Section 106 Consultation in Transportation Projects

EVOLUTION OF SECTION 106 CONSULTATION & LESSONS LEARNED ALONG THE WAY
Why do we consult?

President Johnson signs National Historic Preservation Act of 1966
Why do we consult?

Section 106 (16 U.S.C. 470f)

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal agency to which there has been referred the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.
How do we consult?

- **36 CFR §800—Protection of Historic Properties**
- Regulations on the process
- Written somewhat vaguely, allowing for flexibility
Is consultation important to Section 106?

In the 16-page regs:

"consultation" = YES times

"consulting" = 68 times

BUT,
How much consultation is enough?

APPROPRIATE TO SCALE & NATURE OF UNDERTAKING

HISTORICALLY, DONE DURING NEPA UNLESS CONTROVERSIAL

Pond Eddy Bridge
Pike County
Pond Eddy: The Challenges

Began NEPA: 1993
Cleared CE: 2013

Landlocked Pennsylvania
New York

2 DOTs
2 SHPOs
2 municipalities
2 sets of CPs with conflicting interests

National Park Service
Upper Delaware Council
Upper Delaware Scenic Byway
Multiple Regulatory Agencies
ACHP
Delaware River
What’s the goal of consultation?

36 CFR §800.16(f): “…the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process.”

"consultation is a process of dialogue that leads to a decision"
The Early Years of PennDOT Consultation

- Inconsistent Stewardship
- Engineers’ Perceptions
- Public Perceptions
- Consultation Late in Design Process
- Not Enough Face-to-Face Interactions
- Reactive vs. Proactive
Consulting Party Responses

We found the meeting informative; however, we were disappointed that coordination of the presentations was not conducive to the open exchange of ideas and communication among consulting parties that is expected in the Section 106 consultation process. We were particularly concerned that some consulting parties felt hindered in their ability to engage PennDOT and FHWA in a meaningful discussion of their concerns. While we believe that PennDOT is committed to complying with the requirements of Section 106, learning to better manage conflict, FHWA and PennDOT can more efficiently conclude review, even when managing complex and contentious consultations. As a rule, we find that objections can be more quickly and satisfactorily resolved with a coordination strategy that is inclusive of all parties involved.

Now you are asking us to come to a "design" public meeting, well knowing that it is clear of this project is that the demolition of the historic resource was a foregone conclusion and all efforts were directed at demolishing the bridge without regard to possibly retaining it in any form. We are learning to better manage conflict, FHWA and PennDOT can more efficiently conclude review, even when managing complex and contentious consultations. As a rule, we find that objections can be more quickly and satisfactorily resolved with a coordination strategy that is inclusive of all parties involved.

suggests that the Design Advisory Committee’s role will be to offer reactive recommendations to a design put forth by PennDOT rather than a more proactive approach, where we might consider alternatives such as using a spider foot bridge or a cable-stayed bridge, which PennDOT immediately dismissed as too expensive. We were told that our design choices would be limited to superficial considerations such as concrete stamp patterns on the piers or colors. We also suggested a single pier design but were told by PennDOT that they could not transport the sections down the highway due to the length. When we suggested they...
What did we learn about consultation?

Engage Early & Often

Consensus Building Works Best in Person

Identify Non-106 Concerns

Clearer Documentation

Communication is KEY

Transparency is also KEY
What did we learn about consultation?

ProjectPATH
Linking Planning & NEPA
PennDOT Connects