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Environment Other Laws and Requirements **Section 106 of the National Historic Preservation Act**

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Agencies that use Federal funds must consider the effects of their projects on historic properties

There are several areas of environmental law that local public agencies, or LPAs, might encounter on a Federal-aid project. These areas address a project's effects on:

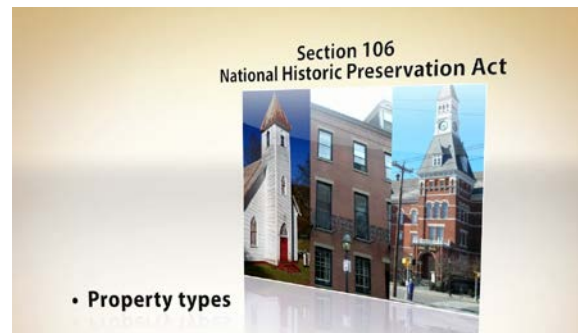
- The natural environment—things like air and water quality, wetlands, wildlife or endangered species
- The social environment—things that affect our quality of life, like the displacement of homes or businesses or community cohesion impacts, particularly as they relate to minority and low-income populations
- Historic sites
- Parks and recreation areas



The National Environmental Policy Act, known as NEPA, provides a framework for environmental analyses, reviews, and series of discussions known as consultations.

NEPA's process "umbrella" covers a project's compliance with all pertinent Federal environmental laws.

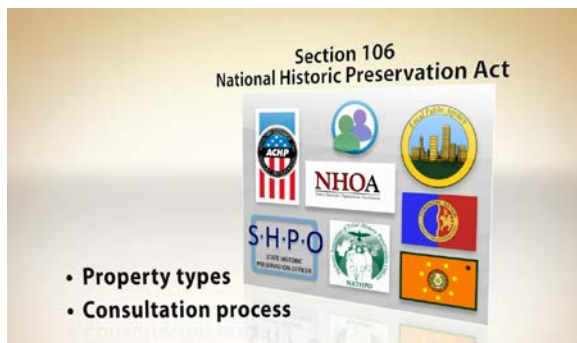
While NEPA provides a coordinated environmental review process, the related environmental law specifies what an agency must do to comply with its particular requirements—which can vary widely. One such law, Section 106 of the National Historic Preservation Act, requires Federal agencies to consider the effects of their projects on historic properties.



A historic property is any prehistoric or historic district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. The Advisory Council on Historic Preservation and the State Historic Preservation Officers—or SHPOs—administer the Federal or State historic preservation program.

The National Historic Preservation Act does not mandate preservation of historic properties. However, if your project receives Federal-aid funding, your agency must participate in a consultation process that considers the effects of your project on those properties.

Depending on the project, consulting parties may include the Advisory Council on Historic Preservation, your SHPO, the Tribal Historic Preservation officer, federally recognized Indian tribes and Native Hawaiian Organizations, local governments, and the public.



Let's take a look at the consultation process and the responsibilities of agencies in complying with the National Historic Preservation Act.

While the consultation process is somewhat iterative, there are four basic steps:

- Initiate consultation
- Identify and evaluate historic properties
- Assess effects
- Resolve effects

To initiate consultation, an LPA typically sends a letter of correspondence to either the SHPO or the State's department of transportation— or State DOT—identifying the project, the project location, and who is involved. And if known, an agency will also identify any historic properties in the project area.



In order to properly identify and evaluate any potential archeological and historic sites, an agency needs to use a qualified employee or hire a consultant. The evaluator will begin by performing file and literature searches to determine if the property is on or potentially eligible for the National Registry of Historic Places. The resulting report summarizes the site's setting and historical context, project information—including maps—and any cultural resources that were identified.

If there are no historic properties in the project area or no adverse effects are likely to occur to ones that are present, an agency will issue a letter with its findings, which completes the consultation process.

On the other hand, if adverse effects are likely to occur, an assessment must be made. An adverse effect occurs when an element of a historic property is altered in a manner that diminishes the integrity of the property's location, design, setting, materials, workmanship or association. For example, noise or visual blight can be considered an adverse effect.

The public and the consulting members of the project team can help determine any adverse effects resulting from the project.

Once potential adverse effects are identified, an agency needs to evaluate possible alternatives or modifications that would help resolve the effects by avoiding, minimizing, or mitigating them. For example, the alignment of a road might be altered to avoid affecting a historic property, or a commemorative publication or plaque might be erected.

The process concludes when the agency finalizes a memorandum of agreement between consulting parties.



To illustrate the process, let's consider a drainage and road improvement project in a town we'll call Old Towne, which was established in the early 19th Century.

To initiate the consultation process, the project manager sends a letter to the SHPO describing the project and providing a map of the project area.

The city of Old Towne hires a consultant with recent experience developing similar studies for the State DOT. During the course of her literature review, she discovers evidence of an early 19th-Century tavern at the corner of 1st and Main. During a site visit, she confirms that there is no longer any evidence of the tavern from the ground's surface.



The project team then conducts a subsurface investigation of the area and finds the foundation of the tavern and an outhouse. Further excavation indicates that the site might yield important information about the lifestyle of Old Towne's earliest residents.

Unfortunately, given its proximity to the street, the drainage and road improvement work would destroy the archeological site.

To resolve the adverse effects, the project team consults with the SHPO, the local historical society, the State DOT, and the Federal Highway Administration's division office. After the artifacts are analyzed and a report is prepared, the team agrees to erect an interpretive sign describing what was found and to give any recovered artifacts to the county museum. With everyone satisfied with this arrangement, the project team concludes the consultation process by writing a memorandum of agreement.

As we have seen, as a sponsor of a federally aided transportation project, your agency may be required to conduct studies and coordinate with other parties.

The necessary activities and degree of your involvement depend on the nature of your project and your State DOT's practices. Your State DOT can help you navigate the requirements and develop approaches that adequately evaluate and address your project's effect on historic properties.

Additional Resources

- Overview of FHWA's Historic Preservation Program
<http://www.environment.fhwa.dot.gov/histpres/index.asp>
- AASHTO Practitioner's Handbook 06 on Section 106 consultation
<http://environment.transportation.org/pdf/programs/PG06.pdf>
- Advisory Council on Historic Preservation Web site provides useful overview of the Section 106 process
<http://www.achp.gov/work106.html>
- Helpful references related to Section 106 and transportation projects
<http://www.achp.gov/fhwa.html>
- Information on LPA involvement in Section 106 reviews for preservation of historic properties
<http://www.achp.gov/docs/LocalGovernmentsSection106.pdf>
- Information on role of LPAs in protection of historic properties
<http://www.achp.gov/regs-rev04.pdf>
- Link to National Historic Preservation Act of 1966
[h \[http://www.cr.nps.gov/local-law/FHPL_HistPrsrvt.pdf\]\(http://www.cr.nps.gov/local-law/FHPL_HistPrsrvt.pdf\)](http://www.cr.nps.gov/local-law/FHPL_HistPrsrvt.pdf)

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.