

Citizens' Guide to Section 106 Consultation in Maryland



STATE HIGHWAY
ADMINISTRATION

What is Section 106?

The National Historic Preservation Act of 1966 (NHPA) is a significant federal law governing stewardship of our nation's cultural heritage. Section 106 of the NHPA requires federal agencies to take into consideration the effects their actions will have on historic properties. State and local projects using federal funding, or requiring federal approval or permitting, are required to comply with what is often referred to as "Section 106."

The Section 106 review process was codified in the Code of Federal Regulations at 36 CFR 800, "Protection of Historic Properties" and includes the following general steps for an "undertaking" or project:

- initiate Section 106 review with consulting parties;
- identify historic properties;
- determine whether historic properties would be affected; and
- avoid, minimize, or mitigate any adverse effects to historic properties.

The Maryland Historical Trust Act requires state funded projects to follow a similar review process. Information about the Maryland Historical Trust's review of state and federal projects is available at:

<https://mht.maryland.gov/projectreview.shtml>.

For more information about Section 106 and NHPA, see the Advisory Council on Historic Preservation's Protecting Historic Properties: A Citizen's Guide to Section 106 Review at achp.gov.

How Do I Participate?

The State Highway Administration (SHA) regularly coordinates with preservation organizations on projects. We also hold public meetings, which allow the public to share their views on projects and help us find additional consulting parties.

Visit roads.maryland.gov and navigate to SHA's Project Portal to view current, funded, and planned projects across Maryland. Individual project pages have project information and dates of upcoming public meetings, as well as contact information for SHA staff.



MDOT MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Section 106

What is a Historic Property?

Under Section 106, a historic property is any site, district, building, structure, or object included in, or eligible for, inclusion in, the National Register of Historic Places (National Register). The National Register is the official list of our country's historic places worthy of preservation.



*Casselman River Bridge,
Grantsville, Garrett County Maryland*

Resources that may be affected by a project are evaluated by the State Highway Administration (SHA) for National Register eligibility as part of the Section 106 process in consultation with the Maryland Historical Trust.

Some jurisdictions have their own list of local landmarks. These resources are not historic properties under Section 106 unless they are also determined eligible for the National Register.

What is the role of a Consulting Party?

Consulting parties include the Maryland Historical Trust (the Maryland State Historic Preservation Office), Federally recognized Indian tribes, local governments, the Advisory Council on Historic Preservation, and other individuals/organizations with a demonstrated interest in the project. While the Maryland Historical Trust is always a consulting party, other parties will vary depending on the location and scope of the project.

Consulting party status allows participants to share their views related to historic properties and review Section 106 consultation materials.

SHA's obligation in Section 106 review is to consider the views of consulting parties, but it is not required to ultimately accept or implement those views.

What is an Adverse Effect?

An adverse effect occurs when a project diminishes the characteristics of a property that make it historic. Not all changes to a historic property constitute an adverse effect. Criteria for adverse effect findings are found in the Section 106 implementing regulations. Adverse effects may include actions such as replacing a historic bridge, removing historic materials from a historic building or streetscape, or destruction of an archaeological site.



National Road (US 40)

Sometimes adverse effects cannot be avoided or minimized. When there is an adverse effect, SHA works with consulting parties to identify mitigation that is reasonable, feasible, and commensurate with the adverse effects of the project.

Mitigation commitments are specified in agreement documents. These documents may specify ongoing roles for consulting parties, who may be invited to concur by signing the final agreement.

How does SHA Conduct a Section 106 Review?

Section 106 regulations allow federal agencies to delegate responsibilities and establish a streamlined process for Section 106 review, in documents known as programmatic agreements.

The State Highway Administration has executed a programmatic agreement with the Federal Highway Administration that delegates some Section 106 responsibilities to SHA. The programmatic agreement also allows SHA to complete Section 106 review of Local Government Agency projects using Federal Highway Administration funds administered by the Maryland Department of Transportation.

The programmatic agreement includes categories of project types with low potential to affect historic properties. Projects that qualify are reviewed in-house by qualified cultural resources professionals using an expedited process.

The State Highway Administration sends out quarterly and annual reports which list all projects reviewed in-house.

To receive these reports, visit SHA's cultural resources webpage for a full copy of the programmatic agreement and information on how to join the list.



Nash Property Fieldwork