CHAPTER 11:

DETERMINATION OF EFFECTS REPORT GUIDELINES

The Determination of Effects (DOE) report (also called Documentation for Consultation) is prepared when there is an adverse effect or no adverse effect finding on a project as a result of consultation between the ODOT, FHWA, and the OHPO. ODOT uses the DOE report to provide information to FHWA, the ACHP, the OHPO and other Section 106 Consulting Parties about a project and the consultation process that resulted in the finding of adverse effect or no adverse effect. This work would be conducted in the PDP Environmental Engineering Phase.

Determining the effect of the project on historic properties is made after considering several factors, including whether the project will alter the characteristics that qualify the historic properties for inclusion in the NRHP. When an adverse effect is determined, statements concerning ways to reduce or mitigate the adverse effect are presented in the DOE report, which documents how historic properties (i.e., those included in or eligible for inclusion in the NRHP) will be impacted by the undertaking. The components of a DOE report are specified at 36 CFR Section 800.11(e) as documentation standards.

The DOE report does not justify a decision; rather, it is the compilation of the decision-making process that demonstrates how a no adverse effect or adverse effect on an eligible or listed property has been determined. It also documents the process by which ODOT and FHWA consulted with the public, identified consulting parties, and consulted with federally recognized Native American Indian tribes. Furthermore, the DOE report is the tool by which FHWA informs ACHP of the undertaking and requests ACHP to join consultation. This is why the DOE report must clearly demonstrate proper processes and decision-making throughout the project, including summary documentation of public involvement and identification of Section 106 Consulting Parties.

Below you will see that, pursuant with 36 CFR Part 800, the DOE report is for findings of no adverse effect or adverse effect. In ODOT’s process, and at OHPO’s direction, the DOE report is normally prepared when there is an adverse effect determination on an ODOT project. For no adverse effect determinations OHPO typically considers the standard consultation materials prepared by ODOT for OHPO as fulfillment of these documentation requirements.

However, there are still projects with no adverse effect determinations where ODOT, OHPO, and FHWA decide to prepare the DOE report. In these cases, there may or may not be a resulting MOA. It is rare that ODOT, OHPO, and FHWA decide to prepare an MOA for a no adverse effect finding, but it can happen occasionally. Users of this manual should be clear that there are no adverse effect situations in which a DOE report is prepared and there is no MOA.

Determination of Effects Report

Level of Work: Documentation as specified by 36 CFR Section 800.11(e), Finding of No Adverse Effect or Adverse Effect

Objectives:
- Identify consulting parties
- Prepare report documenting the effects of the undertaking on historic properties
- Prepare a draft Memorandum of Agreement (MOA) if applicable

Documentation Requirements:
- Description of the project specifying federal involvement and the APE including photographs, maps and drawings, as necessary
• Description of the steps used to identify historic properties, i.e., included in or eligible for inclusion in the NRHP
• Description of the affected historic properties, i.e., included in or eligible for inclusion in the NRHP, including information on the characteristics that qualify them for the NRHP
• A description of the project's effects on historic properties, i.e., those included in or eligible for inclusion in the NRHP
• An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects
• A description of why the property is eligible with respect to the National Register Criteria
• Copies or summaries of any views provided by consulting parties, the public, and federally recognized Native American tribes
• Draft MOA (if applicable)

Deliverables:
• Determination of Effects Report
• Draft MOA (if applicable)

ODOT/Project Sponsor Responsibilities:
• ODOT or the project sponsor will provide project maps
• ODOT or the project sponsor will provide the results of the previous studies, if applicable (e.g., Bridge Condition Report)
• ODOT or the project sponsor will document public involvement activities including letters to consulting parties such as local historical societies
• ODOT will facilitate MOA consultation meetings
• ODOT will prepare and circulate MOA for signature
• ODOT will distribute final DOE

For an archaeological site that has a determination of adverse effect and will undergo data recovery for mitigation, the DOE report information will be part of the Data Recovery Plan (DRP) for the site. ODOT will coordinate the DRP with FHWA, OHPO, and identified consulting parties. FHWA will coordinate the DRP with ACHP.

See below for a DOE Report Outline.
BASIC OUTLINE:
DETERMINATION OF EFFECTS REPORT
FOR THE FINDING OF NO ADVERSE EFFECT OR ADVERSE EFFECT
(Refer to 36 CFR Section 800.11(e))

Description of the Undertaking
- Federal Involvement
- Area of Potential Effects (APE)
- Purpose and Need

Description of the Efforts to Identify Historic Properties
- Summary of the Phase I methodology and results (feasible corridors/alignments**)
  - Historic buildings, structures, districts
  - Archaeological sites
- Summary of the Phase II methodology and results (preferred alignment)
  - Historic buildings, structures, districts
  - Archaeological sites
- Summary of Phase II recommended sites avoided and not evaluated on alternatives

Description of the Affected Historic Properties
- Individual Property Descriptions
  - Historic buildings, structures, districts
  - Archaeological sites
- Characteristics that Qualify the Property for the National Register
  - Historic buildings, structures, districts
  - Archaeological sites

Description of the Undertaking’s Effects on the Historic Properties
- Individual Property Effects (whole or partial)
  - Historic buildings, structures, districts
  - Archaeological sites

Explanation of the Finding of Adverse Effect/No Adverse Effect
- Applicability of Criteria
- Resolution of Adverse Effect
  - Avoid
  - Minimize
  - Mitigate

Summary of Public Involvement Consultation Activities
- Public
- Consulting Parties
- Tribal Consultation

MOA is included as an attachment, if prepared.

**Note: Alternatives discussed should be the same as in the environmental document; however, the same level of detail is not needed for the DOE. This discussion should lead the reader to the discussion and decision on the selection of the preferred alternative, since it is the preferred alternative that will cause the no adverse effect or adverse effect in nearly all situations.