

# Section 106

## Advanced Topics



# Welcome

- National Register evaluation
- NEPA and 106 coordination
- Consultation with Tribes and other parties
- Negotiating and preparing agreements
- Mitigation
- Special situations



# Section 106

The head of any federal agency having direct or indirect jurisdiction over a proposed undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure or prior to the issuance of any license, as the case may be, take into account the effects of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the national register. The head of any such federal agency shall afford the advisory council on historic preservation established under title II of this act a reasonable opportunity to comment with regard to such undertaking.

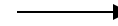


*Public  
involvement*



## **Initiate Section 106 Process**

Establish undertaking  
Identify appropriate SHPO/THPO  
Plan to involve the public  
Identify other consulting parties



NO UNDERTAKING/  
NO POTENTIAL TO  
CAUSE EFFECTS

UNDERTAKING MIGHT AFFECT HISTORIC PROPERTIES

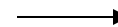


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involvement*



## **Identify Historic Properties**

Determine scope of efforts  
Identify historic properties  
Evaluate historic significance



NO HISTORIC  
PROPERTIES  
AFFECTED



HISTORIC PROPERTIES ARE AFFECTED

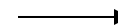


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involvement*



## **Assess Adverse Effects**

Apply criteria of adverse effect



NO HISTORIC  
PROPERTIES  
ADVERSELY  
AFFECTED



HISTORIC PROPERTIES ARE ADVERSELY AFFECTED

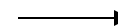


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## **Resolve Adverse Effects**

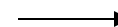
Continue consultation



MEMORANDUM  
OF AGREEMENT



FAILURE TO AGREE



COUNCIL COMMENT

# Defining the undertaking

36 CFR Section 800.3(a)



# Howard Farms wetland restoration Lucas County





# Area of Potential Effects

*The Phase I/II Howard Farms restoration will transform approximately 732 acres of intensively farmed land located on the east side of Howard Road to approximately 592 acres of managed coastal wetlands and 85 acres of tree and native grass restoration, including several forested islands within the restored wetlands; approximately 37 acres of deep water ponds also will be created within the restored coastal wetlands. The balance of the property will be made up of 44 acres of constructed levees and parking areas/open space and 11 acres of road right of way and existing canal. The restoration will feature an open hydrologic exchange with Lake Erie that promotes passage by fish and other aquatic organisms between the lake and restored wetland.*



# Howard Farms Be

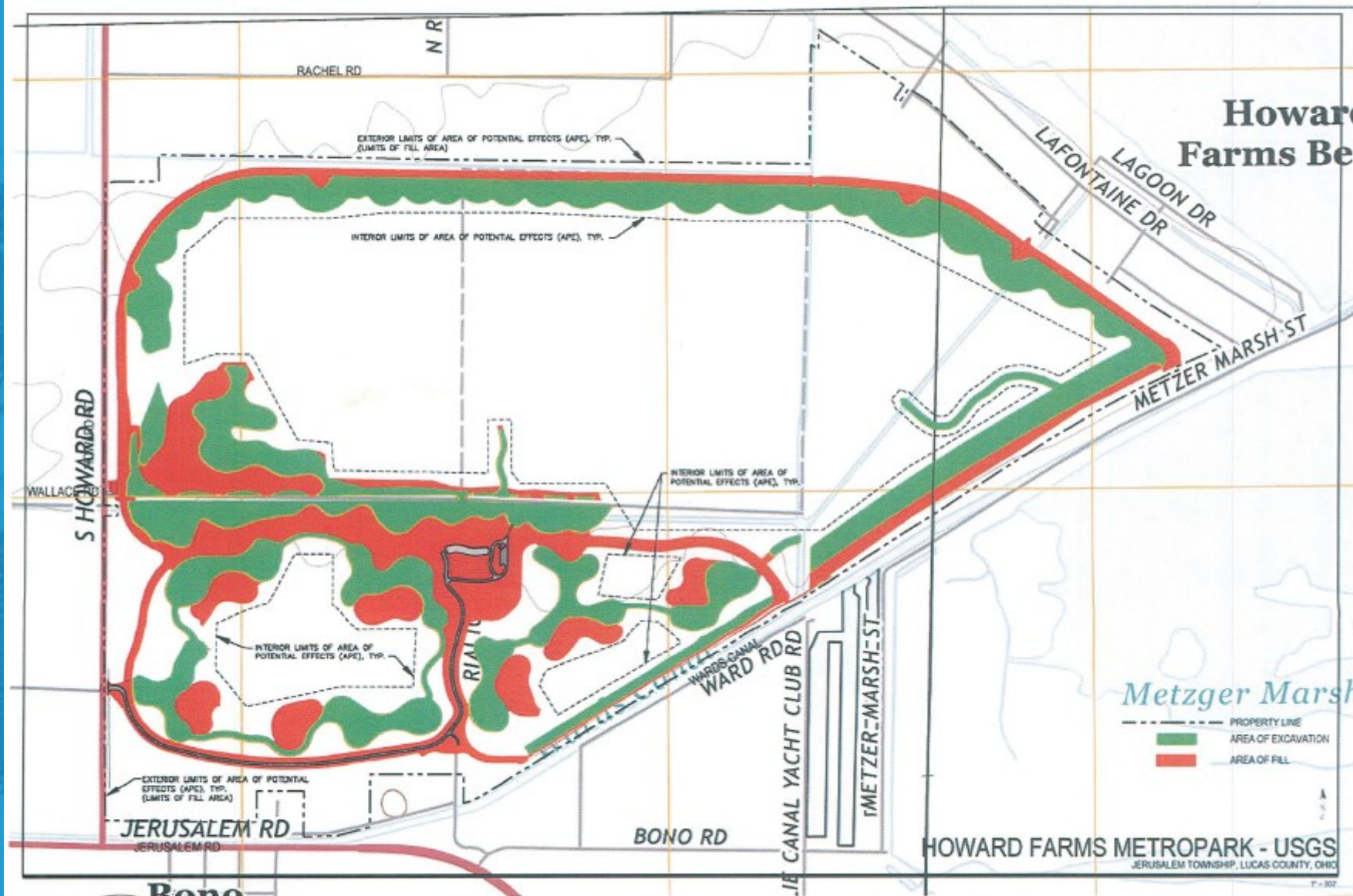






Photo 31: 33LU816 Area B 525 Rialto Drive, facing northeast.

CONNECTION



Photo 37: Ward's Canal, looking southwest.





Photo 39: 33LU818 Area C Locus 3 overview, facing northeast.



Photo 1: Overview of Area A from Howard Road, facing east.





Photo 15: Overview of Area D from north end, facing southeast.





Photo 4: Overview of Area B from its southwest corner, facing northeast.

# Area of Potential Effects

36 CFR Section 800.4(a)(1)



# Area of Potential Effects

- Definition of APE given at 36 CFR 800.16(d).
- Consult with SHPO in determining APE.



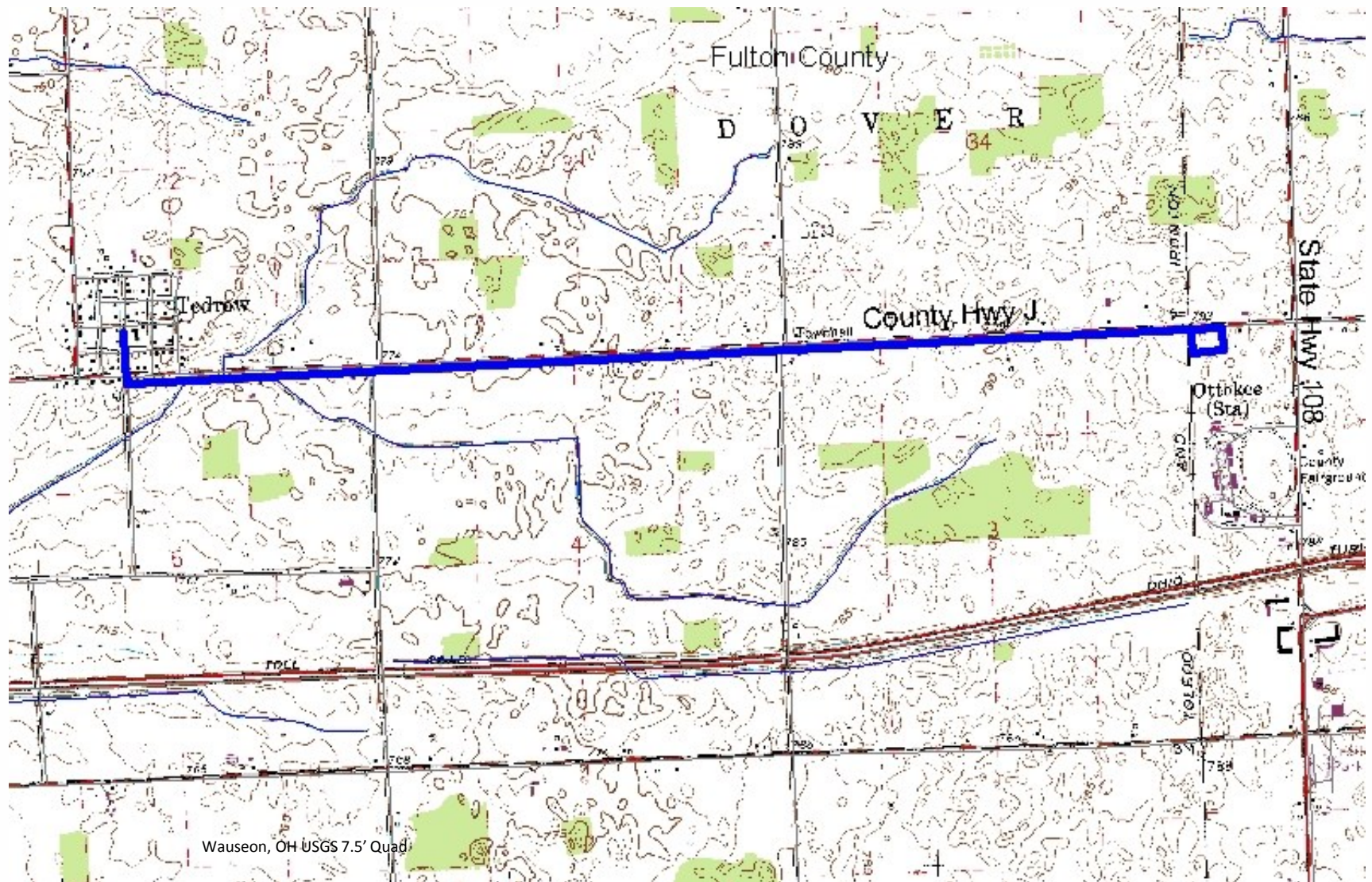
# Area of Potential Effects

- Prior to property identification, consider ways that project might affect historic properties if any are present.
- Consider effects that extend outside of the footprint of construction.





# APE Example: Tedrow Waterline





# Area of Potential Effects

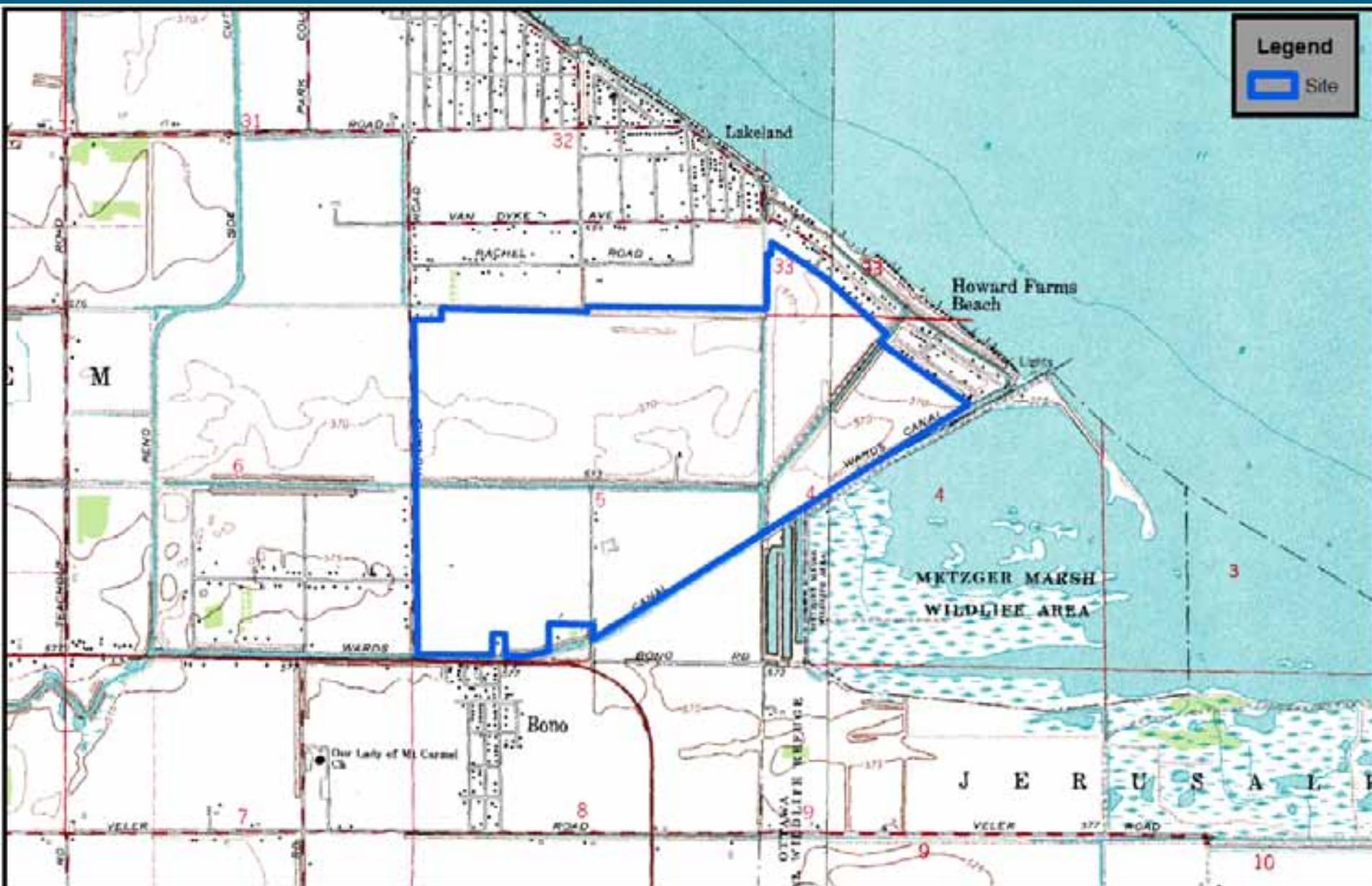
- Begin with a written description.
- What differences will I see after the project has been completed?
- Consider effects that extend outside of the footprint of construction.
- List the different kinds of effects that the project will have.
- Summarize the types of historic properties that could be in the project area.



# Area of Potential Effects

- For complex projects, APE may consist of more than one discontinuous geographic area.
- Influenced by scale and nature of undertaking.
- Depends on the type of effects that may be caused by the undertaking.





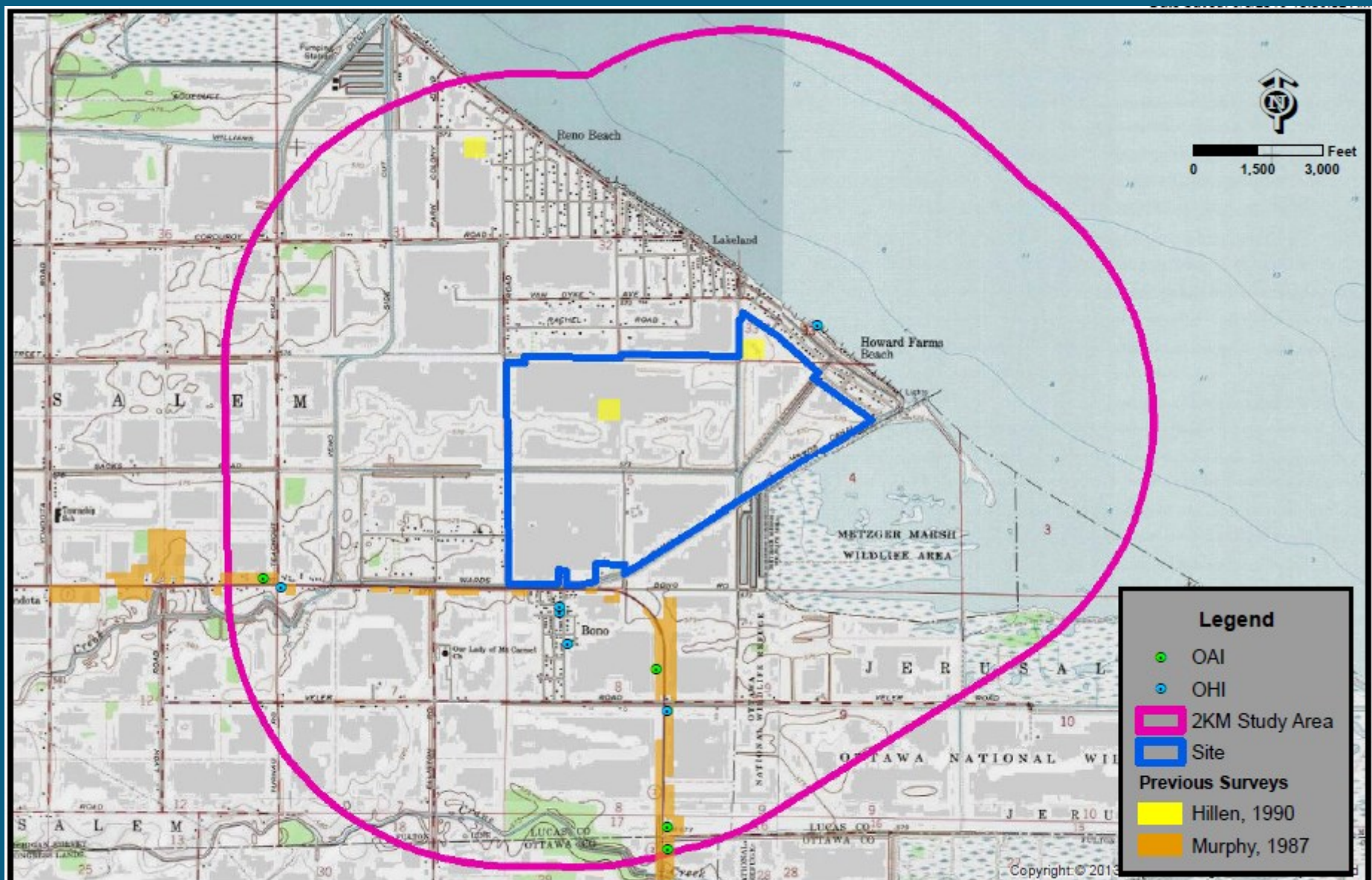
**Figure 1.1: Project Location**  
**Howard Farms Wetland Restoration**  
**Jerusalem Township, Lucas County, Ohio**

**Notes**  
 USGS Quadrangle, 7.5' Series Topographic  
 Reno Beach, Lucas Co., OH 1967  
 Metzger Marsh, Lucas Co., OH 1964

0 1,000 2,000 Feet







**Figure 2.2: Literature Review**  
**Howard Farms Wetland Restoration**  
**Jerusalem Township, Lucas County, Ohio**

**Notes**

USGS Quadrangle, 7.5' Series Topographic  
 Reno Beach, Lucas Co., OH 1967  
 Metzger Marsh, Lucas Co., OH 1964  
 Genoa, OH 1966 Revised 1988  
 Oak Harbor, OH 1961 Revised 1978





**Figure 1.2: Project APE**  
**Howard Farms Wetland Restoration**  
**Jerusalem Township, Lucas County, Ohio**

**Notes**

The Lucas County photography, dated April 2011, is provided by OGRIP as part of the Ohio Statewide Imagery Program.



# Identification and Evaluation

36 CFR Section 800.4



# What is the National Register?

- A program of the National Park Service
- The official list of properties recognized as worthy of preservation for their local, state, or national significance in American history, architecture, archaeology, engineering, or culture
- The basis for Section 106 (resource protection) and Federal historic-preservation tax credit programs



# The National Register in Ohio

- For Ohio, the program is administered by the Ohio Historic Preservation Office
- Nearly 4,000 listings in Ohio, with over 45,000 historic properties
- Over 500 listings for historic districts, including commercial and residential districts, campuses, and large farms or estates



# What the National Register does

- Recognition of historic properties and their importance (planning/education tool)
- Consideration in planning federal and federally assisted projects (Section 106)
- Eligibility for federal tax benefits (for income-producing properties)
- Qualifying preservation projects for federal grant assistance



# What it does not do

- Prevent owner from remodeling, repairing, altering, selling, or demolishing with other than federal funds
- Obligate owner to make repairs or improvements to property





# What types of places are listed?

- Buildings

- Shelter for human activity
- House, barn, church, hotel, office building

- Sites

- Battlefield, campsite, cemetery
- Shipwreck, rock shelter, ruins of a building or structure

- Structures

- Not used for human shelter
- Bridges, tunnels, dams, earthworks, carousels

- Objects

- Monument, milepost
- Boundary marker, statue, fountain

- Districts



# What Makes a Property Eligible?

- Age
- Significance
- Integrity

# What are the Criteria for Evaluation?

- Criterion A: Event or broad pattern of events
- Criterion B: Persons important in our past
- Criterion C: Architectural or Engineering merit
- Criterion D: Yield important information



# Criterion A

Properties that are associated with events that have made a significant contribution to the broad patterns of our history.





# John Hunt Morgan Surrender Site West Point vicinity, Columbiana County



- Marks the spot where the northernmost advance of Confederate soldiers into Union territory was stopped on July 26, 1863.
- Criterion A: Important historic event.



## Our House Gallipolis, Gallia County

- Brick tavern and inn that could house ten people comfortably (and “three dozen in relative discomfort”).
- Criterion A: Commercial and social center of the frontier village. General Lafayette was a guest here in 1825.
- Criterion C: Built in 1819 in the Federal style.



# Columbiana County Infirmary

## Lisbon vicinity



- Built in 1872 to house the indigent and mentally ill in Columbiana County.
- Criterion A: Reflects philosophies about care of the poor, mentally ill, and orphans in the mid-to-late 19th century.
- Criterion C: Utilitarian buildings typical of institutional structures built in the 19th century.



# Criterion B

Properties that are associated with the lives of significant persons in our past.



# Ulysses S. Grant Boyhood Home Georgetown, Brown County



- Ulysses S. Grant, 18th President of the U.S., was born in nearby Point Pleasant, Ohio in 1822.
- Criterion B: Grant's home during a productive period of his life, when he received commission to West Point.



# A. B. Graham House

## Columbus, Franklin County



- In 1902, school teacher A. B. Graham was a primary founder of the 4-H program in Springfield, Ohio.
- Criterion B: This was Graham's home during his retirement years when he worked tirelessly to promote the 4-H movement and chronicle the history of its development.



# Criterion C

- Properties that embody the distinctive characteristics of a type, period, or method of construction.
- Work of a master.
- High artistic values.
- Significant and distinguishable entity whose components may lack individual distinction.
- Single properties and historic districts.



# People's Federal Savings and Loan Sidney, Shelby County



- Designed by Louis Sullivan, an influential American architect in the late 19th and early 20th centuries.
- Criterion C: Work of a master architect.

# Station Road Bridge Cuyahoga/Summit Counties spans the Cuyahoga River near Brecksville



- Metal truss bridge built by the Massillon Bridge Company in 1882.
- Criterion C: Excellent example of a double intersection Pratt through truss and association with Massillon Bridge Company, one of the leading bridge manufacturing companies of the era.



# St. Clairesville Historic District St. Clairesville, Belmont County



Criterion C: Cohesive unit of 19th century commercial and public buildings.

# Kirtland House

## Poland, Mahoning County



- James Kirtland assisted in conducting first geological survey in Ohio, which allowed land to be recorded accurately, sold, then settled.
- Criterion A: Early settlement in Ohio
- Criterion B: James Kirtland
- Criterion C: Greek Revival architecture

# Criterion D

Properties that have yielded or may be likely to yield, information important in history or prehistory.



# Miamisburg Mound

## Miamisburg, Montgomery County



- Constructed by the prehistoric Adena Indians (800 BC - 100 AD).
- Largest conical burial mound in Ohio.
- Criterion D: Excavation at the site has yielded materials and features important to understanding prehistory.



# Exceptions

The following kinds of properties are not eligible for the National Register, unless they meet special requirements, or are integral parts of an eligible district.

- Religious properties
- Moved structures
- Birthplaces or graves
- Cemeteries
- Reconstructed buildings
- Commemorative properties
- Properties less than 50 years



# Exceptions are called Criteria Considerations

- Criteria Consideration A: Religious Properties
- Criteria Consideration B: Moved Properties
- Criteria Consideration C: Birthplaces or Graves
- Criteria Consideration D: Cemeteries
- Criteria Consideration E: Reconstructed Properties
- Criteria Consideration F: Commemorative Properties
- Criteria Consideration G: Properties that have achieved significance within the last fifty years



# Criteria Consideration A

## Religious Properties

A religious property deriving primary significance from architectural or artistic distinction or historical importance



# St. Timothy's Protestant Episcopal Church Massillon, Stark County



- Meets Criteria Consideration A
- Significance
  - Criterion C: Prominent architect (Arthur B. Jennings); Gothic Revival religious architecture; high artistic value of the four stained glass windows from Tiffany Studios of New York



## Criteria Consideration B

### Moved Buildings and Structures

A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event.





### **Zoarville Station Bridge**

Fink Truss iron bridge, built in 1868, first installed in Canal Dover, but was moved to a smaller road in 1905. It was abandoned in the 1940s and was nearly overgrown with trees and vegetation. Ten years ago, ODOT sponsored its restoration and it is now on a path near a Boy Scout camp in Tuscarawas County. Photo taken on the day of its dedication in 2008.





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## Outville Depot

Originally, this Baltimore and Ohio Railroad depot served the small town of Outville. In 1963, it was no longer used by the railroad and it was sold to a nearby farmer for storage. In the 1990s, the farm was sold to a developer, who donated the depot to the Township Trustees. The depot now sits next to the railroad tracks by the township offices. It was restored and listed in 1995.



# Criteria Consideration C

## Birthplaces or Graves

- A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life.
- Is there an existing property that is directly associated with the person?





U. S. Grant Birthplace  
Point Pleasant, Clermont County



Listed in 1998 under Criterion A, with Criteria  
Consideration A (commemorative).

# Criteria Considerations D

## Cemeteries

A cemetery that derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.



# Spring Grove Cemetery Cincinnati, Hamilton County



- Meets Criteria Consideration D
- Significance
  - Criterion C: Mid-19th century rural landscape design in cemeteries; high-style architecture of mausoleums and monuments.

# NR Criteria Consideration E

## Reconstructed Buildings

A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived.





# NR Criteria Consideration E

## Reconstructed Buildings



Buckeye Furnace, a typical charcoal iron furnace from the mid-19<sup>th</sup> century, was acquired by the Ohio History Connection in 1936. After exhaustive research, which included interviewing former employees, the building was re-constructed.

## Criteria Consideration F Commemorative Properties

A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance.





Soldiers and Sailors Monument, Cleveland  
(1879-1894)

# Criteria Consideration G

## Less than 50 years

- A property achieving significance within the past 50 years if it is of exceptional importance.
- Ability to provide contextual analysis, recognition of exceptional qualities of design or cultural significance.





# The Westerly Apartments Lakewood, Cuyahoga County



- Built between 1962 and 1974
- Meets Criteria Consideration G
- Significance
  - Criterion A: The first housing for the elderly in Ohio using a HUD initiative.
  - Criterion C: First use of Modernist architecture for low-income housing for the elderly

# Integrity

- The ability of a property to convey its significance.
- The authenticity of a property's historic identity, based on surviving physical characteristics.
- Would people who used or inhabited the place historically recognize it today?

# Integrity is evident through historic qualities, including:

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association



# How much integrity is needed?

- Enough to convey the property's significance.
- More than one aspect (for example, location alone is not enough).
- But perhaps not all seven aspects need to be present.





# Assessing Integrity



# Emery Hall today



# Assessing Integrity



# Identifying historic properties within the APE

- The Federal Agency is responsible for applying the National Register Criteria for Evaluation and the Criteria Considerations to identify historic properties within the APE.
- The Federal Agency may employ consultants or assign this work to its applicant.
- Federal Agency then asks SHPO for concurrence about their identification of historic properties.





# Identifying historic properties within the APE

- Ideally, the identification process is performed by someone who meets the Secretary of the Interior's "Professional Qualification Standards" in history, architectural history, historic architecture, or archaeology
  - In Ohio, it is not required that the person applying the Criteria for Evaluation and the Criteria Considerations meet the "Professional Qualification Standards"
  - Submissions including analysis prepared by qualified individuals are less likely to be delayed by requests for additional information
  - SHPO maintains list of qualified consultants who work in Ohio



# Identifying Historic Properties:

## Finding properties through professional surveys

- What is a survey? A study designed to locate previously unidentified historic properties.
- NPS and SHPO have guidelines about how to do professional level surveys- see SHPO website.
- Use SHPO Fact Sheet for advice about hiring consultants.
- Consultant lists are available from SHPO if you want to circulate an RFP or contact consultants directly.
- Get references and call them, just like when you hire a contractor.
- Make sure that you understand what you're hiring them to do and that it meets the project's needs.



# National Environmental Policy Act and Section 106



# National Environmental Policy Act and National Historic Preservation Act

- NEPA is separate review process, different in legal authority from National Historic Preservation Act.
- Emphasizes alternative analysis and impacts.
- Scale of project impact establishes extent of project analysis: Categorical Exclusion, Environmental Assessment, Environmental Impact Statement.



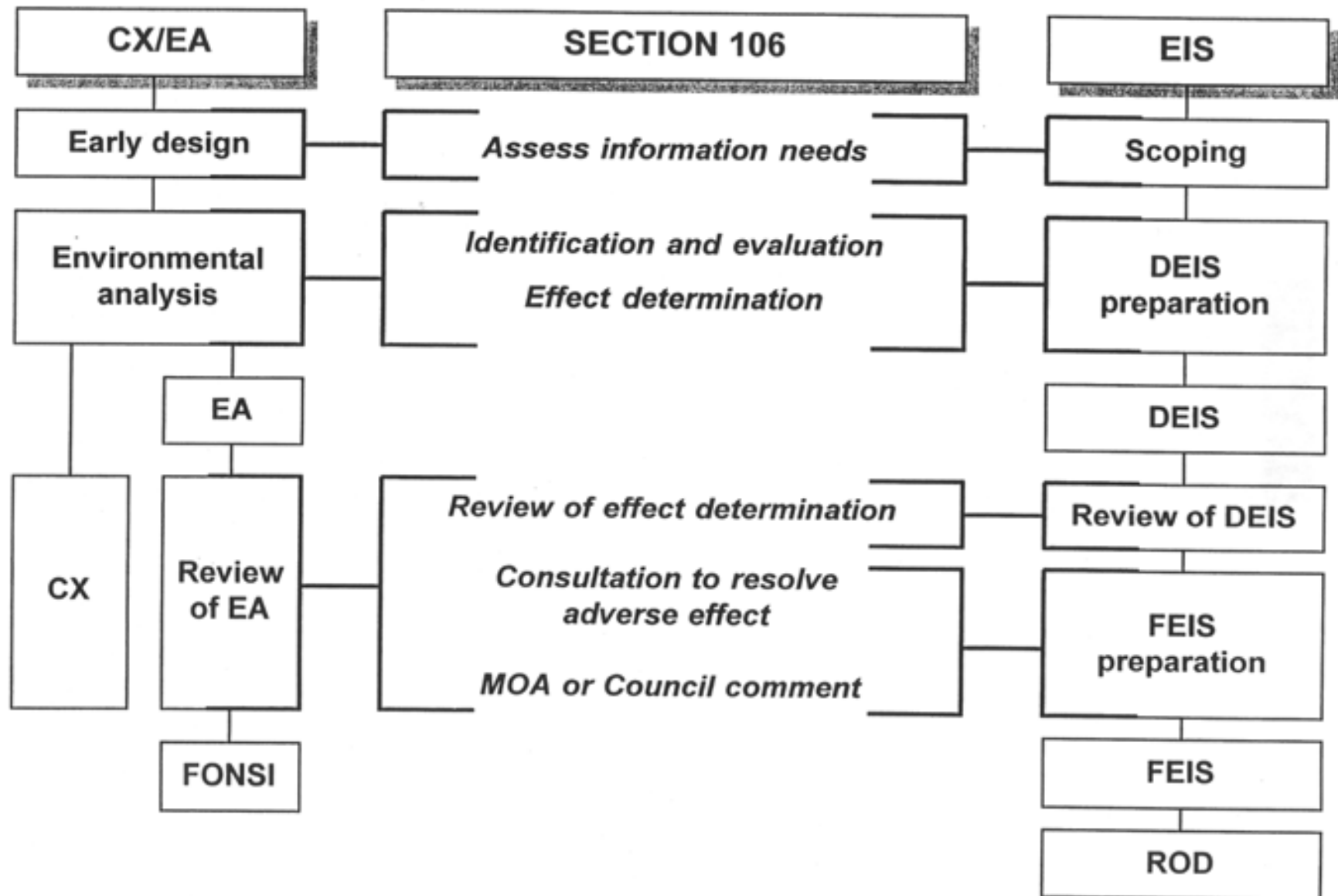


# Coordinating NEPA and NHPA

- Look for opportunities to streamline project planning.
- Challenge of managing combined regulatory processes with federal program rules.
- Consideration of historic properties under NEPA should be commensurate with impact analysis for other resources.
- SHPOs don't have formal responsibilities under NEPA regulations



## Coordinating NEPA and Section 106 Review



# Comparing NEPA and NHPA's Section 106 process

## NEPA

- Public disclosure process
- Defines agency planning process
- Focuses on alternatives
- Closed timeframe
- CEQ regulations binding on all agencies

## Section 106

- Stakeholder consultation process
- Separate from agency planning process
- Focuses on considering effects to historic properties
- Open timeframe
- ACHP regulations binding on all agencies



# NEPA and NHPA Coordination

- NHPA: Assess Information Needs
- NEPA: Early Design and Scoping
- Scoping is a good way to help plan for consideration of complex projects
  - What level of effort is needed?
  - What kinds of surveys will be required?
  - How will the review process work?



# What happens if I only need to complete a CATEX or FONSI?

- Agency obligations under Section 106 of NHPA are independent from NEPA and must be complied with even when an EA or EIS is not required.
- Is your project a federal undertaking under the Section 106 regulations?
- SHPO cannot tell you how to make your NEPA decisions
- If project is not part of combined NEPA/NHPA review, under 36 CFR 800.8, SHPO will not review NEPA documents as anything but an information source





# Using 36 CFR 800.8: Formally using NEPA for NHPA

- Early coordination critical to making combined NEPA/NHPA process work effectively.
- Plan to coordinate public involvement, analysis and evaluation of both processes.
- Consider how you will balance “alternative analysis” (NEPA) with “measures to avoid, reduce, mitigate” effects (NHPA).
- Public meetings should include meaningful discussion of effects to historic properties.

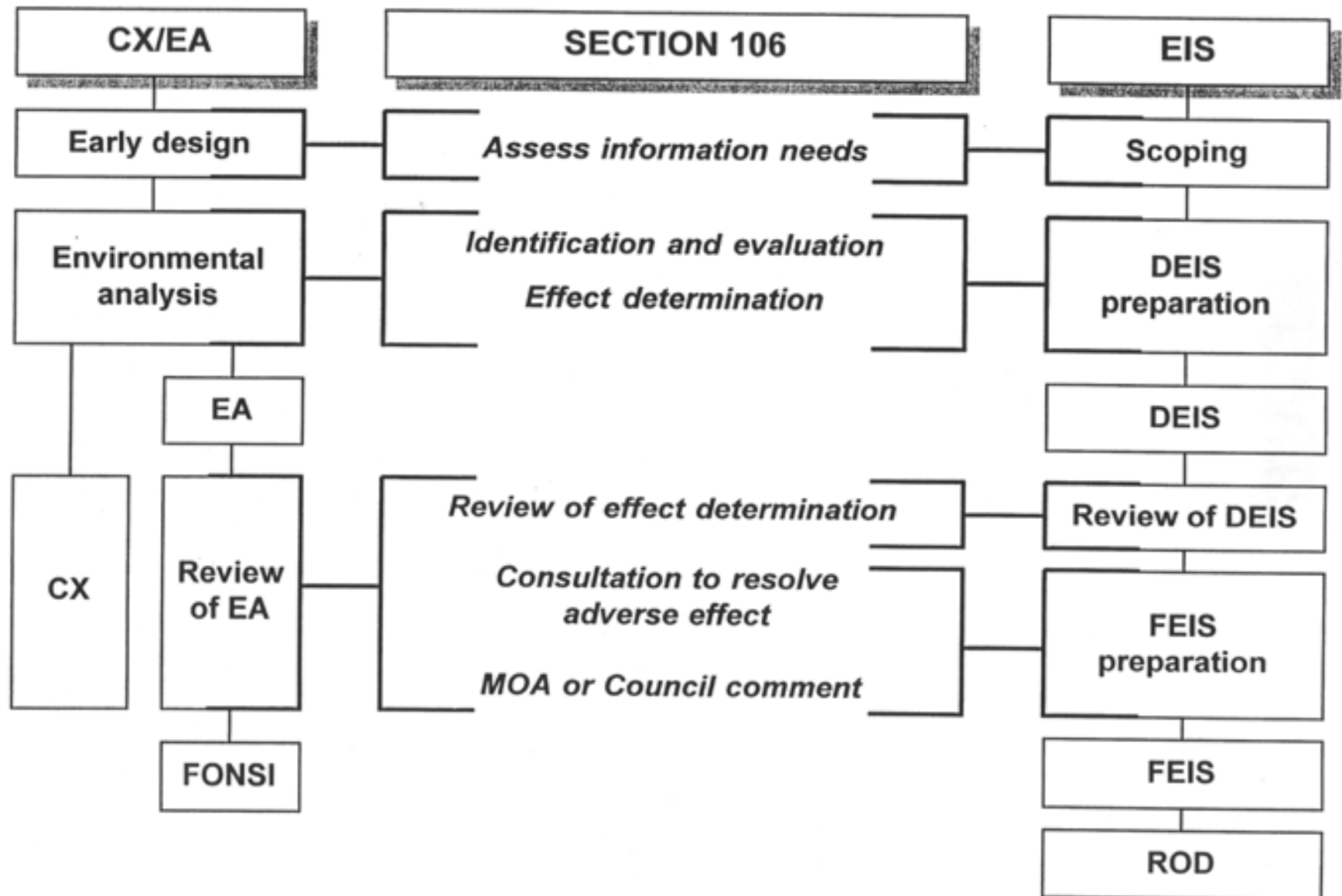


# Reducing Duplication of Effort

- The goal: to simplify concurrent reviews under NEPA and Section 106, thus reducing costs and avoiding redundant paperwork and effort.
- 36 CFR Section 800.8 provides:
  - guidance on a formal process to coordinate compliance.
  - a process whereby Agencies can use preparation of an EA or EIS to comply with Section 106.
  - Never really done.



## Coordinating NEPA and Section 106 Review



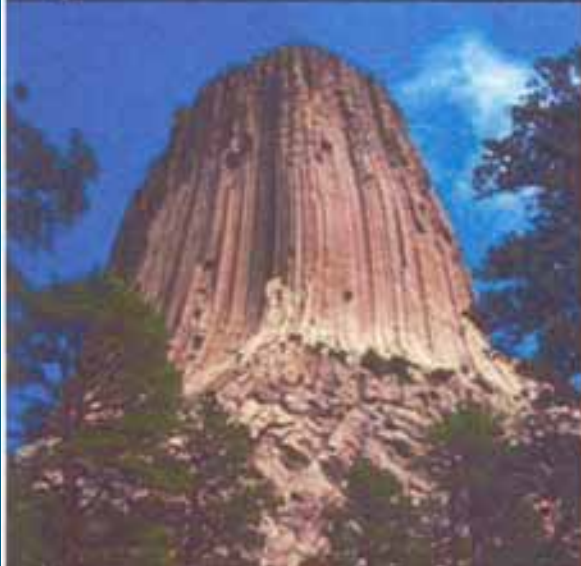
# Consultation and Consulting Parties





# CONSULTATION WITH NATIVE AMERICANS

## A HISTORIC PRESERVATION RESPONSIBILITY



Every Federal  
Agency is responsible  
for “government-  
to-government”  
relationships with  
Indian Tribes.





# Expanding Consultation

- Tribal Consultation
- Required under National Historic Preservation Act provisions
- A challenge for Ohio
  - In Ohio there are no Federally recognized Tribal Authorities.
  - There are no Tribal lands.
  - We do have places of importance to Tribes.



# Consulting with Tribes

- With whom do you consult?
- Tribes that are historically tied to the area of Ohio where your project will be located.
- Other Tribes that have expressed an interest in that area or in similar kinds of projects.
- Native American concerns groups who have expressed an interest in your project area



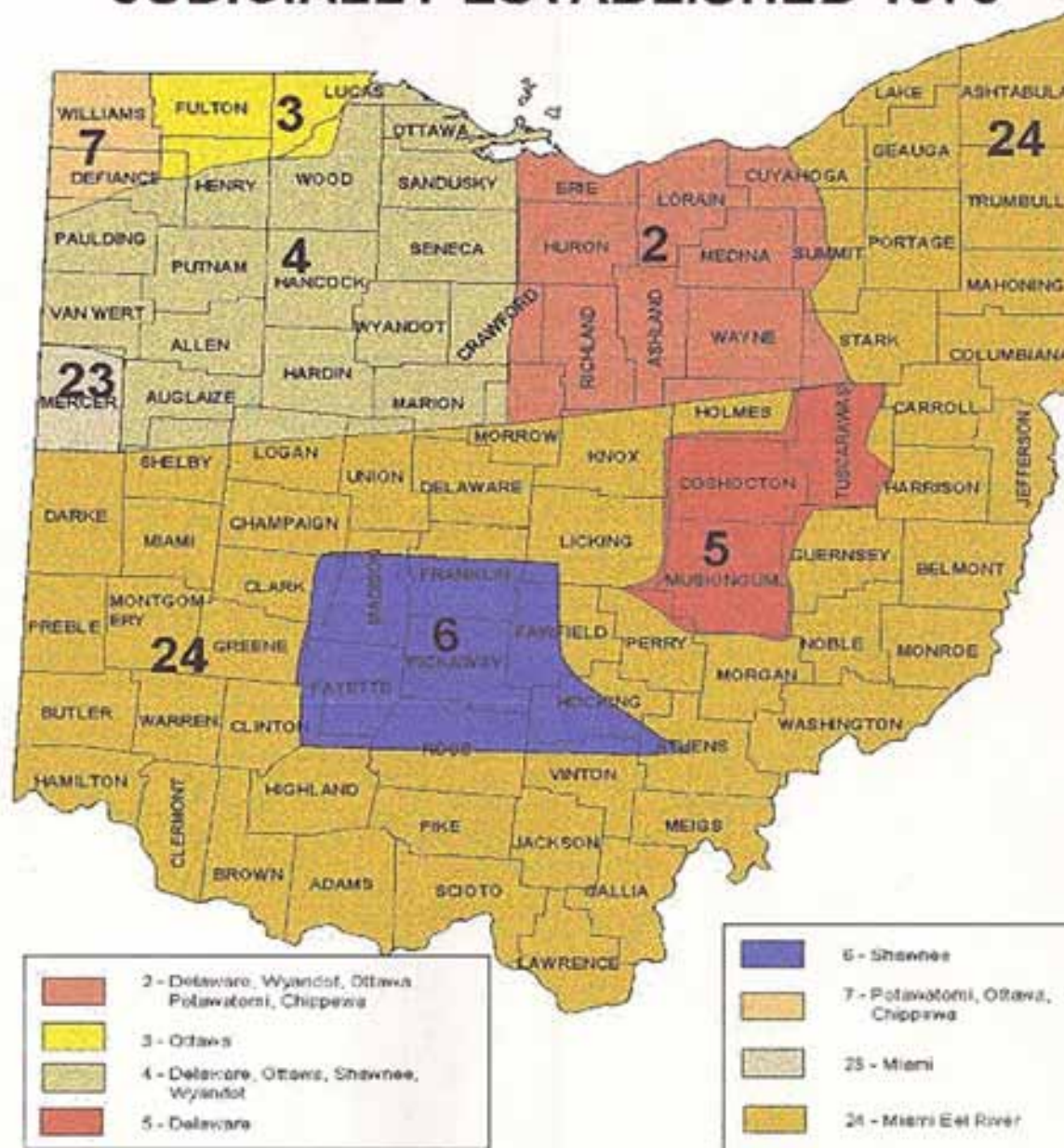
# Identifying Tribes

## Resources

- Written histories
- 1978 map of Indian Land Areas Judicially Established
- SHPO
- Federal Agencies
- Ask the Tribes
- Consult information provided by the ACHP, NATHPO, and BIA



# INDIAN LAND AREAS JUDICIALLY ESTABLISHED 1978



# Tribal Consultation

- Federal agency responsibility.
- Establish programs that describe and maintain consultative relationship.
- Based on government-to-government communication.
- Must have authority to speak for the government.
- Recognizes the sovereignty and right of self government of Tribes.





# Best Practices

- Regular and Meaningful Consultation
- Not enough to provide notice
- Tribes are not just interested parties
- Ongoing, coordinated, follows protocols.
- Agencies should have written procedures.
- Including contact persons



# Best Practices

- Understand and follow protocols.
- Inform Tribes on project details prior to consultation session.
- Coordinate with Agency Tribal Liaison.
- Consult early.
- Communicate as an ongoing process.
- Meet routinely to discuss how to consult.



# Consultation

- Develop planning documents, including project description and APE.
- Identify consulting partners.
- Initiate consultation.
  - Often a telephone call or email message is helpful to let folks know that you are sending information.
  - Determine if a consultation meeting is needed.
- Conduct consultation meeting, as needed.
- Conclude consultation.



# Tips

- Communicate.
  - Meet face to face.
  - Get to know one another.
  - Learn about their Tribal government and programs.
  - Know administrative limitations.
  - Avoid information overload.
- Consult early and often.
- Be honest. Don't promise what you can't deliver.
- Recognize cultural differences.



# Benefits of Consultation

- Knowledge and understanding of the importance of cultural heritage.
- Learning respect for cultural traditions.
- Through consultation we can learn what cultural resources are important, and learn how Tribes would like to preserve them.





# Benefits of Consultation

Getting to know the tribes and the cultural resources they value is essential for ensuring that no Federal program deprives them of the rights afforded by the Constitution of the United States and Federal law



# Benefits of Good Consultation

- Greater project efficiencies and planning.
- Avoid or reduce delays and project disruption and lawsuits.
- Timely and successful consultation can reduce the compliance costs of agency projects over time.



# When Is Consultation Complete?

- Consultation is completed once a well-documented administrative record of the consultation, discussions, and decisions exists and an action plan is agreed upon.
- No time limit, but should take a reasonable amount of time.



# Agreements



# Purpose of agreements

- The purpose of an agreement document under Section 106 is to make it clear who will do what to resolve the effects of the undertaking on historic properties.
- So, it must be unambiguous and complete.





# Memorandum of Agreement

Use when an undertaking will have adverse effects on historic properties and the consulting parties agree on ways to minimize or mitigate such effects.



# Programmatic Agreements

- Provides an alternative to the standard process in 36 CFR Part 800 for potential adverse effects.
- For a whole agency program.
- For a large and complicated undertaking.
- For multiple undertakings.



# Conditional No Adverse Effect

- Embody consensus on conditions under which an undertaking can be regarded as having no adverse effect on historic properties.
- Conditional determinations of no historic properties affected are not allowable under 36 CFR Part 800.



# Essential elements

Before you start to write an agreement document, you should be sure that you know the answers to five basic questions:

- What?
- Where?
- Who?
- When?
- Why?



# General principles

- Remember the cold reader.
- Say what you mean, not what you think is "standard" or "acceptable."
- Structure the agreement logically.
- Include all agreed upon provisions.
- Think ahead.



# General principles

- Include all pertinent statutory and regulatory authorities.
- Review your agreement for internal consistency.
- Make sure your agreement is personality-free.
- Don't be too subtle.
- Avoid assuming things that aren't specified.



# Substantive recommendations

- Don't agree to things that cannot be done.
- Always provide for means of monitoring performance, and make these as explicit as possible.
- Always provide for the resolution of disputes, both between the parties to the agreement and between the responsible agency and members of the public.



# Use the right type of agreement

- A conditional no adverse effect is used to document an agreement among an agency, SHPO, and sometimes other parties about how adverse effects will be avoided.
- CNAE cannot be used to document how adverse effects will be mitigated. That is what an MOA is for.
- A PA does this for multiple or large projects, whole programs, or to substitute for the standard process.



# Standard archaeology MOA

- Only effects will be to National Register eligible archaeological sites.
- The information for which the site is significant can be recovered through appropriate professional methods and with a plan.
- Agency should use the prototype MOA framework published by the Council.



# Parties

- Consulting parties: participate in consultation to resolve adverse effect.
- Signatory parties: signatures make the MOA go into effect: the Federal agency, SHPO, and Council if participating.
- Invited signatories: not required to sign.
- Concurring parties: invited by the signatories to concur in the MOA, but whose failure to do so does not keep the MOA from going into effect.





## Conditional No Adverse Effect

- Appropriate when an undertaking's effects will not be adverse as long as certain conditions will be met.
- Most common conditions involve work that will meet established standards and guidelines.
- Take care to not use when an MOA would be more suitable.

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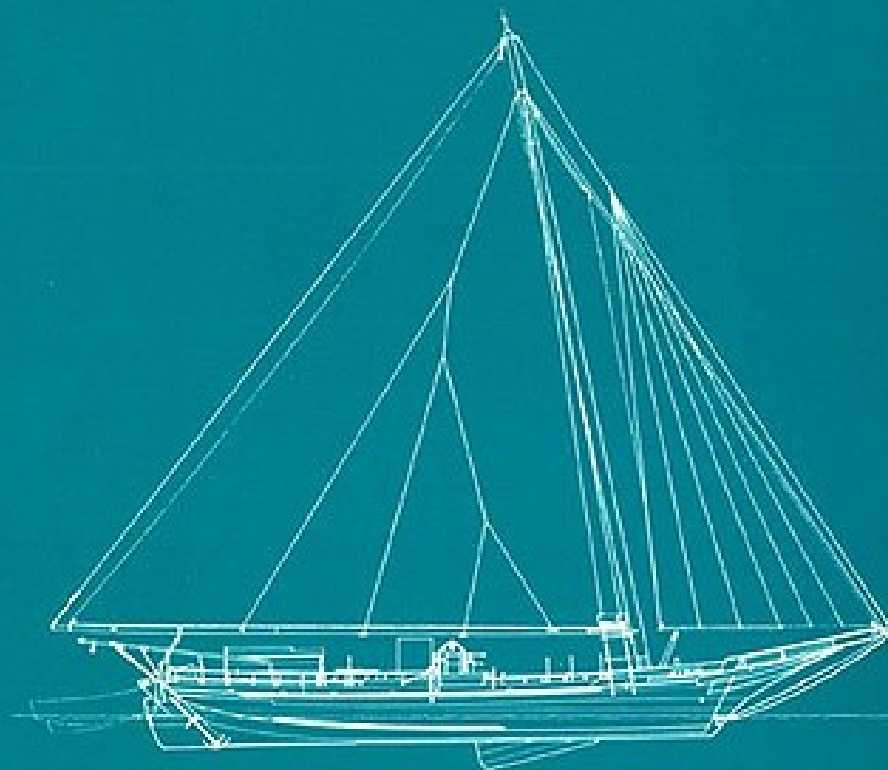
Department of the Interior  
National Park Service  
National Maritime Initiative

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The Secretary of the Interior's  
Standards for Historic Vessel  
Preservation Projects

with Guidelines for Applying the Standards

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## Conditional No Adverse Effect

- Embodies consensus on conditions under which an undertaking can be regarded as having no adverse effect on historic properties.
- Conditional determinations of no historic properties affected are not allowable under 36 CFR Part 800.



# Covered Bridge Manual

PUBLICATION NO. FHWA-HRT-04-098

APRIL 2005



U.S. Department of Transportation  
**Federal Highway Administration**

Research, Development, and Technology  
Turner-Fairbank Highway Research Center  
6300 Georgetown Pike  
McLean, VA 22101-2296



The Secretary  
of the Interior's  
Standards for  
Rehabilitation &

# Illustrated Guidelines for Rehabilitating Historic Buildings



U.S. Department of the Interior  
National Park Service  
National Historic Preservation  
Act of 1966



# Preparing a Programmatic Agreement

- To fulfill an agency's Section 106 responsibilities for
  - a particular program
  - a large or complex project
  - a class of undertakings that would otherwise require numerous individual requests for comments



# What is a PA good for?

- Effects on historic properties are similar and repetitive or are multi-State or national in scope.
- Effects on historic properties cannot be fully determined prior to approval.
- Non-Federal parties are delegated major decision-making responsibilities.
- Routine management activities at Federal installations, facilities, or other land-management units.
- Other appropriate circumstances.



# Preparing a PA

- Follows the same process as for MOAs, unless nationwide or multi-state.
- Depending on the circumstances, consultation may involve
  - SHPO/THPOs
  - National Conference of State Historic Preservation Officers
  - Native American tribes
  - other Federal agencies
  - members of the public



# Common types of PAs

- For Community Development Block Grant and other HUD funds.
- For facility management.
- To establish programmatic approaches to treating a particular type or types of historic property.
- For undertakings where particular standards can be met and guidelines followed.

# What if a PA isn't carried out?

The Agency Official must comply with 36 CFR Part 800 for individual undertakings covered by the agreement.



# Considering a PA?

- Replaces 36 CFR Part 800.4 through 800.6 for the program or project it covers.
- Should not paraphrase or parrot the standard process.
- PA must meet the requirement of Section 106 to take effects on historic properties into account.





# Considering a PA?

- An agency that is able to comply with 36 CFR Part 800.4 through 800.6 probably does not need a PA.
- No time limits on preparation of a PA.
- PAs may be used to address non-106 statutory requirements, but cannot change a statutory requirement.



# Beware these PAs

- Paraphrase 36 CFR Part 800.
- Don't make adequate provision for consultation with local governments, tribes, the public, and other consulting parties.
- Copied from old or inappropriate models.
- Contain unnecessary language.

# More PA cautions

- Be careful about National Register eligibility.
- Be sure to provide for implementation systems, including regular progress reporting, monitoring, review, amendments when needed, and termination.



# Most important considerations

- MOAs and PAs are contracts.
- Write for the “cold reader.”
- Cite legal basis for decisions.
- Don’t use to meet requirements of other laws.
- Use terms, acronyms, citation style consistently.
- Include everything that was agreed to in the negotiations.
- Written by the agency.



# Finalizing Agreements Without Council Participation

- Even when Council does not participate in consultation, copy of executed MOA must still be submitted to Council with documentation.
- Absent above step, requirements of Section 106 not met.
- Helps Council to monitor overall application of Section 106 process.



# Programmatic Agreements and Other Program Alternatives

36 CFR Sections 800.14 and 800.15





# Subpart C: Program Alternatives

- Programmatic Agreements (PAs)
- Alternate Procedures
- Standard Treatments
- Exemptions
- Program Comments



# Programmatic Agreements

- PAs for complex or multiple projects
  - Developed like MOAs
  - Council must be invited to consult
  - Lack of agreement on PA for multiple undertakings triggers case-by-case review
- PAs for regional or national programs
  - Consultation required (as appropriate) between Council, NCSHPO, SHPOs/THPOs, tribes and Native Hawaiian organizations, and the public

# Alternative procedures

- Should differ from the regulations, but must meet the requirements of the law and the regulations.
- Think creatively, considering the unique circumstances of the undertaking or undertakings.
- Provide detailed explanations for everything, just as the regulations do for the standard review process.



# PAAs for Programs: Execution & Termination

- Signatories are Council, Agency, SHPOs/THPOs in a region, or NCSHPO for nationwide agreements.
- Individual SHPO/THPO may terminate participation in a regional PA.
- Nationwide PAs can be terminated by the Council, Agency, or NCSHPO.



# Agency Alternate Procedures

- Agencies authorized to develop procedures to substitute for all or part of normal process.
- Need not be formal Federal regulations.
- Must be developed with consultation.
- Council must find procedures consistent with 36 CFR Part 800 if they are to substitute.



# Negotiation



**OHIO**  
**HISTORY**  
CONNECTION



# Keys to successful negotiation

- Keep an open mind
- Act in good faith
- Be reasonable
- Make sure that mitigation is commensurate with effects and level of significance
- Have no predetermined outcome
- Don't drag out unnecessarily
- Don't act too hastily



# Keys to successful negotiation

Make sure that the agency has completed and documented all steps in the review process:

- Defined Undertaking
- Set Area of Potential Effects
- Made Eligibility Decisions
- Made Clear Adverse Effect Decision
- Included all Consulting Parties
- Public comment



# Keys to successful negotiation

- Consulting parties meetings.
- Discuss and document alternatives to avoid or minimize.
- Agree to acceptable loss only after discussion with consulting parties.
- Mitigate only after clear it's the only alternative.
- Keep consultation ongoing, but have a goal and set reasonable deadlines.



# Keys to successful negotiation

- Link mitigation to the properties and the undertaking.
- Commensurate with level of effect and significance.
- Look for preservation opportunities in the community.
- Get input and buy-in from consulting parties.
- Standards: reasonable and good faith effort (as with everything).
- Common sense.



# Mitigation



**OHIO**  
**HISTORY**  
CONNECTION

# Mitigation stipulations

- Actions agreed to that will minimize or mitigate the adverse effect.
- Not necessarily “standard.”
- Cost and level of effort should be commensurate with the severity of the undertaking’s effects and the significance of the historic properties.
- Consider placing deadlines on tasks to keep all parties accountable.
- Think creatively.





# Mitigation

- Be creative.
- Seek opportunities for preservation in the community.
- “On-site” is first choice, but “off-site” may be better in some cases.
- Use successful examples, but make sure the measures are appropriate.
- Cost should be in line with the level or effect and significance; it should be reasonable.
- Be creative.



# Mitigation

- Should not be perfunctory.
- Don't duplicate what is already done.
- If historic property is already well documented, do something new—something of value.
- Seek opportunities that add value and fulfill needs.
- Set schedules and deadlines and put them in the agreement.
- Define roles in the agreement.
- Be creative.



# Mitigation

State Route 93 improvements  
Canal Fulton



NOW THEREFORE, FHWA, ODOT, and SHPO, agree that the UNDERTAKING shall be administered in accordance with the following stipulations to satisfy FHWA's Section 106 responsibilities for all aspects of the UNDERTAKING.

## STIPULATIONS

FHWA shall ensure that the following measures are carried out:

### I. ARCHITECTURAL PROPERTIES

A. In consultation with FHWA, SHPO, and other consulting parties, ODOT has identified historic architectural properties in the Area of Potential Effects (APE) of the UNDERTAKING. The *Section 106 Determination of Effects Report for the Undertaking STA-93 Cherry/Locust Street PID 90972 in the City of Canal Fulton, Stark County, Ohio (July 2014)* documents efforts to: identify historic properties within the APE; consult with the SHPO and other consulting parties regarding the effect of the UNDERTAKING on historic properties; and, efforts to identify measures to mitigate the adverse effect.

B. In consultation with FHWA, SHPO, and other consulting parties, ODOT has proposed treatment plans commensurate with the level of impact. The cost of the treatment plans will be a reasonable public expenditure in light of the severity of the impact. ODOT will propose treatment plans using but not limited to, one or more of the following treatments:

1. A Canal Fulton Historic District gateway sign will be constructed on the remnant of the parcel featuring the building to be demolished at 255 Cherry Street (SR 93). The gateway sign will complement the City of Canal Fulton's city park plan. The city and consulting parties will collaborate on content and design.

2. A low-level retaining wall will be constructed along a section of Cherry Street (SR 93) to minimize effects on the Canal Fulton Historic District. The retaining wall may include aesthetic treatments such as canal era motifs. The city and consulting parties will collaborate on aesthetic treatments and motif design.

3. A commemorative kiosk will be incorporated into the UNDERTAKING within the city's St. Helena Heritage Park and the Canal Fulton Historic District. The kiosk will serve as an educational resource that complements the canal related features within the park. The kiosk may include: historic renderings, text, maps, and photographs. The city and consulting parties will collaborate on design and content.

4. Salvage of sandstone foundation stones, from the building to be demolished at 255 Cherry Street (SR 93), will be considered prior to demolition activities. Salvaged stones will be made available to the city. Reuse applications may include: the incorporation of salvaged stones into the city's park plan or commemorative displays; or reuse of salvaged stones by the local historic preservation commission. The city and consulting parties will collaborate on the reuse of salvageable foundation stones.

5. The application of aesthetic treatments, as mitigation for the UNDERTAKING, will be in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (STANDARDS). The city and consulting parties will collaborate on aesthetic treatments.

6. ODOT will submit proposed treatment plans to the SHPO and the consulting parties concurrently for review and/or comment. The SHPO will provide comments and/or concurrence with the treatment plans within the 30-day review period established by 36 CFR Part 800. ODOT will forward consulting party comments received within the 30-day review period to FHWA and SHPO, along with ODOT's proposed resolution.

## II. PROJECT MODIFICATIONS

If the APE must be revised due to modifications of the UNDERTAKING, ODOT will identify historic properties within the revised APE and determine effects. Upon completion of the identification and effect evaluation, an addendum report will be submitted to the SHPO and other consulting parties concurrently. The SHPO will provide comments and/or concurrence with the findings within the 30-day review period established by 36 CFR Part 800. Consulting party comments received by ODOT within the 30-day review period will be forwarded to the FHWA and the SHPO.

## III. POST REVIEW DISCOVERIES

# Mitigation

Heyl School demolition  
Columbus





## STIPULATIONS

The CGH shall ensure that the following measures are carried out:

### I. MITIGATION

A. **Documentation of Heyl Avenue Elementary School:** CGH shall contract with a historic preservation consultant meeting the Professional Qualification Standards (36 CFR Part 61) in architectural history to prepare a recordation package for the Heyl Avenue Elementary School that includes the following components:

1. A narrative report documenting Heyl Avenue Elementary School that includes the following:
  - a. Date of construction.
  - b. Name of architects.
  - c. Architectural description of the building describing its building materials, overall dimensions, and architectural features. Any building alterations that have occurred should be clearly described in the documentation package.
  - d. A history of the school, including a discussion of Heyl Avenue Elementary School within the broader context of the Columbus City Schools and the Near South Neighborhood.
2. Photographic Documentation: All exterior façades, the building interior, and any significant or unusual architectural features of the Heyl Avenue Elementary School shall be documented with digital photographs conforming to the "BEST" practices outlined in *Selecting a Digital Camera and Taking the Picture* in the National Park Service's *National Register Photo Policy Fact Sheet* [Attachment 5], [http://www.nps.gov/nr/publications/guidance/Photo\\_Policy\\_final.pdf](http://www.nps.gov/nr/publications/guidance/Photo_Policy_final.pdf). Images shall be in Tagged Image File Format (TIFF).
  - a. CGH may submit the photographs required above, to SHPO in TIFF format on a CD-R or DVD-R via standard mail for review and approval at any time.
    - i. SHPO shall have thirty (30) days from receipt of the photographs to approve them for inclusion in the recordation package or request additional images.
    - ii. If SHPO does not respond within thirty (30) days of receipt of the photographs, CGH may assume SHPO's approval of them for use in the recordation package.

recording package.

- b. The recording package shall include 5" x 7" prints of all digital photographs in

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accordance with the "BEST" practices outlined in *Printing the Images* and *Selecting the Paper and Inks* in the National Park Service's *National Register Photo Policy Fact Sheet* [Attachment 5], [http://www.nps.gov/nr/publications/guidance/Photo\\_Policy\\_final.pdf](http://www.nps.gov/nr/publications/guidance/Photo_Policy_final.pdf)], labeled in accordance with the "ACCEPTABLE" practice outlined in *Identifying Photographic Prints* and *Labeling the Photographs* in the same document, and placed in archival sleeves.

- c. The recording package shall include an archival CD or DVD containing all digital photographs created following the "BEST" practices outlined in *Burning the Images onto an Archival Disk* in the National Park Service's *National Register Photo Policy Fact Sheet* [Attachment 5], [http://www.nps.gov/nr/publications/guidance/Photo\\_Policy\\_final.pdf](http://www.nps.gov/nr/publications/guidance/Photo_Policy_final.pdf)]. All images on the disk shall be renamed in accordance with the practice outlined in *Renaming the Digital TIFF Image* in the same document.
- d. The recording package shall include a photo log created following the practices outlined in *NR Nomination Photograph Log Page* in the National Park Service's *National Register Photo Policy Fact Sheet* [Attachment 5], [http://www.nps.gov/nr/publications/guidance/Photo\\_Policy\\_final.pdf](http://www.nps.gov/nr/publications/guidance/Photo_Policy_final.pdf)].

3. Historic Photographs: Available historic photographs of Heyl Avenue Elementary School shall be reproduced by creating high quality digital images in TIFF format at a resolution of at least 300 dpi.

- a. Prints of all reproduced historic photographs that replicate their original dimensions as closely as possible without distorting their aspect ratio shall be

dimensions as closely as possible without distorting their aspect ratio shall be prepared and included in the recordation package following the practices outlined in Stipulation I.A.2.b., above.

- b. The TIFF files created by photographing or scanning the historic photographs shall be included in the archival CD or DVD required by Stipulation I.A.2.c., above.
  - c. Reproduced historic photographs shall be included in the photo log required by Stipulation I.A.2.d., above.
- 4. Copies of any existing Sanborn Fire Insurance maps, historic drawings, or floor plans of the Heyl Avenue Elementary School shall also be included in the documentation package.
  - 5. CGH shall submit a draft of the documentation package to the SHPO for review and comment no later than February 1, 2016.
    - a. SHPO shall have forty-five (45) days to review the draft and provide comments and requests for revision.
    - b. If SHPO does not respond within forty-five (45) days, CGH may move forward with production of final copies of the recordation package required by Stipulations I.B.2 and I.B.3., below, without making revisions.

- 6. After CGH's consultant makes revisions to the draft document that take into account comments provided by SHPO, CGH shall submit three archival copies of the final recordation package – two bound copies and one unbound copy – to the State Library of Ohio at the following address:

Ms. Kirstin Krumsee

The phrase "Submitted to the State Historic Preservation Office" must appear on the title page of the documentation package to allow library staff to identify SHPO as the state agency from which the document originated and process it for entry into the collections.

7. CGH shall submit additional bound archival copies of the final documentation package to the Columbus Historic Resources Commission (one copy), SHPO (one copy), and the Columbus Metropolitan Library (one copy, if desired). Before submitting a copy of the documentation package to the Columbus Metropolitan Library, the historic preservation consultant retained by CGH shall contact library staff to inquire regarding the library's interest in obtaining a copy of the documentation package and to inform them that cataloging of the documentation package will be available through OCLC.

**B. Preliminary Cultural Resources Survey of the Ganther's Place Neighborhood:** CGH shall contract with a historic preservation consultant meeting the Professional Qualification Standards (36 CFR Part 61) in architectural history to prepare a preliminary cultural resources survey of the Ganther's Place neighborhood; bounded by East Whittier Street to the north, Heyl Avenue to the east, Cline Street to the south, and Parsons Avenue to the west. The majority of the neighborhood is single family dwellings, and many of the children who grew up in the neighborhood would have attended Heyl Avenue Elementary School. The preliminary cultural resources survey will include the following components:

1. A narrative report documenting the history of the neighborhood, and how it fits into the broader context of residential development of Columbus.
2. A summary of building types located within the neighborhood.
3. Photographs and descriptions of selected example resources located within the neighborhood.
4. Recommendations for potential future cultural resources studies, including potential National Register of Historic Places recommendations.
5. CGH shall submit a draft of the preliminary cultural resources survey to the SHPO for review and comment no later than April 1, 2016.
  - a. SHPO shall have forty-five (45) days to review the draft and provide comments and requests for revision.



CGH shall submit bound archival copies of the preliminary cultural resources survey to the SHPO (one copy), Columbus Historic Resources Commission (one copy), and Ganther's Place Civic Association (one copy, if desired).

**C. Production and display of an interpretive exhibit documenting the Heyl Avenue Elementary**

**School:** CGH shall contract with a historic preservation consultant meeting Professional Qualification Standards (36 CFR Part 61) in history or architectural history to produce an interpretive exhibit documenting the history of the Heyl Avenue Elementary School for installation in the lobby of the planned new apartment building. The interpretive exhibit will include the following:

1. Images, both modern and historic, of the Heyl Avenue Elementary School, including captions detailing each image.
2. A narrative detailing the historic and architectural significance of the Heyl Avenue Elementary School, and how the school fit into the historic context of Columbus City Schools and the Near South neighborhood.
3. Any artifacts salvaged during the demolition process that provide a historical link to the Heyl Avenue Elementary School with interpretative signage detailing that link.
4. Any donated materials from former students of the Heyl Avenue Elementary School and/or residents of the Near South neighborhood regarding the history of the school.
5. Relevant materials from the recordation package required by Stipulation I.A., above.
6. CGH shall submit a mock-up of the proposed interpretive exhibit, including a draft of all narratives, copies of all photographs and their respective captions, photographs of and draft interpretative signage for any salvaged or donated artifacts and materials, and drawings showing the design and layout of the proposed interpretative exhibit, to the Columbus Historic Resources Commission for review and approval no later than June 1, 2017.
  - a. The Columbus Historic Resources Commission shall have thirty (30) days from receipt of the mock-up to request revisions or approve the design and content.
  - b. Subsequent reviews shall also be completed by the Columbus Historic Resources Commission within thirty (30) days of receipt of requested documentation.
7. CGH shall fabricate the interpretive exhibit approved by the Columbus Historic Resources Commission in Stipulation II.B., above, and install the exhibit in the lobby of the planned new apartment building within six (6) months of completion of the building.
8. CGH shall allow interested members of the public to view the interpretive exhibit during typical business hours within six (6) months of completion of the building.

# Mitigation

West Milton Dam removal  
West Milton





Corps shall require that the APPLICANT carries out the following measures by inserting conditions in its permit for this UNDERTAKING:

## **I. MITIGATION OF ADVERSE EFFECT**

**A. Documentation:** the APPLICANT indicated that previous investigations of the project area included:

1. Project Summary Form submitted to the Ohio Historic Preservation Office (SHPO) by the Ohio EPA on behalf of the Ohio River Foundation and dated October 27, 2010;
2. SHPO letter to the Ohio EPA dated November 3, 2010;
3. *Findings of No Significant Impact To All Citizens, Organizations, And Government Agencies, Village of West Milton, West Milton Low-head Dam Removal and Stillwater River Restoration Project, Miami County, WPCLF Loan# WR3980985-0002* prepared by the Ohio EPA dated November 10, 2010;
4. Phase 1 cultural resources survey and preparation of a report titled *Phase I Cultural Resources Survey for the Proposed West Milton Low-Head Dam Removal and Stillwater River Restoration Project, West Milton, Miami County, Ohio* (Phase I investigation) and prepared by ASC Group dated 2011;
5. Ohio Historic Inventory Form for L.A. Pearson Electric Power Plant (MIA-1542-1 (AL001) prepared by ASC Group dated April 15, 2011;
6. SHPO letter to Stantec dated October 22, 2012; and
7. Letter prepared by ASC Group titled *West Milton Low-Head Dam Removal and Stillwater River Restoration Project, Union Township, Miami County, Ohio* and dated July 30, 2013 in response to correspondence received November 3, 2010 and October 22, 2012 from the SHPO.

**B. Background Information:** The aforementioned Phase I investigation identified MIA-1542-1, the L.A. Pearson Electric Power Plant, as being historically significant

under Criterion A for its association on a local level with the important historic theme of the development of electricity and distribution. The Plant consists of the remains of a hydroelectric facility, including the West Milton Dam. The dam is a concrete gravity dam and an integral part of the hydroelectric facility, which operated between 1908-1951. The Corps, SHPO, and APPLICANT recognize the West Milton Dam, built in 1917, as eligible for inclusion in the National Register of Historic Places under Criterion A. The Corps determined the proposed UNDERTAKING will constitute an adverse effect on the L.A. Pearson Electric Power Plant (MIA-1542-1). The proposed UNDERTAKING requires mitigation for the resulting adverse effect on historic properties. Mitigation for the adverse effect incorporates treatment measures providing further documentation of this structure both in a historical and social context, as well as detailing the structure itself for the historical record. The Corps, SHPO and APPLICANT agree that this emphasis is appropriate for a structure recognized for eligibility primarily under Criterion A.

**Video Documentary:** The APPLICANT has agreed to provide for the production and distribution of a documentary video to provide a historical commentary on the L.A. Pearson Electric Power Plant (MIA-1542-1) and the West Milton Dam. The documentary will utilize historical documents, photographs, interviews, and video to tell the story of the dam and the community it served from its construction through the final stages of the project. Please see the attached work plan titled "*Section 106 Mitigation Workplan West Milton Dam Removal and Stillwater River Restoration Project, West Milton, Miami County, Ohio dated August 12, 2014*" and prepared by Stantec on behalf of the APPLICANT for a detailed outline of the video documentary.

**TIMING:** The APPLICANT'S draft version of the documentary will be provided to the Corps, SHPO and Consulting Parties within four and a half (4 ½) months following issuance of any 404 permit by the Corps. The Corps, SHPO and Consulting Parties will have 30 days to provide comments to the APPLICANT. The APPLICANT will finalize the documentary and provide a disc with the documentary to Corps, SHPO and Consulting Parties. The documentary will be archived at the Milton-Union Public Library for reference by the local community. Furthermore, the APPLICANT will place the video on its website for public access and play the documentary on the local public access television channel. The APPLICANT will make sure that the documentary remains readily accessible on its website for a period of at least one year. SHPO's copy of the final documentary will be archived by the Ohio History Connection as part of the Ohio Memory program. The documentation provided to the Ohio History Connection allows unrestricted in-house use of the documentary and distribution of the documentary with permission by the



- E. **PROJECT STATUS REPORTING:** The APPLICANT will provide the Corps, SHPO and Consulting Parties with a "Project Status Letter" at the minimum of every 4 ½ months following issuance of any 404 permit by the Corps, to report the project status and any delays in the construction and/or mitigation associated with the UNDERTAKING and the APPLICANT'S implementation of this MOA.

## II. **POST REVIEW DISCOVERY OF ARCHAEOLOGICAL PROPERTIES OR HUMAN REMAINS DURING FURTHER CONSTRUCTION OF THE PROJECT**

- A. If previously unidentified significant archaeological deposits are discovered during implementation of the UNDERTAKING, construction in the area of the previously unidentified archaeological deposits shall immediately cease. The person or persons encountering such archaeological deposits shall immediately notify the APPLICANT. The APPLICANT shall immediately notify SHPO and the Corps. Construction in the area of such archaeological deposits shall not resume until the APPLICANT, SHPO and the Corps agree in writing on an acceptable course of action.
- B. If human remains are unexpectedly encountered during implementation of the UNDERTAKING, such person or persons encountering the human remains before resuming work shall make a reasonable effort to refrain from disturbing or removing the human remains, protect the exposed portions of the human remains from inclement weather and vandalism, and immediately notify the APPLICANT. The APPLICANT shall immediately notify SHPO, the Corps and any consulting parties. After consulting with SHPO and the Corps, the APPLICANT will contact the Miami County Coroner's Office and request that the Coroner examine the remains. If the human remains are not subject to a criminal investigation by local

unidentified archaeological deposits shall immediately cease. The person or persons encountering such archaeological deposits shall immediately notify the APPLICANT. The APPLICANT shall immediately notify SHPO and the Corps. Construction in the area of such archaeological deposits shall not resume until the APPLICANT, SHPO and the Corps agree in writing on an acceptable course of action.

- B. If human remains are unexpectedly encountered during implementation of the UNDERTAKING, such person or persons encountering the human remains before resuming work shall make a reasonable effort to refrain from disturbing or removing the human remains, protect the exposed portions of the human remains from inclement weather and vandalism, and immediately notify the APPLICANT. The APPLICANT shall immediately notify SHPO, the Corps and any consulting parties. After consulting with SHPO and the Corps, the APPLICANT will contact the Miami County Coroner's Office and request that the Coroner examine the remains. If the human remains are not subject to a criminal investigation by local, state or federal authorities, the SHPO's *Policy Statement on Treatment of Human Remains* (1997) shall be used as guidance. Notwithstanding such guidance, all applicable state and federal laws and regulations governing the discovery and disposition of human remains shall be followed.

### III. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

### IV. DISPUTE RESOLUTION

Should any Signatory or Consulting Party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Signatories shall consult for no more than thirty (30) days to resolve the objection. The objection must be identified specifically and the reasons for objection documented in writing. If the Corps determines that such objection cannot be resolved, the Corps will:

# Mitigation

Wind turbines at Youngstown State  
University  
Youngstown



## STIPULATIONS

The Department of Energy, in cooperation with YSU, shall ensure that the following stipulations are met:

### **I. MITIGATION**

**A. Wick Avenue Historic District Walking Tours:** YSU staff and students in the university's Center for Applied History will conduct two one-day guided walking tours of historic sites within the Wick Avenue Historic District.

1. **Preparation of a script:** A YSU History Practicum class will draft a script for the walking tour prior to the end of the university's spring 2014 semester (May 11, 2014). Dr. Donna DeBlasio, director of the Center of Applied History, will be responsible for approving the script.
2. **Dates:** The first of these tours will be conducted in May of 2014 and the second will be in June of 2015, in conjunction with the YSU Sustainable Energy Forum.
3. **Participants.** The walking tours will be open to all members of the public.
4. **Reporting:** YSU will submit a list of participants and photographs of each walking tour to DOE and SHPO by email within one month of its completion to document fulfillment of this stipulation.

**B. Exhibit Banners:** Students in a YSU History Practicum course will create exhibits on the history of the Wick Avenue Historic District and the properties that comprise it for use during the guided walking tours required by Stipulation I.A., above.

1. **Content and method of production:** The exhibits will contain photographs and narrative and will be produced on portable exhibit banner stands that can travel to different sites.
  - a. Dr. Donna DeBlasio, director of the Center of Applied History, will be responsible for approving the content and design of all banners.
  - b. To minimize issues related to securing rights to reproduce photographs, YSU will partner with the Mahoning Valley Historical Society in the production of the exhibits.



2. **Locations:** YSU will produce ten banners that will be placed at the following locations: Mahoning Valley Historical Society, Alumni

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House, Pollock House, Jones Hall, Butler Institute of American Art, St. John's Episcopal Church, the Public Library, Rayen Building, the Masonic Temple and the First Presbyterian Church.

3. **Disposition:** Once the walking tours are completed, the banners will be housed initially at the Mahoning Valley Historical Society for up to six weeks. Final recipient of the banner stands will be YSU through the Youngstown Historical Center of Industry and Labor.
4. **Schedule for completion:** The first draft of the exhibit is due by the Practicum course on March 19, 2014; a second draft is due on April 2, 2014, and a final draft is due on April 18, 2014. Once the final draft is complete, the exhibits will go to the YSU Graphic Arts Department to be designed. Once the design is completed, YSU will contract with City Printing in Youngstown for production.
5. **Reporting:** YSU will submit an electronic copy (.pdf) of each banner to DOE and SHPO by email no later than May 31, 2014, to document fulfillment of this stipulation.

- C. **Tri-Fold Walking Tour Brochure:** YSU will produce a one page tri-fold brochure providing sufficient information to act as a guide for individuals so they can do their own walking tour of Wick Avenue Historic District at any time.

C. **Tri-Fold Walking Tour Brochure:** YSU will produce a one page tri-fold brochure providing sufficient information to act as a guide for individuals so they can do their own walking tour of Wick Avenue Historic District at any time.

1. **Content:** The publication will contain narrative and thumbnail photographs.
  - a. Dr. Donna DeBlasio, director of the Center for Applied History, will author the brochure and have editorial control of its development.
  - b. To minimize issues related to securing rights to reproduce photographs in the publication, YSU will partner with the Mahoning Valley Historical Society in the production of the publication and employ a professional photographer to shoot current images.
2. **Design:** Design work will be done by YSU Graphic Services.
3. **Distribution:** Copies of the brochure will be made available as follows:
  - a. YSU will provide a copy of the brochure to each participant in the walking tours required by Stipulation I.A., above.

b. The Mahoning Valley Historical Society will make copies of the brochure available to the public at no cost at its location at 648 Wick Avenue in Youngstown.

i. YSU will provide the tri-fold brochure to Mahoning Valley Historical Society in hard copy and in an electronic format (.pdf) so that additional copies can be printed at a later date as needed. The initial run of hard copies to be provided by YSU will be determined based on conversations with MVHS but is expected to be approximately 1000 copies.

4. **Reporting:** YSU will provide an electronic copy (.pdf) of the tri-fold brochure to DOE and SHPO by email no later than May 31, 2014, to document fulfillment of this stipulation.

D. **Hardback Publication:** YSU will create a professionally prepared consumable publication of a quality worth keeping documenting the buildings comprising the Wick Avenue Historic District.

1. **Content:** This will be a hardback publication containing photographs and related captions arranged in a “then and now” layout.

a. Dr. Donna DeBlasio, director of the Center for Applied History, will author the publication and have editorial control of its development.

b. To minimize issues related to securing rights to reproduce photographs in the publication, YSU will partner with the Mahoning Valley Historical Society in the production of the publication and employ a professional photographer to shoot current images.

2. **Design:** Design work will be done by YSU Graphic Services.

3. **Distribution:** In an effort to recover the costs of production and to facilitate dissemination of the publication, the book will be made available for sale at the June 2015 walking tour and will be stocked in the YSU Bookstore.

4. **Reporting:** YSU will provide a copy of the publication to DOE and SHPO by standard mail or courier no later than June 30, 2015, to document fulfillment of this stipulation.

2. **Design:** Design work will be done by YSU Graphic Services.
3. **Distribution:** In an effort to recover the costs of production and to facilitate dissemination of the publication, the book will be made available for sale at the June 2015 walking tour and will be stocked in the YSU Bookstore.
4. **Reporting:** YSU will provide a copy of the publication to DOE and SHPO by standard mail or courier no later than June 30, 2015, to document fulfillment of this stipulation.

E. **Removal of Turbines:** Within five years from the execution of this agreement, YSU will decommission and remove the turbines. If YSU determines that the

turbines will remain in place beyond the initial five year period, YSU will initiate further consultation with DOE and SHPO to determine if additional compensatory mitigation is needed.

## II. CONTACTS

- A. Casey Strickland  
Physical Scientist/NEPA Specialist  
United States Department of Energy



# Special Situations



# National Historic Landmarks

- 36 CFR Part 800.10.
- Standard is: planning and actions to minimize harm.
- Agency must **invite** Council to consult when effect is adverse.
- Agency must **notify** the Secretary of Interior when NHL involved in consultation.
- Agency must **invite** Secretary of the Interior to consult when effect is adverse.
- Council may request a report from the Secretary under Section 213 of the Act, addressing measures to avoid, minimize, or mitigate effect.
- Included in criteria for Council involvement.





# Public Participation During Resolution of Adverse Effects

- Agency must seek views of the public
- Flexibility for agency public involvement efforts to take into account:
  - magnitude of undertaking
  - nature of effects
  - relationship of Federal involvement to project
  - public participation efforts at earlier steps
  - confidentiality concerns



# Resolving Adverse Effects through Data Recovery: Council Guidance

- Guidance published by Council in *Federal Register*
- Guidance not binding, but when followed, Council unlikely to enter consultation
- Provides recommendations on when and how to use data recovery for mitigation of adverse effects
- Includes model MOA format



# Failure to Resolve Adverse Effects

- If Agency and SHPO cannot agree, Council must be invited to participate .
- Council may consult or choose to comment.
- If further consultation not productive, Agency, SHPO, or Council can terminate.



# Termination of Consultation

- Agency termination must be by agency head or other policy-level official
- If SHPO terminates, Council may execute an MOA with the Agency rather than comment.
- Prior to Council termination, Council may consult FPO to seek resolution

# Council Comment

- Council must comment within 45 days, unless otherwise agreed on.
- Council comments to head of agency (copy provided to Federal Preservation Officer and consulting parties).
- Council authorized to issue advisory comment in addition to signing an MOA



# Response to Council Comment

- Head of the agency must document final decision to the Council prior to approving the undertaking.
- Consulting parties must be provided copies of decision summary.
- Public must be notified.





# Section 110(k): Consulting with the Council

- 36 CFR Section 800.9.
- The agency:
  - determines whether Section 110(k) is applicable and believes circumstances may justify granting assistance.
  - notifies Council and provides documentation.
- Council provides opinion on granting the assistance and possible mitigation.



# Section 110(k): Agency Decision to Grant Assistance

- Agency must consider the Council's opinion
- If agency decides to grant the assistance, before doing so it must:
  - notify the Council, SHPO, and other parties.
  - comply with the standard Section 106 process.



# Council notification and participation

## Section 800.6



# Agency Notification to Council

- For all adverse effect findings, agency must notify the Council by providing documentation given to consulting parties, including description of:
  - undertaking and APE
  - identification steps and affected historic properties
  - project effects and why the criteria of adverse effect are applicable
  - views of consulting parties and public



# Agency Invitation to the Council to Participate

- Agency notification to the Council must include an invitation to participate in consultation when:
  - the Agency wants Council involvement.
  - a National Historic Landmark is adversely affected.
  - a Programmatic Agreement is proposed.



# Council Decision to Participate in Resolution of Adverse Effects

- Council has 15 days to respond when notified of project by Agency or requested to enter consultation by another party.
- When entering process, Council must:
  - document that criteria for Council involvement are met.
  - advise head of the agency.





# Criteria for Council Involvement

- Council is likely to enter a review when there are:
  - Substantial effects to important properties
  - Important questions of policy or interpretation
  - Procedural problems
  - Issues of concern to Native Americans



# Emergencies and Post-review Discoveries

36 CFR Sections 800.12 and 800.13



# Emergencies

- In addition to emergencies declared by the President or a governor, agencies can invoke emergency procedures when responding to:
  - an emergency declared by a tribal government
  - another immediate threat to life or property
- Immediate rescue and salvage exempt.



# Planning for Emergencies

- Agency encouraged to develop tailored procedures for emergency response.
- Must be developed in consultation with appropriate parties and approved by the Council in order to substitute.

# Review Without Agency Emergency Procedures

- 7-day period for Council and SHPO review required when possible.
- Proposed emergency undertakings must be implemented in 30 days, although extension possible.

# Planning for Post-Review Discoveries

- Agency can develop Programmatic Agreement to set forth an approach to discoveries.
- If discoveries are likely and no PA exists, agency must include process for dealing with discoveries in CNAE or MOA.





# Post-review Discoveries: Expedited Review

- When construction underway, Agency:
  - can notify Council, SHPO, and Indian tribes within 48 hours of discovery.
  - give reviewers 48 hours to provide recommendations on proposed actions
  - take recommendations into account
  - report on actions

# Eastern Corridor



**OHIO**  
**HISTORY**  
CONNECTION



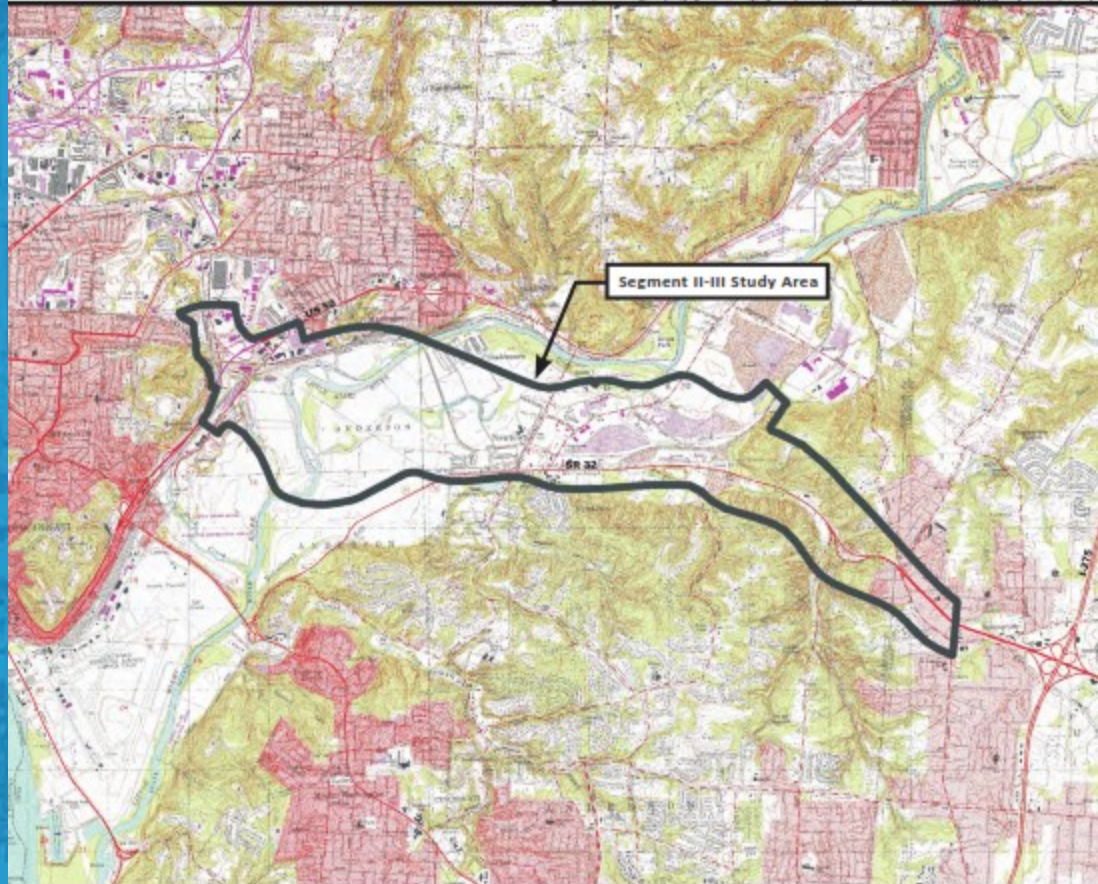












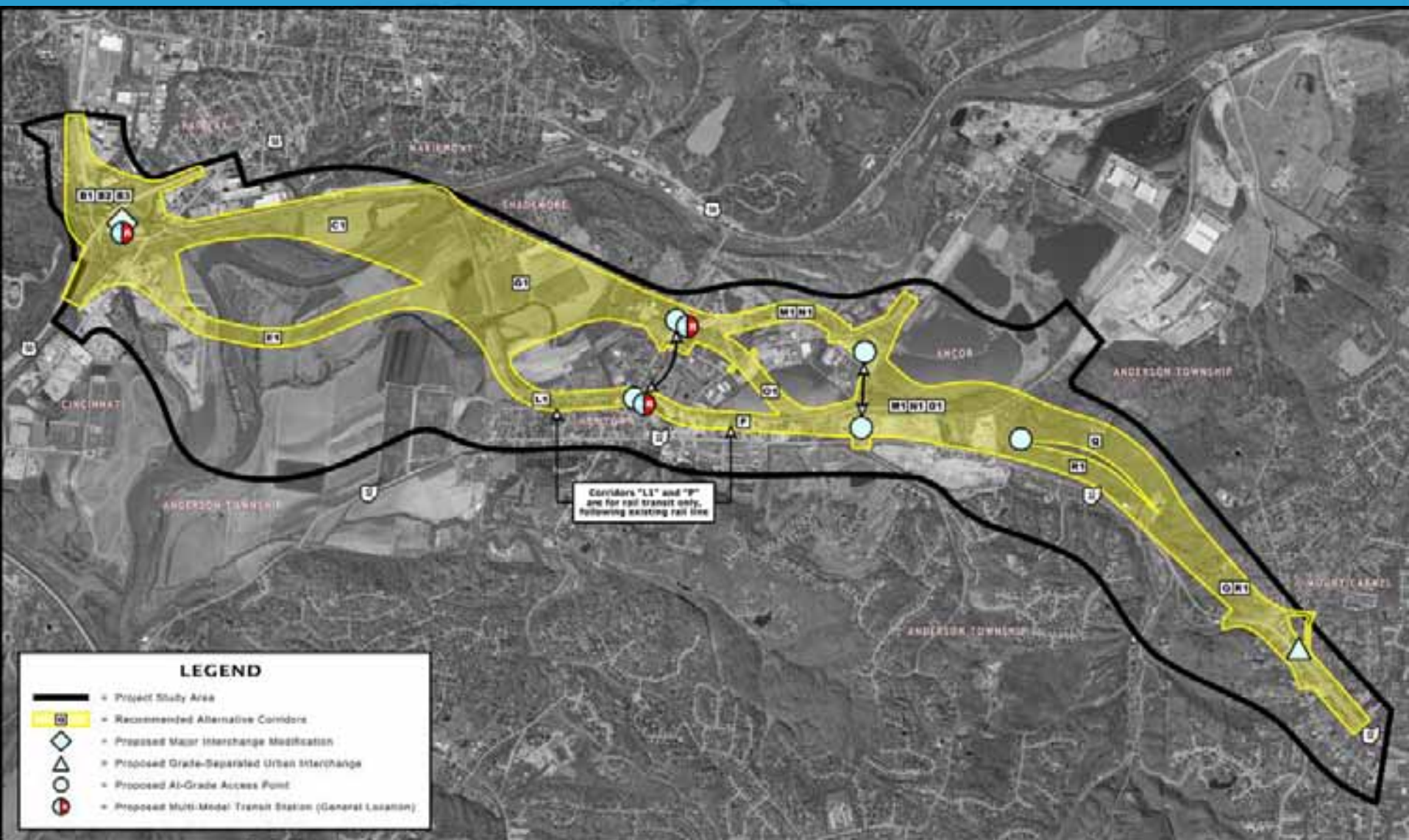
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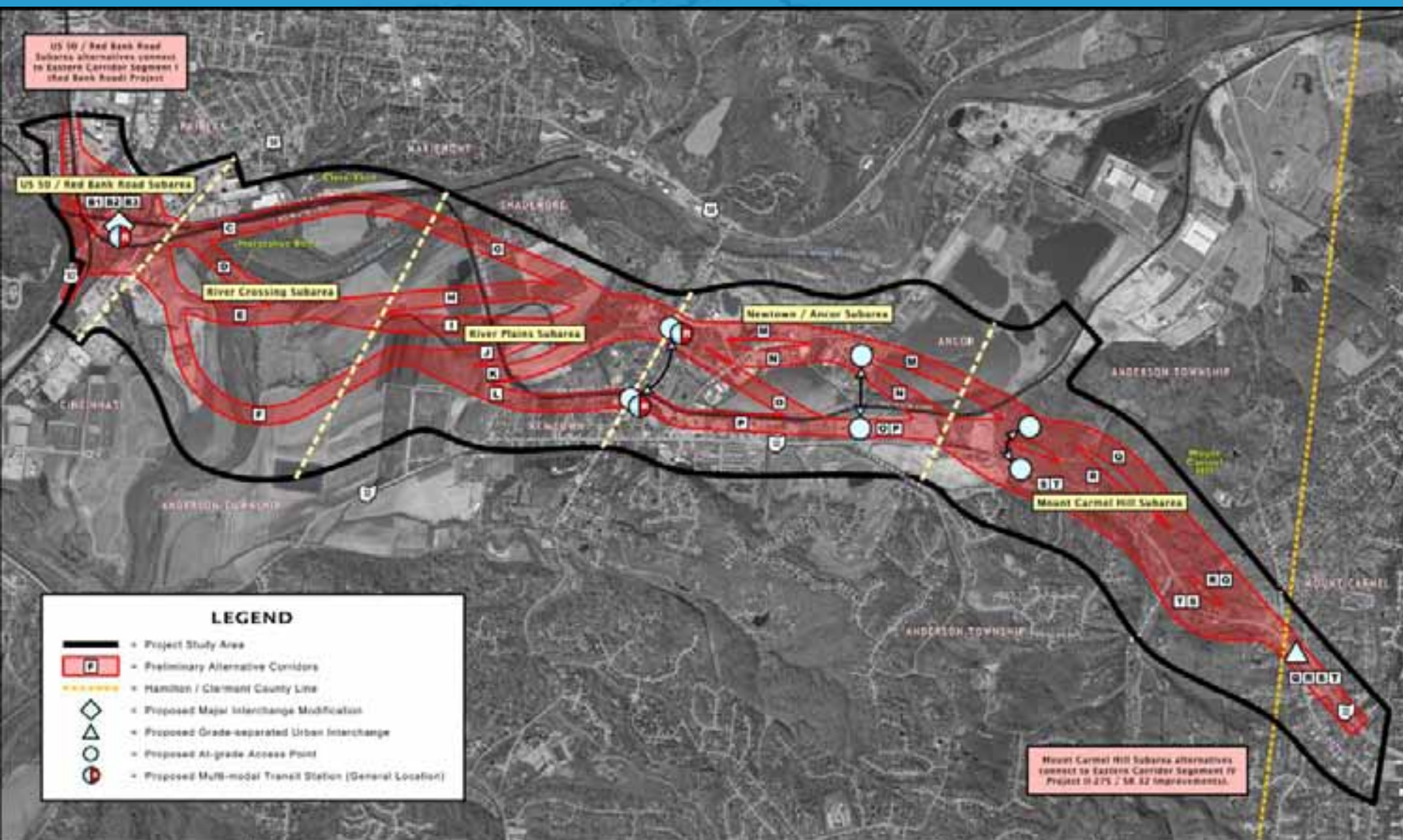
**Feasibility Study**  
 Eastern Corridor Multi-Modal Projects  
 Segment II-III; Relocated SR 32  
 HAM/CLE-32F-2.50/0.00; PID 80462

**Figure 3**  
 Segment II-III  
 Project Location

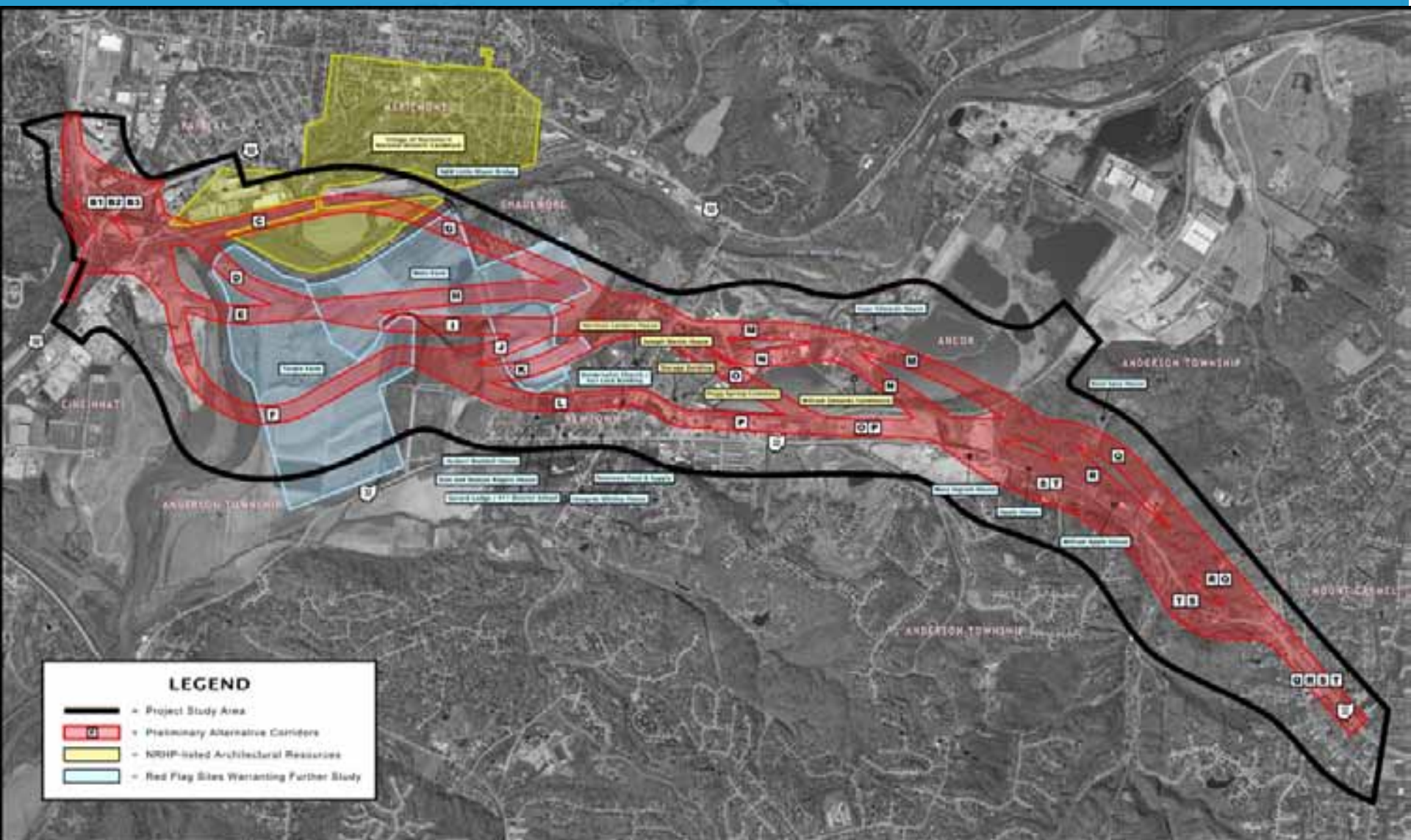




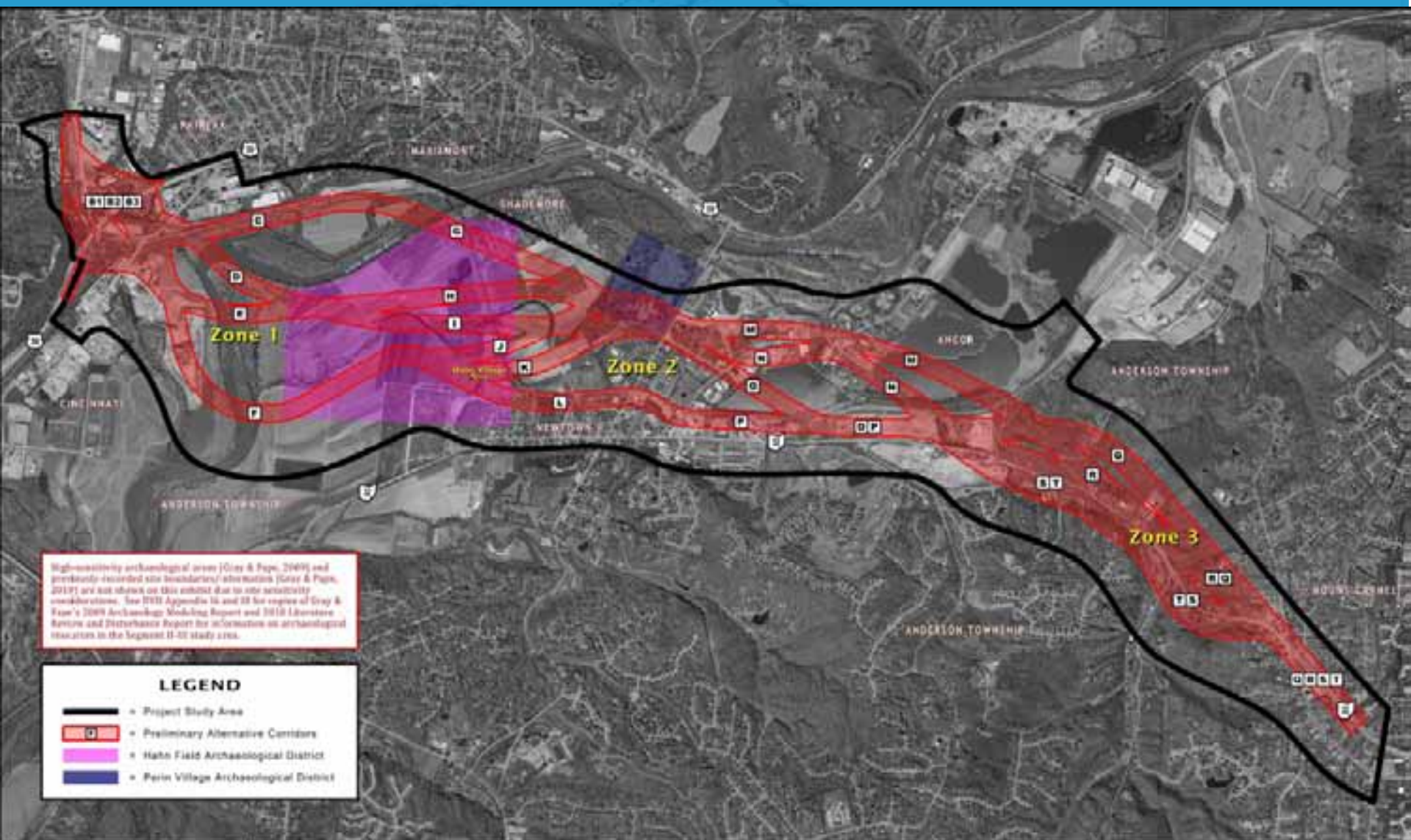












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