



TABLE OF CONTENTS

3.13 Cultural Resources Impacts	2
3.13.1 Introduction and Background	2
3.13.2 Methodology and Process.....	3
3.13.2.1 Standard Section 106 Review Process.....	3
3.13.2.2 Chronology of Tier 1 Section 106 Review for All Corridor Alternatives - Mid-States Corridor Project	4
3.13.2.3 Identification of Cultural Resources Impacted	5
3.13.3 Identification and Evaluation of Aboveground Resources	6
3.13.4 Identification and Evaluation of Archaeological Resources.....	6
3.13.5 Tabulation of Cultural Resources Impacted	6
3.13.6 Effect Determination Assumptions	7
3.13.7 Resolution of Adverse Effects	7
3.13.8 Tier 2 Studies.....	8
3.13.9 Summary	8

TABLES

Table 3.13-1 Above Ground Cultural Resource Impacts	6
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3.13 CULTURAL RESOURCES IMPACTS

3.13.1 Introduction and Background

The **National Historic Preservation Act (NHPA)** of 1966 is a federal law designed to protect and preserve cultural resources, historic structures and archaeological sites, in the United States, its territories and protectorates. **Section 106** of the NHPA charges federal agencies to “take into account” effects on historic properties from federally funded undertakings by **identifying** historic properties, **assessing** the level of effects, or impacts, to historic properties and **mitigating**, or resolving, adverse effects to historic properties when necessary. The process of identifying historic properties, assessing effects to them and mitigating adverse effects to them is known as Section 106 review. Please see **Appendix P – Cultural Resource (Section 106) Documentation** for such documents produced during Tier 1 studies, described in **Section 3.13.2**, for the Mid-States Corridor project.

Section 106 of the NHPA requires **Consulting Parties** be identified and invited to comment on effects to historic properties resulting from an undertaking administered or executed by a federal agency, involving federal funding, or requiring a federal permit. Consulting Parties include local government representatives, local historical societies and preservation organizations, Native American tribes, the State Historic Preservation Officer (SHPO), property owners or interested members of the public.

The Mid-States Corridor project is an undertaking administered by the Indiana Department of Transportation (INDOT) on behalf of the Federal Highway Administration (FHWA). This Tier 1 Study is funded by the Mid-States Corridor Regional Development Authority and does not have federal funding. However, future project stages are anticipated to include federal funds and permits. Accordingly, the Section 106 process is being followed to review historic aboveground and archaeological properties within the **Area of Potential Effects (APE)** of the project. The APE is the “geographic area or area within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. 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” (36 CFR § 800.16(d)). The aboveground preliminary APEs for Tier 1 of the Mid-States Corridor project encompass all resources within the project area, which is a 2,000-foot-wide corridor for each of the five routes, and an additional area one mile beyond each side of the preliminary corridors for new terrain locations. For existing highway locations, the preliminary APEs extend 4,000 feet from both sides of the centerline. The belowground, or archaeological, APE for Tier 1 is limited to the 2,000-foot-wide corridor for each of the five alternatives.

Section 106 of the NHPA also created the **National Register of Historic Places (NRHP)**. The purpose of a Section 106 review is to identify all cultural resources, whether aboveground and belowground, within the project APE currently listed in the NRHP or that are considered eligible for listing in the NRHP. The term “historic” when used within the Section 106 review process refers to all properties currently listed within the NRHP as well as those eligible for listing in the NRHP. Oftentimes, the terms “historic resource” or “historic property” are used to refer to both aboveground and archaeological resources that are listed or eligible for listing in the NRHP. Because formal eligibility determinations will not be made during this Tier 1 process, all resources considered potentially eligible for listing in the NRHP based on the Tier 1 review are considered historic resources or historic properties for this evaluation.

Aboveground cultural resources encompass all structures built by humans that rise above ground level. These include residences, barns, bridges, commercial and industrial buildings, outbuildings, windmills, etc. According to the NHPA guidelines, these aboveground resources must be 50 years old or older to be considered eligible for listing within the NRHP. Aboveground resources may also be associated with belowground or archaeological sites. Please



see **Appendix O – Historic Properties Analysis** for information on aboveground resources that are currently listed in, or are considered potentially eligible for, the NRHP within the preliminary APEs for each of the five alternatives.

Belowground cultural resources are referred to as archaeological resources and encompass the remnants of past human activity usually found beneath the ground surface. However, some archaeological resources extend aboveground, such as an abutment or pier from a demolished bridge, the ruins of an old house or a decaying industrial site. Archaeological resources are generally identified as sites or areas and in Indiana must date no later than 1870. These sites/areas are grouped into prehistoric, dating to the time prior to Native American contact with European explorers/traders, and historic, post contact, time periods. Please see **Appendix N – Archaeology Analysis**, for a discussion of belowground resources within the preliminary APEs of all alternatives.

The Mid-States Corridor Study Area includes 12 counties in Southern Indiana, generally bounded by the Ohio River, SR 37 and I-69. The project area is within the Southern Hills and Lowlands Region of the state, characterized by rolling topography consisting of agricultural fields, wooded ridges and valleys with occasional rural towns and small cities.

Cultural resources within the Study Area include aboveground structures dating from c.1830 to the present, representing many historical themes within European American and African American occupation. It also includes archaeological sites dating from 11,000 BC to 1870. These contain artifacts that convey information on the lifeways of many Native American tribes who lived in the region and early European American/African American settlement.

3.13.2 Methodology and Process

3.13.2.1 Standard Section 106 Review Process

The full Section 106 Review process, following the guidance of INDOT Cultural Resources Office (CRO) and the Indiana SHPO, generally includes the following steps:

- **Initiation of the Section 106 Process:** Potential Consulting Parties are identified for the undertaking, and an Early Coordination Letter is sent to this group. It provides a description of the project and invites individuals and agencies with a demonstrated legal, economic or historic preservation interest to become Consulting Parties and participate in the Section 106 process. Consulting Parties are entitled to share their views, receive and review pertinent information, and offer ideas and suggest avoidance, minimization and mitigation measures. A 30-day review period of the Early Coordination Letter is provided for potential Consulting Parties. They are asked to provide comments on any potential environmental concerns, including cultural resources, they foresee.
- **Identification of Aboveground & Archaeological Resources:** Qualified Professional historians and archaeologists who meet the Secretary of the Interior's Standards conduct research of the project area. They use online databases and in-person field reviews. They identify properties listed in, or eligible for listing in, the NRHP. They also delineate an APE.
- **Evaluation of Aboveground & Archaeological Resources:** A Historic Property Report (HPR) and a Phase 1A Archaeological Report are completed for the APE and project area, respectively. The HPR and Phase 1A Report include information on the prehistory and history of the area. These assess and evaluate the identified resources for listing in the NRHP. They make recommendations either for, or against, NRHP eligibility for each aboveground and archaeological resource. These reports are sent to the Consulting Parties for a 30-day review period.
- **Determination of Effects to Aboveground & Archaeological Resources:** Impacts to aboveground resources from the undertaking are presented to Consulting Parties in an Effects Report. This explains what effects are



anticipated and makes a recommendation for a Finding of Effects. An undertaking may result in a Finding of “No Historic Properties Affected,” “No Adverse Effect” or “Adverse Effect.” Consulting Parties have a 30-day review period in which they may provide comments on the Letter of Effects.

- **Resolution of Adverse Effects:** A formal Effect Finding is recommended, which includes supporting documentation (800.11 Report). This is presented to Consulting Parties for review and concurrence. Consulting Parties have a 30-day review period in which they may comment on the Effect Finding. If the Effect Finding is “No Historic Properties Affected” or “No Adverse Effect,” the Section 106 process concludes at the end of this 30-day review period if no Consulting Parties object to the Effect Finding. However, if the Effect Finding is “Adverse Effect,” a Memorandum of Agreement (MOA) is drafted which contains stipulations designed to mitigate for the “Adverse Effect” to the historic property/ies. In the case of an “Adverse Effect,” the Section 106 Review concludes when all the required and invited signatories have signed the MOA. However, the mitigation stipulations described in the MOA must be completed within a reasonable time frame that is established within the MOA, or the undertaking will be in violation of Section 106.

Regulations of the Council on Environmental Quality (CEQ) and FHWA allow NEPA studies for large, complex projects to be carried out in a two-stage, “tiered” process. In the first tier, the “big picture” issues are addressed, while taking into account the full range of impacts. After the “big picture” issues are resolved in Tier 1, the focus shifts in Tier 2 NEPA studies to issues associated with a more exact determination of impacts and the avoidance and mitigation of adverse impacts. Because the Mid-States Corridor is a very large undertaking with a 12-county Study Area, the NEPA process and accompanying environmental reviews, including Section 106 reviews, also follow a tiered process. See **Section S.3.1** for more details about the tiered NEPA process.

Tier 1 Section 106 Review identifies aboveground and previously recorded belowground resources within all of the alternatives. The Final Environmental Impact Statement (FEIS) in which this chapter will appear, accompanied by a Record of Decision (ROD), will identify a preferred alternative and provide a Programmatic Agreement (PA) to conclude Tier 1 environmental studies. The PA, approved and signed by FHWA, SHPO and INDOT, will guide the Tier 2 Section 106 Review. Tier 2 studies will focus only on the preferred alternative.

The methodology described above was reviewed by the SHPO. In a September 5, 2019 letter to Gary Quigg of the Mid-States project team, Beth McCord of the SHPO stated, “... the staff of the Indiana State Historic Preservation Officer (“Indiana SHPO” or “INDNR-DHPA”) has reviewed the draft methodology received by our office August 7, 2019 and subsequently discussed at the August 12, 2019 agency meeting with representatives from my office, INDOT, FHWA, and Lochmueller Group. We are satisfied with the Section 106 methodology discussed that will take place during the drafting of the Tier 1 Environmental Impacts Statement (“EIS”).”

3.13.2.2 Chronology of Tier 1 Section 106 Review for All Corridor Alternatives - Mid-States Corridor Project

The Section 106 Review methodology for the Tier 1 studies approved by INDOT CRO, FHWA and the SHPO included the steps below:

- Consulting Parties including local governments, local preservation organizations, Native American tribes and environmental review agencies were identified. **(July 2019)**
- A coordination meeting with state environmental agencies and Native American tribes was held. **(August 20, 2019)**
- An Early Coordination Letter/Invitation was sent to Consulting Parties. **(December 2019/January 2020)**
- An Invitation Letter was sent for the first Consulting Party Meeting. **(April 13, 2020)**



- The first Consulting Party meeting introduced the Consulting Parties to the project, explained the process that would be undertaken for the Tier 1 Study, provided an overview of the Section 106 methodology and planned Programmatic Agreement and defined their role for this level of review. **(April 27, 2020)**
- The aboveground APE for each 2,000-foot-wide alternative corridor was established as extending one mile in each direction from both sides of each alternative corridor for new terrain locations. For existing highways, the preliminary APE was established as extending 4,000 feet from both sides of the centerline. **(May 2020)**
- Aboveground resource identification consisted of an online review of the State Historic Architectural and Archaeological Resource Database (SHAARD) structures map to determine the locations of previously recorded structures. This remote review was followed by on site “Windshield Survey” field verification of each potential corridor alternative to verify the previously recorded structures remain extant and worthy of their existing ratings from the Indiana Historic Sites and Structures Inventory (IHSSI). These included NRHP-listed, Outstanding, Notable and Contributing properties. The Windshield Survey field studies also included recording any previously undocumented structural resources fifty years old or older that warranted a preliminary rating of Contributing or higher on the IHSSI rating system. Field recordation efforts were limited to one photograph and brief textual notation per resource. No additional research on cultural resources was conducted as a part of the Tier 1 review. **(May 2020-February 2021)**
- Archaeological resource identification was conducted online via the SHAARD Archaeology map to determine the locations of previously recorded archaeological sites. No archaeological field work was conducted during the Tier 1 evaluations. **(May-July 2020)**
- Although not a part of the original methodology for Tier 1 studies approved by INDOT CRO, FHWA and the SHPO, an additional Consulting Party Meeting was held. This meeting was requested by Consulting Parties to review results of the cultural resource investigations. This second Consulting Party Meeting was held **April 20, 2021**.
- A written summary of cultural resource investigations titled “Cultural Resource Impacts,” to be included in the FEIS, will be drafted for Consulting Party review. This document will include a brief historic context of the communities within the Tier 1 Study Area, but will not include evaluations for the NRHP eligibility of historic properties. **(Early 2022)**
- A Programmatic Agreement (PA), included in **Appendix P**, will be reviewed by Consulting Parties. The PA will define how the Section 106 Review process will be completed during Tier 2 studies. This process will evaluate multiple alignments within the preferred alternative corridor. The PA also will identify specific considerations for cultural resources identified in the Tier 1 study, with a framework for mitigation of adverse effects, including anticipated Tier 2 MOAs within the preferred corridor. Since an Effect Finding/800.11 documentation is not provided in Tier 1, the Section 106 process for Tier 1 will conclude with the approval of the PA, one preferred alternative corridor and the FEIS. **(2022)**
- An Invitation Letter will be sent to Consulting Parties for a third Consulting Party Meeting. **(2022)**
- The third Consulting Party Meeting will be held to obtain comments on the “Cultural Resource Impacts” section of the DEIS and the PA that will guide the Tier 2 process. **(2022)**

3.13.2.3 Identification of Cultural Resources Impacted

Tier 1 studies were limited to the identification of aboveground and archaeological resources within the five preliminary APEs and Local Improvement areas. The location of these properties relative to the working alignments in each alternative corridor (potential roadway right-of-way) and Local Improvement area was noted during the online remote review and subsequent Windshield Survey. The alternative corridors, centered within the preliminary



APEs, are 2,000 feet wide. Following the conclusion of Tier 1 review, the location of all aboveground resources within the preliminary APEs was recorded and tabulated. The resulting detailed tables are found in **Appendix O - Historic Properties Analysis**. A summary table of potential impacts by alternative is provided below in Section 3.13.5.

3.13.3 Identification and Evaluation of Aboveground Resources

Please see **Appendix O – Historic Properties Analysis** for a complete review of NRHP-listed and potentially NRHP-eligible properties identified during Tier 1 studies of cultural resources.

3.13.4 Identification and Evaluation of Archaeological Resources

Please see **Appendix N – Archaeological Analysis** for a complete review of NRHP-listed and potentially NRHP-eligible properties identified during Tier 1 studies of cultural resources.

3.13.5 Tabulation of Cultural Resources Impacted

Tier 1 studies focused on the identification of cultural resources, but did not make final eligibility determinations, nor effects determinations for these properties from a Section 106 perspective. However, a preliminary review of impacts to cultural resources was undertaken. An **impact**, for the purposes of this preliminary review, occurs when a cultural resource is either within, or less than 2,000 feet from, a working alignment for a new facility, or within a working alignment for a Local Improvement. The term “impact” refers only to the proximity of a cultural resource to an alternative and does not indicate a level of effect. The level of effect to cultural resources will be detailed during Tier 2 studies. **Table 3.13-1** shows the number of resources impacted within each alternative.

Above-Ground Cultural Resource Impacts Summary	
Alternatives	Number of Resources Impacted
B	0
C	5
M	2
O	15
P	8

Table 3.13-1 Above Ground Cultural Resource Impacts

Additional tables were created showing all properties that are NRHP listed or potentially eligible for the NRHP within 2,000 feet of all the alternatives, including the Local Improvement areas. These additional tables are found in **Appendix O - Historic Properties Analysis** and show the distance, in feet, between the edge of the associated working alignment and the primary structure on the historic property, as well as to the nearest parcel boundary of the historic property.



3.13.6 Effect Determination Assumptions

Section 106 review includes a process by which the effects to aboveground and archaeological resources listed or eligible for listing within the NRHP may be determined by levels. Specifically, three kinds of effects are possible for the Mid-States Corridor project:

No Historic Properties Affected: This determination usually means that there are no historic properties within the APE. It may also mean there will be no effects to any of the historic properties identified in the APE.

No Adverse Effect: This determination means that there will be an effect on the historic property, but the effect does not meet the criteria of “Adverse”, which is described in the next point.

Adverse Effect: This determination means the effect on the historic property may, according to 36 CFR 800.5(a)(1), “alter, directly or indirectly, any of the characteristics that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association...” Adverse effects include, but are not limited to:

- Demolition
- Alteration
- Removal of a property from its original setting
- Change in use
- Neglect or abandonment
- Introduction of visual, atmospheric or audible elements

Effect determinations will be made for each Tier 2 project separately as they advance independently through the Tier 2 process. A finding of Adverse Effect, even to a single property, will result in an overall adverse effect finding for the entire Section of Independent Utility (SIU) or Tier 2 project in which the single property is located.

Effect determinations will be made during Tier 2 studies. These will not be a part of Tier 1 review.

3.13.7 Resolution of Adverse Effects

Adverse effects to historic properties are resolved through the development of a Memorandum of Agreement (MOA) that include stipulations to address these adverse effects. The MOA(s) would be between the federal agency involved in the project, which is FHWA for the Mid-States Corridor project, and include select Consulting Parties such as the SHPO, the Advisory Council on Historic Preservation, Native American Tribes, appropriate local government representatives and the appropriate historical organization and the property owner. An MOA is a legally binding document that includes a description of the project, a description of the historic property/ies, an explanation that all parties agree the effect to the historic property is adverse and agreement by all parties that despite the adverse effect the project will move forward. The MOA includes a list of stipulations to which all signatories agree to avoid, minimize or mitigate for the adverse effect to the historic property/ies. MOA stipulations vary, but common mitigation stipulations include the funding of a nomination of the property to the NRHP, data recovery of archaeological sites, interpretive signage, replanting of trees or restoration of landscape features disturbed by the undertaking.



3.13.8 Tier 2 Studies

While Tier 1 studies for aboveground cultural resources are limited to the **identification** of historic properties, Tier 2 studies for aboveground cultural resources will **assess the effects** of the preferred alternative upon NRHP-listed and NRHP-eligible properties as well as **seek ways to avoid, minimize or mitigate any adverse effects** to these resources. During Tier 2 studies: 1) Historic Property Reports (HPRs) will be completed for each Section of Independent Utility (SIU) of the preferred alternative corridor, 2) Effect Findings and supporting documentation will be completed for each SIU. Each NRHP-listed and NRHP-eligible property within each SIU will receive an effects determination as described in its Effect Finding, and 3) Memoranda of Agreement (MOAs) will be developed for any SIU wherein an “Adverse Effect” has been determined that will occur to one or more historic properties. An MOA may include multiple historic properties with an “Adverse Effect.” MOAs will include stipulations to mitigate these adverse effects. Tier 2 studies are a much more in-depth review of cultural resources. These studies may result in the discovery of additional NRHP-eligible properties not documented during Tier 1. These studies also may result in properties evaluated as potentially NRHP-eligible during Tier 1 being determined not NRHP-eligible due to more detailed research. Likewise, properties evaluated as not NRHP-eligible during Tier 1 may be determined NRHP-eligible during Tier 2 studies.

Tier 2 archaeological studies, focusing on the preferred alternative, will include Phase 1a field reconnaissance surveys up to Phase III data recovery (mitigation). Predictive modeling conducted at the beginning of Tier 2 will better inform decisions on locations of ground disturbing activity along with the Phase 1A field reconnaissance surveys for each SIU. Tier 2 archaeological research will begin upon the commencement of Tier 2 studies. Like the Tier 2 process for aboveground resources, Tier 2 archaeological studies will include reports, Effect Findings for each SIU of the preferred alternative and MOAs for any SIU where an “Adverse Effect” is anticipated for any archaeological sites determined NRHP-listed or NRHP-eligible.

The Tier 2 studies will be guided by a Programmatic Agreement for the project to be finalized at the conclusion of Tier 1 for the Mid-States Corridor project. A draft of the Programmatic Agreement is included in **Appendix P**.

3.13.9 Summary

The National Historic Preservation Act requires that this project identify historic properties listed, or potentially eligible for listing, within the NRHP which may be affected by this project. Requirements include assessment of the project’s effects on these properties and identifying activities initiated to avoid, minimize or mitigate for any adverse effects. Section 106 of this law details how federal agencies must take into account the effects of their projects. The input from identified Consulting Parties is an important part of Section 106 review, as those groups and individuals provide valuable guidance in identifying and evaluating cultural resources. INDOT, FHWA and the SHPO have approved the methodology for the application of Section 106. For large undertakings such as the Mid-States Corridor, the Section 106 process and the rest of NEPA review may be divided into two stages or tiers. The Final Environmental Impact Statement (FEIS) along with a Record of Decision (ROD) recommending a preferred alternative and a Programmatic Agreement (PA) will conclude Tier 1 environmental studies. The PA will guide the Tier 2 Section 106 Review. A draft of the PA is included in **Appendix P**. This document will be further reviewed and refined in coordination with Consulting Parties prior to finalization. Tier 2 studies will focus only on the preferred alternative.

Please see **Appendices N, O and P** for more details on the historic resources analysis undertaken for Tier 1, as well as documentation of the Section 106 review process to date.

As noted in Chapter 2, the preferred alternative is Alternative P. It generally encompasses the area where existing US 231 is located while avoiding downtown Huntingburg and Jasper by shifting to the east side of those cities. **Table**



3.13-1 shows Alternatives B, C and M will have fewer impacts to cultural resources than Alternative P, and shows Alternative O will have a higher number of impacts to cultural resources than Alternative P. Impacts to cultural resources are one of many considerations in identifying Alternative P as the preferred alternative. For example, Alternatives B and C have inadequate performance levels core goals of the project while Alternatives M and O will have higher impacts to natural resources. Alternative P, as the preferred alternative, has mid-range impacts to both natural and cultural resources while achieving a higher level of performance on the core goals of the project.

