

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) FACT SHEET

National Historic Preservation Act, Section 106, Consultation Process

Overview

Section 106 of the National Historic Preservation Act (NHPA) (implemented by 36 CFR 800) requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the public and appropriate parties a reasonable opportunity to comment on such undertakings. Historic properties are buildings, structures, objects, districts, or archaeological sites that are listed or eligible for listing in the National Register of Historic Places.

THE SECTION 106 PROCESS CONSISTS OF:

■
Identifying and evaluating historic properties.

■
Applying the criteria of “adverse effect” on historic properties.

■
Consultation to determine methods to avoid, minimize, or mitigate adverse effects.

The National Telecommunications and Information Administration (NTIA) grant awards, particularly for infrastructure development projects, will usually include several Special Award Conditions (SACs) that must be fulfilled before the proposed project is implemented. These SACs will often include a requirement to complete Section 106 consultations with the appropriate State Historic Preservation Office (SHPO) and may require consultations with Federally-recognized Native American tribes represented by Tribal Historic Preservation Offices (THPO).

The NTIA, as the lead Federal agency, is responsible for initiating all Section 106 consultations. The recipient's role is to assist NTIA in conducting and concluding these consultations.

NHPA SECTION 106 CONSULTATION PROCESS

The Section 106 consultation process typically consists of providing project information and responding to questions and requests for additional information with various consulting parties. Consulting parties may include the Advisory Council on Historic Preservation, the State (or Tribal) Historic Preservation Officer, the local government, an applicant/grantee for Federal assistance, and interested federally recognized Indian tribes or Native Hawaiian organizations. Historic preservation organizations and others with an interest in the preservation outcomes of the project or those with a legal or economic interest may also be invited to join consultation. The agency also plans how it will involve the public.

SHPO CONSULTATIONS

- Within a few weeks after the grant is awarded, the NTIA Historic Preservation Specialist (HPS) will ask the recipient to provide a current and comprehensive project description and detailed maps (preferably by e-mail). This information should be readily available to the recipient and provided expeditiously to NTIA (i.e., within one month from acceptance of the award).
- The HPS will send the detailed project description and maps to the SHPO for the state in which project activities will take place. This letter will initiate NHPA Section 106 consultations for the project. The recipient will be copied on the letter. If more than one state is involved, the HPS will send letters to each.



SHPO CONSULTATIONS (CONT.)

- Shortly thereafter the recipient is required to contact the SHPO, preferably by phone, followed by a letter or e-mail, and offer to provide any additional information the SHPO may require to complete the consultation process.
- SHPO consultation requirements may differ from state to state. Hiring a cultural resource consultant with state-specific Section 106 experience is almost always beneficial and, in some cases, may be required, depending on the potential for the project to impact historic or cultural resources.
- Construction or expansion of communication facilities (cell towers) are regulated by the Federal Communications Commission (FCC). NTIA, as the lead Federal agency, will involve FCC for activities that must go through a streamlined Section 106 review under the National Programmatic Agreement (NPA) specific to the FCC. We will follow the procedures set forth in the NPAs, using NHPA Section 106 and the FCC's Tower Construction Notification System (TCNS) to avoid duplicative reviews, but only for telecommunication projects. If there is an adverse effect identified, we will work closely with the FCC in the consultations. Other aspects of the project, such as cabling, may require separate Section 106 consultation with the NTIA as lead agency. The HPS will assist recipients in determining if this applies.
- The SHPO will respond to the NTIA letter initiating Section 106 consultation or to the recipient's follow-up contact, based on state-specific procedures and their level of concern over the proposed project. The implementing regulations of Section 106 of the NHPA give the SHPO 30 days to respond to submissions.
- When projects have the potential to affect historic or cultural resources, SHPOs will typically require the completion of a survey of the project's Area of Potential Effect (APE). To complete the required surveys, the recipient will typically need to secure the services of cultural resource professionals that meet the requirements and standards specified by the Secretary of the Interior (36 CFR Part 61) for archaeology and/or architectural history.
- Recipients with multi-state projects should not assume that information requests and decisions by one state's SHPO apply to other states as well. Recipients must conduct separate consultations with each SHPO.
- Some SHPOs prefer to consult only with the lead Federal agency of a proposed project. The recipient should inform the NTIA HPS if an SHPO is unresponsive or expresses any concerns regarding the consultation.
- Under Section 106 of the NHPA, a SHPO has 30 calendar days to respond to a determination of project effect upon receiving the required information.
- Changes to the project limits or scope of work may require additional SHPO consultation and could impact a project's effect determination.
- If an adverse effect is determined by the SHPO, NTIA will need to resolve the adverse effect(s) through consultation with the Council, SHPO, and all applicable consulting parties. The process will result in a Memorandum of Agreement (MOA) that will document steps taken to avoid or minimize the adverse effect(s), views of consulting parties and the public, and terms and conditions agreed upon to resolve the adverse effects.
- The recipient should include in its Environmental Assessment (EA): the results of SHPO consultations, determination of effect, mitigation requirements, project procedures, and any other information resulting from consultations.
- **Section 106 consultation is considered completed when:**
 - SHPO provides a letter concluding that the project will have No Effect or No Adverse Effect on historic or cultural resources.
 - A MOA is signed between all involved parties setting forth requirements necessary to avoid, minimize, or mitigate any adverse effects identified by the SHPO during the review.
- NTIA must receive evidence of completion of its Section 106 responsibilities before a Finding of No Significant Impact (FONSI) will be signed.

TRIBE/THPO CONSULTATIONS

- Section 106 requires that consultations with Federally-recognized Indian tribes occur in parallel with the SHPO consultations.
- **THPO consultations differ from those with the SHPO in a number of important ways:**
 - Consultations are conducted on a government-to-government basis (i.e., NTIA to Tribe/THPO), so the recipient's formal role is focused on supporting NTIA.
 - Tribes/THPOs that are notified of a project have no obligation to respond, nor any requirement to respond within a specified time.
 - Tribes/THPOs notification of a project typically concludes with no communication after a reasonable period of time, a communication of no interest, a request to be notified if remains or artifacts are discovered, or expressions of interest that could include such things as requests for certain procedures to be followed in implementing the project and participation in field surveys. NTIA will require the recipient to accommodate all reasonable requests from Tribes/THPOs.
- NTIA has arranged to participate in the FCC's TCNS in order to facilitate and expedite outreach to the 574 Federally-recognized tribes and other Native American groups.
- TCNS is an automated system developed to facilitate licensees, applicants, and private tower constructors' identification of and early communication with all Federally-recognized Indian tribes, including Alaska Native Villages and Native Hawaiian Organizations. Tribes participate in TCNS by identifying their geographic area of interest and then receive only those notices of projects with activities that are planned within that specified area. For NTIA projects, the notification process begins when project descriptions are entered by NTIA into the automated TCNS system. Notified tribes interested in receiving more information on a specific project will respond via e-mail through the TCNS to NTIA (the TCNS requests responses within 14 days). NTIA will then, through the established government-to-government protocol, arrange for the recipient to establish communications with the tribe in order to provide any additional information and complete the consultation process. This is typically done through e-mail initiated by the NTIA HPS, with the THPO, and recipient.
- **For THPO consultations through the TCNS process, recipients should understand that:**
 - THPO consultations required by Section 106 are initiated by NTIA.
 - NTIA will forward THPO requests for information to the recipient for a timely and adequate response.
 - If the THPO identifies potential impacts to tribal historic or cultural resources, the recipient should coordinate its responses closely with the NTIA HPS.
 - The recipient's EA should discuss any substantive interactions with THPOs regarding the project.

ADDITIONAL RESOURCES

For additional information on the National Historic Preservation Act Section 106 Consultation Process, please refer to the following resources:

- Section 106 Summary, National Historic Preservation Act: <https://www.achp.gov/>
- National Conference of State Historic Preservation Offices: <https://ncshpo.org/>
- National Association of Tribal Historic Preservation Officers: <https://www.nathpo.org/>

