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
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
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
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
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.
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
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)
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