



Local Preservation

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WHAT IS "SECTION 106 REVIEW?"

Section 106 of the National Historic Preservation Act requires that Federal agencies consider what effects their actions, and actions they may assist, permit, or license, may have on historic properties, and that they give the Advisory Council on Historic Preservation a "reasonable opportunity to comment" on such actions.

Federal agencies participate in many projects and programs that affect local governments and local historic properties. Some of these are obvious: construction of highways and wastewater treatment plants, for example. Others are less so: the Corps of Engineers issues permits to dredge and fill in waterways; the Federal Deposit Insurance Corporation approves opening branch banks and the installation of automatic teller machines; Federal Community Development Block Grant and Urban Development Action Grant funds are used by local governments to assist in rehabilitation and redevelopment. All these activities are subject to review under Section 106. The procedures to be followed in Section 106 review are referred to as "the Section 106 process," and are set forth in regulations issued by the Advisory Council on Historic Preservation.

The Advisory Council is an independent Federal agency. Its role in the review of actions under Section 106 is to encourage agencies to consider, and where feasible adopt, measures that will preserve historic properties that would otherwise be damaged or destroyed. The Council's regulations, entitled "Protection of Historic Properties" (36 CFR Part 800), govern the Section 106 process. The Council does not have the authority to require agencies to halt or abandon projects that will affect historic properties; its regulations emphasize consultation among the responsible Federal agency, the State Historic Preservation Officer (SHPO), and other interested parties -- including local governments -- to identify and, if possible, to agree upon ways to protect the properties in question.

Section 106 applies to properties that have been listed in the National Register of Historic Places, properties that have been determined to be eligible for inclusion in the Register, and properties that may be eligible but have not yet been evaluated. If a property has not yet been nominated to the Register or determined eligible for inclusion, it is the responsibility of the Federal agency involved to ascertain its eligibility, following procedures outlined in Council and National Park Service regulations.

The Section 106 Process in a Nutshell

The Council's regulations are set forth in a process consisting of five basic steps, as follows:

Identification and evaluation: The Federal agency responsible for the action identifies the historic properties (if any) that exist in the area to be affected. Identification involves assessing the adequacy of existing survey data, inventories, and other information on the area's historic properties, conducting further studies as needed, consulting with the SHPO, local governments, and other interested parties, and documenting the results of the identification effort. If properties are found that may be eligible for the National Register but have not been listed or determined eligible for listing, the agency consults with the SHPO and, if needed, the Keeper of the National Register to determine eligibility or ineligibility.

Effect determination If properties in, or eligible for, the Register exist in the area that may be affected by the action, the agency consults with the SHPO in determining what effect the action will have on them. The agency may find that the action will have no effect on historic properties, no adverse effect on such properties, or adverse effects on them. Local governments and interested members of the public are to be informed of these findings.

The regulations provide specific criteria for determining whether an action will have an effect, and whether the effect will be adverse. Generally, if the action may alter the characteristics that make a property eligible for the National Register, it is held to have an effect, and if the alterations may be detrimental to those characteristics, including relevant qualities of the property's environment or use, they are held to be adverse.

Consultation: If the action will have an adverse effect, the agency consults with the SHPO, other interested persons, and sometimes the Advisory Council, to seek agreement on ways to avoid or reduce the effects. Local governments, Indian tribes, affected property owners, and others concerned should be involved in the consultation, and the public should be given the opportunity to express their views. Local governments must be invited to participate in consultation regarding effects on historic properties within their jurisdictions, if they so request.

If agreement is reached, a Memorandum of Agreement (MOA) is drawn up and signed. If agreement cannot be reached, the formal comments of the Council are requested.

Agreement and Council comment: Acceptance of a MOA by the Council and implementation of its terms by, or at the direction of, the Federal agency satisfies the requirement of Section 106 that the Council be "given a reasonable opportunity to comment;" it also demonstrates that the agency has "taken into account" the effects of the action. If no agreement is reached, the comments of the Council are sent formally to the head of the agency.

Proceed: Having obtained the Council's comments, the agency either carries out the terms of the MOA or considers the formal comments in making its final decisions about whether and how to proceed with the action.

Participation by Certified Local Governments and Other Local Governments

The Council's regulations say that:

Local governments are encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for Section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to Section 101 (c) (1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations. (36 CFR Sec. 800.1 (c)(2)(i))

The regulations provide many opportunities for local governments to become aware of and participate in the Section 106 process. Becoming knowledgeable about the process and how to participate in it can help local commissions ensure that their concerns, and their historic properties, are fully considered in Federal agency planning.

The Advisory Council offers regular training courses dealing with the Section 106 process; course schedules, publications, and other information on the process and related topics can be obtained from:

Publications Office
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, #809
Washington, DC 20004
Phone (202) 786-0503

Information on actions currently undergoing review by the Council can be obtained from :

Eastern Division of Project Review *
Advisory Council on Historic Preservation
1100 Pennsylvania Ave. NW, #803
Washington, DC 20004
Phone (202) 786-0505

* Generally for actions that occur east of the Mississippi.

Western Division of Project Review **
Advisory Council on Historic Preservation
730 Simms Street, Room 450
Golden, CO 80401
Phone (303) 236-2682

** Generally for actions that occur west of the Mississippi.

For further information on Section 106 review see:

36 CFR Part 800

Protection of Historic Properties

Advisory Council on Historic Preservation (1986)

and

Section 106 Step-by-Step

Advisory Council on Historic Preservation (1986)

Single copies of each are available free from the Publications Office, Advisory Council on Historic Preservation, at the address given above.

Prepared by Dr. Thomas F. King, Advisory Council on Historic Preservation, May, 1987