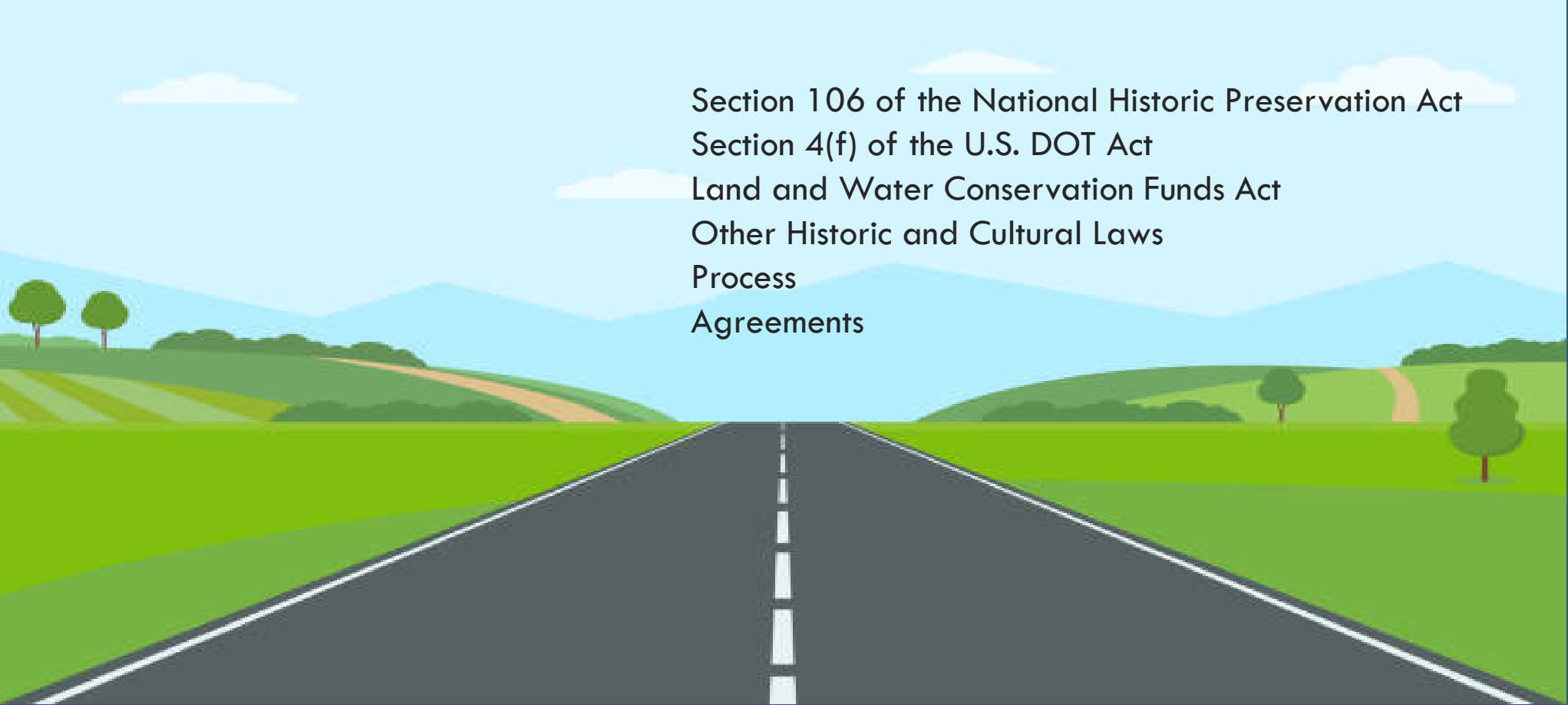




BASIC HISTORIC, CULTURAL AND PARKLAND GUIDANCE FOR MAINEDOT STAFF

MaineDOT Environmental Office
Julie Senk, Historic Coordinator

BASIC HISTORIC, CULTURAL AND PARKLAND GUIDANCE OVERVIEW



Section 106 of the National Historic Preservation Act
Section 4(f) of the U.S. DOT Act
Land and Water Conservation Funds Act
Other Historic and Cultural Laws
Process
Agreements

SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966

□ What is Section 106?

- Requires all federal agencies to consider effects on historic properties by any undertakings that they carry out, assist, fund, permit, license, or approve through their agency

□ Section 106 review ENCOURAGES, but does not mandate, preservation

- It ensures that preservation values are factored into federal agency planning and decisions

SECTION 106 - MAJOR STEPS IN REVIEW PROCESS

- ❑ Initiate consultation with State Historic Preservation Office (SHPO) and Tribal Historic Preservation Offices (THPO)
 - Maine Historic Preservation Commission
 - Penobscot Nation, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, & Mi'kmaq Nation
- ❑ Publicize project
 - Must seek and consider public views
 - Must commence at the early stages of project planning
- ❑ Identify historic properties within the Area of Potential Effect (APE)
- ❑ Assess potential effects and explore measures to avoid or reduce harm to historic properties
- ❑ Resolve adverse effects through consultation with SHPO, the public, and any other consulting parties

SECTION 106 - IDENTIFY HISTORIC PROPERTIES

- ❑ A “historic property” is any district, site, building, structure, or object included in or eligible for the National Register of Places
 - The National Register is maintained by the National Park Service and is a list of properties that have been evaluated against specific criteria and found to have historic, architectural, archaeological, and/or cultural significance.
 - Properties (except in rare instances) must be 50 years or older to qualify for inclusion
- ❑ Four Criteria to Evaluate Significance:
 - (A) Associated with events that have made a significant contribution to the broad patterns of our history
 - (B) That are associated with the lives of significant persons in our past
 - (C) Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values
 - (D) That have yielded or may be likely to yield, information important in history or prehistory

SECTION 106 - IDENTIFY HISTORIC PROPERTIES

- ❑ Integrity is the ability of a property to convey its significance
 - must always be grounded in an understanding of a property's physical features and how they relate to its significance.

- ❑ 7 Aspects of Integrity
 - Location - place of construction or event
 - Design - elements of form, plan, structure, and style
 - Setting – environment
 - Materials - physical elements
 - Workmanship - evidence of culture/people during a given time
 - Feeling - combination of design, setting, materials that convey time and place of resource
 - Association - direct link between historic event and property

SECTION 106 – ASSESSING EFFECTS

- ❑ When a project may alter characteristics that qualify a property for inclusion in the National Register in a manner that would diminish the integrity of the property

- ❑ Determine Level of Effect
 - no historic properties
 - no effect (historic resources present, but not effected by project)
 - no adverse effect (impact to historic resource is minimal)
 - adverse effect (significant impact to historic resource)

SECTION 106 – ASSESSING EFFECTS

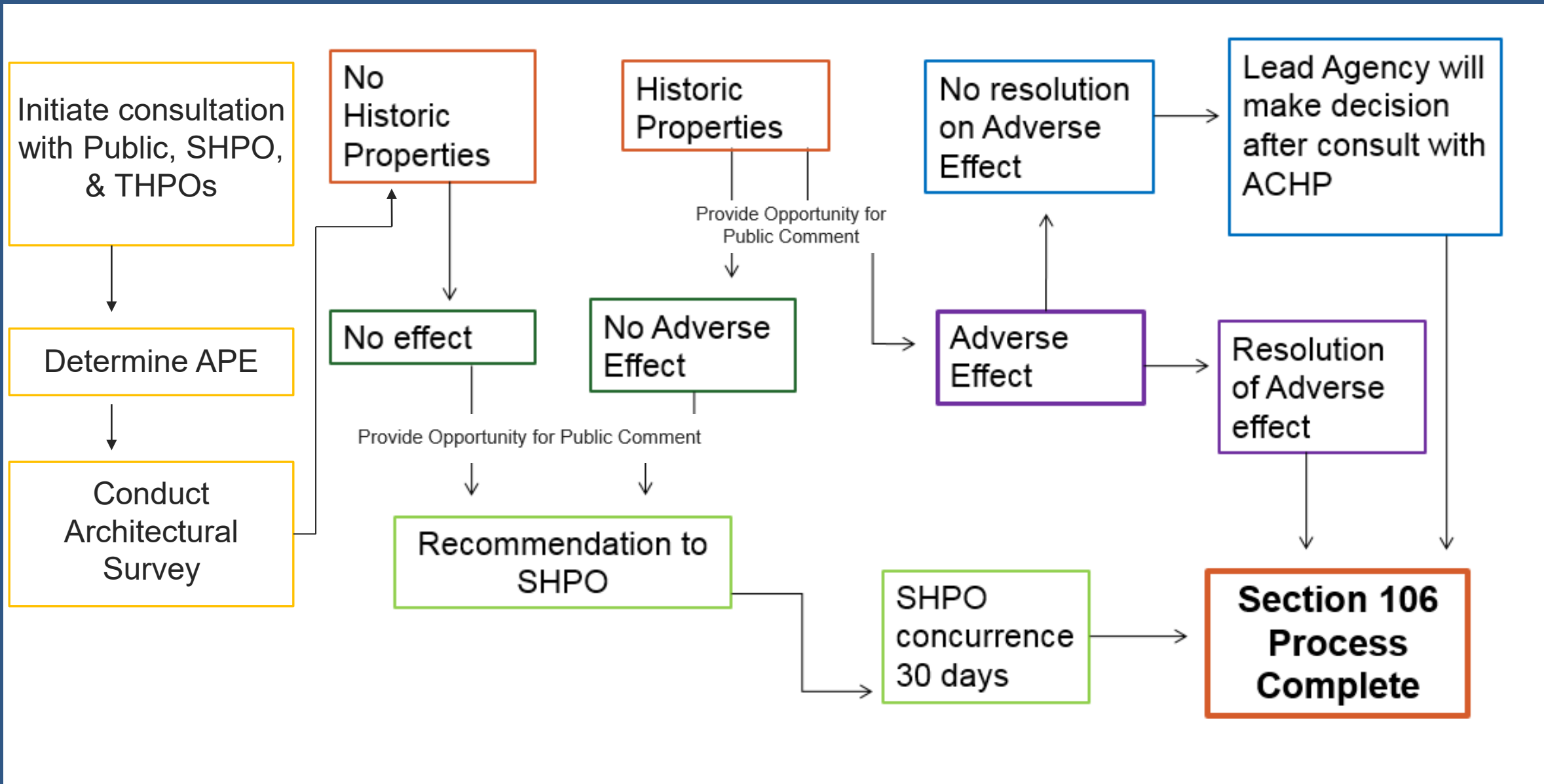
- ❑ When a project may alter characteristics that qualify a property for inclusion in the National Register in a manner that would diminish the integrity of the property
- ❑ Determine Level of Effect
 - no historic properties
 - no effect (historic resources present, but not effected by project)
 - no adverse effect (impact to historic resource is minimal)
 - adverse effect (significant impact to historic resource)
 - Seek to avoid, minimize, or mitigate the adverse effects
 - Federal agencies and others negotiate, draft, finalize, execute, and implement "Memoranda of Agreement" (MOA) stipulating how the adverse effects of Federal actions on historic properties will be resolved.

SECTION 106 – CONSULTING PARTIES

- ❑ Consulting Parties include, but are not limited to:
 - State Historic Preservation Officer (SHPO)
 - Advisory Council on Historic Preservation
 - Federally recognized Tribes
 - Representatives of local governments
 - Historical societies or organizations
 - Interested parties

SECTION 106 – PUBLIC INVOLVEMENT

- ❑ Because proposed projects vary in scope and size, plans for involving the public may be different for each Section 106 review.
- ❑ Agencies must give the public a chance to learn about the project and provide their views
- ❑ Opportunity to comment on Finding of Eligible Properties and Finding of Effects
- ❑ Consultation does not mandate a specific outcome



SECTION 4(F) OF THE US DOT ACT OF 1966

- ❑ Section 4(f) applies to projects that receive funding from or require approval by an agency of the U.S. DOT
- ❑ Before approving a project that uses a Section 4(f) property, FHWA must determine that there is no feasible and prudent alternative that avoids the Section 4(f) properties and that the project includes all possible planning to minimize harm to the Section 4(f) properties; OR, FHWA makes a finding that the project has a de minimis impact on the Section 4(f) property

SECTION 4(F)- PROPERTIES

- Publicly owned public parks
- Publicly owned recreation areas
- Publicly owned wildlife or waterfowl refuges
- publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places

SECTION 4(F)- WHAT IS A USE?

- ❑ When land is permanently incorporated into a transportation project
- ❑ When there is a temporary occupancy of land that is adverse in terms of the statute's preservation purpose
 - ❑ Under certain conditions a temporary occupancy may not be considered a use
- ❑ When there is a constructive use (a project's proximity impacts are so severe that the protected activities, features, or attributes of a property are substantially impaired)

SECTION 4(F)- DE MINIMIS IMPACT EVALUATION

- ❑ A *de minimis* impact is one that, after taking into account avoidance, minimization, mitigation and enhancement measures, results in no adverse effect to the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f)
 - ❑ For historic properties, a *de minimis* impact is one that results in a Section 106 determination of "no adverse effect" or "no historic properties affected."
- ❑ A *de minimis* impact determination requires agency coordination with the officials having jurisdiction over the Section 4(f) property and opportunities for public involvement.

SECTION 4(F)- PROGRAMMATIC EVALUATIONS

- ❑ There are five existing Nationwide Programmatic Section 4(f) evaluations that can be used in place of individual evaluations for certain types of highway projects and specific uses
 - ❑ Programmatic Evaluations save time and do not require a draft, comment period, or circulation
 - ❑ The five programmatic evaluations are:
 - ❑ Independent Bikeway or Walkway Construction Projects
 - ❑ Use of Historic Bridges
 - ❑ Minor Involvement with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges
 - ❑ Minor Involvement with Historic Sites
 - ❑ Transportation Projects that have a Net Benefit to Section 4(f) Property

SECTION 4(F)- INDIVIDUAL EVALUATION

- ❑ An individual Section 4(f) evaluation must be completed when approving a project that requires the use of Section 4(f) property if the use results in a greater than de minimis impact and a programmatic Section 4(f) evaluation cannot be applied to the situation
- ❑ When multiple alternatives use Section 4(f) property and the evaluation of avoidance alternatives concludes that there is no feasible and prudent avoidance alternative, then FHWA may approve, from the remaining alternatives that use Section 4(f) property, only the alternative that causes the least overall harm in light of the preservation purpose of the statute

SECTION 6(F)- LAND AND WATER CONSERVATION FUND PROGRAM

- ❑ The federal government established the Land and Water Conservation Fund (LWCF) Program in 1965 to increase the net quantity of public, outdoor recreational space. Section 6(f) of this Act provides matching funds to states or municipalities for planning, improvements, or acquisition of outdoor recreational lands. Any property that was planned, purchased, or improved with LWCF money is considered a 6(f) property
- ❑ Like Section 4(f), the project team must evaluate and document all practical alternatives to the proposed conversion of Section 6(f) land for transportation use before the acquisition can be approved
 - ❑ It is possible that the project could temporarily affect Section 6(f) lands. Provided the impact to the land and facilities can be restored as approved by DPR and NPS, then the intent of the statute can be met by onsite mitigation
 - ❑ If acquisition of a Section 6(f) property is unavoidable, DDOT is required to replace the property

OTHER CULTURAL LAWS AND AGREEMENTS

Archaeological Resources Protection Act

MaineDOT complies with the Archaeological Resources Protection Act through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes and Section 106.

Preservation of Historical and Archaeological Data

MaineDOT complies with the Preservation of Historical and Archaeological Data through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes and Section 106.

Native American Grave Protection and Repatriation Act

MaineDOT complies with the NAGPRA through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes and Section 106.

OTHER CULTURAL LAWS AND AGREEMENTS

❑ **American Indian Religious Freedom Act**

MaineDOT complies with the American Indian Religious Freedom Act through coordination with the Maine Historic Preservation Commission Archaeological staff, tribes and Section 106.

❑ **Section 106 Programmatic Agreement**

MaineDOT has an agreement with FHWA, ACHP and MHPC to streamline the Section 106 process by exempting certain actions from further Section 106 review and by allowing MAineDOT to conduct the 106 process.

❑ **Program Comment for Common Post-1945 Concrete and Steel Bridges**

MaineDOT complies with Program Comment that was issued by the ACHP at the request for FHWA to eliminate individual historic review requirements under Section 106 of the National Historic Preservation Act for common post-1945 concrete and steel bridges and culverts.

QUESTIONS

Julie Senk, MaineDOT Historic Coordinator

julie.senk@maine.gov