

**Toolkit for the Development of Section 106  
Memoranda of Agreement for  
Above-ground Resources**

**October 2012**

# Table of Contents

	Page
<b>A. Executive Summary</b> .....	<b>1</b>
<b>B. Consultation Process for Preparing Memoranda of Agreement</b> .....	<b>1</b>
Goal.....	1
Who is Responsible for Completing Consultation?.....	1
Who is Included in Consultation?.....	1
Overview of Consultation Process .....	2
<b>C. Templates for Standard Whereas Clauses</b> .....	<b>4</b>
<b>D. Potential Mitigation Options</b> .....	<b>7</b>
<b>E. Standards Stipulations</b> .....	<b>17</b>
Dispute Resolution .....	17
Amendment.....	17
Professional Qualifications.....	17
Termination .....	17
Sunset Clause .....	18
<b>F. Standard MOA Signatures</b> .....	<b>19</b>
<b>G. Formatting Guidance</b> .....	<b>20</b>

## Appendices

- A Documentation for Consultation Template
- B Flowchart 1 – Overall process for MOA development, signature, and approval (WisDOT CRT perspective)
- C Flowchart 2 – Overall process for consultation and MOA development (Project Manager/Project Team perspective)

## **A. Executive Summary**

The *Toolkit for Development of Section 106 Memoranda of Agreement for Above-Ground Resources from Non-Aboriginal Traditions* (Toolkit) was created through a joint effort by staff from the Federal Highway Administration (FHWA), State Historic Preservation Office (SHPO), and the Wisconsin Department of Transportation (WisDOT) Cultural Resources Team (CRT). The Toolkit is not intended for use on projects that affect archaeological sites, burials, artifacts, Traditional Cultural Properties, or Tribal-related cultural resources. Please contact WisDOT CRT for guidance on how to prepare mitigation and agreement documents for these types of resources. The Toolkit is intended to assist the project team in resolving adverse effects to above-ground historic properties under 36 CFR § 800.6. The Toolkit outlines the process for consulting with interested parties, preparing Documentation for Consultation (D for C), and drafting Memoranda of Agreement to include stipulations that mitigate adverse effects to historic properties.

## **B. Consultation Process for Preparing Memoranda of Agreement**

### **Goal**

To notify the public of proposed actions and seek input regarding ways to avoid, minimize, or mitigate adverse effects on historic properties.

### **Who is Responsible for Completing Consultation?**

Consultation is a joint effort between the Project Manager (PM) and the Project Team to identify interested parties, facilitate consultation, and properly document consultation efforts in the Documentation for Consultation (D For C).

### **Who is Included in Consultation?**

All interested parties must be included in the consultation process. Interested parties may include, but are not limited to, the following based on the undertaking and affected historic resource:

- Local historical societies
- County historical societies
- Friends groups (for parkways and bridges, for example)
- Historic preservation commissions
- Local Main Street Program
- Property owners of affected historic properties
- Residents in affected historic districts
- Municipal councils or interested departments (City Forester or County Bridge Engineer, for example)
- Any individual or organization that will assume a specific role or responsibility in mitigation
- Federal Highway Administration
- State Historic Preservation Office
- Wisconsin Department of Transportation
- U.S. Army Corp of Engineers (if a Section 404 Permit will be required)
- Advisory Council on Historic Preservation (if they choose to participate)

## Overview of Consultation Process

The consultation process can be simple or complex depending on the scope of the undertaking, the affected historic resource(s), and the number of interested individuals and/or organizations. The flowchart in **Appendix C** illustrates how consultation fits into the overall MOA development process.

### 1. Initiate consultation process

The consultation process begins once it has been determined that a proposed undertaking may adversely affect a historic resource(s). Commencement of the consultation process can begin prior to or after all appropriate signatures on the Section 106 Review Form have been obtained. The PM is responsible for retaining the services of qualified professional(s) to collaborate with in the consultation and MOA development processes.

### 2. Prepare for consultation

The PM and the Project Team must work together to identify interested parties based on the affected historic resource(s) and proposed undertaking. Prior to consultation, the PM and Project Team should collaborate on the following:

- **Confirm project details** (including all project alternatives) in order to effectively solicit input from interested parties and the public.
- **Clarify the adverse effect** on National Register-listed or determined eligible historic resource(s).
- **Identify potential mitigation measures** that are tied to the historic resource(s) and proposed undertaking. Mitigation measures may change or evolve throughout the consultation process but having a starting place is an important step toward a thorough and robust consultation process.
- **Formulate questions for interested parties and the public** that will solicit useful information to inform project design and potential mitigation efforts.

### 3. Consult with interested parties

The most effective method(s) for consultation will depend on the scope of the undertaking, potential effect(s) to historic resource(s), and the number of interested parties. Acceptable methods of consultation may include, but are not limited to, the following:

- Public Information Meeting(s)
- Phone call(s)
- Email correspondence
- Letter(s)
- In-person meeting(s) and site visit(s)

All consultation must be properly documented. In some cases, the Documentation for Consultation (D for C) may serve as the method of consultation as long as appropriate follow-up efforts are made (see Step 4) for further discussion on follow-up efforts). The D for C can serve as either a method of consultation or a summary of consultation efforts. The D for C is discussed in further detail in Step 7.

Consultation efforts that do not result in resolution or proper acknowledgement of comments/concerns expressed by interested parties are unacceptable. For example, sending a technical report to an individual or filing the report with a municipality without any follow-up are unacceptable. Provide the public and interested parties with the information they need to make informed comments about the project, which will ultimately lead to successful project implementation.

#### **4. Follow-up on comments and concerns expressed by interested parties during consultation.**

A thorough and robust public involvement and consultation process must include follow-up with interested parties to address their comments and concerns. Comments related to potential adverse effects on historic properties must be documented in the D for C (see Step 7) and addressed through either project redesign or mitigation measures in the MOA. Concerns expressed during consultation should result in an ongoing dialogue between the PM, Project Team, and interested party to address the concern(s) in a proper manner.

Additional attempts to solicit input from interested parties must be completed in those cases where no response was received and may require a different method of consultation. For example, if no response is received from emails, try calling, or vice versa; if you sent a notification letter and did not receive a response, send another letter or try calling. It is in the interest of the PM and the overall success of the project for the consultation process to be thorough and properly documented.

#### **5. Identify mitigation options that properly address concerns expressed during the consultation process and that properly mitigate the adverse effect on the historic resource(s).**

Mitigation options will change and/or evolve during the consultation process as input is received from the public and interested parties and project design refinements are made. Potential mitigation options include, but are not limited to, those discussed in Section E and must be customized to each project and affected historic resource(s). Potential mitigation options must be outlined in the D for C.

#### **6. Document-specific consultation efforts**

Consultation must be documented so that those unfamiliar with the project can easily understand what consultation was completed and so there is a thorough public record of consultation efforts.

Acceptable methods for documenting specific consultation efforts may include, but are not limited to, the following:

- Memo
- Phone memo
- Email correspondence
- Meeting minutes/summary
- Public Information Meeting minutes/summary
- Comment sheet(s)
- Interview summary
- Response letter

Remember, the goal of consultation is to notify and seek input from the public regarding adverse effects to historic properties. Therefore, documentary evidence of consultation must be provided to illustrate the entire consultation process from initial notification to resolution (in the form of redesign or mitigation measures).

## **7. Prepare Documentation for Consultation**

The D for C may serve as the method of consultation or more commonly as the summary of consultation efforts. The D for C includes formatted sections that convey the proposed undertaking, identify historic resource(s) located within the Area of Potential Effects (APE), describe project alternatives and potential mitigation options, and document consultation efforts. The D for C must provide a clear understanding of consultation efforts and convey how and why decisions were made regarding project alternatives and potential mitigation measures.

Consultation efforts must be briefly summarized in the *Views of Consulting Parties and the Public* section of the documentation, most commonly in the form of a bulleted chronological list based on the date of the consultation. Each item must have a corresponding piece of documentation in an appendix and all concerns expressed related to adverse effects to historic resources must be addressed appropriately to provide resolution. Comments received during the consultation process that do not relate to historic resource(s) do not need to be included in the documentation.

A template and general guidance for preparation of the D for C is included in **Appendix A**.

### **C. Templates for Standard Whereas Clauses**

Provided in this section is a template for standard whereas clauses that may be included in a MOA. Highlighted items will change with each project and should be replaced with correct information or removed from the MOA as appropriate. The language provided has been approved by staff at the Federal Highway Administration, the Wisconsin Department of Transportation's Cultural Resources Team, and State Historic Preservation Office. Use the provided language word-for-word unless your particular project requires revisions to this standard language. The preparer must identify the necessary clauses to include and additional clauses not listed below may be appropriate depending on the historic resource(s) and project details.

## Memorandum of Agreement

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND  
THE WISCONSIN STATE HISTORIC PRESERVATION OFFICER

Prepared pursuant to 36 CFR § 800.6(c)

Regarding

WISCONSIN DOT PROJECT I.D. XXX-XX-XX

WHS#: XX-XXXX/XX

[Name of road, corridor, or bridge proposed for replacement

[Termini]

[Municipality and County]

**WHEREAS**, the Federal Highway Administration (FHWA) has been requested to participate in the [project type, e.g. replacement, reconstruction, corridor preservation plan] of the [resource name or corridor] in the [municipality], [county name], Wisconsin; and

**WHEREAS**, the FHWA is the lead agency on this project with responsibility for completing the requirements of Section 106; and

**WHEREAS**, the FHWA has established the Project's Area of Potential Effects (APE), as defined in 36 CFR § 800.16(d), to be the [brief description of APE]; and

**WHEREAS**, the FHWA, pursuant to 36 CFR § 800.4(c), has determined that the [name of National Register-listed or eligible resource(s)] is eligible for inclusion in the National Register of Historic Places; and

**WHEREAS**, the FHWA has determined that the project will have an adverse effect upon the [name of National Register-listed or eligible resource(s)]; and

**WHEREAS**, the FHWA has determined that the project will have no adverse effect on the [name(s) of historic resources within the APE that will not be adversely affected by the project]; and

**WHEREAS**, the FHWA, in consultation with the State Historic Preservation Office (SHPO), has executed the Programmatic Agreement (PA) for the [name of PA] but the [historic resource(s)] is not included in the PA; and

**WHEREAS**, the FHWA has consulted with the SHPO in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 (NHPA), and its implementing regulations (36 CFR Part 800) to resolve the adverse effect of the project on historic properties; and

**WHEREAS**, the FHWA intends to use the provisions of this Memorandum of Agreement (MOA) to address applicable requirements of Section 110(b) of NHPA, 16 U.S.C. 470h-2(b); and

**WHEREAS**, the U.S. Army Corps of Engineers (USACE) may be requested to issue a Section 404 permit for the Project, participated in the consultation and has elected to be a consulting party to this MOA; and

**WHEREAS**, the Wisconsin Department of Transportation (WisDOT) participated in the consultation and **has been invited to concur** in this MOA; and

**WHEREAS**, the [name of invited signatory 1] participated in the consultation and has been **invited to concur in this MOA**; and

**WHEREAS**, the [name of invited signatory 2] participated in the consultation and has been **invited to concur in this MOA**; and

**WHEREAS**; this undertaking is not on federal or tribal land as defined by the National Historic Preservation Act [NHPA]; therefore, all inadvertent human remain discoveries will be addressed in accordance with Wisconsin s.s. 157.70; and

**WHEREAS**; post-review discoveries of non-human remain historic resources will be treated in accordance with 36 CFR 800.13(b); and

**NOW, THEREFORE**, the FHWA, and the Wisconsin SHPO agree that, upon execution of this MOA, and upon the FHWA's decision to proceed with the Project, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effect of the undertaking on historic properties.

## **D. Potential Mitigation Options**

Provided in this section are potential mitigation options that may be included as stipulations in the MOA. Mitigation is not limited to the options outlined in this document. Mitigation for an affected historic resource must be chosen with consideration for project activities, the type of historic resource(s), the adverse effect, public benefit, and input obtained from interested parties through consultation. In general, the language for each stipulation must convey who will do what, by when, how they will do it, who will pay for it, and how payment will be made. Unless there will be a flat rate payment, do not include specific dollar amounts in the stipulation language.

Each project and historic resource is unique. As a result, the stipulation language may vary from one MOA to the next. Below are some stipulation options to consider along with some necessary questions to address for each option regarding the final stipulation language. This list is not intended to be exhaustive and is only intended to provide options for mitigation that have been successful in the past. Creative mitigation that is project- or resource-specific is always an option and is preferred. Consider including more detailed requirements for select stipulations in a separate appendix if necessary.

### **1. Photographic Documentation**

Photographic documentation is typically completed to mitigate impacts to the setting of a historic property or document a resource proposed for demolition or that will undergo substantial alterations as a result of the project. There are two basic options for photographic documentation, HABS/HAER-level photo documentation and standard color digital photographic documentation. Please contact the WisDOT CRT if you have questions regarding the appropriate type of photographic documentation for a specific resource type.

#### *HABS/HAER Photographic Documentation*

Resources that retain mechanical systems that are integral to the significance of the resource(s), including but not limited to, movable bridges and a variety of hydraulic facilities, must be documented with the appropriate level of HABS/HAER photography. Please refer to <http://www.nps.gov/history/hdp/> for the most current guidelines for this type of photographic documentation.

#### *Standard Color Digital Photographic Documentation*

Most resources can be documented with color digital photography, including, but not limited to, residences, public buildings, select bridge types, historic landscapes, historic districts, farmsteads and other complexes. Below are requirements for standard color digital photographic documentation (include this language in an appendix):

- Labeled per current National Park Service (NPS) and SHPO standards.
- Photographic documentation will include (insert number or range of numbers) digital images that meet SHPO and NPS requirements (detailed below).

- WisDOT or its agent will submit digital images to SHPO and [any relevant historic societies, local libraries, or preservation commission] on an archival CD, per SHPO and NPS requirements.
- WisDOT or its agent will provide two sets of commercially produced prints to SHPO.
- (insert name) is aware of and will bear the cost of fulfilling this stipulation.

*SHPO and NPS Requirements for Digital Photographs*

- Images will be taken with a digital SLR camera set to the highest quality.
- Each image will be at least 2,000 pixels on the longest side or at least 300 pixels per inch.
- Image file sizes will exceed 3MB (uncompressed)
- Images will be saved as uncompressed JPEGs and will not be cropped, compressed, up-sampled, or otherwise digitally altered.
- CDs should be “closed out” and readable on multiple computers.
- Photologs will be submitted that record the structure name, location, date of photograph, photographer, and direction of photo.
- All color prints will be labeled on the back with the date, project name, structure name, direction of the photograph, and the image file name that corresponds with the digital images and the photolog.

Below are some questions to consider when developing language for stipulations that include any type of photographic documentation:

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. Who is responsible for completing the photographic documentation?
- c. How many photographs will be submitted and what are they intended to document (exterior, interior, setting, etc...)?
- d. How many sets of photographs will be submitted and who will receive each set?
- e. Who will pay for this stipulation and is there a maximum cost?
- f. What is the process for payment?

## **2. Plans and/or Drawings**

Plans and/or drawings are typically prepared to mitigate impacts to historic resource(s) that are significant in the area of engineering or design and retain mechanical components that are integral to the significance of the resource(s), including, but not limited to, movable bridges and a variety of hydraulic facilities. Below are some questions to consider when developing language for stipulations that include preparation of plans and/or drawings:

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. Who is responsible for obtaining/preparing the plans and/or drawings?
- c. What is the required format or level of detail for the plans and/or drawings? The answer to this question requires check-in with ESS staff and SHPO.
- d. How many sets of plans and/or drawings will be submitted and to whom?
- e. Will electronic versions or scans of the plans and/or drawings be submitted?
- f. Who will pay for this stipulation and is there a maximum cost?
- g. What is the process for payment?

## **3. Educational Outreach**

Education stipulations may include, but are not limited to, educational programs, plaques, historic markers, interpretive signage, museum exhibits, a curriculum or website. These types of mitigation are typically created to mitigate the loss of historic resource(s) but can also be used to mitigate less severe impacts. Below are some overall questions to consider when developing language for stipulations that include one of these mitigation measures:

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. Who is responsible for completing this stipulation?
- c. Will there be a review of draft content by WisDOT CRT, SHPO, or other parties throughout the development process?
- d. What is the overall timeframe and allowable comment period for each reviewer?
- e. Who will pay for this stipulation and is there a maximum cost?

- f. What is the process for payment?

Below are specific questions to consider for each type of mitigation:

- a. Educational Program

- 1) What will the educational program content consist of or focus on?
- 2) Who is the intended audience for the educational program and is the format and focus appropriate?
- 3) What is the format of the educational program?
- 4) Where will the education program be located and or stored?
- 5) Who will maintain ongoing responsibility for the educational program once implemented?

- b. Plaque

- 1) What will the plaque content consist of or focus on? If applicable, will pictures be included and how many? Will the plaque be in color?
- 2) What is the size of the plaque?
- 3) Where will the plaque be installed?
- 4) What type of plaque will be installed? Is it a specific plaque type associated with a certain organization or agency such as the Wisconsin Historical Society? Are there certain requirements for the type of plaque proposed for installation?
- 5) Who will review the plaque content and what are the allowable comment periods for that review?
- 6) What is the purpose of the plaque? What level of honor does the plaque provide to the resource and what are the implications of that honor? For example, the meaning of a National Register of Historic Places plaque is much different than a memorial or commemorative plaque installed by a local community.
- 7) Are there other plaques within the community or surrounding area that the new plaque should be compatible with in terms of appearance, format, color, size, etc....?

c. Historic marker

- 1) What will the historic marker content consist of or focus on? If applicable, will pictures be included and how many?
- 2) What type of historic marker will be installed? Is it a specific type associated with a certain organization or agency? Are there certain requirements for the type of marker proposed for installation?
- 3) Is this an official Wisconsin Historical Society marker? What are the current requirements for this type of marker?
- 4) Who will review the content and what are the allowable comment periods for that review?
- 5) What is the purpose of the marker? What level of honor does the marker provide to the resource and what are the implications of that honor?
- 6) Are there other markers within the community or surrounding area that the new marker should be compatible with in terms of appearance, format, color, size, etc....?

d. Interpretive signage

- 1) What will the interpretive signage content consist of or focus on? If applicable, will pictures be included and how many? Will the signage be in color?
- 2) What type of interpretive signage will be installed? Do the locals prefer a certain type of signage or there some organization that oversees this locally?
- 3) Who will review the content and what are the allowable comment periods for that review?
- 4) What is the purpose of the signage? What level of honor does the signage provide to the resource and what are the implications of that honor?
- 5) Is there other signage within the community or surrounding area that the interpretive signage should be compatible with in terms of appearance, format, color, size, etc....?
- 6) Are there any American with Disabilities Act (ADA) requirements to consider?

e. Museum exhibit

- 1) What will the museum exhibit content consist of or focus on?
- 2) What is the scale of the museum exhibit? Approximately how many panels will it have?
- 3) What is the format of the museum exhibit? How many panels will it have? Will it consist primarily of photos and text or include artifacts? Be as specific as possible.
- 4) Where will the exhibit be displayed and for what time period?
- 5) Who will review the museum content prior to installation?
- 6) Is the repository for the exhibit agreeable to housing the exhibit?
- 7) What is the purpose of the exhibit?

f. Curriculum

- 1) What will the curriculum content consist of or focus on?
- 2) Who is the audience for the curriculum?
- 3) Where will the curriculum be implemented or used?
- 4) Who will review the curriculum content prior to implementation?

g. Website

- 1) What will the content of the website consist of or focus on?
- 2) Will the website be new or will the content be hosted by an existing website?
- 3) Who will prepare the content?
- 4) Who will review the content prior to it being posted live?

**4. Design Review**

Design review is typically implemented to mitigate impacts to historic resource(s) that are significant in the area of design or that contribute to the design of a wider resource, such as a

replacement bridge within a district, for example. Below are some questions to consider when developing language for stipulations that include design review:

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. Who is responsible for submitting the design plan(s) for review and addressing comments?
- c. Is this resource included in an executed PA? If so, what does PA say about design review requirements?
- d. At what stage(s) will design plans be submitted for review? For example, will plans be reviewed at the 30 percent, 60 percent, and 90 percent completion stages? Only one of these or some combination?
- e. Who will review the design plans and what are the allowable comment periods for that review? Typically, plans are submitted to WisDOT CRT first then transmitted to SHPO.
- f. What is the allowable timeframe for addressing comments at each stage of review?

## **5. National Register Nomination**

National Register Nominations are prepared to mitigate a wide range of impacts to historic resources. Below are some questions to consider when developing language for stipulations that include a National Register Nomination:

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. Does the timeframe account for preparation time and the schedule for Wisconsin Historical Society Review Board Meetings where nominations are presented and approved?
- c. The property owner must agree to the nomination. If that agreement cannot be determined through consultation, the process for soliciting property owner input must be defined in the MOA along with contingencies based on the property owner's response.
- d. Who is responsible for preparing the nomination and supplemental materials?
- e. What materials will be prepared and submitted? Consider including a bulleted list of items or language conveying that submitted materials will follow current National Park Service and SHPO guidelines and requirements.

- f. Is this resource included in an executed PA? If so, what does PA say about preparation of National Register Nominations?
- g. Who will pay for this stipulation and is there a maximum cost?
- h. What is the process for payment?

## 6. Relocation Plan

Relocation plans are prepared to mitigate the removal and relocation of historic buildings, structures, or bridges. The PM and/or Project Team must consult with WisDOT CRT regarding stipulation development for this option. Below are some questions to consider when developing language for a stipulation that includes a relocation plan:

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. Who is responsible for completion of this stipulation?
- c. What are the appropriate contingency plans to include? What if a new owner is not identified? What if the current owner decides he/she no longer wants the property? Under what circumstances would the resource be demolished rather than relocated?
- d. Who will pay for this stipulation and is there a maximum project cost and cost to property owner(s)?
- e. What is the process for identifying a new location for the resource?
- f. Does this stipulation require a preservation covenant (requires check-in with WisDOT CRT and SHPO)?
- g. Include stipulations for the following items and the appropriate level of detail regarding deadlines, content, cost, payment, and responsible parties:
  - 1). Press release and advertisement (both required)
  - 2). Information packet for prospective owners
  - 3). Statement of interest.
- h. Who will review submittals by prospective owners and select the recipient?
- i. What are all of the timeframes for submittal and review?
- j. Will the new owner be required to develop a design and specifications plan for rehabilitation at its new location?

- k. Who will identify and coordinate with a qualified building mover?
- l. Who will pay for each of the items included in this stipulation?
- m. What is the process for payment?
- n. Is the historic property a bridge? If so, please contact WisDOT CRT as there may be certain requirements for advertising the bridge for relocation.
- o. Is the historic property listed in the National Register? If so, the relocation effort must follow National Park Service Guidelines and the state review board and federal review board must review the proposed relocation plan.

## **7. Historic Preservation Plan**

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. What are the qualifications for the preparer of the historic preservation plan?
- c. What resource(s) will the historic preservation plan address?
- d. What is the public benefit of developing the historic preservation plan?
- e. Who will review the historic preservation plan prior to implementation?
- f. Are there agencies, local officials, or other professionals that will be utilized in the development of the historic preservation plan?

## **8. Development Of A Programmatic Agreement**

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. What are the qualifications for the preparer of the PA?
- c. What resource(s) will the PA address?
- d. What individuals, groups, or agencies might be consulted during the development of the PA?
- e. What is the goal of the PA?

- f. What is the public benefit of developing a PA?

**9. Design Guidelines**

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. What are the qualifications for the preparer of the design guidelines?
- c. What resource(s) will the design guidelines address?
- d. What individuals, groups, or agencies might be consulted during the development of the design guidelines?
- e. What is the goal of the design guidelines?
- f. What is the public benefit of developing the design guidelines?
- g. Who will review the draft design guidelines and what is the process for those reviews?

**10. Development Of New Website Or Update To Existing Website**

- a. What is the specific timeframe for completion? It must be keyed to the MOA execution date and completed prior to commencement of project activities.
- b. What are the qualifications for the preparer of the web content?
- c. What resource(s) and/or themes will the web content focus on?
- d. What individuals, groups, or agencies may be consulted during the development of the web content?
- e. What is the public benefit of developing the web content?
- f. Who will review the draft web content and what is the process for those reviews?

## **E. Standards Stipulations**

Please include the following standard stipulations in the MOA. As a reminder, this standard language is for use in MOAs that do not adversely affect archaeological resources. Do not change the standard language unless directed by WisDOT CRT staff:

### **Dispute Resolution**

Should any signatory to this MOA (including any invited signatory), per 36 CFR 800.6(c)(1) and (2), object in writing at any time prior to termination to any actions proposed or the manner in which the terms of this MOA are implemented, WisDOT and FHWA shall consult with such party to resolve the objection. The objection must specify how the actions or manner of implementation is counter to the goals, objectives or specific stipulation of this MOA. If FHWA determines that such objection cannot be resolved, FHWA will:

1. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the Advisory Council on Historic Preservation (ACHP). The ACHP shall provide FHWA with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the 30 day period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to proceeding, FHWA shall notify the parties to this MOA of its decision regarding the dispute.
3. It is FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

### **Amendment**

Any signatory to this agreement may propose to the agency that the agreement be amended. Whereupon the agency shall consult with the other signatory parties [including invited signatories per 36 CFR 800.6(c)(1) and (2)] to this agreement to consider such an amendment. 36 CFR 800.6(c)(1) and (7) shall govern the execution of any such amendment.

### **Professional Qualifications**

WisDOT shall ensure that all historic preservation work carried out pursuant to agreement is carried out by or under the supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards* in the field of architectural history, as published in 36 CFR Part 61.

### **Termination**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

**Sunset Clause**

This agreement shall be null and void if all terms are not carried out within five (5) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of this MOA by FHWA and the Wisconsin SHPO, and implementation of its terms, evidences that FHWA has complied with Section 106 on the [insert name of project] and its effects on historic properties and that the FHWA has taken into account the effects of the project on historic properties.

**F. Standard MOA Signatures**

Confirm with WisDOT CRT that the standard signatories listed below are current and include the following signature lines in the MOA as appropriate:

**FEDERAL HIGHWAY ADMINISTRATION**

BY: \_\_\_\_\_  
Ilan Chidister,  
Environmental Program Manager, FHWA

Date: \_\_\_\_\_

**WISCONSIN STATE HISTORIC PRESERVATION OFFICER**

BY: \_\_\_\_\_  
Michael E. Stevens, State Historic Preservation Officer

Date: \_\_\_\_\_

**U.S. ARMY CORPS OF ENGINEERS [IF APPLICABLE]**

BY: \_\_\_\_\_

Date: \_\_\_\_\_

**INVITED SIGNATORIES:**

**WISCONSIN DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_  
Rebecca S. Burkel, Director, Bureau of Technical Services/  
WisDOT Historic Preservation Officer

Date: \_\_\_\_\_

**[Name of other invited signatories]**

BY: \_\_\_\_\_

Date: \_\_\_\_\_

**CONCUR:**

**[Name of concurring parties]**

BY: \_\_\_\_\_

Date: \_\_\_\_\_

## **G. Formatting Guidance**

1. Each page should have a header that includes the WisDOT ID, Termini, Road, County, and page number.
2. Each signature line should be on a separate page.
3. Add a draft watermark to draft submittals.

## **APPENDIX A**

### **Documentation for Consultation Template**

## DOCUMENTATION FOR CONSULTATION

Project ID XXXX-XX-XX  
WHS#  
[XXX to YYY (termini)]  
[Highway]  
[County]

### 1. Description of the Undertaking

Specify the Federal involvement and clearly explain overall project activities and the Area of Potential Effects (APE). Use the most current project information to provide a concise but thorough summary of proposed project activities, including:

- Type of project (i.e. realignment, reconstruction, bridge replacement)
- Project location (i.e. name of city or town, county)
- Project corridor and termini
- Project length
- APE
- Existing and proposed alignment details (i.e. number of lanes; width of lanes, sidewalk, terrace, and right-of-way)

Make sure the summary is complete enough so those unfamiliar with the project can understand it. Keep it simple and avoid acronyms and engineering terms. The information in this summary also needs to set up your explanations in Section 5 below. Coordinate with the Project Manager to determine that the most current project details and plan sheets are included. Project activities and their location in relation to historic properties should also be illustrated on maps and plan sheets in an appendix.

**Although this is not a Purpose and Need Statement, this section must clearly convey why the preferred alternative was chosen and how it meets the project Purpose and Need.**

### 2. Description of Steps to Identify Historic Properties

Summarize the reconnaissance and intensive surveys for both historical and archeological resources, including survey dates and results. If a survey was not required, clearly explain why. If a particular property was already listed in or determined eligible for the National Register, provide the date it was listed or determined eligible. Include screening list approval dates as appropriate. Signed DOE cover pages may be included in the Appendices.

EXAMPLE: An archaeology field survey was not required because the project was placed on the screening list for archaeology on January 2, 2006. An architecture/history reconnaissance survey

was conducted in 2006 and one property in the APE, the Smith House, was determined eligible for the National Register on July 28, 2006. A copy of the Determination of Eligibility (DOE) cover page is included in the Appendices.

If there are listed or eligible properties located within the APE that will not be affected directly or indirectly by proposed activities included in project alternatives, explain why there will be no effect(s). Please note that there is no need to discuss these properties in the remaining sections of the document.

### **3. Description of Affected Historic Properties**

This section includes a brief physical description of the affected historic property and an explanation of why it is eligible for, or listed in, the National Register. This information can be obtained from the Wisconsin Historical Society DOE form or National Register Nomination form. The historic boundary should also be described as well as a brief discussion of the setting and any contributing and noncontributing features related to the property, such as fences, bollards, and landscaping elements that may be impacted by the project. Discuss each eligible or listed historic property in a separate paragraph. Include a historic boundary map and representative photographs in the Appendices.

EXAMPLE: The Smith House, located at 123 Main Street, is recommended eligible for the National Register under *Criterion C: Architecture* as a highly intact example of the Queen Anne style. It was constructed in 1906 and features clapboard sheathing, complex massing, a wraparound porch, and corner turret. A contributing carriage house is located at the rear of the property and a contributing iron fence is located at the front of the property, set back two feet from the back edge of the sidewalk. The historic boundary along Main Street coincides with the back edge of the sidewalk and the current right-of-way line.

### **4. Description of the Undertaking's Effects on Historic Properties**

This section should focus on the project's effects to the historic property's setting and the characteristics that qualify each property for listing in the National Register. Link each project activity that has the potential to directly or indirectly impact the historic property and/or its related features to the applicable criteria of adverse effect and examples of adverse effect listed at 36 CFR § 800.5 in your discussion. Do not step the reader through each of the examples of adverse effect, only those that apply given the historic property, proposed activities, and potential effects. Each eligible or listed property should be discussed in a separate paragraph under headings tied to the applicable examples of adverse effect. This detailed description must be tied to supplemental materials and should include all construction activities that impact the property, such as:

- Current and proposed right-of-way, including acquisition details
- Current and proposed traffic lanes and shoulders
- Changes to the shoulder and/or curb and gutter
- Changes to the sidewalk and/or terrace
- Proposed tree removal
- Proposed alterations to access (relocated driveways, road closings, etc.)

- Proposed removal of contributing and/or noncontributing features
- Relation of project activities to the historic boundary

Supplemental materials may include:

- Plan sheet(s) with the historic property, historic boundary, and project activities clearly labeled
- Photographs showing the roadway features and landscape changes adjacent to the historic property
- Photographs that have been labeled to depict the proposed back-of-curb, sidewalk, terrace, or other project details

Consider and describe both direct and indirect effects. Direct effects are construction activities that physically impact a property. Generally, they demolish existing parts of the property or add highway-related elements to the property. Indirect effects generally do not physically impact the property itself but introduce visible or audible changes to the wider area around a historic property. Indirect effects may include the removal of parking in a business district or closing of access and redirection of traffic patterns.

EXAMPLES:

*(i) Physical destruction of or damage to all or part of the property.*

The Smith House is located 7 feet from the back edge of the adjacent sidewalk along STH 32. The preferred alternative would shift the alignment of STH 32 and require the new right-of-way to be approximately 30 feet west of its current location, requiring the purchase of the Smith House parcel and removal of the residence. The removal of the Smith House will constitute an adverse effect on the historic property. Please see the photos and plan sheets in the Appendices.

*(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.*

WisDOT proposes to widen and reconstruct STH 32 in front of the Smith House. The roadway will expand from two, 11-foot lanes to three, 12-foot lanes. To accommodate this increase, the 6-foot terrace will be removed and the existing sidewalk will shift 4 feet closer to the house. Approximately 10 feet of right-of-way acquisition will be necessary on each side of the roadway, including 10 feet from within the historic boundary of the Smith House. The removal of the terrace and sidewalk relocation will result in the removal of several mature trees from in front of the Smith House and a strip of the front lawn. A contributing fence will also be removed as a result of the project. These changes will alter physical features within the setting that contribute to the residential character of the property and will constitute an adverse effect. Please see the photos and plan sheets in the Appendices.

## 5. Discussion of Project Alternatives

Discuss each of the project alternatives considered. Start by stating what each alternative proposes, including the cost and service life (if applicable). Then provide an explanation for each alternative that addresses the following questions:

- How the alternative does/does not meet the project purpose and need
- How the alternative does/does not avoid or minimize adverse effect(s) to the historic property
- Why the alternative was/was not chosen
- Why the alternative was chosen (for preferred alternative only)

The four general categories of alternatives typically include *no build*, *build within existing conditions*, *alternative alignments*, and *new construction at existing location*. Each project is unique and the number of alternatives will vary depending on the scope and type of the project proposed. Discuss each alternative in a separate paragraph. For more complicated projects, consider including a table or matrix that illustrates project alternatives and impacts (see Table 1 for an example).

**Table 1. Impacts Matrix – example only**

Alternatives	No Build	New alignment	Widen existing alignment to east	Widen existing alignment to west (Preferred)
<b>Fee Acquisition (Acres)</b>	0	40.0	14.5	8.2
<b>Relocations</b>	0	Ten houses	Gas Station House Commercial Building	Smith House
<b>Historical Impacts</b>	None	None	None	Smith House
<b>Lane Widths and Pedestrian Accommodations?</b>	No	6 lanes @ 11 feet with bicycle accommodations	4 lanes @ 11 feet with bicycle accommodations	4 lanes @ 11 feet with bicycle accommodations
<b>Meets Capacity Needs?</b>	No	Yes	Yes	Yes
<b>Total Estimated R/W and Relocation Cost</b>	\$0	\$2.6 million	\$1.4 million	\$700,000
<b>Estimated Construction Cost</b>	\$0	\$4.6 million	\$3.6 million	\$2 million
<b>Total Estimated Cost (R/W and Construction)</b>	\$0	\$7.2 million	\$5 million	\$2.7 million

## **6. Discussion of Actions that Minimize or Mitigate Adverse Effect**

Describe specific mitigation items identified during the consultation process in separate paragraphs or in a bulleted list. If mitigation items are not identified at the time the D for C is prepared, indicate that options for minimizing or mitigating adverse effects will be identified in the future during the consultation process.

See the MOA Toolkit for guidance on developing appropriate mitigation.

## **7. Views of Consulting Parties and the Public**

Document consultation efforts, including contact or attempts to contact property owners, local historical societies, municipalities, Native American tribes, and any other individual or group that is affected by the project and that has a stake in the undertaking. Please refer to the *Toolkit for the Development of Section 106 Memoranda of Agreement for Above-ground Resources* for guidance on the consultation process. The property owner **must** be included in consultation efforts. Incorporate correspondence received, meeting minutes, and responses made to address concerns related to the historic resources in an appendix. On some projects, your outgoing letter and a follow-up phone memo may have to suffice. All concerns expressed during consultation must be addressed/acknowledged and resolved.

If you have difficulty contacting the property owner or other key stakeholder, coordinate with the Project Manager. See the Facilities Development Manual (FDM) for guidance on the proper method for requesting public input on the project.

### **Submission Requirements for D for C**

At least one (1) original and three (3) high quality copies of the D for C must be provided to WisDOT Cultural Resources Team (CRT). Copies for WisDOT Region, local unit(s) of government, local historical societies, and other consulting parties are in addition to these numbers.

## **APPENDIX B**

### **Flowchart 1**

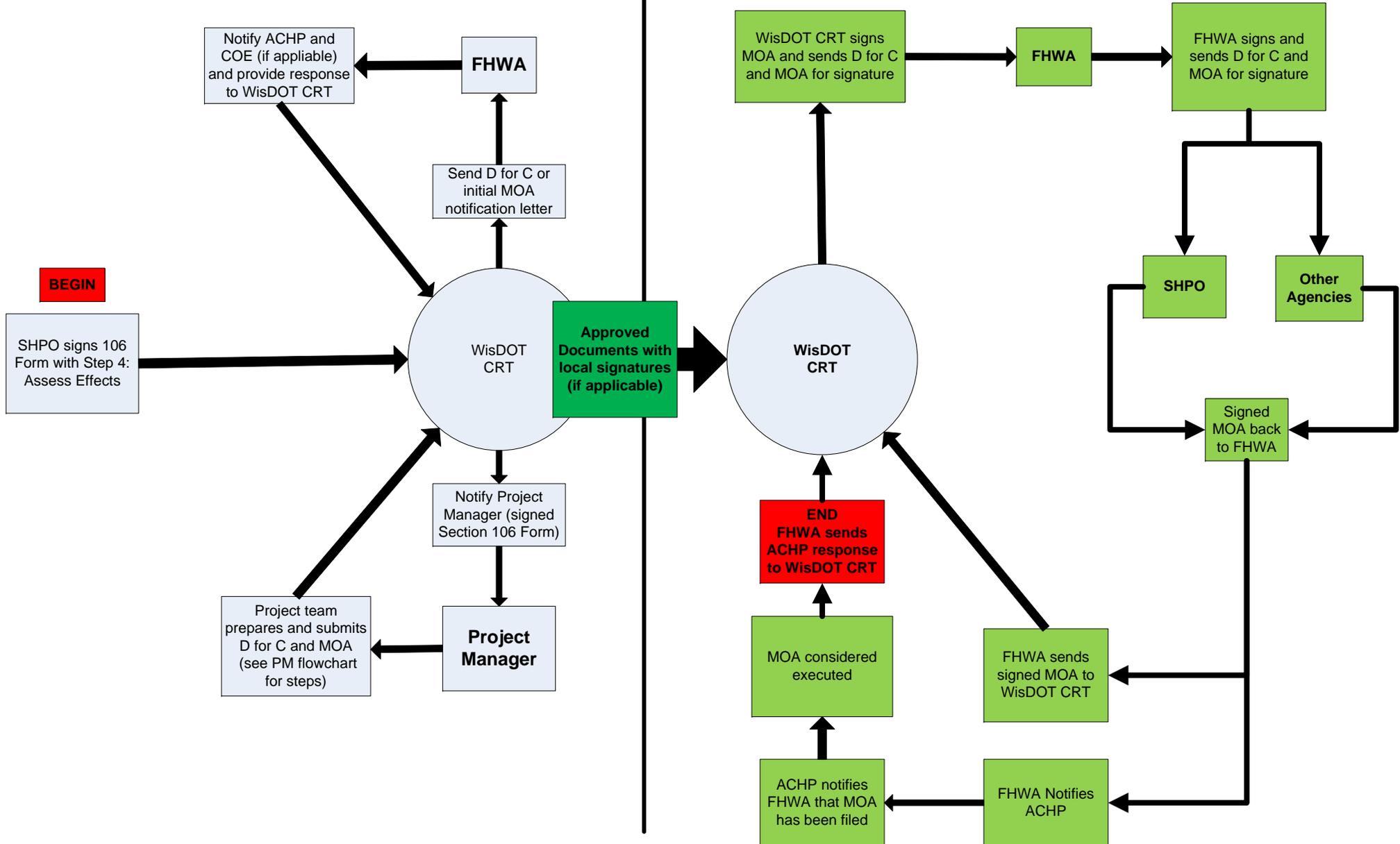
**Overall process for MOA development,  
signature, and approval  
(WisDOT CRT perspective)**

# WisDOT Cultural Resources Team (CRT)

## Documentation for Consultation and MOA Process

### Preparation / Consultation Process

### Signature / Approval Process



## **APPENDIX C**

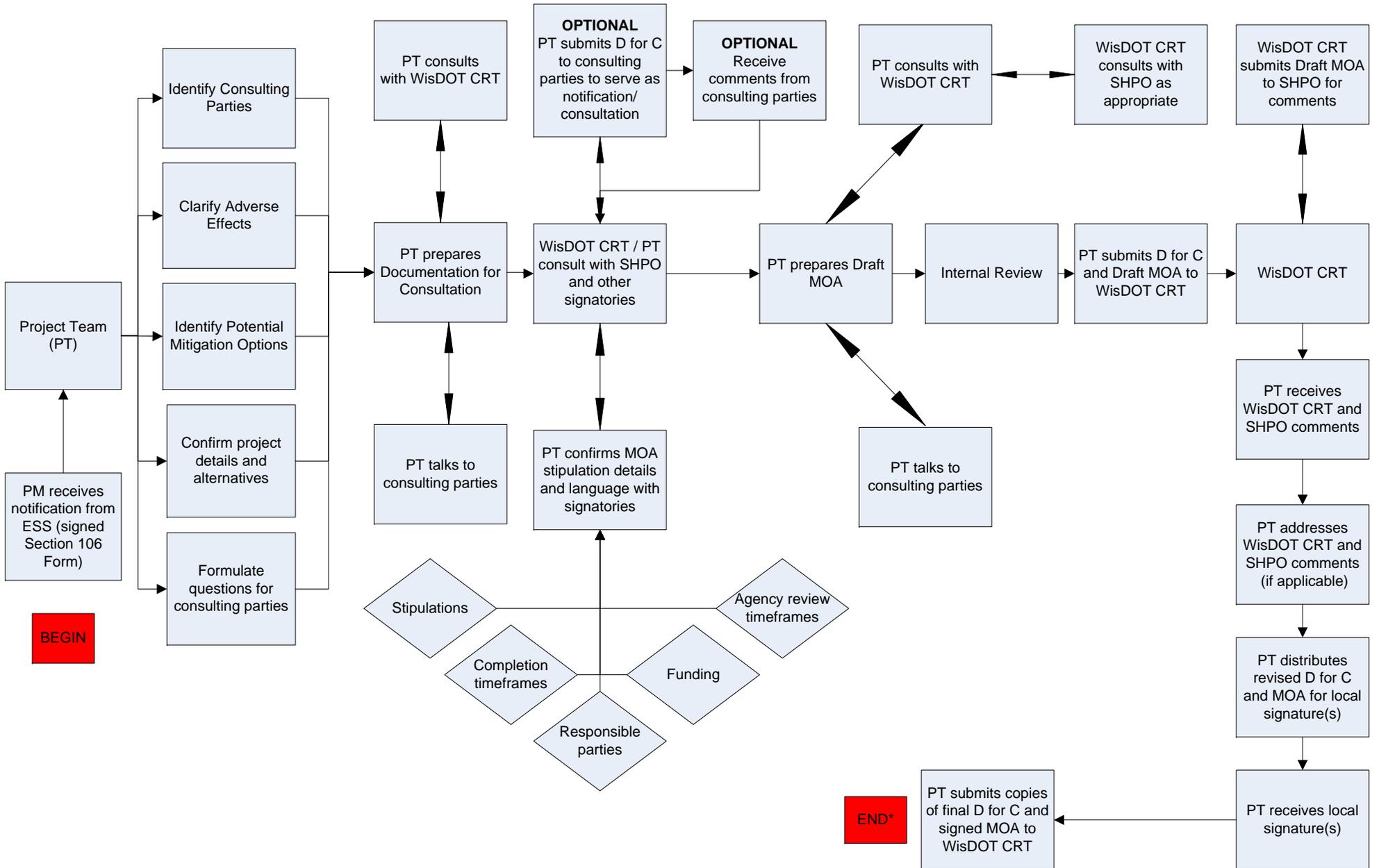
### **Flowchart 2**

**Overall process for consultation  
and MOA development**

**(Project Manager/Project Team perspective)**

# Project Manager/Project Team

## Process for Preparation of Documentation for Consultation and MOA



\*PT waits for signed MOA back from WisDOT CRT and a letter from the Advisory Council on Historic Preservation stating that MOA has been filed and is executed