



FACT SHEET
Broadband Technology Opportunities Program
National Historic Preservation Act, Section 106, Consultation Process

Overview

Section 106 of the National Historic Preservation Act (NHPA) (implemented by 36 CFR 800) requires Federal agencies to consult with appropriate parties to take into account the effects of their undertakings on historic properties. Historic properties are buildings, structures, objects, districts, or archaeological sites that are listed or eligible for listing in the National Register of Historic Places.

The Section 106 process consists of:

- Identifying and evaluating historic properties.
- Applying the criteria of "adverse effect" on historic properties.
- Consultation to determine methods to avoid, minimize, or mitigate adverse effects.

Broadband Technology Opportunities Program (BTOP) grant awards, particularly for infrastructure development projects, will usually include several Special Award Conditions (SACs) that must be fulfilled before the proposed project is implemented. These SACs will often include a requirement to complete Section 106 consultations with the appropriate State Historic Preservation Office (SHPO), and may require consultations with Federally-recognized Native American tribes represented by Tribal Historic Preservation Offices (THPO).

The U.S. Department of Commerce National Telecommunications and Information Administration (NTIA), as the lead Federal agency for BTOP, is responsible for initiating all Section 106 consultations. The recipient's role is to assist NTIA in conducting and concluding these consultations.

NHPA Section 106 Consultation Process

The Section 106 consultation process typically consists of providing project information and responding to questions and requests for additional information with two separate consulting parties:

- The SHPO(s) for the state or states in which project activities will take place.
- The THPO(s) that have recorded an interest in reviewing projects within the geographic area of the recipient's project (recorded geographic areas may be identified by county or the entire state).

SHPO Consultations

- Within a few weeks after the grant is awarded, the NTIA Historic Preservation Specialist (HPS) will ask the recipient to provide a current and comprehensive project description and detailed maps (preferably by e-mail). This information should be readily available to the recipient and provided expeditiously to NTIA (i.e., within one month from acceptance of the award).
- The HPS will send the detailed project description and maps to the SHPO for the state in which project activities will take place. This letter will initiate NHPA Section 106 consultations for the project. The recipient will be copied on the letter. If more than one state is involved, the HPS will send letters to each.
- Shortly thereafter the recipient is required to contact the SHPO, preferably by phone, followed by a letter or e-mail, and offer to provide any additional information the SHPO may require to complete the consultation process.





- SHPO consultation requirements may differ from state to state. Hiring a cultural resource consultant with state-specific Section 106 experience is almost always beneficial and in some cases may be required, depending on the potential for the project to impact historic or cultural resources.
- Construction or expansion of communication facilities (cell towers) are regulated by the Federal Communications Commission (FCC). These activities must go through a streamlined Section 106 review under the National Programmatic Agreement (NPA) specific to the FCC. Other aspects of the project, such as cabling, may require separate Section 106 consultation with the NTIA as lead agency. The HPS will assist recipients in determining if this applies.
- The SHPO will respond to the NTIA letter initiating Section 106 consultation, or to the recipient's follow-up contact, based on state-specific procedures and their level of concern over the proposed BTOP project. The implementing regulations of Section 106 of the NHPA give the SHPO 30 days to respond to submissions.
- When projects have the potential to affect historic or cultural resources, SHPOs will typically require the completion of a survey of the project's Area of Potential Effect (APE). The recipient will typically need to secure the services of cultural resource professionals that meet the requirements and standards specified by the *Secretary of the Interior* (36 cfr 61) for archaeology and/or architectural history.
- Recipients with multi-state projects should not assume that information requests and decisions by one state's SHPO apply to other states as well. Recipients must conduct separate consultations with each SHPO.
- In some cases, the current engineering design may not be sufficient to define the project limits and APE within the EA schedule. Under this scenario, the SHPO, NTIA, and recipient can develop and sign a Programmatic Agreement (PA) that establishes the framework for complying with Section 106 as the project develops. The NTIA HPS will assist recipients and SHPOs with establishing PAs on a case-by-case basis.
- Some SHPOs prefer to consult only with the lead Federal agency of a proposed project. The recipient should inform the NTIA HPS if an SHPO is unresponsive or expresses any concerns regarding the consultation.
- Section 106 consultation is considered completed when:
 - SHPO provides a letter concluding that the project will have No Effect or No Adverse Effect on historic or cultural resources.
 - A PA is signed between the SHPO, NTIA, and the recipient, and any other necessary parties.
 - A Memorandum of Agreement (MOA) is signed between all involved parties setting forth requirements necessary to avoid, minimize, or mitigate any adverse effects identified by the SHPO during the review.
- Under Section 106 of the NHPA, a SHPO has 30 calendar days to respond to a determination of project effect upon receiving the required information.
- The recipient should include in its Environmental Assessment (EA): the results of SHPO consultations, determination of effect, mitigation requirements, project procedures, and any other information resulting from consultations.
- NTIA must evidence completion of its Section 106 responsibilities before a FONSI will be signed. If Section 106 consultations for proposed telecommunications towers are coordinated via the FCC under the NPA, the FONSI will require the applicant's commitment to comply.
- Changes to the project limits or scope of work may require additional SHPO consultation and could impact a project's effect determination.





THPO Consultations

- Section 106 requires that consultations with Federally-recognized Indian tribes occur in parallel with the SHPO consultations.
- THPO consultations differ from those with the SHPO in a number of important ways:
 - Consultations are conducted on a government-to-government basis (i.e., NTIA to THPO), so the recipient's formal role is focused on supporting NTIA. If the recipient needs to interact with the THPO, NTIA will submit a request.
 - THPOs that are notified of a project have no obligation to respond, nor any requirement to respond within a specified time.
 - THPO notification of a project typically concludes with no communication after a reasonable period of time, a communication of no interest, a request to be notified if remains or artifacts are discovered, or expressions of interest that could include such things as requests for certain procedures to be followed in implementing the project and participation in field surveys. NTIA will require the recipient to accommodate all reasonable requests from THPOs.
- NTIA has arranged to participate in the FCC's Tower Construction Notification System (TCNS) in order to facilitate and expedite outreach to the 565 Federally-recognized tribes and other Native American groups.
- TCNS is an automated system developed to facilitate licensees, applicants, and private tower constructors' identification of and early communication with all Federally-recognized Indian tribes, including Alaska Native Villages, Native Hawaiian Organizations, and SHPOs. Tribes participate in TCNS by identifying their geographic area of interest and then receive only those notices of projects with activities that are planned within that specified area. For NTIA BTOP projects, the notification process begins when project descriptions are entered by NTIA into the automated TCNS system. Notified tribes interested in receiving more information on a specific project will respond via e-mail through the TCNS to NTIA (the TCNS process requests responses within 14 days). NTIA will then, through the established government-to-government protocol, arrange for the recipient to establish communications with the tribe in order to provide any additional information and complete the consultation process. This is typically done through e-mail initiated by the NTIA HPS, with the THPO, and recipient.
- For THPO consultations through the TCNS process, recipients should understand that:
 - THPO consultations, required by Section 106, are initiated by NTIA.
 - NTIA will forward THPO requests for information to the recipient for a timely and adequate response.
 - If the THPO identifies potential impacts to tribal historic or cultural resources, the recipient should coordinate its responses closely with NTIA HPS.
 - The recipient's EA should discuss any substantive interactions with THPOs regarding the project.

Additional Resources

For additional information on National Historic Preservation Act, Section 106, Consultation Process, please refer to the following resources:

- National Conference of State Historic Preservation Offices: <http://www.ncshpo.org/index.htm>.
- National Association of Tribal Historic Preservation Officers: www.nathpo.org/map.html.
- Section 106 Summary, National Historic Preservation Act: www.achp.gov/106summary.html.

