



MEMORANDUM

TO: Section 106 Consulting Parties

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REFERENCE: **Route 250 Bypass Interchange at McIntire Road**
VDOT Project: 0250-104-103, PE-101; UPC Number: 60234
Section 106 Overview

Introduction

The purpose of this memorandum is to provide a brief summary of the Section 106 process for project consulting parties, and describe how it relates to the Route 250 Bypass Interchange at McIntire Road project. Complete information on Section 106 is available from the Advisory Council on Historic Preservation (www.achp.gov). Project information is available at www.250interchange.org.

Some of the text below is adapted from the ACHP website and from *Protecting Historic Properties: A Citizen's Guide to Section 106 Review*, an ACHP publication. Copies of this publication have been printed by the project team for Consulting Party use.

Section 106 Background

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies (in the case of this project, the Federal Highway Administration - FHWA) to *take into account* the effect of their undertakings on historic properties (per 36 CFR Part 800). As mandated by the regulations, consulting parties have the opportunity to share information and review evaluations of significance, effects, and treatment.

A successful and complete Section 106 review process includes the following:

- Determine if Section 106 applies to the project, if so, initiate the review;
- Gather information to determine which properties within the project area are listed in or eligible for the National Register;
- Determine how the historic properties might be affected;
- Explore alternatives to reduce impacts to or altogether avoid impacts to historic properties; and
- Reach an agreement with the State Historic Preservation Office (SHPO), consulting parties, and the ACHP (when applicable), on measures to lessen adverse effects or obtain advisory comments from the ACHP.

It is important to note that Section 106 review encourages, but does not mandate, preservation. Sometimes there is no way for a necessary project to proceed without impacts to historic properties. However, Section 106 does ensure that preservation values are factored into the



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planning and decision making processes for projects. The Section 106 process also ensures that Federal agencies must assume responsibility for the consequences of their actions to historic properties and be publicly accountable for their decisions.

Definitions

The *Area of Potential Effect (APE)* is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. The *National Register of Historic Places* is the Nation's official list of properties recognized for their significance in American history, architecture, archeology, engineering, and culture. It is administered by the National Park Service which is part of the Department of the Interior. The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

The most important term to understand for Section 106 is "*effect*". An effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register. A historic property may be directly or indirectly affected by physical, audible, or visual impacts; however, if the project is not found to affect the significant or qualifying characteristics of the resource, it may not be considered an effect. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be further removed in distance, or be cumulative.

The Federal agency (FHWA), in consultation with the State Historic Preservation Office (in this case, the Virginia Department of Historic Resources – VDHR), makes an assessment of adverse effects on the identified historic properties based on criteria found in ACHP's regulations. If they agree that there will be *no adverse effect*, the agency proceeds with the undertaking and any agreed-upon conditions. If they find that there is an *adverse effect*, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.

Consultation includes the process of seeking, discussing, and considering the view of other participants (including the public), and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. *Consulting Parties* include certain individuals and organizations with a demonstrated interest in the undertaking. The consulting parties may have a legal or economic relation to the project or affected properties or may demonstrate concern for the project's effects on historic properties. Throughout the Section 106 process, consulting parties are to be involved in findings and determinations made concerning effects to historic properties.

The Federal agency (FHWA) consults to resolve adverse effects. Consultation usually results in a *Memorandum of Agreement (MOA)*, which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may



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agree that no such measures are possible, but that the adverse effects must be accepted in the public interest. Consulting parties play an important role in sharing information, reviewing evaluations of significance, effects and treatment, however, they are not likely to have a direct role in affecting treatment to mitigate adverse effects. Thus, they are generally not appropriate as signers of an MOA.

Section 106 should not be confused with *Section 4(f)*. Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 USC Section 303) stipulates that the Federal Highway Administration (FHWA) and other US Department of Transportation (USDOT) agencies cannot approve the use of land from a significant publicly owned public park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless the following conditions apply:

- There is no *feasible and prudent* alternative to the use of land.
- The action includes all possible planning to minimize harm to the property resulting from use.

The Section 106 process provides information that is important for the Section 4(f) process, such as evaluation of historical significance. However, Section 106 does not require the same “feasible and prudent” test for avoidance alternatives. A *de minimis* Section 4(f) finding may be made by FHWA if, after consultation and notification to VDHR, a no adverse effect finding is made under then Section 106. For more information on Section 4(f), refer to the White Paper prepared by the study team in June 2007 (available on the project web site).

Historic Resources in the Project Area

To date, the Route 250 Bypass Interchange at McIntire Road project team has coordinated with VDHR to identify significant historic resources in the project area. The Environmental Assessment (EA) for the project evaluated the known archeological and architectural resources within the project area. Based on this evaluation, there are three architectural historic resources in the project area: McIntire Park east of the Norfolk Southern Railroad, McIntire / Covenant School, and the Charlottesville and Albemarle County Courthouse Historic District. Within the Courthouse District there are three contributing elements (all of which are residences): 807 Park Street, 501 Park Hill, and 502 Park Hill.

The garden associated with the Rock Hill Academy (now occupied by the Monticello Area Community Action Agency) was assessed during the inventory as a site with both archeological (44AB0215) and landscape (104-5137) qualities. This site was initially recommended eligible, but the detailed research conducted during evaluation demonstrated that the designed landscape is now missing several key components. Owing to the site’s lost integrity, it was subsequently recommended not eligible.

The project team prepared a Phase I Cultural Resources Investigation in February 2007 and supplemental survey forms in August 2007. VDHR responded to these investigations in April 2007 and September 2007 with their concurrence on the project team’s recommendations. Copies of these materials were submitted to the consulting parties in advance of this memo.

The Project and the Section 106 Process

The project team has circulated a draft EA which discusses the alternatives evaluation process to date and identifies two Preferred Alternatives: Alternative C1-diamond interchange with



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roundabout and Alternative G1-diamond interchange with signalized intersections. Although the alternatives have different traffic operational characteristics, both alternatives meet the purpose and need for the interchange project and have similar impacts to the environment and historic properties. The draft EA includes the current results of the historic properties survey.

Likely effects to historic properties have been considered extensively in the alternatives evaluation to date. Much of the process has involved reduction of physical impacts to McIntire Park, especially through the separate Section 4(f) Evaluation process. Of the 13 build alternatives evaluated, Alternatives C1 and G1 have the smallest impact to McIntire Park. *FHWA has not made any historic property effect determinations* in the draft EA. *Preliminary assumptions* on potential effect determinations for each property were identified as follows:

- McIntire Park: likely Adverse Effect
- McIntire / Covenant School: likely No Adverse Effect
- Charlottesville-Albemarle County Courthouse Historic District: likely No Adverse Effect

The Environmental Assessment process (per the National Environmental Policy Act - NEPA) is separate from Section 106. However, some elements of the two processes may be combined for greater efficiency. In the case of the 250 Interchange project, the draft EA includes Section 106 information available for public review; the Public Hearing notice solicited Section 106 input; and information on potential effects to historic properties was available at the Public Hearing.

Under NEPA, the EA is used to determine if there are significant impacts to the environment – including to historic properties. As stated in 36 CFR 800, the determination of whether an undertaking significantly affects the environment should consider effects to historic properties, however, a finding of adverse effect under Section 106 does not necessarily result in a significant impact under NEPA. Based on the draft EA it is not anticipated that the project would have significant impacts.

Depending on the project, the effects determination may be made either before or after the draft NEPA document. For this project, an effect determination will be made by FHWA following receipt of all comments from the EA and Public Hearing. This will provide the public and consulting parties full opportunity to comment on likely project impacts prior to FHWA making an adverse effect or no adverse effect determination.

NEPA Environmental Assessment development is continuing for the project. The project team will prepare a revised EA to address public comments, continue the Section 106 process, and provide greater design detail on a single Preferred Alternative. Section 106 effect determinations will be publicly documented in the revised EA. If, after the revised EA, it is found that the project will not have significant impacts, a Finding of No Significant Impact (FONSI) will be prepared if appropriate to identify FHWA's Selected Alternative.

Through the consultation process, the City, VDOT and FHWA will seek to avoid, minimize, and mitigate effects to historic properties in order to achieve no adverse effect determinations wherever possible. The City, VDOT and FHWA intend to resolve any adverse effects through the development of an MOA. It is anticipated that the MOA will be completed concurrently with the FONSI.



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Note: Based on the preliminary review of possible effects to historic properties, the EA proposed the intent to pursue a Section 4(f) de minimis finding for the Covenant School and the Courthouse District. This may only be carried forward if, through continuation of the Section 106 process, a no adverse effect determination is made for these properties. FHWA agrees that a de minimis finding *would not* be appropriate for McIntire Park because of likely adverse effects from the project.