

Section 106, National Historic Preservation Act

What is Section 106?

The National Historic Preservation Act (NHPA) is intended to protect and preserve historical and archeological sites within the United States. Section 106 of the NHPA requires Federal agencies to consider the effects on historic properties of their actions (or “undertakings”), and the actions they fund, permit, or license. Federal agencies must also give the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Detailed information on the procedures agencies must follow can be found on the ACHP web site (www.achp.gov).

HRSA grant funding that is used for construction and renovation projects is subject to Section 106 review. HRSA has determined that specific project types constitute an undertaking as defined under the NHPA, and these are: 1) all new construction and expansion projects; 2) alteration and renovation projects where exterior changes to the building façade or surroundings may be made (including roof, windows, and parking lots), and 3) projects where interior renovations may be made to a building that is over fifty (50) years old, or is historically, architecturally, or culturally significant.

What are historic properties?

Historic properties include buildings, structures, archaeological sites, districts, objects, and landscapes that are listed in or eligible for listing in the National Register of Historic Places (NRHP).

Is my grant project subject to Section 106?

HRSA will evaluate the following undertakings: 1) all new construction and expansion projects; 2) alteration and renovation projects where exterior changes to the building façade or surroundings may be made (including roof, windows, and parking lots), and 3) projects where interior renovations may be made to a building that is over fifty (50) years old, or is historically, architecturally, or culturally significant. If the HRSA grant money will be used for these types of projects then the grant is subject to Section 106 review. If the HRSA grant money will be used to acquire equipment *and there is no planned new construction, expansion, or alteration of the facility*, then the project is exempt from Section 106 review.

Will HRSA conduct the Section 106 process for my grant?

HRSA has authorized the grant applicants and their authorized representatives to act on its behalf in the Section 106 review process.



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How do I initiate the Section 106 process for my grant?

The first step is to provide project information to the appropriate State Historic Preservation Office (SHPO). The SHPO will minimally need to know where a project is located and what type of work is proposed. The location information should be as specific as possible, including a street address for an existing structure. If new construction is proposed, then a SHPO will usually request a map showing the project boundaries. The description of the type of work proposed should indicate whether the project will entail new construction or renovation to an existing structure. If a structure will be renovated, the SHPO will need to know what types of activities are proposed.



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A listing of SHPO contact information can be found at www.ncshpo.org/stateinfo/fulldist.htm. The websites for each SHPO usually contain contact information and specific instructions for undertaking the Section 106 process in its state. The SHPO should also provide a list of qualified historic preservation consultants who can assist in the Section 106 process.

Section 106 also requires formal consultation with certain groups and individuals. Specifically, consulting parties are defined as:

- 1) the SHPO;
 - 2) Indian tribes and Native Hawaiian organization;
 - 3) representatives of local governments;
 - 4) applicants for Federal assistance, permits, licenses and other approvals; and
 - 5) individuals and organizations with demonstrated interest due to legal or economic relation to the undertaking.
- Based on the type of project the grantee is undertaking, the SHPO will assist in identifying relevant consulting parties such as Indian tribes or historical organizations.

Section 106 also requires that the public be notified of an agency's proposed undertakings and be given the opportunity to comment on the project. In addition to consultation, the grantee must place a notice in the area's most widely distributed local newspaper detailing the proposed undertaking and asking that comments from interested parties be sent to the grantee.

Grantees should be aware that a SHPO has thirty (30) days from receipt of project information in which to provide written comments regarding the proposed undertaking. If a SHPO does not respond within this period, the project may move forward. Grantees should note that the first response from a SHPO may be a request for additional information. The thirty (30) days for SHPO comments do not begin until the SHPO has all necessary information with which to prepare their response.

What if my project is located on Tribal land?

If the project is located on Tribal land, the grantee must contact the HRSA Program Office. The Program Office will contact the Tribal Historic Preservation Office or Tribe (THPO/Tribe) to determine if the THPO/Tribe will work directly with the applicant. If the THPO/Tribe will not work directly with the applicant, the applicant must still comply with the Section 106 process. However, the applicant will supply the information to the Program Office, and the Program Office will work with the THPO/Tribe to obtain its comments.

HRSA notifies the THPOs, Indian Tribes, and Native Hawaiian organizations of the Congressional Earmarks and asks for their comments on the proposed projects before the Federal assistance is awarded. In accordance with 36 CFR Part 800.2(c)(2), HRSA shall ensure that all consultations with THPOs/Indian Tribes are conducted in a manner respectful of Tribal sovereignty and the government-to-government relationship between the Federal government and Indian Tribes.

This policy, therefore, is not intended to modify or limit such requirements. HRSA recognizes its Tribal consultation responsibility. Only if the THPO/Tribe decides to forgo its government-to-government relationship in this instance, and the THPO/Tribe agrees to work with the applicants directly, will the applicant/authorized representative contact the THPO/Tribe. (For information on THPOs, see www.nathpo.org).

How long will the Section 106 process take?

There is no simple answer to this question. If a SHPO determines that, based on the information initially provided to them, no historic properties will be affected by the proposed project, then the Section 106 process is complete once the SHPO has provided a written statement to this fact.

However, in the case of new construction, for example, a SHPO might require work such as an archaeological survey and preparation of a report by a qualified consultant to see if previously unrecorded historic properties are present. Also, if the SHPO determines that renovation will be undertaken on a historic property that could be adversely affected, then steps must be taken to resolve the adverse effects. The timeframe in these examples will vary on a case by case basis.

Section 106 is a consultative process that does not preordain a preservation outcome. Rather, the applicant must identify historic preservation issues as part of project planning. For this reason, it is strongly recommended that grant applicants begin the consultation process with the SHPO as soon as possible to avoid any potential delays. Providing the SHPO with as much information about the proposed project as possible is key to facilitating the process.



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What if it is determined there is a Historic Property?

If historic properties listed in or eligible for the National Register of Historic Places are identified within a project area, the applicant must consult with the SHPO to determine if the project will have an effect on the historic properties and if the effect is adverse. If a finding of adverse effect is made, the applicant must continue the consultation process to mitigate the adverse effect. Again, the SHPO will assist in this process.

The Section 106 review attempts to resolve two key issues: 1) whether the proposed project has an effect on historic properties; and 2) whether any effect on the historic property will be adverse. The term “effect” is defined under 36 CFR Part 800.16(i) as an “alteration to the characteristics of historic property qualifying it for inclusion in, or eligibility for the National Register.” Consider the project’s impact on the property’s use, character, location, and setting when determining its effect on the historic property. An effect is considered adverse under 36 CFR Part 800.5(a)(1) when it will endanger those qualities that make the property eligible for inclusion in the National Register. Adverse effects can be direct or indirect. Typical examples include:



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- Physical destruction or damage;
- Alteration inconsistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties;
- Decommissioning of the property;
- Change in the character of the property’s use or setting;
- Introduction of incompatible visual, atmospheric, or audible elements; and
- Neglect and deterioration.

HRSA will remain responsible for participating in the consultation process when:

- it is determined that the Criteria of Adverse Effect apply to an undertaking;
- there is a disagreement between the grantee or grantee's authorized representative, and the SHPO/TPHO regarding identification and evaluation, and/or assessment of effects;
- there is an objection from consulting parties or the public regarding findings and determinations, the implementation of agreed upon processions, or their involvement in a Section 106 review;
- or, there is a potential for anticipatory demolition, removal, or abandonment as specified in Section 110(k) of the NHPA.



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Under these circumstances, HRSA will enter into the consultation process and assist the applicant in developing a Memorandum of Agreement (MOA) that outlines the agreed upon mitigation measures with the SHPO and the ACHP (if it decides to participate).

In cases where the consultation is terminated without an agreement between the applicant and SHPO to resolve adverse effects, the HRSA Program Office will consult with the ACHP.

Links to additional information:

National Historic Preservation Act of 1966, as amended: <http://www.achp.gov/nhpa.html>

36 CFR Part 800: <http://www.achp.gov/regs-rev04.pdf>

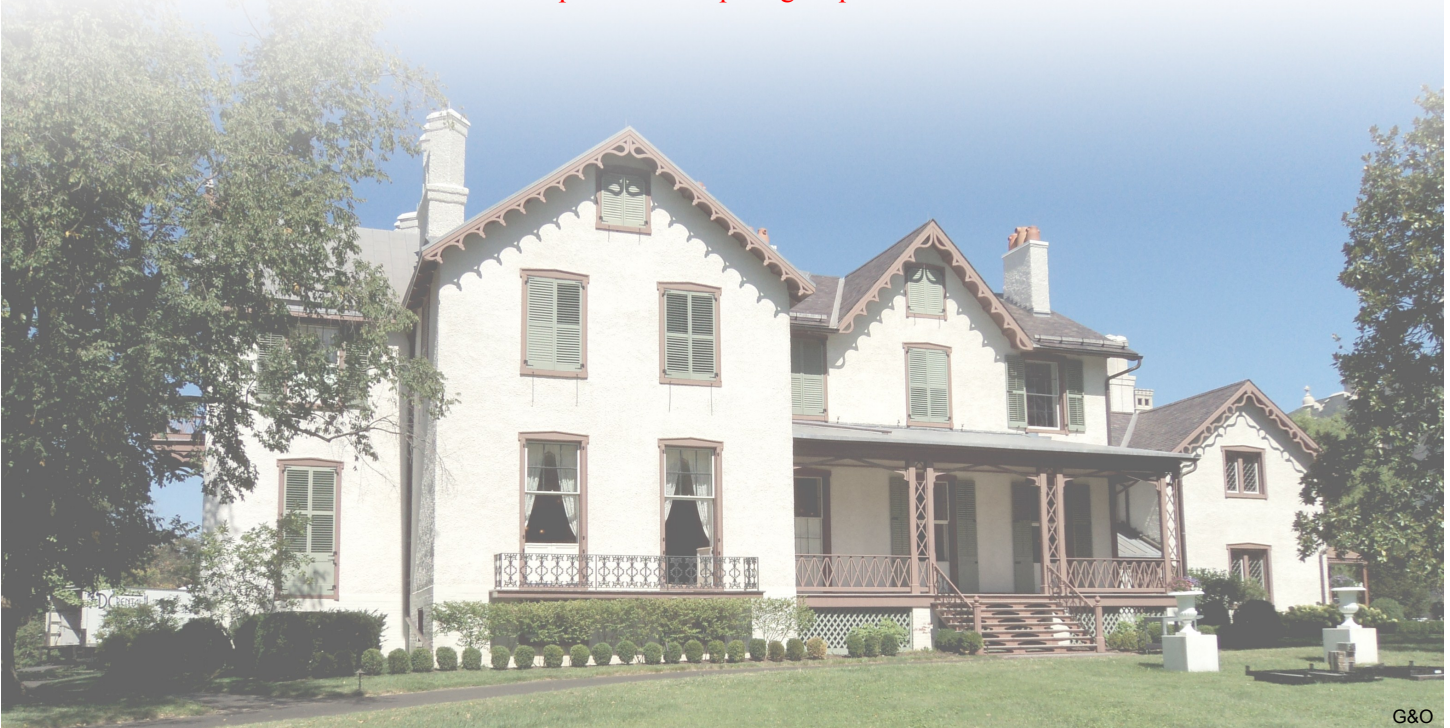
Advisory Council on Historic Preservation: <http://www.achp.gov>

National Council of State Historic Preservation Officers: <http://www.ncshpo.org>

Find a State Historic Preservation Officer: <http://www.ncshpo.org/find/index.htm>

National Association of Tribal Historic Preservation Officers: <http://www.nathpo.org/>

Find a Tribal Historic Preservation Officer: <http://www.nathpo.org/map.html>



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