



PRESERVATION BEST PRACTICES # 2 | APRIL 2022 | MICHIGAN.GOV/SHPO

## Local Governments and Section 106 Projects

Under the National Historic Preservation Act of 1966 (NHPA), federal agencies are required to take into consideration the potential effects of projects that they carry out, license, fund, or permit on properties listed in or eligible for listing in the National Register of Historic Places. These are often referred to as “Section 106 projects” because this federal requirement was mandated in Section 106 of the NHPA.

Per Section 106 regulations, federal agencies are required to complete several steps to determine if and how a project will affect historic properties. Broadly speaking, these steps include:

- Defining the nature of the project;
- Determining the area in which the project has the potential to affect properties, either directly or indirectly;
- Gathering information on historic resources in the area to determine if any of them are listed in or eligible for listing in the National Register;
- Assessing the type(s) of effects the project will have on historic properties, if present; and
- If necessary, identifying ways to avoid, minimize, or mitigate adverse effects to historic properties.

In carrying out these steps, the federal agency is required to take into account feedback from project applicants, knowledgeable local parties, entities like the State Historic Preservation Office (SHPO), and the public. They do this via a process called consultation, through which the agency solicits information on historic properties and potential project concerns.

As part of consultation, agencies are required to notify the local government with jurisdiction over an area in which there may be an effect and offer an opportunity to comment on the project. The individual contacted may vary from agency to agency; contacts commonly include the chief elected official (e.g., mayor), municipal manager, planning staff, the liaison to the historic district commission (HDC), or the HDC chairperson. Not sure what to do if you're the one contacted? Read on.

### 5 Things to Know About Section 106

**Section 106 is primarily a planning tool.** The Section 106 process is intended to make sure that federal agencies complete the required procedural steps, which provide a framework for problem solving and informed decision making. It is not designed to unnecessarily impede or stop projects. Likewise, Section 106 does not mandate a specific outcome or guarantee that no historic properties will be negatively impacted. The goal of the Section 106 process is to achieve a balance between the needs of the agency and local historic preservation interests. Ultimate decision-making authority over the action to be taken remains with the agency.

**Section 106 isn't just about impacts to buildings.** Section 106 is concerned with all historic properties, including buildings, structures, objects, districts, sites, archaeological resources, and properties of traditional religious or cultural importance.

**Section 106 projects always involve SHPO.** SHPO is an automatic participant in the Section 106 process. SHPO's role is to advise and assist the federal agency in understanding potential effects to the state's historic properties. That said, SHPO is not a regulatory agency and does not clear, approve, or authorize projects.

**Section 106 projects can have many stakeholders.** In addition to required parties like SHPO and local governments, other parties with a demonstrated legal, economic, or preservation interest in a project can also participate in the Section 106 process. Such parties could include land owners, local historical societies, business owners, neighborhood organizations, and more. The agency has final discretion as to who to include.

**Section 106 is about you.** At its core, Section 106 is about the public voice. It's about stewardship and the public benefit of historic preservation. For more info, check out the [Citizen's Guide to Section 106 Review](#) from the Advisory Council on Historic Preservation (ACHP).

## What Should You Do If You Get Invited to Participate in a Section 106 Project?

Section 106 is specifically designed to give local stakeholders a voice in federal decisions that affect historic properties. An invitation to participate in the Section 106 process is your chance to make sure that important historic resources in your community are taken into consideration as part of the project development process. Your feedback is important, and your participation is encouraged.

### 1. Review the Provided Information

When an agency invites you to participate in the Section 106 process, it will provide you with a letter informing you of the project scope and areas impacted. Review the information carefully as this will inform your response. Depending on how far along the project is, the initial notice may include documentation of resources in the area and a discussion of effects to those resources. Such information may also be provided later. Generally speaking, local governments receive the same information provided to SHPO as part of the consultation process.

### 2. Prepare Your Response

There is no right or wrong way to respond to a Section 106 notice. The agency simply wants to make sure that it has all the relevant information needed to make an informed decision. You can respond with any and all comments you have about the proposed project; historic properties of interest, including any that might not have been identified by the agency; and the project's effects on historic properties. For example, you could comment on how a road widening project would affect your downtown's historic district or how a new cell tower would impact the view from a prominent site. Also consider if you want to get feedback from any of your colleagues to include in your response or if you've received direct comments from the public that should be noted.

### 3. Stay Engaged

Beyond responding to information provided by the agency, the nature of your role will vary from project to project. For example, you might be invited to participate in meetings or asked to assist in identifying creative solutions for mitigating the negative impacts of a project. Regardless of where the process goes, stay engaged and be responsive to opportunities to provide feedback. Your participation not only promotes meaningful outcomes for the current project but can also help establish relationships that will benefit future projects.



#### WHAT SHOULD I DO IF I DON'T KNOW WHO GETS NOTIFIED OF SECTION 106 PROJECTS IN MY COMMUNITY?

CLGs have a vested interest in potential impacts to historic properties. If you are the staff person for a CLG or an HDC member and aren't currently notified of Section 106 projects, ask around to see who currently handles such requests on behalf of the local government. Make your interest known and discuss ways that your feedback can be included in future requests so that preservation concerns are appropriately considered as part of future projects.

Correspondence you receive as part of a Section 106 project will use specific terms defined under the law. Here are some of the most common:

- **Area of potential effects (APE):** The geographic area(s) within which an project may directly or indirectly cause changes in the character of use of historic properties
- **Consultation:** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement
- **Consulting party:** An individual or organization with a demonstrated legal, economic, or preservation interest
- **Determination of Effect:** The agency's determination of the effect of a project on historic properties. There are three determinations an agency can make:
  - **No historic properties affected:** When there are no historic properties present or impacted by a project
  - **No adverse effect:** When a project will impact a property but the impacts do not alter the property's eligibility for listing in the National Register
  - **Adverse effect:** When a project may directly or indirectly alter a property's characteristics in such a way that its ability to be included in the National Register is diminished
- **Historic property:** A property listed in or eligible for listing in the National Register of Historic Places
- **Memorandum of Agreement (MOA):** The document that records the terms and conditions agreed upon to resolve adverse effects to historic properties
- **Mitigation:** A way to remedy or offset an adverse effect to a historic property
- **Undertaking:** An activity funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval.