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National Historic Preservation Act (NHPA) Consultation Process Fact Sheet

Broadband Equity, Access, and Deployment Program

April 2024



NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) FACT SHEET

National Historic Preservation Act (NHPA) Section 106 Consultation

Overview

Section 106 of the NHPA requires Federal agencies to consider the effects of their undertakings (projects) on historic properties by completing a review process codified at 36 CFR 800. Historic properties are buildings, structures, objects, districts, or archaeological sites that are listed or eligible for listing in the National Register of Historic Places (NRHP).

SECTION 106 REQUIRES FEDERAL AGENCIES TO:

■
Identify potentially affected historic properties.

■
Assess the project's potential for adverse effects.

■
Consult to avoid, minimize, or mitigate adverse effects, where identified.

NTIA grant awards, particularly for infrastructure development projects, may include Special Award Conditions (SACs) that recipients must fulfill before a proposed project can be implemented. These SACs will often include a requirement to complete NHPA Section 106 review, which involves consultation with the appropriate State Historic Preservation Office (SHPO), one or more Federally recognized Tribes or Tribal Historic Preservation Offices (THPO), and other interested “consulting” parties.

In a memorandum effective from January 2024 through December 2030 (delegation memo), NTIA has authorized grant award recipients to initiate the Section 106 review process; to identify and evaluate historic properties; and to assess effects. NTIA remains legally responsible for Section 106 findings and determinations and for government-to-government consultation with Tribes.

The Advisory Council on Historic Preservation (ACHP) oversees the Section 106 process and has developed a Section 106 Applicant Toolkit (<https://www.achp.gov/digital-library-section-106-landing/section-106-applicant-toolkit>) to guide recipients assisting Federal agencies with Section 106 review requirements. The ACHP has also issued several “program alternatives” to streamline reviews for communications projects. NTIA Environmental Program Officers (EPOs) are available to advise on the applicability of the [Program Comment for Federal Communications Projects](#), and to assist in ensuring that Section 106 obligations are met.

NHPA SECTION 106 CONSULTATION

The NHPA requires Federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve; and provides the ACHP, consulting parties, and the public the chance to weigh in on these matters before a final decision is made. Consulting parties may include the ACHP, the SHPO and/or THPO, other agencies, local governments, affected land/property owners, historic preservation organizations, and members of the public with interests in the project. Applicants and recipients of Federal assistance, permits, licenses, or approvals participate in the Section 106 process as consulting parties, but may actively assist the agency in fulfilling the Section 106 review requirements. Certain Section 106 activities must be completed by qualified historic preservation professionals. Recipients are encouraged to hire Secretary of the Interior qualified consultants to engage with SHPOs as authorized representatives.



ENGAGING WITH THE SHPO

- The recipient should prepare a comprehensive and detailed project description, including maps, as early as possible to begin the Section 106 process promptly.
- The recipient, or an authorized representative of the recipient, will provide this information:
 - To the NTIA EPO for the state to begin Tribal notification (see next section); and
 - To the SHPO for the state in which project activities will take place with a copy of the delegation memo. This submittal must identify a contact person for the recipient, the authorized representative hired to coordinate the review, and the NTIA EPO for the state.
- The recipient, or an authorized representative, is responsible for identifying historic properties. The [Program Comment for Federal Communications Projects](#) can significantly streamline Section 106 identification requirements. When a recipient includes information identifying historic properties and assessing effect in its initial letter, the recipient may request the SHPO's concurrence on its finding of effect.
- Immediately notify the NTIA EPO if projects are located on or cross Tribal lands. EPOs will assist with THPO notifications as described in the section below.
- If a project involves more than one state, the recipient will send letters to each state's SHPO.
- Construction or expansion of commercial wireless communication facilities (cell towers) are regulated by the Federal Communications Commission (FCC). NTIA will notify the SHPO when projects include towers subject to streamlined Section 106 review under the FCC's National Programmatic Agreements (NPA). The recipient must then initiate review of the tower(s) using the FCC's electronic systems, E-106 and the Tower Construction Notification System (TCNS). Recipients should notify the EPO of towers with adverse effects. For multi-component projects, NTIA remains responsible for the Section 106 review of infrastructure beyond towers, such as a fiber network. The EPO will assist recipients in determining if this applies.
- Section 106 regulations give the SHPO 30 calendar days to provide its comment on a project's effect on historic properties, provided the initiation letter includes sufficient identification information and a finding of effect.
- When projects have the potential to affect historic or cultural resources, SHPOs may request the completion of a survey of historic properties within the project's Area of Potential Effect (APE). To complete such surveys, the recipient will 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.
- Hiring a consultant with state-specific cultural resource experience is almost always beneficial and, in some cases, may be necessary. For example, the State of Utah limits the review of its archaeological site files to professionals holding a state-specific permit.
- Changes to the project limits, route, or scope of work may require additional SHPO consultation and could impact a project's effect determination.
- The NTIA EPO must be notified when an adverse effect on a historic property is identified during project planning or in consultation with the SHPO. Recipients must consider alternatives to avoid adverse effects.
- If adverse effects cannot be avoided, NTIA will work with the ACHP, SHPO, the recipient, and all applicable consulting parties to develop a Memorandum of Agreement (MOA) to avoid, minimize, and/or mitigate the adverse effect(s). The MOA will establish the terms and conditions the recipient must comply with to resolve the adverse effect.
- The recipient should include in its NEPA documentation: the results of the Section 106 review, including copies of SHPO consultation letters; avoidance or mitigation requirements (where applicable); project procedures; and any other substantive information associated with the Section 106 review.
- **A recipient's Section 106 obligations are considered completed when:**
 - The SHPO provides a letter concurring that the project will have No Effect or No Adverse Effect on historic properties and the recipient's Tribal outreach obligations are met; or

- A MOA is signed between all consulting parties setting forth requirements necessary to resolve any adverse effects identified during the Section 106 consultation; or
- NTIA notifies the recipient that its Section 106 obligations are otherwise complete.
- NTIA must have documentation that the Section 106 review has concluded before a Finding of No Significant Impact (FONSI) will be signed when an Environmental Assessment (EA) is required.

TRIBAL PARTICIPATION IN SECTION 106 CONSULTATION

- Recipients must immediately notify the NTIA EPO of projects located on or crossing Tribal lands. The EPO will inform the recipient whether a THPO will act in lieu of the SHPO or if the Tribe will participate in the Section 106 review on the same basis as the SHPO and advise the recipient on how to proceed.
- For projects that are not on Tribal lands, NTIA uses the FCC's Tower Construction Notification System (TCNS) to facilitate outreach to Federally recognized tribes. Recipients must send the NTIA EPO a comprehensive and detailed project description, including maps, to initiate TCNS notification.
- The FCC developed TCNS to support licensees, applicants, and private tower constructors' identification of and early communication with Federally recognized Indian tribes, including Alaska Native Villages and Native Hawaiian Organizations. Tribes identify their geographic areas of interest in the TCNS system and receive notification when projects are proposed within that specified area.
- For NTIA projects, the notification process begins when the NTIA EPO enters the project description and map(s) into TCNS. Notified tribes interested in receiving more information on a specific project will respond via e-mail or through TCNS to NTIA. NTIA will then instruct the recipient on what is required to ensure that the Tribe has an opportunity to comment on the project, including how to provide any additional information necessary to conclude the review. This is typically done through e-mail initiated by the NTIA EPO, with the Tribe/THPO, and recipient.
- **For Tribal outreach through the TCNS process, recipients should understand that:**
 - NTIA must submit project information into TCNS to initiate Tribal participation in the Section 106 review.
 - NTIA will forward a Notice of Organization (NOO) report to recipients with Tribal/THPO requests for information and details on submittal requirements.
 - If the Tribe/THPO identifies potential impacts to historic properties of Tribal cultural or religious significance, the recipient should immediately notify the NTIA EPO.
 - When a Tribe identifies historic property concerns, NTIA will conduct consultations on a government-to-government basis. A Tribe may request to work and consult only with NTIA, so the recipient's role may be limited to supporting NTIA.
 - The recipient's NEPA documentation should document any substantive interactions with Tribes/THPOs.
- **Tribal Section 106 engagement differs from that with the SHPO in several important ways:**
 - NTIA has a government-to-government relationship with Tribes, and Tribes are not obligated to communicate with applicants or recipients of federal assistance.
 - TCNS has a process for referring non-responsive Tribes that allows a project to proceed when recipients notify NTIA that a Tribe has failed to respond, as described below.
- Tribal outreach typically concludes with a response within 30 days, which may include a communication of no interest or an expression of interest, or a referral resulting in no response after 45 days (total). NTIA will require the recipient to accommodate reasonable requests from Tribes/THPOs to address concerns over potential impacts to Tribal historic properties. If a recipient has not received a response 30 days after TCNS notification, the recipient may refer the matter to NTIA for referral. NTIA will provide the Tribe with 15 additional calendar days to express interest in the project. If the Tribe does not respond within 15 days, the recipient's Section 106 review obligations are discharged with respect to that Tribe.

