

Section 106 Review on Historical Resources

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Section 106 of the National Historic Preservation Act (NHPA) provides for preservation of historical resources and sites. Historic sites include archaeological sites and standing architectural property that is at least 50 years old, such as burial grounds, buildings, culverts, and bridges. A Section 106 review is needed when using Federal funds or if a Federal review or permit, such as a wetlands permit is required.

Is a Section 106 Process Needed?

Determine if any historical resources exist near the project area.

1. Are any properties in the area listed or eligible for listing in the National Register of Historic Places? See www.nr.nps.gov.
2. Complete a field review and discuss it with the NH Division of Historical Resources.
3. If the division requires complete historic surveys. Summarize the site's history; current and historical appearance; and level of historical significance; and integrity on the district survey. Specify details of each building on the individual survey. If more than one building exists, complete a project survey. The survey allows the division to determine if any resources are eligible for listing in the National Register. The division recommends hiring a consulting architectural historian for site review when any structure in the area is older than 50 years old and, therefore, potentially eligible for listing in the National Register.

Review Process

The review process determines if the project effects historic properties. The three categories of project effect are "No Historic Properties Affected," "No Adverse Effect," and "Adverse Effect." The Advisory Council on Historic Preservation (advisory council) can comment during the review process.

When historical resources are determined to be at risk and the project has been determined to have no adverse effect or adverse effect, invite public comment on the project, either through local media or by holding a public meeting.

If the division, in consultation with the lead Federal agency (ACOE), determines that there will be an adverse effect, including physical damage and change to the property's use or setting; mitigation may be required. Formalize the agreed-to mitigation by writing a Memorandum of Agreement (MOA) with the project sponsor, ACOE, and the division. The MOA will summarize the steps the project sponsor will take to minimize and mitigate the adverse effects to the historical resources. A MOA template is online: www.fhwa.dot.gov/indiv/moatempt.htm. When damage cannot be avoided, but the project is in the public's interest, construction may begin after coordination is complete.

After the Review Process

Municipalities must complete the review process before beginning construction. If construction has mistakenly begun before the process is complete, the advisory council and the division may advise municipalities as to how to become compliant. Contractors and/or municipalities may be found liable if historical resources are put at risk of damage or are damaged during construction. To save time, resources, money, and prevent a lawsuit, follow proper procedure before constructing in a historically sensitive area. The advisory council is available to provide guidance even if they decide not to directly participate in the review process.

Resources:

ACHP: www.achp.gov/106summary.html (April 26, 2002)

Complete set of rules for federal agencies: www.achp.gov/regs-rev04.pdf

NHDHR Section 106 Compliance: <http://www.nh.gov/nhdhr/review/> (2007)

Sample Wetlands Permit: www.nh.gov/dot/bureaus/enviornment/documents/microsoftword-2006wetlandsperrmitsmanual.pdf (2006)



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