



Preservation Hotline #3

South Carolina Department of
Archives & History
8301 Parklane Road
Columbia, SC 29223-4905
**State Historic
Preservation Office**
www.state.sc.us/scdah

Is there a highway project in your future?

If so . . . there are federal and state laws that affect where a road may or may not be built. Some are:

- ▶ *Section 106 of the National Historic Preservation Act* and the regulations of the Advisory Council on Historic Preservation at 36 CFR Part 800 to protect historic properties which may be affected by federal undertakings.
- ▶ *Section 4(f) of the Department of Transportation Act of 1966* to protect historic properties, public parks, and wildlife refuges from loss to federal transportation projects.
- ▶ *South Carolina Code of Laws 60-12* which offers some consideration for National Register-listed properties owned by state agencies.
- ▶ *National Environmental Policy Act (NEPA)* requires major federal undertakings to complete an environmental assessment.
- ▶ Laws relating to the protection of wetlands, special areas, and endangered species.

Do any of these laws apply? To determine this, you need to know:

- ▶ Where is the project and why is it being planned?
- ▶ How is the project being funded? State or federal funds?
- ▶ Are there any federal or state permits involved?
- ▶ Who supports the project and would like to see it built?

To answer these questions and determine if there may be a highway project in your future:

Contact the Metropolitan Planning Organization or the Council of Government for your area. In South Carolina, transportation planning is a cooperative effort between the SCDOT and the Metropolitan Planning Organizations, the Councils of Government, and transit providers.

Metropolitan Planning Organizations (MPOs) help develop transportation plans for **urban** areas. The urban areas of the state include:

| | | | | |
|----------|------------|--------------|------------|-------------|
| Aiken | Charleston | Florence | Greenville | Spartanburg |
| Anderson | Columbia | Grand Strand | Rock Hill | Sumter |

Council of Governments (COGs) help develop transportation plans for **rural** areas. The ten COGs include:

| | |
|---|--|
| Appalachian Council of Governments | Lower Savannah Council of Governments |
| Berkeley-Charleston-Dorchester Council of Governments | Pee Dee Regional Council of Governments |
| Catawba Regional Council of Governments | Santee-Lynches Council of Governments |
| Central Midlands Regional Council of Governments | Upper Savannah Council of Governments |
| Lowcountry Council of Governments | Waccamaw Regional Council of Governments |

For more information, visit the SCDOT website at
www.dot.state.sc.us/inside/transportation_planning.shtml

The Statewide Transportation Improvement Program (STIP) is a comprehensive report listing the various projects in which work activity is planned within the next six years. The present STIP includes the fiscal years 2007-2012. You can download a copy from the SCDOT website at www.scdot.org/inside/stip.shtml or order a hard copy by contacting the SCDOT Engineering Publications Office at 803-737-4533 or engrpubsales@dot.state.sc.us

Finally, if you write a letter about a particular project, address it to:

Executive Director / SC Dept. of Transportation / P.O. Box 191 / Columbia, SC 29202

Send copies to: Your legislators and state highway commissioner and

Dr. Rodger E. Stroup / State Historic Preservation Officer
 SC Dept. of Archives and History / 8301 Parklane Road / Columbia, SC 29223-4905

Differences Between Sections 106 and 4(f)

Section 106 of the National Historic Preservation Act and Section 4(f) of the U.S. Department of Transportation Act are the primary laws governing consideration for historic properties in planning transportation projects.

Section 106 requires federal agencies whose **undertakings** may affect **historic properties** to take the properties into consideration and consult with the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation to avoid or reduce any **adverse effects**. Under Section 106, the South Carolina Department of Transportation (SCDOT) and the Federal Highway Administration (FHWA) consult with the South Carolina State Historic Preservation Office and other interested parties when planning highway projects that involve federal funds or permits. This generally involves a process of developing reasonable solutions that provide safe highways while avoiding adverse effects to historic properties. If adverse effects cannot be avoided, agreements are negotiated to minimize or mitigate those effects. The regulations for Section 106 are available online at www.achp.gov/regs.html.

Section 4(f) prohibits the U.S. Secretary of Transportation from approving any project that **uses** land from any **historic site**, public park area, or wildlife refuge if there is a **feasible and prudent alternative** to the use. All possible planning to minimize harm to the historic site must be undertaken if there is no feasible and prudent alternative.

The South Carolina Department of Transportation consults primarily with the Federal Highway Administration in carrying out the Section 4(f) process. The regulations for Section 4(f) are available online at <http://environment.fhwa.dot.gov/projdev/4fregs.asp>.

Section 106 of the National Historic Preservation Act

A **historic property** is any building, site, structure, object, or district that is listed in or determined eligible for the National Register of Historic Places.

Under Section 106, a federal agency, or its representative, must determine if an undertaking will cause adverse effects to a historic property. An **undertaking** is any project, activity, or program that involves federal funds, permits, licenses, or approvals. **Adverse effects** alter the characteristics that make a property eligible for the National Register. Adverse effects can be direct such as

Section 4(f) of the National Historic Preservation Act

A **historic site** is any building, site, structure, object, or district that is listed in or determined eligible for the National Register of Historic Places. In addition, the Federal Highway Administration has the discretion — on a case-by-case basis — to determine that Section 4(f) should apply to other historic resources.

Section 4(f) is triggered when a transportation project will use a historic site. Use means that land in the site will be incorporated into the transportation facility, or land in the site will be temporarily occupied by the project in a way that damages the characteristics that make the site eligible for inclusion in the National Register. However, if a transportation project will

Section 106 of the National Historic Preservation Act

physical destruction or damage to all or part of a historic property, or they may be indirect such as changes to the setting of a historic property or the introduction of increased noise or traffic that are incompatible with the characteristics that make it eligible for the National Register.

If a project has the potential to cause adverse effects to a historic property, the federal agency or its representative must develop and consider modifications to the project that would avoid, minimize, or mitigate adverse effects to the historic property. The agency is encouraged, but not mandated, to avoid harm to historic properties.

Consultation with the State Historic Preservation Office (SHPO), other parties outlined in the regulations, and the Advisory Council on Historic Preservation is required. The Advisory Council on Historic Preservation is an independent federal agency that oversees the Section 106 process.

Section 4(f) of the National Historic Preservation Act

not adversely affect a historic site, even though land from the site will be incorporated into the transportation facility, the Federal Highway Administration and the state transportation department are not required to develop and evaluate alternatives.

If a transportation project will use land from a historic site and will adversely affect the characteristics that make the site eligible for inclusion in the National Register, the project cannot be approved by the Secretary of Transportation unless the state transportation department and the Federal Highway Administration can document that there is no feasible and prudent alternative to the project as designed. **Feasible and prudent alternatives** are alternatives that would not cause unique problems; extraordinary economic, social, or environmental impacts; or community disruption.

Consultation with the State Historic Preservation Office, the other parties outlined in the Section 106 regulations, and the Advisory Council on Historic Preservation is required to determine whether the project will have an adverse effect on the characteristics that make the historic property eligible for inclusion in the National Register. Once that decision has been made, the state transportation department must consult with the Federal Highway Administration, which is responsible for the Section 4(f) process.

For more information:

David Kelly, SCDOT Projects Coordinator
State Historic Preservation Office / S.C. Department of Archives and History
8301 Parklane Road / Columbia, SC 29223

State Historic Preservation Office website
www.state.sc.us/scdah/hpsection106review.htm

Federal Highway Administration website
www.fhwa.dot.gov/environment/4_f.htm

The activity that is the subject of this fact sheet has been financed, in part, with federal funds from the National Park Service, Department of the Interior. However, the contents and opinions do not necessarily reflect the views or policies of the Department of the Interior, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of Interior. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, the Department of the Interior prohibits discrimination on the basis of race, color, national origin, or handicap in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to: Office of Equal Opportunity, U. S. Department of the Interior, Washington, DC 20240.