

9:30-11:00

# Preservation in Practice

Mastering Section 106 Reviews and  
Programmatic Agreements



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# Introductions

Tiffany Ciavattone  
Historic Compliance Team Lead  
[ciavatto.net@detroitmi.gov](mailto:ciavatto.net@detroitmi.gov)

Penny Dwoinen  
Environmental Review Officer  
[dwoinenp@detroitmi.gov](mailto:dwoinenp@detroitmi.gov)

Kim Siegel  
Environmental Compliance Specialist  
[kim.siegel@detroitmi.gov](mailto:kim.siegel@detroitmi.gov)

# National Historic Preservation Act of 1966 (NHPA)

By the mid-1960s, federally-funded infrastructure and urban renewal projects had resulted in the rapid destruction of places significant in the nation's history. Congress recognized that the federal government's historic preservation program was inadequate to ensure that future generations could appreciate and enjoy the rich heritage of the nation

*NHPA was enacted in recognition that historic places were being lost or altered, and that preservation was in the public's interest*

**Section 106** of the NHPA outlines Federal Agencies' obligation to consider the effects of their undertakings on historical, cultural, and archaeological resources

# NHPA Established:

- **Advisory Council on Historic Preservation (ACHP)**
  - An independent federal agency, that advises the President and Congress on historic preservation matters. The Council and its staff also advise federal agencies on their roles in the national historic preservation program, especially their compliance with Section 106 of NHPA.
- **State Historic Preservation Officers (SHPOs)**
  - States and tribes are responsible for identifying and nominating properties for listing in the NRHP and advising and assisting federal agencies in carrying out their historic preservation responsibilities, including federal agency compliance with Section 106. SHPO's act as a central state-wide repository of collected information.
- **Tribal Historic Preservation Officers (THPOs)**
  - Officially designated by a federally-recognized Indian Tribe to direct a program approved by the [National Park Service](#). The THPO assumes some or all of the functions of State Historic Preservation Officers on Tribal lands
- **National Register of Historic Places (NRHP)**
  - The official list of the Nation's historic places, that have completed the nomination process, worthy of preservation
- **Historic Preservation Fund**
  - Established in 1977, provides financial assistance to carry out activities related to preservation. Funding is provided from Outer Continental Shelf oil and gas lease revenues, not tax dollars, and an amount is appropriated annually by Congress

# What is Section 106?

- Section 106 implementing regulations are laid out in [36 C.F.R. Part 800](#)
- Federal Agencies are tasked with:
  - Identifying historic properties, including archaeological sites
  - Assessing potential for impacts to historic sites
  - Determining the effect that project will have on historic properties
  - Avoiding, minimizing, or mitigating any potential adverse effects to historic resources
- The Section 106 Review is best implemented early in planning stages of a project!

# What is Section 106?

- Federal agencies are directed to withhold assistance to applicants who intentionally, significantly, and adversely affect historic properties
- Section 106 is an ongoing consultation process, not a one-time event, and is not one-size-fits-all

Section 106 is a mandated *process*.  
There are no mandated *outcomes*.

## Section 106 Exemptions

- Part 58 Exempt and CENST Levels of review have no potential to affect historic properties
- Program Alternatives- These must be agreed to with SHPO through an agreement document
  - Programmatic Agreements (PA)/Memorandum of Agreements (MOA)
- Regular maintenance activities
  - [See HUD's website for summary of maintenance vs rehabilitation activities:](https://www.hud.gov/sites/documents/16-02cpdn.pdf)  
<https://www.hud.gov/sites/documents/16-02cpdn.pdf>
- ACHP Program Comment (PC)- currently, HUD has not indicated they plan to utilize the PC's exemptions that were circulated at the end of 2024

*If you are unsure if a project qualifies for an exemption, reach out to your SHPO or HUD*

# Section 106 Process

**Identify**

**Evaluate**

**Resolve Adverse Effects**



# Initiating Section 106 Review

- Define the undertaking- A good project description is key
- Initiate the Section 106 Process- Identify relevant consulting parties
  - SHPO, THPO, neighborhood organizations, local historians, historic societies, others who may have an interest in the history of the area
  - Make an effort to coordinate with other federal reviews to avoid duplication of effort!
- Don't take any choice limiting actions
  - Anticipatory demolition

# Define Area of Potential Effects (APE)

- Area of Potential Effect (APE) is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist
- The APE is influenced by the scale and nature of an undertaking
- The APE should include areas of direct effect (any ground disturbance or physical alterations) as well as areas of indirect effect (visual, audio, atmospheric; including traffic patterns, etc.)

# SHPO's Role-Mandatory Consulting Party

- Concur in Agency Official's findings
- Provide access to information on known historic properties to the Agency Officials when requested
- Consult with Agency Official regarding evaluation of effects when requested
- Consult with Agency Official to resolve adverse effects
- Review and sign Memorandum of Agreement (MOA) or Programmatic Agreement (PA)

# Tribal Consultation

- This is government-to-government consultation which will be initiated by the Federal agency. For HUD projects, the RE is responsible for conducting consultation
  - [When to Consult with Tribes Checklist](#)
  - [Tribal Directory Assessment Tool](#) (TDAT)- links tribes to their counties of interest in a state
- Information Tribes may request to make an assessment during consultation:
  1. The lead agency or consulting firm with point(s) of contact, mailing address, phone number, and email address
  2. A description of the undertaking or proposed action, including the location, extent of impact(s), and maximum depth and horizontal extent of soil disturbance
  3. A description of the Area of Potential Effect (APE), including quality aerial maps clearly showing the boundaries and any photographs of the APE/study area/permit area
    - a. Also includes staging areas or utility improvements or modifications
  4. A list of previously conducted cultural resource studies within the APE and aerial maps clearly showing the coverage of previous surveys
  5. A descriptive list of any previously identified cultural resources within and/or adjacent to the APE/study area/permit area with any eligibility determinations for the National Register of Historic Places
  6. Any GIS file geodatabases and/or shapefiles associated with the undertaking/project
- Allow 30 days for consultation periods, many THPO's are understaffed

*Use of an Unanticipated Discoveries Plan is a great way to demonstrate good faith in the consultation process*

## Identify

The agency gathers information to decide if any historic properties in the area may be affected by the project.

- Historic properties are listed, or are eligible for listing, in the National Register of Historic Places.

If no historic properties are present, or if those present will not be affected by the project, the review may conclude here.

If at least one historic property is found that could be affected by the project, the federal agency must proceed to the assessment of effects. The agency must notify all consulting parties and invite their comments.



# Professional Qualification Standards

- [36 CFR Part 61](#)
  - The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities
  - History, Archaeology, Architectural History, Architecture, and Historic Architecture
  - May have specific expertise in preparing Section 106 agreement documents like MOAs
- Qualified Professionals may be used to prepare Section 106 documentation for the Agency Official, and are considered by HUD to be an eligible project expense

# What is a Historic Property?

Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the [National Register of Historic Places](#)

- Includes artifacts, records, and remains that are related to and located within such properties and properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization

# National Register of Historic Places

A historic resource must be significant at the local, state, or national level, under one or more of the following four criteria:

## **Criteria A**

Association with events that have made a significant contribution to the broad patterns of our history

## **Criteria B**

Association with the lives of persons significant in our past

## **Criteria C**

Embodiment of 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 that represent a significant and distinguishable entity

## **Criteria D**

Sites that have yielded, or may be likely to yield, important information about prehistory or history



# Identifying Historic Properties

- Resources in the APE that are over 45 years old should be evaluated for eligibility
  - Environmental reviews can last for up to 5 years. Identification should include resources that could reach the 50-year threshold for inclusion on the NRHP
- Resources that are eligible for inclusion in the NRHP should be treated the same as those that are listed
- Check SHPO records, Sanborn Maps, Census Data, local and internet archives, newspapers, city directories, etc.
- Utilization of 36 CFR Part 61 Qualified Professionals is highly recommended

# Local Historic Districts

- HDC approval is not required for Section 106, but can affect a project scope of work and final design
- Check your local commission requirements early in project planning
- Historic District Commissions (HDC) typically require a separate application and approval process, under a local ordinance, with design requirements specific to each individual district
- HDC applications should be coordinated early so the approved scope of work is properly captured in the Environmental Review Record

# Archaeology

- A lack of existing information or a record of previous ground disturbance does not indicate a lack of historic properties!
- Archeological investigations seek to identify historic properties that may be affected by a project and/or serve as mitigation prior to their loss if impacts cannot be avoided
- Requests from tribes and NHOs to keep information on sensitive sites confidential should be honored
  - Remember this when doing HEROS entries!
- Consult with your SHPO and interested tribes if archaeology fieldwork is recommended for a project

## Evaluate

The federal agency determines how historic properties might be affected by the project and whether any of those effects would be considered adverse. The agency does so in consultation with other participants in the review.

If there are no potential adverse effects to a historic property, the review may conclude here.

A finding of adverse effects requires further consultation on ways to resolve them.



# Historic Integrity

Once historic significance is established, seven (7) aspects of historic integrity are evaluated. **Integrity is the ability of a property to convey its significance.** One or more aspect may be applicable

- Location- Does the resource remain in the same place as it did during the period of significance?
  - Period of significance describes the time-period when a property achieved its significance
- Design- The elements that create the physical form, plan, space, structure, and (architectural) style of a property
- Setting- The physical environment
  - Some properties have settings that are designed and integral to the property, ex.
- Materials- The physical elements of the historic property
- Workmanship- evidence of a particular culture, people, or artisan
  - may include tooling, carving, painting, graining, turning, or joinery
- Feeling- The quality that a historic property has in evoking the aesthetic or historic sense of a past period of time. Feeling is intangible, and dependent upon a property's significant physical characteristics that convey its historic qualities
- Association- A link to an important person, event, or activity
- Buildings can be in poor condition and still maintain certain aspects of historic integrity
- Alterations over time or historic changes in use may themselves have historical, cultural, or architectural significance

# Secretary of the Interior (SOI) Standards and Guidelines

- [The Secretary of the Interior Standards for the Treatment of Historic Properties](#) address four treatments: preservation, rehabilitation, restoration, and reconstruction
- Technical guidance for each treatment is available through the [National Park Service Technical Preservation Services Publications](#)
- The publication guidelines are intended to promote responsible preservation practices that help protect the nation's irreplaceable cultural resources. They are advisory, not regulatory
  - New [guidance on replacement materials](#) was release in 2023
  - New guidance on [Building Codes for Historic Buildings](#) released in 2024

# SOI Treatment Definitions

**Preservation** means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.

**Rehabilitation** means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

**Restoration** means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

**Reconstruction** means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

# Determinations of Effect

No Historic Properties Affected (NHPA)- no historic resources were identified in the project APE. Section 106 Review complete

No Adverse Effect (NAE)-A historic resource is within the direct or indirect APE, but the project will not adversely affect the historic integrity. Section 106 Review complete

Conditional No Adverse Effect (CNAE)- completion of Section 106 Review is dependent on the completion of certain “conditions.” Conditions may include additional documentation such as: approval of final scope of work, results of phase II/III archaeology study or monitoring, tax credit certifications, etc.



## Resolve Adverse Effects

In the final step of the process, the agency explores measures to avoid or minimize the adverse effects.

Mitigation of adverse effects which cannot be avoided must reach agreement with the State (or Tribal) Historic Preservation Officer (and the ACHP in some cases) on specific measures to resolve them.



# Adverse Effects

An Adverse Effect may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register

Adverse Effects on historic resources make an undertaking ineligible for federal funds, unless mitigation can be agreed upon

Mitigation may give back to the community, enhance knowledge or protection of historic properties, and should accommodate the needs of all parties, especially those who ascribe value to the property

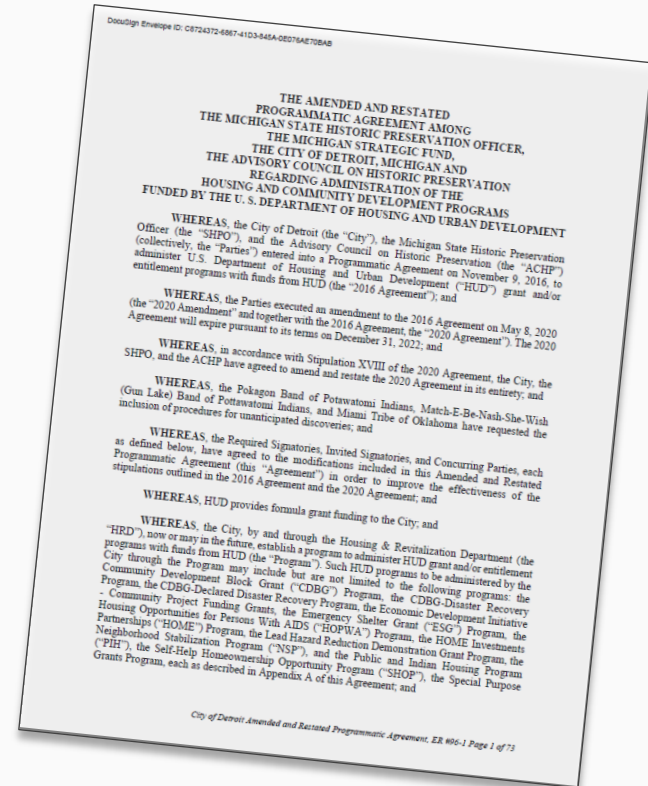
Mitigation is developed through consultation and typically results in creation of a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) that is filed with the ACHP

# Agreement Documents

- Memorandum of Agreement (MOA)-Appropriate to record the agreed upon resolution for a specific undertaking with a defined beginning and end, where adverse effects are understood.
- Programmatic Agreements (PA)
  - Program PA-to create a Section 106 process that differs from the standard review process and that will apply to all undertakings under a particular program
  - Project PA-may be appropriate when, prior to approving the undertaking, the federal agency cannot fully determine how a particular undertaking may affect historic properties

# Detroit's Programmatic Agreement (PA)

- Delegates some of the Section 106 review responsibilities normally reserved for the SHPO to the Housing and Revitalization Department's (HRD) Historic Compliance Team
  - Defines the Section 106 compliance process for HUD-funded projects to ensure regulatory compliance is met
- Provides a clear list of Section 106 exemptions
- Provides agreed upon terms and conditions to resolve potential adverse effects for complex undertakings
- It shortens review timelines (5-14 days internally vs 30 days each time SHPO is consulted)
- Requires a yearly report out to signatories and consulting parties
- Renew every 5 years
- [Detroit's Programmatic Agreement](#)



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# Programmatic Agreement Development

- If you are interested in creating a PA, HUD and ACHP have guidance and example agreements for reference
- Reach out to your SHPO for state specific guidance
- <https://www.hudexchange.info/environmental-review/historic-preservation/section-106-agreements/>
- [https://www.achp.gov/program\\_alternatives/pa](https://www.achp.gov/program_alternatives/pa)

# Section 106 integration with NEPA

Substitution of NEPA for Section 106-Some aspects of Part 58 Review can be utilized to substitute Section 106 to streamline to public involvement and notification process.

- Federal agencies are encouraged to combine public involvement efforts for the two reviews

COD requires Project Kickoff Meetings with federal funders, developers, and their consultants to gather information and outline expectations for Section 106 and NEPA

**\*IF PROJECT PLANS CHANGE AFTER COMPLETION OF THE ENVIRONMENTAL/SECTION 106 REVIEW, YOU MUST NOTIFY THE CONSULTING PARTIES AND REEVALUATE YOUR FINDINGS\***

*ACHP's handbook on integrating NEPA with Section 106 was published in 2013, it is currently being revised*

# Single Family Home Repair

- Detroit uses HUD's Tiered Review format for single family home repair (SFHR) programs. Section 106 cannot be cleared in the Tier I broad level review, so it is done in the Tier II review
- HRD's Preservation Compliance Specialist (PCS) receives a notification from SFHR program staff when an application for home repair is approved. This triggers the internal Section 106 review process. The PCS determines if the address is historic and verifies this through consultation with Detroit's Historic Designation Advisory Board
- If no historic properties are identified, a No Historic Properties Affected determination letter is issued, the rest of the Tier II review is completed and the project may move forward to construction
- If the property is historic, the PCS will review the scope of work. The tier II review is only completed once any outstanding Section 106 requirements are met
- We completed

# Buersmeyer Manor- 2024

Project Description: The proposed project included acquisition and rehabilitation of a 7 (seven) building apartment complex at 8500, 8508, 8520, 8534, 8550, 8564, 8580, and 8600 Wyoming Avenue, Detroit, Wayne County, Michigan 48204. The exterior portion of the proposed rehabilitation is to consist of the milling and capping of the parking lot, replacement of the decorative fence, landscaping, replacement of parking bollards, replacement of the dumpster enclosure, alley curb replacement, masonry repair, soffit replacement as needed, building cleaning, repair of damaged trim, seal coat all exterior concrete floors, replacement of fabric canopies, roof replacements, building gutter replacement, install new windows, replacement of exterior exhaust vents, door replacements, install new light fixtures, replacement of air conditioning units, and install new wayfinding signage. The Subject Property will retain its on-site parking of 47 parking spaces.



# Buersmeyer Manor- Part 58 and Section 106 Review

- Project included multiple federal funders including The City of Detroit and The Michigan State Housing Development Authority (MSHDA)
- A Section 106 application was submitted to HRD's Preservation Compliance Specialist (PCS) by a 36 CFR Part 61 qualified consultant
- Under the terms of our PA, the project was exempt from archaeology assessment and consultation with SHPO and Tribes was not required
- No historic resources were identified by the consultant. PCS verified this through internal research and consultation with Detroit's Historic Designation Advisory Board, as required by the PA
- HRD's PCS provided a **No Historic Properties Affected** Section 106 determination letter for the project
- Upon submittal of the final Environmental Assessment, HRD's PCS reviewed the Historic Preservation Section in HEROS for accuracy prior to project publication

# Case Study: Preserve on Ash I-III– North Corktown- 2021-TBD

- Project involves new construction of townhouses, single-family residences, a mix of multifamily housing, and a Community Empowerment Center
- Project Area occupies 31 formerly vacant parcels across 8 city blocks in a historically significant area
  - Forest: until c. 1800
  - Farmland: c. 1800-1875
  - Residential neighborhood: 1875-1973
  - Abandonment and demolition: 1973-2005
- Section 106 process:
  - Background research (early 2022 to July 2023)
  - POA I Fieldwork (July-August 2023)
  - POA I Reporting (August-October 2023)
  - POA II-III Fieldwork (September-October 2024)
  - POA II-III Reporting (October 2024-now)
  - Section 106 Determination (projected mid-2025)



# Case Study: Preserve on Ash I-III

- Archaeological fieldwork was required due to likelihood of historic archaeological deposits in the Project Area
- The urban environment required special methodology
  - Primary excavation conducted with backhoe
  - Hand excavation of selected features
- Resulted in identification of 31 NRHP-eligible archaeological sites, grouped into a new NRHP-eligible Archaeological District
  - Recovered over 3000 historic artifacts (donated to Wayne State University)
  - Artifacts and data will provide significant information on daily life in Detroit from 1875 to 2005
- Expected Determination: No Adverse Effect
  - Sites are eligible and the project will destroy them, but enough data was collected during evaluation fieldwork to avoid an Adverse Effect determination



# Useful Links

- ACHP PA/MOA template <https://www.achp.gov/sites/default/files/2018-06/GAD%20template%20MOA%202015.pdf>
- National Preservation Institute Standard Stipulations for MOA's <https://www.npi.org/standard-stipulations-memoranda-agreement-under-section-106-national-historic-preservation-act>
- ACHP 106 Flowchart <https://www.achp.gov/sites/default/files/2019-10/106%20Flow%20Chart%20Handout.pdf>
- U.S. Bureau of Indian Affairs Tribal Leaders Directory <https://www.bia.gov/bia/ois/tribal-leaders-directory/>
- ACHP guidance NEPA and Section 106 integration [https://www.achp.gov/integrating\\_nepa\\_106](https://www.achp.gov/integrating_nepa_106)
- HUD Model Letters/Agreements <https://www.hudexchange.info/programs/environmental-review/historic-preservation/section-106-agreements/>
- SOI Treatment Guidelines <https://www.nps.gov/tps/standards.htm>
- Council on Environmental Quality Citizens Guide to NEPA <https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf>
- The National Congress of American Indians Tribal Nations and the United States an Introduction [https://www.ncai.org/tribalnations/introduction/Tribal\\_Nations\\_and\\_the\\_United\\_States\\_An\\_Introduction-web-.pdf](https://www.ncai.org/tribalnations/introduction/Tribal_Nations_and_the_United_States_An_Introduction-web-.pdf)



# Questions?





2 Woodward Ave, Suite 908  
Detroit, Michigan



(313) 628-0044



ciavattonet@detroitmi.gov



<https://detroitmi.gov/departments/housing-and-revitalization-department/housing-development/hud-nepa-compliance>



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