



Historic Resources Procedural Manual

Geo-Environmental Section
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Historic Resources Procedure Manual

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Contact

Please contact Chris Bell, Cultural Resource Program Coordinator, with questions about the content included in this manual.

Introduction

Historic Resources documentation at the Oregon Department of Transportation (ODOT) ensures regulatory compliance with both state and federal legislation. The Historic Resources program has been developed to balance the needs of the state transportation system with the protection and documentation of significant historic resources.

ODOT Historic Resource Specialists work with project teams, consultants and other interested stakeholders to develop projects. Their primary role is to identify and evaluate historic resources within a project's Area of Potential Effect (APE). Historic Resources include buildings, districts, objects, sites, and structures. These resources are evaluated to determine if they meet the National Register of Historic Places Criteria.

Regulatory compliance for transportation projects is the primary focus of the ODOT Historic Resources Program. The primary regulations ODOT typically encounters are the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act, the National Environmental Policy Act, and Oregon Revised Statute 358.653.

ODOT has developed a Historic Resources Program to satisfy these regulations. The process includes a variety of work products to inform both regulatory agencies and ODOT project teams of Historic Resources within a project area. These work products vary from initial scoping reports to detailed analysis of project alternatives. A standard Scope of Work for Historic Resources is available to assist with projects developed outside the Agency.

ODOT Historic Resources documentation must be prepared by personnel who meet the Secretary of the Interior's Professional Qualification Standards in the fields of history and/or architectural history. All documentation must be prepared based on the style and format of the sample documents found on the ODOT Geo-Environmental website or by specific arrangement with ODOT staff. Blank documentation forms are also available. Preparers of ODOT Historic Resources documentation are responsible to obtain example reports prior to beginning any work or must coordinate with ODOT Historic Resources Staff to discuss alternative formats, if appropriate. Historic Resources documentation submitted in an incorrect format will not be accepted or approved for payment.

ODOT has the responsibility of ensuring compliance with all applicable regulations for ODOT construction projects. All Historic Resources documentation must be forwarded to regulatory agencies by ODOT Staff on Agency letterhead. All compliance documentation will be forwarded to the appropriate regulatory agency by the ODOT Geo-Environmental Section in Salem, who is also responsible for maintaining a centralized documentation tracking, filing, and distribution system.

The first step in Historic Resources documentation is for the preparer (if outside ODOT) to establish contact with the appropriate ODOT Staff. From this point, it will be necessary to maintain regular contact with the ODOT Staff throughout the project, especially at critical

milestones in the documentation process. ODOT currently has Historic Resources Staff in Regions 1 and 2, and a statewide Program Coordinator in Salem.

During the initial contact with ODOT staff, it will be necessary to establish the project Area of Potential Effect (APE). This area is decided in conjunction with the ODOT Project Leader and Region Environmental Coordinator or Environmental Project Manager. It is important to note that the boundaries of historic resources are typically interpreted as the tax lot boundary containing the resource, so the entirety of tax lots adjacent to a project APE should be surveyed if there is potential for the project to expand beyond the existing right of way. Following the establishment of the APE, the following work products may be required, depending on the nature of the project. Included in the work product descriptions are estimates of the number of hours required to prepare the various types of products. These estimates will vary slightly depending on the nature of the project and the resources present in the project area, and do not include travel time or coordination with the project team.

Historic Resources Baseline Report

The Historic Resources Baseline Report is prepared as a component of the broader-scope Environmental Baseline Report (EBR) which identifies all potential environmental constraints during the development stage of a transportation project.

The baseline report preparation process is initiated with a review of previously documented historic properties within the Area of Potential Effect (APE). This literature review may include previous documentation held at the State Historic Preservation Office (SHPO), at a local jurisdiction (city or county), or in ODOT files. The literature review is followed by a field reconnaissance survey to identify previously documented and undocumented historic resources in the project APE.

Following the literature review and reconnaissance survey, a Baseline Report is prepared according to the approved ODOT format. This report typically includes a project description, a brief discussion on the results of the literature review and field survey, photographs and location maps for all historic resources identified during the field survey, and preliminary finding of National Register eligibility for each resource. Information for each resource identified is presented in tabular form, with a single map showing the location for all resources, if possible. Consultation with ODOT Staff is required for Historic Resources identified in the Baseline Report that may be potentially eligible for the National Register, as these resources may require further research and documentation.

Section 106 Determination of Eligibility

Section 106 of the National Historic Preservation Act is a multi-step process that must be followed for all ODOT projects with a federal nexus (funding or permit). This section requires that Federal agencies take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation an opportunity to comment, if

appropriate. The Baseline Report will identify previously undocumented historic resources within a project Area of Potential Effect (APE) that may meet the National Register Criteria for Listing. A Determination of Eligibility is the first step in the Section 106 process to identify the effects of a federal undertaking on historic resources. Resources determined eligible for the National Register receive the same level of protection as those listed on the National Register under federal law. Because Section 106 applies to federal undertakings, the Oregon Division of the Federal Highway Administration (FHWA) is responsible for all determinations of eligibility. This step in the Section 106 process is conducted by ODOT on behalf of FHWA, and FHWA will receive a copy of all determinations made for projects with a FHWA nexus. Section 106 documentation must be submitted to the State Historic Preservation Office (SHPO) by the ODOT Geo-Environmental Section to ensure adequate documentation and consistency.

Following consultation with ODOT Staff, a Determination of Eligibility (DOE) is prepared for resources that may be potentially eligible for the National Register. These DOEs must be prepared according to the approved format, and provide the information necessary to evaluate the significance of the resource. Determinations of Eligibility may be written for individual properties, multiple property submissions, or historic districts. ODOT has also developed a specific bridge DOE form in coordination with SHPO. Draft DOE forms are forwarded to the appropriate ODOT Historic Resources Staff and any consulting parties for review and comment. Once the comments are addressed, the completed forms are forwarded to the ODOT Geo-Environmental Section for transmittal to SHPO as formal requests for concurrence on National Register eligibility. According to Section 106 regulations, SHPO has 30 days (although under the 2011 PA is scheduled to complete review in 21 days) to review these requests for concurrence. Once concurrence from SHPO is received, the resource is provided the same level of protection as a resource that is formally listed on the National Register of Historic Places.

Determinations of Eligibility provide enough detail and background information to determine if the resource meets the criteria for listing on the National Register of Historic Places. DOEs are not as in-depth as formal nominations, but typically provide a statement of significance, background history of the resource, a physical description of the resource, a discussion of the integrity of the resource, and the boundaries of the resource. The DOE must indicate the aspects of integrity that the resource retains (location, design, setting, materials, workmanship, feeling, and association). Photographs and a map showing the location of the historic resource are also included in the DOE, and the ODOT Key Number and Federal-Aid Project Number must also be included in the DOE.

Section 106 Finding of Effect

A Finding of Effect (FOE) documents a proposed project's effect on resources either determined eligible for or listed on the National Register of Historic Places. Consultation with ODOT Staff is required to assess all possible effects to historic resources for each project alternative. Findings of Effect document alterations to National Register eligible or listed resources, including physical changes to the resource itself (e.g. a building or structure), changes to the boundaries of a historic resource (e.g. right of way acquisition), or any other change that affects any of the elements of integrity of the resource (i.e. location, design, setting, workmanship, materials,

feeling, and association). Any alteration to any feature that contributes to the eligibility of the resource can be considered an effect. ODOT Historic Resources Staff, FHWA, and SHPO must coordinate on the project's level of effect, which may include "No Effect", "No Adverse Effect", and "Adverse Effect" under the Section 106 regulations. These Findings are made by ODOT on behalf of FHWA, and FHWA has the ultimate responsibility for determining the level of effect on historic properties for an undertaking.

Draft FOEs are submitted to the appropriate ODOT Historic Resources Staff for review and comment. These documents must be prepared according to the approved format, and typically include a brief project description, a brief description of the significance of the resource, avoidance and minimization alternatives considered, the evaluation of the proposed project's effect on the resource using the Criteria of Adverse Effect, and a brief summary of the public involvement and coordination for the project. Example FOEs for both No Adverse Effect and Adverse Effect are available. Once the draft FOE comments are addressed, the final forms are forwarded to the ODOT Geo-Environmental Section for transmittal to SHPO for their review and concurrence. Geo-Environmental is responsible for distribution to appropriate parties and will coordinate with FHWA as required at this stage.

It is important to note that the Oregon SHPO has expressed a desire to receive Determinations of Eligibility and Findings of Effect for Historic Resources simultaneously. If possible, both the DOE and FOE should be submitted as one transmittal to SHPO. All DOEs and FOEs for a particular project should be included in a single transmittal to reduce review time. As the SHPO has 21 days to review Section 106 documents by regulation, submitting both the DOE and FOE simultaneously saves one review period and can help meet project development schedules.

Section 106 Memorandum of Agreement

If a transportation project results in a Section 106 Finding of Adverse Effect to a potentially eligible or National Register listed resource, interested parties identified during the Section 106 process should be consulted. In addition, a News Release is prepared and released to local newspapers to solicit public comment for possible mitigation. The Notice of Adverse Effect must be prepared in accordance with the ODOT approved sample. A Notice of Availability may also be prepared if a historic resource (such as a bridge or house) is to be relocated as a result of a project.

Once comments are received from consulting parties and the public, a Memorandum of Agreement (MOA) is written. The MOA specifies mitigation to resolve adverse effects to historic resources. ODOT Historic Resources Staff must be involved in the development of mitigation and the stipulations in the MOA so appropriate mitigation is achieved. Once appropriate mitigation is agreed upon, a draft MOA is submitted to the appropriate ODOT Historic Resources Staff, who will review the document and provide comments. After these comments are addressed, the ODOT Historic Resources Program Coordinator will transmit the document to both the ODOT Contracts Section and to the SHPO for review. Once the MOA stipulations have been found to be legally sufficient and are agreed to by the SHPO, the finalized MOA is submitted to SHPO and other required parties for signature. The ODOT Geo-

Environmental Section will prepare and distribute the MOA to all signatories one at a time, and will distribute the final executed MOA to all participating parties and the ODOT Contracts Section. It may also be required to transmit the MOA to the Advisory Council on Historic Preservation in accordance with Section 106 regulations. ODOT has sample MOA language available, although the specific mitigation stipulations will vary depending on the type of resource and the proposed effect to the resource.

In addition to ODOT Technical Services and SHPO signatures, other signatories to a MOA may include FHWA (if the project uses federal funds), the Region Project Delivery Manager (or Region Manager), and other government agencies if they are involved in the project. The ODOT Historic Resources Staff can assist with determining who the appropriate signatories will be for a particular agreement.

Section 4(f) Evaluation

For all projects with a Federal nexus, a Section 4(f) Evaluation may be required. Section 4(f) of the Department of Transportation Act requires the evaluation of alternatives which would avoid or minimize effects to historic resources. If an alternative exists that avoids effects to the historic resource that is both prudent and feasible and solves the transportation problem, Section 4(f) requires the selection of that alternative. If a project has a “use” of a National Register listed or eligible historic resource according to the criteria established in the regulations (Section 771.135(p) of 49 U.S.C. 303), the ODOT Historic Resources Staff must be consulted to determine the appropriate Section 4(f) evaluation. The type of evaluation required depends on the nature of the project and the effect to the resource, and may include a Nationwide Programmatic Evaluation, a full evaluation, or a *de minimis* evaluation.

The Nationwide Programmatic Evaluations are typically used when a project meets certain criteria, such as right of way acquisition from a tax lot containing a historic resource when there is no adverse effect. These evaluations are in the form of a checklist, and can only be used for projects classified as a Categorical Exclusion. They must be prepared according to the approved ODOT format for Minor Involvement with Historic Sites or for Historic Bridges.

Nationwide Programmatic Evaluations are intended to be stand-alone documents. These documents must address all items associated with the particular programmatic as indicated on FHWA’s Programmatic 4(f) website. Determinations of Eligibility and Findings of Effect completed as part of the Section 106 process will be included with the Programmatic Evaluation as appendices. In addition, the cover letter for submittal to FHWA must include the following items: a description of the FHWA nexus, the project Federal-Aid Number, the proposed NEPA Class of Action, the project purpose and need, the status of the project in relation to the NEPA process (including the project bid let date and estimated construction date), a summary of the alternatives analyzed, a summary of the measures to minimize harm, and a conclusion that there is no feasible and prudent alternative to the use of the 4(f) resource.

The Programmatic 4(f) Evaluation must also include a vicinity map and a detail map that clearly depicts the relationship of all alternatives to the 4(f) resource, including the portion of the

resource that is proposed for use by the transportation project. If this mapping exists within the Section 106 documentation, those maps may be referenced in the 4(f) document.

The “Alternatives Considered” section of the evaluation must provide a description of all alternatives considered for the project, especially those that avoid the use of the 4(f) resource. This section will provide the basis for the conclusion that there is no prudent or feasible alternative, and will vary in the level of detail with the complexity of the project. Measures to minimize harm to the 4(f) resource must also be described, and if those measures are not incorporated into the final project the reasoning behind this position must be explained. Finally, the Programmatic 4(f) Evaluation must summarize the results of coordination with local, state, or federal agencies and consulting parties under the Section 106 process. If the project will have an adverse effect to a historic resource, a fully executed copy of the project MOA must be included with the 4(f) evaluation. FHWA will not approve Programmatic 4(f) Evaluations until the executed MOA has been filed with ACHP.

Full Section 4(f) Evaluations are required for projects that do not meet the requirements of the Programmatic or *de minimis* evaluations. This evaluation must show that there is no prudent and feasible alternative that avoids the “use” of the historic resource. Full evaluations typically include a description of the historic resource, project background and purpose and need, a description of the impact to the 4(f) resource, a description of all project alternatives (including the preferred alternative), measures incorporated to minimize harm to the historic resource, a record of coordination with other agencies and the public, and a conclusion. The evaluation also includes the Section 106 documents related to the property and any MOAs prepared to resolve adverse effects as appendices. This documentation must follow the approved ODOT format for Full Section 4(f) Evaluations.

Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amended the existing Section 4(f) legislation (§138 of Title 23 and §303 of Title 49, U.S.C.) to simplify the approval of projects that are determined to have only a *de minimis* impact on resources protected under Section 4(f) of the Department of Transportation Act. Section 6009 of the act states that once a transportation use of a historic resource is determined to have only a *de minimis* impact, an analysis of avoidance alternatives is not required and the Section 4(f) process is complete. For historic resources, an impact is considered *de minimis* if, through the Section 106 process, a finding of “No Historic Properties Affected” or “No Historic Properties Adversely Affected” is made. The SHPO must concur in writing with the Section 106 FOE in order for the *de minimis* provision to apply. Section 106 documents for projects intending to use the *de minimis* provision must indicate this when submitted to SHPO. Following written SHPO concurrence on the FOE, the FHWA Division Administrator must approve the use of the *de minimis* provision. Section 6009 requires consultation with the parties participating in the Section 106 process prior to a *de minimis* finding, and all consulting party involvement should be documented. For projects requiring the distribution of a National Environmental Policy Act (NEPA) document (Environmental Assessment (EA) or Environmental Impact Statement (EIS)), information supporting the *de minimis* impact finding will be disclosed in the NEPA document and the public will have the opportunity to review and comment on the *de minimis* finding during the formal NEPA comment period. It is important to note that the *de minimis* provision does not replace the existing Nationwide Programmatic 4(f)

evaluations, and that the SHPO must be informed in writing of the intent to use the *de minimis* provision during the Section 106 consultation process. FHWA has issued guidance on the use of the *de minimis* provision. ODOT, with FHWA, has developed interim guidance on the *de minimis* process.

All Section 4(f) Evaluations, regardless of type, require the involvement of the ODOT Historic Resources Staff. The Historic Resources Staff will comment on draft evaluations, and once these comments are addressed the final evaluation will be submitted to FHWA by the Geo-Environmental Section in Salem or published in the NEPA document if the project is an Environmental Assessment or Environmental Impact Statement.

Programmatic Agreement Clearance

Certain project types may be cleared under the Programmatic Agreement between the Oregon Department of Transportation (ODOT), the State Historic Preservation Office (SHPO), the Federal Highway Administration (FHWA), and the Advisory Council on Historic Preservation. These projects are typically minor and have no potential to affect National Register eligible or listed resources. The Programmatic Agreement (PA) has been revised in 2011 allowing a much better mix of project types to be included.

The Programmatic Agreement includes specific work activities and project types that do not require formal SHPO review for compliance with Section 106 of the National Historic Preservation Act. If a proposed project meets the stipulations included in the PA, it may be cleared using a Programmatic Agreement Clearance Memo. This memo must follow the format described in the PA, and coordination with the ODOT Historic Resources Staff is required to proceed with clearing a project in this manner. The draft memo must be prepared by personnel meeting the Secretary of the Interior's Professional Qualification Standards in history or architectural history, and reviewed by ODOT Staff. The completed memo will be sent to the Geo-Environmental Section in Salem, where it will be distributed and filed accordingly. All memos will be transmitted to SHPO by Geo-Environmental in the manner described in the Programmatic Agreement on an annual basis.

ORS 358 Coordination

Projects that have no federal nexus but require work on historic resources owned by a state agency or other political subdivision (e.g. school districts, cities, counties, etc.) require SHPO coordination under Oregon Revised Statute 358.653. This statute applies to any "real property of historic significance", which can mean any resource either listed on or determined eligible for listing on the National Register of Historic Places. The statute states that the owner of the historic resource "shall institute a program to conserve the property and assure that such property shall not be inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate." Coordination under this statute is accomplished by completing the Request for SHPO Comment form for the project, along with a cover letter explaining the project and its justification. It may be necessary to complete a determination of eligibility for the historic

resource if it has not been previously documented. Two sample ORS358 documentation forms are available for review, one complete submission for a resource previously determined eligible and one for a resource requiring a determination of eligibility.

ODOT Historic Resources Staff is available for consultation on any project that requires this type of coordination. Unlike Section 106 documents or other regulatory documentation, consultants or other political subdivisions may submit this type of documentation directly to SHPO without ODOT review.

Historic Resources Technical Reports

For projects classified as Class 1 (Environmental Impact Statement) or Class 3 (Environmental Assessment) under the National Environmental Policy Act, a Historic Resources Technical Report will be required. This report is a more in-depth analysis of Historic Resources within a project area. The Technical Report contains a summary of the development of the project area, a summary of research on previously identified resources in the project area, the results of the Section 106 consultation process, and a description of different project alternative's effects to Historic Resources. The Technical Report is a more detailed analysis but is similar to the Baseline Report described above. The Technical Report must be prepared according to the approved ODOT format.

The draft Technical Report must be reviewed by the appropriate ODOT Historic Resources Staff, who will provide comments. Once these comments are addressed, the Technical Report will be forwarded to the Environmental Project Manager and incorporated into the larger NEPA document. A summary of the Technical Report may also be required. The Technical Report, along with the full NEPA document, may be transmitted to SHPO and other interested parties.

Historic Resources Documentation Checklist

On the next two pages is a checklist to track the progress of Historic Resources documentation throughout a project's development. This checklist may be used to identify critical dates for deliverables and track when each task is completed.

Historic Resources Documentation Checklist

Project Name:	
Location/Highway:	
County:	
Key Number:	
Funding Source(s):	
Local Agency (if appropriate):	
Prime Consultant:	
Historic Resources Consultant (if different):	
Date	

- _____ Baseline Report to ODOT for review and comment
- _____ Baseline comments from ODOT on APE, NR resources, and possible effects caused by the project
- _____ Programmatic Agreement Memo if baseline report indicates that there is no potential to effect National Register listed or eligible historic Resources
- _____ Draft DOE to ODOT for review
- _____ Final DOE to ODOT to transmit to SHPO
- _____ SHPO response on DOE returned to ODOT
- _____ Draft FOE to ODOT for review
- _____ Final FOE to ODOT to transmit to SHPO
- _____ SHPO response on FOE returned to ODOT
- _____ Draft Cultural Report to ODOT for review (NEPA Class I and III projects only)
- _____ Final Cultural Report to ODOT to transmit to SHPO
- _____ Draft MOA to ODOT or review
- _____ Final MOA to ODOT to transmit to SHPO, ODOT, FHWA, and local agency if necessary
- _____ Executed signed copy of MOA from SHPO, ODOT, and FHWA and local agency if necessary sent of all signature parties
- _____ MOA stipulations completed
- _____ Draft 4(f) to ODOT for review

- _____ Final Draft 4(f) to ODOT to transmit to FHWA
- _____ Draft 4(f) sent out to interested parties and availability advertised (45 day review period).
- _____ Draft 4(f) comments back to ODOT/consultant to incorporate into Final 4(f)
- _____ Final 4(f) to ODOT to submit to FHWA and mail out to interested parties