

SECTION 106 PROCESS - AN OVERVIEW



SECTION 106 NATIONAL HISTORIC PRESERVATION ACT

- “requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings.”
- 36 CFR Part 800 –“Protection of Historic Properties” – defines how Federal agencies meet Section 106 obligations

SECTION 106 REVIEW

Purpose of the Section 106 process

- Through consultation, the process seeks to accommodate historic preservation concerns with the needs of Federal undertakings
- The goal of consultation is to identify historic properties & resources, potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

PARTICIPANTS IN THE SECTION 106 PROCESS

- Federal Agency – FHWA
- New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP)
- New York State Department of Transportation (NYSDOT)
- State Historic Preservation Office (SHPO)
- Advisory Council on Historic Preservation (Council)
- Federally Recognized Tribes
- Other Consulting Parties and the Public

PARTICIPANTS IN THE SECTION 106 PROCESS

Federal Agency – FHWA

- Legal responsibility for all Section 106 findings and determinations
- Approves the undertaking and any appropriate actions as a result of Section 106 compliance

NYSOPRHP & NYSDOT

- Initiates consultation; prepares information, analyses and recommendations for eligibilities and effects

PARTICIPANTS IN THE SECTION 106 PROCESS

State Historic Preservation Office (SHPO)

- Advises and assists FHWA, NYSDOT & Office of Parks to carry out Section 106 responsibilities
- Consults on findings of eligibility and effect, measures to avoid, minimize or mitigate adverse effects on historic properties

Advisory Council on Historic Preservation (ACHP)

- Issues Section 106 regulations and oversees compliance
- May provide technical assistance or participate in consultation on projects under certain circumstances

PARTICIPANTS IN THE SECTION 106 PROCESS

Federally-Recognized Tribes

- Consultation for properties of religious and cultural significance that may be affected by an undertaking
- Federal agencies (FHWA) have a government-to-government relationship with Tribal Nations

PARTICIPANTS IN THE SECTION 106 PROCESS

Other Consulting Parties and the Public

- Consulting Parties are approved by the Federal agency, and invited to participate based on their demonstrated interest in the project (property owners, historic preservation groups)
- Consulting Parties have a right to receive information and articulate their views
- The views of Consulting Parties and the public are considered in the decision-making process

STEPS IN THE SECTION 106 PROCESS

- **Initiate Section 106 Process**
- **Identify Historic Properties**
- **Assess the Project's Effects**
- **Resolve Adverse Effects**

STEP 1 – INITIATE SECTION 106 PROCESS

- Establish the project as an undertaking subject to Section 106 review
- Determine if the project has the potential to cause effects to historic properties & resources
- Identify Federally-recognized tribal nations
- Involve the public; identify other consulting parties

STEP 2 – IDENTIFY HISTORIC PROPERTIES & RESOURCES

Area of Potential Effects (APE)

- APE – geographic area within which the project may cause alterations to historic properties, if any exist
- APE defines the scope of identification efforts
- Delineates the horizontal and vertical boundaries
- Should the project scope change, revisions to the APE may be necessary

STEP 2 – IDENTIFY HISTORIC PROPERTIES & RESOURCES

Identify Historic Properties & Resources within APE

- “Reasonable and good faith” effort to identify historic resources that may be affected by the project
- Establish & document the area of potential effects (APE)
- Review and update existing information on historic properties & resources
- Conduct field survey and evaluation

STEP 2 – IDENTIFY HISTORIC PROPERTIES & RESOURCES

Historic Properties & Resources

- Buildings, sites, districts, structures and objects that are listed, or eligible for listing, in the National Register of Historic Places (NR)
- 50+ years old; less only for exceptional significance
- To be considered eligible, a property must meet at least one of the NR Criteria for Evaluation, and retain essential character-defining features from the period in which it achieved importance

STEP 2 – IDENTIFY HISTORIC PROPERTIES & RESOURCES

National Register Criteria for Evaluation

- A: that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B: that are associated with the lives of persons significant in our past; or
- C: that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values; or
- D: that have yielded, or may be likely to yield, information important in prehistory or history.

PROPOSED APE RMP Removal Project Main to Findlay (North End)



PROPOSED APE RMP Removal Project Main to Findlay (South End)



STEP 3 - ASSESSING PROJECT EFFECTS

- Effect means an alteration to the characteristics of a historic property that qualify the property for inclusion in or eligibility for the National Register
- No Historic Properties Affected – if there are no historic properties or resources present or there are historic properties & resources present but the project will have no effect on them
- Historic properties affected – Apply the criteria of adverse effects to historic properties & resources within the APE

STEP 3 - ASSESSING PROJECT EFFECTS

Criteria of adverse effect

- “An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association...”

36 CFR 800.5(a)(1)

STEP 3 - ASSESSING PROJECT EFFECTS

- If the Criteria of adverse effect are not applicable, the project will have No Adverse Effect on historic properties
- Provide documentation for a finding of No Adverse Effect to the SHPO and other consulting parties for 30-day review

STEP 3 - ASSESSING PROJECT EFFECTS

Documentation for the Assessment of Effects

- A description of the project and its APE
- Steps taken to identify historic properties
- A description of affected properties and their qualifying characteristics
- A description of the project's effects on historic properties
- An explanation of why the criteria of adverse effect were found applicable or not applicable
- Any conditions to avoid, minimize, or mitigate effects
- A summary of views of consulting parties and the public

STEP 3 - ASSESSING PROJECT EFFECTS

- Written comments submitted within the 30-day review period will be considered
- FHWA issues No Adverse Effect determination; requirements of 36 CFR Part 800 are met
- When an Adverse Effect is found, additional consultation is carried out to seek resolution

STEP 4 - RESOLVE ADVERSE EFFECT

- Consultation to develop and evaluate measures that could avoid, minimize, or mitigate adverse effects
- Memorandum of Agreement (MOA) - stipulates measures to mitigate adverse effects to historic properties
- MOA records compliance with Section 106
- FHWA ensures the project is carried out in accordance with the executed MOA; requirements of 36 CFR Part 800 are met

AN OVERVIEW OF THE SECTION 106 PROCESS



EFFECTS DETERMINATION

Paul Tronolone - USAN

EFFECTS DETERMINATION

ON HISTORIC (NON-ARCHAEOLOGICAL) PROPERTIES

- 1. Niagara Reservation**
(National Register-listed & National Historic Landmark [NHL])
- 2. Aquarium of Niagara** (National Register-eligible)
- 3. Chilton Avenue-Orchard Parkway Historic District** (National Register-listed)
- 4. Old Customs House** (National Register-listed)
- 5. Michigan Central RR Bridge** (National Register-eligible)
- 6. Whirlpool Rapids Bridge** (National Register-eligible)

NIAGARA RESERVATION

National Register-Listed & National Historic Landmark

Year: 1885

Key Characteristics:

- Designed by Frederick Law Olmsted; Nation's oldest state park
- Contributing resources within the Reservation not located in/near the APE
- Area within the NHL boundary not part of the original 1885 Reservation

