



Connecticut DOT

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Bureau of Engineering and Construction  
Bureau of Policy and Planning

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## ENGINEERING & CONSTRUCTION-POLICY & PLANNING DIRECTIVE

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### **Guidance for Advancing Projects Affected by the Pause in Tribal Consultation due to COVID-19**

Per direction issued by the Advisory Council on Historic Preservation (ACHP) regarding Section 106 processing during COVID-19, the consultation process with Tribal Nations is considered “paused”. Federal Highway Administration (FHWA) Connecticut Division has been issuing conditional approvals to move forward with Final Design prior to the completion of Section 106/Tribal consultation and therefore National Environmental Policy Act (NEPA).

This guidance procedure is developed in collaboration with the Bureau of Policy and Planning’s Office of Environmental Planning (OEP) and applies to all scheduled Federal Fiscal Year 21-22 obligation projects. A spreadsheet has been created to track the status of all conditional approvals and pending requests for conditional approvals and are located at [Tribal Impact FY21-22ADV 11-4-20 21 22 AG 2021-02-03](#) (Note: This location is restricted; only certain personnel have access).

The Department will take the following steps to ensure all projects follow a similar decision-making process to have a consistent review and proper level of concurrence from all parties prior to moving projects to completion. Conditional approval status meetings will be held bi-weekly between OEP and Office of Engineering.

1. If a project does not require Tribal Consultation, as determined by FHWA, or if Section 106/Tribal Consultation was completed prior to the “pause” then a [Categorical Exclusion](#) (Cat Ex) may be completed and signed by all parties as normal. This will be indicated as “Resolved” or “Not Required” by OEP in the “Tribal Involvement?” column of the referenced spreadsheet.

2. If Section 106/Tribal consultation is indicated as “Unresolved”, an FHWA conditional approval needs to be sought by OEP approximately three (3) weeks prior to the scheduled Design Approval date.
3. Once a project receives conditional approval, please complete the remainder of Cat Ex Checklist (January 2021), ensure that Part 3, Question 3. “Historic Properties (Section 106)”, of the [Cat Ex Checklist \(January 2021\)](#) is left **unchecked** and add the following statement to the top of the front page of the Cat Ex **“Conditional Approval was granted by FHWA on Date. This Cat Ex will only be approved and signed by CTDOT once Section 106/Tribal can officially be completed and checked off in this document”** and attach email of conditional approval. The Cat Ex checklist should not have any signatures until Section 106/Tribal Consultation is concluded.

This Conditional Approval allows the Department to obtain Design Approval prior to the completion of Section 106/Tribal Consultation, and therefore NEPA.

4. The Environmental Documentation section of the Design Approval document will be listed as **“Pending Tribal Consultation until Cat EX signed”** and will have the unsigned Cat Ex attached.
5. If the Project requires a Rights of Way (ROW) Phase, a conditional approval does not allow the Division of ROW to make offers, negotiate or purchase property with Federal Funds, hence, in order to maintain the project schedule a determination has to be made, following Design Approval, to “Pause” the ROW phase or fund the ROW Phase with State Funds, which will be credited by FHWA after Section 106/Tribal completion.
6. The Project Manager should set up a meeting with ROW, Finance and Administration (F&A) and OEP immediately following Design Approval to determine the right course of action for step 5.
7. Projects can now proceed to 95% complete under this Conditional Approval. **An additional Conditional Approval will be required by FHWA Headquarters Federal Preservation Officer to proceed with construction prior to the completion of Section 106.**
8. Six (6) weeks prior to FDP, the request for the second conditional approval from OEP will go out to FHWA for inclusion as an attachment to the Final Design Plans (FDP) Memo. The FDP Memo should also indicate **“Pending Tribal Consultation until Cat EX is signed”**
9. Once Section 106/Tribal is completed, the Cat Ex should be signed by all parties, and the project manager should ensure that all Section 106/ Tribal recommendations are incorporated by addendum or Change Order.