

WSDOT Compliance Guidance for Historic Bridge Projects

Section 106 of the National Historic Preservation Act, Section 4(f) of the US Department of Transportation Act and Governor’s Executive Order 05-05

INTRODUCTION

Projects involving the rehabilitation or replacement of bridges listed in or determined eligible for listing in the National Register of Historic Places (NRHP) are required to comply with federal cultural resources laws, regulations, and State policy. These laws include Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36CFR800, and Section 4(f) of the US Department of Transportation (USDOT) Act of 1966, as amended, that relies upon the results of Section 106 compliance efforts. In Washington, the Governor’s Executive Order 05-05 (hereafter “05-05”) is patterned after Section 106 and applies to projects lacking a federal nexus that use state capital construction funds.

Once NRHP-eligibility of a bridge has been established, **both Section 106 and 4(f) regulations require consideration of alternatives that could avoid, minimize, or mitigate adverse effects.** Under the Statewide [Programmatic Agreement](#) (PA), signed by WSDOT, implementing Section 106 for the Federal-aid Highway Program in Washington State, the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Federal Highway Administration (FHWA), FHWA has delegated authority to WSDOT to carry out Section 106 compliance on behalf of FHWA. The Statewide PA allows certain categories of projects with minimal or no potential to cause an effect on historic properties to be exempted from Section 106 and 05-05 review. A WSDOT cultural resources specialist (CRS) is responsible for determining if a project qualifies as an exemption per stipulations outlined in the Statewide PA.

This guidance document and Section 106/ Section 4(f) Flowchart identify steps in the compliance process and provide a model workflow for a timely and efficient review of projects involving National Register-eligible historical bridges. WSDOT’s Cultural Resources Program (CRP) in the Environmental Services Office is available to assist Regions and Programs in their compliance efforts including preparation of necessary documents, but much of the responsibility for completion of the alternatives analysis falls on Region staff.

THE STEPS (see the Flowchart):

- 1. Contact the WSDOT Region Cultural Resources Specialist and establish the regulatory environment.** Projects that require federal approval or a permit, occur on federal or tribal lands, or are federally funded are subject to Section 106 compliance. Projects funded by a USDOT agency, such as FHWA, FRA and FTA, are also subject to Section 4(f) compliance.
- 2. Determine if project can be exempted from Section 106 and Section 4(f) review.** Certain projects involving historic bridges may be exempted by a WSDOT CRS per the following criteria;
 - A. WSDOT’s Statewide Programmatic Agreement with FHWA, SHPO, and ACHP allows exemption of certain types of projects unlikely to affect character-defining features of historic bridges from Section 106 review. Contact the WSDOT Region Cultural Resources Specialist to determine if a project or activity may be exempted.
 - B. Per FHWA, elements of the Interstate System are exempt from Section 106/ Section 4(f) review, except those bridges or structures identified as being Nationally and Exceptionally

Significant Features of the Federal Interstate System. Contact the WSDOT Region CRS to verify an Interstate bridge's status.

C. A 2012 [Program Comment](#) by the ACHP identifies certain common concrete or steel bridges and culverts constructed after 1945 that may be exempt from Section 106 review if;

- the bridge or culvert is NOT NRHP listed or eligible, and
- is NOT located within or adjacent to a NRHP historic district, and
- is NOT on Indian land,

3. Determine the NRHP eligibility of the bridge. A WSDOT CRS determines eligibility of a bridge or structure for listing on the National Register of Historic Places (NRHP).

A. If it is not NRHP-eligible, the WSDOT CRS documents that determination in consultation with the SHPO, or Tribal Historic Preservation Officer (THPO). Compliance with both Section 106 and Section 4(f) is then complete.

B. If it is NRHP eligible, proceed to Step 4.

4. If the bridge is determined NRHP eligible, the WSDOT CRS determines project effect.

A. If a determination of “no adverse effect” or “no historic properties affected” is made, and the SHPO or THPO concurs in writing, Section 106 compliance is complete. FHWA may then apply the *de minimis* rule for Section 4(f), i.e., that there is no “use” of the historic property. Section 4(f) is complete and WSDOT is not required to complete an alternatives analysis, nor obligated to select another alternative.

B. If the project will have an “adverse effect” on an NRHP-eligible or listed bridge, and SHPO/THPO agree, WSDOT must, in consultation with other agencies and interested parties, develop and evaluate alternatives that could avoid, minimize, or mitigate the adverse effects, per 36CFR800.6(a). See Alternatives Analysis below.

C. Similarly, if “adverse effect” is determined, WSDOT should consult with FHWA re. “use” per Section 4(f). Since “adverse effect” per Section 106 is considered a “use” per Section 4(f), WSDOT will use the alternatives analysis done for Section 106 compliance for the 4(f) evaluation. In fact, the Section 4(f) evaluation, structured per FHWA’s basic format, should serve as the Section 106/36CFR800.6(a) evaluation.

D. Through consultation, the federal agency(s), WSDOT, partner agencies, and consulting parties develop a Memorandum of Agreement (MOA) stipulating mitigation measures to resolve adverse effects.

SECTION 106/ SECTION 4(f) EVALUATION ALTERNATIVES ANALYSIS

Section 106 and Section 4(f) share a common requirement – consideration of alternatives:

- **Section 106** requires a consultative procedural process, in which it is WSDOT’s responsibility to make a “reasonable and good faith” effort, in consultation with relevant state and federal partner agencies and interested parties, to “develop and evaluate alternatives . . . that could avoid, minimize, and mitigate adverse effects on historic properties” (36CFR800.6.a).
- **Section 4(f)** allows “use” of a historic property only if there is no feasible and prudent alternative, determined in a Section 4(f) Evaluation of alternatives, and requires “measures to minimize harm” via a Memorandum of Agreement to mitigate adverse effects per the Section 106 process.

Because the Section 106 process must be completed prior to initiating Section 4(f) compliance, *the alternatives analysis developed and reviewed by WSDOT, partner agencies, and consulting parties in the Section 106 process should become the Section 4(f) Evaluation*. The two processes complement, and in fact duplicate, one another.

Evaluation of project alternatives often occurs early in the life of a project, even before initiation of the Section 106/Section 4(f) compliance process has begun. In the case of a bridge replacement project, evaluation of project alternatives must occur early in the life of a project in order to consider all mitigation alternatives in a timely fashion and not delay the project development schedule. It is important for the project office to document the alternatives analyzed and, if an “adverse effect” is anticipated, to ensure that the alternatives listed below are considered, at a minimum.

- **Do nothing.** Documentation must show that this alternative ignores identified needs to correct structural deficiencies and/or functional obsolescence, and does not provide the same level of safety found in structurally and functionally sufficient bridges. *Questions to consider include:* What are the estimated costs to maintain the bridge in its current condition? Can the bridge remain open while routine maintenance is performed?
- **Build on new location without using the old bridge.** It should be demonstrated that parallel or nearby streets or roadways cannot replace the function of the historic bridge, or that a new bridge parallel to the existing bridge (allowing for a one-way couplet), is not feasible and prudent. Documentation must include results of studies showing that this alternative would not be possible due to: terrain/topographical limitations; unacceptable adverse social, economic, and/or environmental effects; cost and engineering difficulties of extraordinary magnitude; and reasons why preservation of the historic bridge would not be possible, due to the bridge being beyond rehabilitation for transportation or other uses, or because agencies with permitting authority require removal of the historic bridge.

Questions to consider include: Can a new bridge on a new alignment be safely and effectively integrated into existing roadways? What is the amount and cost of new right-of-way? What environmental impacts will be caused by a new bridge? What are the bridge’s character-defining features and how will they be preserved? Who will maintain the historic bridge and what are the estimated costs? What are the estimated costs of building or upgrading bypass streets/roadways? What environmental and social impacts would result from creating a bypass around the bridge?

What other Section 4(f) properties would experience “use” if a bypass route were developed? What effects will the new bridge have on the integrity of the historic bridge? If the historic bridge is to be used for pedestrian traffic, is there local interest or need for a pedestrian bridge? What protective railing or fencing will be needed for pedestrian and bicycle use? Are there existing or proposed recreation trails in the vicinity that would promote the historic bridge’s use on a trail?

- **Rehabilitate the historic bridge to retain its current function without affecting the historic integrity of the structure.** Document how the bridge’s character-defining features would be affected, including those not critical to its sufficiency rating, such as guardrails. Analysis must show how structural deficiencies would be corrected, including estimated costs of the repairs. Reasons should be presented as to why repairs would not correct all deficiencies, such as scour, safety and hydraulic requirements, or ensure longevity of the structure, due to uncertainty surrounding conditions or sufficiency of components, such as concrete and pilings.

Questions to consider include: Is it possible to replace deteriorated or failed elements in-kind? Is it possible to rehabilitate the bridge and retain its character-defining features? How will concrete be repaired? What are the estimated costs of a rehabilitation compared with estimated costs of a new bridge? Will a Corps permit be required and will the Corps approve the rehabilitation? Will relevant agencies allow design variances to current hydraulic requirements to allow rehabilitation of a historically significant bridge built prior to modern standards for minimal obstruction of river flow?

- **Replace the historic bridge with a new bridge on the present alignment.** This alternative must state that it constitutes a “use” of a Section 4(f) property (the historic bridge), and demonstrates that there is no feasible and prudent alternative meeting the project’s purposes and need.

Questions to consider include: Will the new bridge pose a “use” of any other Section 4(f) properties (parks, wetlands, etc.)? What are the estimated costs of a new bridge and how were those costs estimated? What are the demolition costs to remove the old bridge? What are the estimated costs for rehabilitating the historic bridge?

Most WSDOT projects necessitating the “use” of a historic bridge may be covered by FHWA’s programmatic Section 4(f) evaluation procedures, with which the above alternatives analysis is intended to comply. If the project meets the programmatic criteria of applicability and the evaluation demonstrates that a feasible and prudent alternative avoiding “use” of the historic bridge cannot be found, FHWA may apply the programmatic Section 4(f) evaluation and approve FHWA participation in a project that “uses” the historic bridge. This is a streamlined 4(f) evaluation process, since it does not require a draft, comment period, or FHWA review for legal sufficiency.

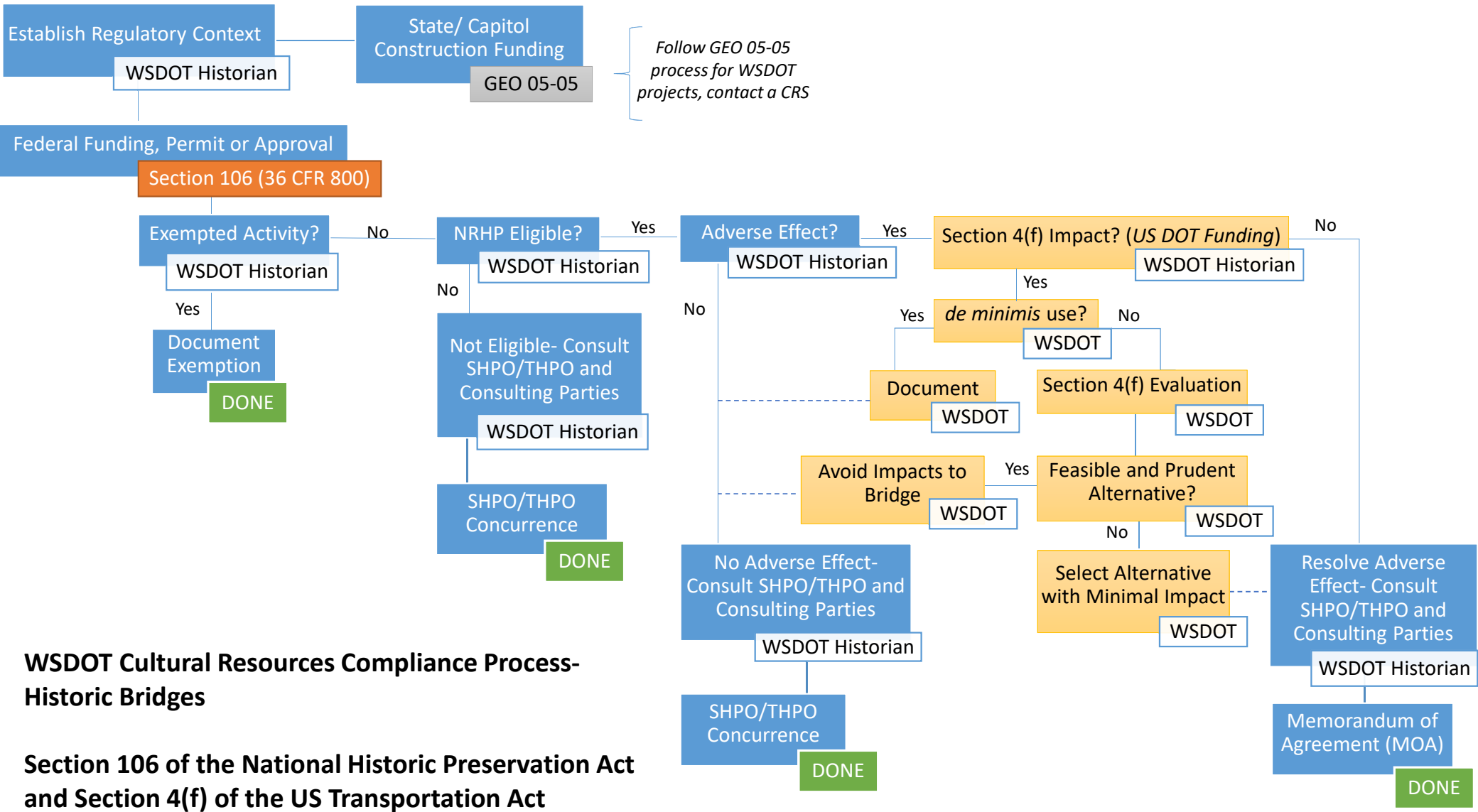
COMPLETION OF FEDERAL COMPLIANCE

Section 106 compliance is complete when “adverse effect” has been mitigated, usually in a Memorandum of Agreement among the consulting parties. The MOA will be the result of consultations in which an alternatives analysis has been considered by the consulting parties. Measures stipulated in the MOA to mitigate “adverse effects” will become the “measures to minimize harm” required for the Section 4(f) Evaluation. Thus, the two laws serve to complement one another in transportation project development.

NON-FEDERAL COMPLIANCE

If a project lacks a federal nexus and uses only state funds, it is subject to compliance with the Governor’s Executive Order 05-05. WSDOT, per our agreement with Department of Archaeology and Historic Preservation (DAHP) may apply the criteria for exemptions stipulated in the Statewide PA for certain projects subject to 05-05 review. GEO 05-05 requires state agencies to:

- 1.** Consult with DAHP and affected tribes during project design and prior to construction.
- 2.** Take reasonable action to avoid, minimize or mitigate adverse impacts to archaeological and historic resources, including NRHP eligible or listed bridges.



**WSDOT Cultural Resources Compliance Process-
Historic Bridges**

**Section 106 of the National Historic Preservation Act
and Section 4(f) of the US Transportation Act**