

**PROGRAMMATIC REVIEW OF
TEXAS DEPARTMENT OF TRANSPORTATION'S
SECTION 106 COMPLIANCE PROCESS**



SESSION: PROGRAMMATIC AGREEMENTS FOR THE 21ST CENTURY

ADC50 2011 MID-YEAR MEETING

JULY 25, 2011

PORTLAND, OREGON



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EXECUTIVE SUMMARY

In 1995, the Federal Highway Administration (FHWA), the Advisory Council on Historic Preservation (ACHP), the Texas Department of Transportation (TxDOT), and the Texas State Historic Preservation Officer (SHPO) entered into Programmatic Agreement for Transportation Undertakings, defining classes of action that resulted in *no effect* determinations to be reported without requiring individual project coordination. This Programmatic Agreement was amended in 2005 to further streamline compliance procedures, providing TxDOT opportunities to finalize determinations in-house unless an *adverse effect* determination was reached.

In 2008, FHWA, TxDOT and the THC conducted a program-level review of the process for Section 106 implementation (36 CFR 800) on federally funded transportation projects in Texas. FHWA, TxDOT, and THC designated representatives from their environmental and engineering sections to perform the review. The reviewers compared TxDOT's written procedures, guidance, and training materials against the federal requirements for Section 106 implementation to verify general procedural compliance, a statewide survey of TxDOT districts to solicit general information on the effectiveness of the Section 106 process, and on-site reviews of four representative TxDOT districts to discuss the Section 106 process in more detail, focusing on:

- Comparison between Section 106 implementation process in Texas and federal requirements under the National Historic Preservation Act;
- Professional qualifications for conducting cultural resource reviews;
- Methodology for identifying cultural resources (background material reviews, survey practices, etc.);
- Quality Assurance/Quality Control (QA/QC) Measures;
- Reporting standards/*Standards of Uniformity/Standards of Submission*;
- TxDOT internal coordination and communication practices (District, Environmental Affairs Division – Cultural Resources Management (ENV-CRM));
- Interagency coordination and communication practices (FHWA, TxDOT, THC, and ACHP); and
- Internal and external training

The review team determined that TxDOT's current practice for implementing Section 106 complies with regulatory requirements. TxDOT's Environmental Affairs Division maintains staffing which meets required federal qualifications and effectively manages statewide Section 106 implementation. The process review team identified commendable practices for successful Section 106 implementation from across the State and specific needs to enhance the process:

COMMENDABLE PRACTICES

Consultation /Local Coordination

Provide an orientation for local historical groups

Agency outreach to the public

Structured Section 106 consultation processes

Effective Tribal Coordination

Routine ENV, FHWA, and District Coordination Meetings

Education/Training

Internal team training
Frequent official updates on the Section 106 process to internal and external partners
Staff and consultant outreach and training
Outreach to non-environmental staff on Section 106 compliance

Guidance and QA/QC

Standards of Uniformity for quality and content of processes and documentation
Standards of Procedure should be formalized
Letting certification requirements
Early consideration of potential environmental issues
QA/QC for locally-let projects
Specialized Methodologies or Tools for identifying resources in the field
Ensuring environmental compliance for change orders
Systematic feedback to consultants
Dedicated Quality Control Coordinator

Contracting

Environmental staff participation in District consultant selection and pre-bid meetings
Improving the quality of cultural resource studies

Right-of-Entry (ROE)

Direct solicitation of ROE at meetings, rather than through correspondence
Seeking assistance with ROE from local officials

Section 4(f)

Graphically structured Section 4(f) alternatives analyses to facilitate
Programmatic Section 4(f) evaluations based on specialized Historic Bridge Guidelines
Section 4(f) team approach involving range of disciplines

Commitments

Ensuring environmental compliance for changes to environmental commitments
Use of intelligent transportation system (ITS) equipment to monitor archeological sites
Use of tracking systems to manage environmental commitments
Multiple notations for environmental commitments made in plan and construction notes
Pre-bid Meetings with Potential Contractors to highlight environmental commitments

NEEDS

Consultation /Local Coordination

Interagency field tours to review both routine and special needs projects on annual basis
Clarification of Certified Local Governments (CLGs) roles in Section 106 by SHPO
Development of historic contexts and evaluation methodologies by SHPO

Education/Training

Increased training for local project sponsors and historical groups.
Increased environmental training for design engineers and other decision-makers
Expanded interagency training opportunities

Guidance and QA/QC

Clearer communication tools tied to improved project tracking
Improved Administrative Record organization and maintenance
Improved guidance regarding routine maintenance along historic transportation corridors
Increased resources for operation and maintenance of historic property databases
Clarification of SHPO archeology coordination procedures
Inclusion of Section 106 eligibility determinations into historic property databases
Assistance for contract scoping for local project sponsors regarding CRM tasks

Right-of-Way/Easements

Clarification of potential for environmental impacts from temporary easements

Section 4(f)

Clarification of the Section 4(f) de minimis procedures

ISSUES

Consultation/Local Coordination

Consideration for Level of effort on Section 106 consultation by SHPO

Clarification for procedures for large historic properties facing minimal impacts

Resolution of classes of Adverse Effects to Historic Bridges

Timing of early Section 106 consultation vis-à-vis sufficiently detailed design information

Guidance and QA/QC

Routine assessment and feedback on Section 106 Implementation by FHWA

Third-party projects

Improved Section 106 compliance by local project sponsors

Timing of ROW acquisition by local project sponsors

Commitments

Structured Follow-up procedures for environmental commitments

Right-of-Entry

Improving efforts to gain ROE to conduct cultural resources surveys

Project Development Process

Post-Section 106 consultation design changes

Bruce Jensen, Supervisor
Historical Studies Branch
Environmental Affairs Division
Texas Department of Transportation
512/416-2628
Bruce.Jensen@txdot.gov