

FAQ for Local Public Agency Projects

Q: What is a Section 106 Programmatic Agreement and why does it matter to local public agencies (LPAs) that you have one?

A: A Section 106 Programmatic Agreement (PA) is a way for the Federal Highway Administration (FHWA) to legally delegate authority and provide an expedited review process for actions that have limited potential to adversely affect historic properties. Through [FHWA/MDOT SHA's amended Section 106 PA](#), FHWA delegates most aspects of consultation to a single agency (MDOT SHA) that administers federal-aid funds. As a result, the Section 106 reviews for local public agency (LPA) projects that receive federal-aid funds will be completed through MDOT SHA, just as National Environmental Policy Act (NEPA) reviews currently are.

Q: Why do we need to complete Section 106 reviews?

A: [Section 106 of the National Historic Preservation Act \(NHPA\)](#) requires federal agencies to consider the effects any federally-funded, approved, or permitted project may have on historic properties. This includes including funding of transportation projects of state and local agencies. Section 106 review ensures consideration of effects; in most cases a professional review of minor projects, under the terms of the PA, ensures that historic properties would not be adversely affected. In more complex situations, the process gives consulting or interested parties, the public, and the Advisory Council on Historic Preservation the chance to weigh in on these matters before a final decision is made.

Q: I thought we were just supposed to complete Section 106 for federally-funded transportation projects. Why did your webinar presentation also say that we need to follow the same process outlined in the PA for state-funded transportation projects?

A: The Maryland Historical Trust (MHT) and MDOT SHA have agreed that the streamlined Section 106 process outlined in the amended PA will also be used to comply with the Maryland Historical Trust Act ([MHT Act](#)). Therefore, state-aid transportation projects will follow the same cultural resources review process as federally-funded transportation projects.

Q: What happens if we don't follow this new process?

A: Following the process in the amended PA for transportation projects is required to receive your federal-aid or state-aid funding. Section 106 and/or MHT Act review must be completed prior to the disbursement of federal- or state-aid funds, just as NEPA/MEPA review must be completed prior to the disbursement of such funds.

Q: Does this new Section 106 review process mean my project will get slowed down?

A: No. In fact, in many cases Section 106/MHT Act review will proceed more quickly than in the past! This is because the amended PA allows for a streamlined process through which certain types of projects can potentially be exempted from further consultation. The exemption categories are found in Appendix 1 and Appendix 2 of the PA.

Q: So will local public agencies still be contacting MHT for federal-aid or state-aid transportation projects?

A: All formal MHT consultation will be conducted between MDOT SHA and MHT; however, MHT is a resource as the state's historic preservation office for general guidance or information on Maryland's historic preservation requirements. In complex situations, MDOT SHA, MHT, and the local public agency will work together.

Q: What about my project that is currently under review with MHT?

A: Projects that are currently under review with MHT will be sent to MDOT SHA to complete the review process.

Q: Is this review process required for local projects that are not federal/state funded projects, but require permits or other involvement from MDOT SHA?

A: No. Continue to follow the existing processes for access permits, utility permits, or other permitting needs:

<https://www.roads.maryland.gov/mdotsha/pages/Index.aspx?PageId=690>

For some permits, direct consultation by the applicant with MHT is recommended after review by cultural resources staff. Continue to follow the existing process in these situations.

Q: What if my project has already been reviewed by MHT for another funding source?

A: If projects were previously reviewed for other federal and/or state funding sources (not MDOT SHA or FHWA funds) the new process still applies. Please provide your prior correspondence with MHT to the MDOT SHA Environmental Manager (EM) and that will help facilitate review.

Q: What do we do when there are changes to project scopes after my project has already been reviewed under Section 106?

A: If there are any projects that have already been submitted to MHT, but there's a change in the project in a later date as you move toward final design, keep your EM informed as you have historically done on other parts of the project (i.e., for NEPA coordination). The EM will coordinate with the Cultural Resources Section and will communicate with the LPA if the change would require additional cultural resources review or information.

Q: The PA states that there is a 30-day window if there are disputes about the review of individual actions or projects. Does the 30-day window start when we receive notification or does that mean 30 days from the project start?

A: The dispute resolution language in the PA refers to disputes under actions taken under the PA, and outlines a process of consultation among consulting parties to the PA and signatories. The circumstances would depend on what the specific action of concern is.

Q: We have qualified archaeologists on staff at my agency. Can they respond to the site of an Inadvertent Discovery under the Inadvertent Discovery Plan (IDP)?

A: Yes! We can work with you to tailor the IDP to the needs/qualifications of your agency. If you have a qualified archaeologist, whether they be on staff or a consultant, who can quickly respond to the construction site, we can work that into the IDP for your project. Your qualified archaeologist will need to work with MDOT SHA as MDOT SHA and FHWA are ultimately responsible for resolution of inadvertent discoveries under the terms of the PA.