this section. In those instances, providing a measurement of approximately how far away from the undertaking the property is located is helpful. Please note that the fact that historic property will not be converted to a transportation use does not preclude an effect on a historic property.*\*\*)

**5. EXPLAIN APPLICATION OF CRITERIA OF ADVERSE EFFECT -- INCLUDE CONDITIONS OR FUTURE ACTIONS TO AVOID, MINIMIZE OR MITIGATE ADVERSE EFFECTS**

(\*\**For each historic property identified, explain why the criteria of adverse effect do or do not apply pursuant to 36 CFR Section 800.5(a). Apply and reference the criteria when evaluating effects. In addition, reference the examples of adverse effect listed in 36 CFR Section 800.5(a)(2). Types of adverse effects are not limited to these examples, but they should be referenced and referred to when assessing effects. If an adverse effect is considered unavoidable, discuss the avoidance alternatives considered and why they were dismissed. If an adverse effect occurs, discuss minimization or mitigation efforts to be undertaken.*

*For historic bridge projects, indicate that per the terms of 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) and, therefore, the effects analysis for this project only applies to other resources located within the APE and not the bridge.*

*Additionally, for historic bridge projects-especially for Non-Select bridges that will be replaced-discuss the results of the Historic Bridge Alternatives Analysis (HBAA), discuss any plan reviews that have already taken place, and indicate which plan reviews still remain. Additionally, please include the HBAA title and summary page as an appendix and reference its location here.*

*For historic bridges that have been marketed, describe the marketing efforts that have taken place. Also, discuss whether any photodocumentation is required for the historic bridge. Examples of Section 106 documentation for historic bridges can be found in IN SCOPE for further reference of how to incorporate the information.*\*\*)

**6. SUMMARY OF CONSULTING PARTIES AND PUBLIC VIEWS**

(\*\**Summarize SHPO's position on the project and reference related correspondence in the appendix. Summarize other consulting parties’ positions and reference any correspondence received in the appendix. Indicate how comments brought forth by SHPO and other consulting parties were addressed or will be addressed, even if the comments are not directly related to historic properties/Section 106, but are more about the project in general. Discuss any consulting party meetings that were held and include meeting summaries in the appendix.*

*If a public notice has been issued, note the date it was issued and summarize any comments received from the public. If no comments were received from the public, make a note of it in this section. If a public notice has not yet been issued, make note of it and indicate when the public notice will be issued and indicate the document will be revised after the public notice, if necessary, to reflect any substantive comments received.*

*For historic bridge projects, indicate that per Stipulation III of the Historic Bridges PA, the project sponsor will hold a public hearing for the project prior to completion of National Environmental Policy Act (NEPA) studies and that all consulting parties will be notified of the public hearing.*\*\*)

**APPENDIX**

*(\*\*The information in item #1 above should be included in the appendix (photographs, maps, plan sheets, etc.). The location of historic properties in the APE should be clearly indicated (except for archaeological sites—see below). The boundaries of historic properties should be clearly indicated on at least one graphic. Plan sheets should clearly show historic property boundaries and the proposed impacts to historic properties. Color coding and notations should be used as appropriate to illustrate existing and proposed conditions for historic properties.*

*Include only the abstract and summary/conclusions from any historic property and archaeology reports, and the HBAA (when applicable). A statement can be made that the full documents (except for archaeology reports) can be downloaded from IN SCOPE. Per Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resources Protection Act, specific archaeological site locations should not be included in documentation made available to consulting parties (except INDOT, FHWA, SHPO, and the Tribes) and the general public. Detailed archaeological reports may be provided to qualified professional archaeologists, but only after consultation with the SHPO. Only summary documentation of any archaeological work should be included in the documentation supporting the findings. No maps or text indicating the locations of archaeological sites should be included. This will minimize the potential for endangerment of sites from vandalism.*

*Provide a list of all consulting parties, including SHPO. Indicate which parties accepted consulting party status. Copies of all correspondence to/from SHPO, other consulting parties, and the public should be included. It is important to include not just the responses received from the consulting parties, but also copies of the correspondence sent by the consultants/agencies in order to show the most complete record of the consultation process. This includes the emails from the consultants/agencies that notified consulting parties of the availability of reports in IN SCOPE, etc. The letters and emails should be arranged in chronological order.*

*For historic bridges that have been marketed, include proof of the marketing measures that have taken place such as the publisher’s affidavit for the newspaper notice marketing the bridge, a screenshot from the INDOT Historic Bridges Marketing website showing the bridge, and photographs of the marketing signs in place at the bridge site.*

*A copy of the publisher’s affidavit from the newspaper legal notice and/or the public hearing notice containing the Section 106 comment period notification should be included in the appendix, once received.\*\*)*