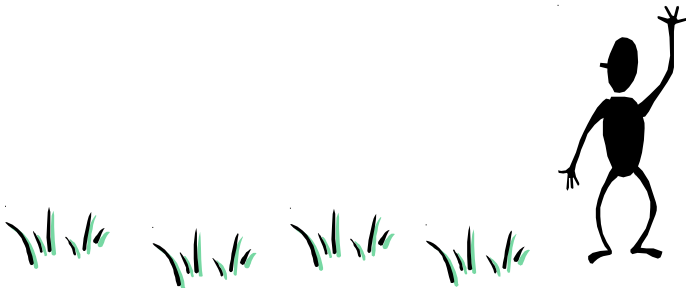


HISTORIC RESOURCES FOR SMARTIES

*A Publication of A.D. Marble & Company
375 East Elm Street
Suite 200
Conshohocken, Pennsylvania 19428*

June 2002



Introduction

The purpose of this booklet is to present an overview of the Section 106 process of the National Historic Preservation Act, and to help individuals, engineers, builders, planners, and agencies wind their way through this often-confusing and sometimes frustrating process. This booklet deals with the historic resources component of Section 106 only.

There are some key elements to remember:

- Section 106 only applies to federal actions (funded, licensed, permitted);
- The Process consists of identification, evaluation, and consultation;
- The federal agency is the party responsible for meeting the requirements of Section 106;
- The State Historic Preservation Office (SHPO) has an important consulting role, but does not possess the regulatory authority to stop a project.



Knowledge of these key factors, thorough research and clear presentation of data, will ensure a successful project that moves through the Section 106 process without any major surprises that might lead to potential project delays, redesigns, and costly overruns.

What is Section 106?

Section 106 is a part of the National Historic Preservation Act of 1966 (NHPA). NHPA was enacted largely because of public concern over the loss of many of our country's historic resources due to intensive infrastructure developments in the late 1950s and early 1960s. In the 1960s, federal preservation law applied to only a few nationally significant properties, and Congress recognized that new legislation was needed to protect the many historic properties of national, state, and local significance that were being threatened by federal actions. NHPA, strengthened and expanded by several amendments, has become the cornerstone of our country's historic preservation policy. It is important to note that the NHPA also includes archaeological resources of significance as well, which are not discussed in this booklet. The 106 process is similar for archaeological resources.

2

Who's Involved in the Section 106 Process?

The primary parties responsible for the Section 106 process include:

- the federal agency undertaking the activity (Federal Highway Administration [FHWA]) as the lead;
- the State Department of Transportation as their designee;
- the State Historic Preservation Office;
- others as appropriate.

The revised Section 106 regulations (issued in 1999) instituted a more inclusive process, where the federal agency must identify interested parties early in the process, and then coordinate with those parties throughout the Section 106 process. These parties could include local and county historical societies, planning departments, and other groups with an interest in cultural resources in a specific project region.



What is Section 106 Review?

Section 106 establishes the federal review procedure, which is designed to ensure that historic properties are taken into consideration during federal project planning and execution. The Advisory Council on Historic Preservation (ACHP), an independent federal agency, administers this review procedure.

What Does the NHPA Require?

The NHPA requires that all federal actions, either directly undertaken by a federal agency, funded by a federal program, or requiring a federal permit, must take into account the potential impacts of that action on significant historic properties. If an action meets one of these criteria, the project must go through the Section 106 process.

What is an Historic Property?

An historic property is any resource listed in or determined to be eligible for listing in the *National Register of Historic Places*. Historic properties can include archaeological sites, objects, structures, buildings, and districts. Section 106 protection extends to properties that possess significance but have not yet been listed or formally determined eligible for listing.



What Makes a Property “Significant”?

A property can be important for lots of reasons. The guidelines are specified by the Department of the Interior, and the National Park Service in the Code of Federal Regulations. Significant properties include:

- Properties that are associated with events that have made a significant contribution to our history; for example, the location where a significant Civil War battle took place (i.e., Gettysburg) and the influence that event had on historical development locally, statewide, or nationally.
- Properties that are associated with the lives of persons significant in our past; for example, the home of an important local, state, or national figure.
- Properties that embody the distinctive characteristics of a type, period, or method of construction, that represent the work of an architectural master, that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction. This criterion is mainly used for properties that are important for their architectural or engineering merit. An example would be a significant historic bridge that may illustrate a particular truss design.
- Properties that have yielded, or may be likely to yield, information important in prehistory or history. This guideline is mainly used for properties that have archaeological value.

It is important to remember that cultural resources may be important for more than one reason. An historic house may be significant as an excellent example of a federal style farmhouse, but may also have significance associated with the life of its original owner and the role he or she played in regional history. A correct assessment of significance according to *National Register* criteria and guidelines will evaluate each resource against all of the criteria, not simply basing the evaluation on the architectural appearance of the resource. Frequently, significance may be found in the history and associations that a property may have, details of which can only be revealed through archival research.



What is the Age Cut-off for Properties to be Assessed Under Section 106?

Properties that are greater than fifty years of age qualify to be surveyed and evaluated according to *National Register* criteria. However, properties that have achieved outstanding significance within the recent past may be eligible for listing in the *National Register*. For example, the Beth Shalom Synagogue in Montgomery County, Pennsylvania was not completed until the 1950s, but this important architectural landmark was designed by Frank Lloyd Wright and is listed in the *National Register of Historic Places*.

What is the Effect of Having a Property Determined to be Eligible for or Listed in the *National Register of Historic Places*?

Inclusion in the *National Register* or a determination of eligibility for inclusion, plays three major roles.



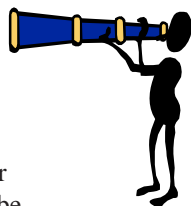
- 1) It creates a list of properties that can be used as a planning tool by government, private organizations, and individuals to help identify cultural resources worthy of protection.
- 2) It is a legal instrument that ensures that federal, federally-assisted, or federally-licensed undertakings, affecting properties in or eligible for listing in the *National Register*, will undergo Section 106 review and comment.

3) It makes properties eligible for tax benefits that may be available at the local, state, or federal levels.

What is the Section 106 Process?

The Section 106 standard review process is outlined in the federal regulations issued by the ACHP, entitled “Protection of Historic Properties.” These regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The guidelines, as well as guidance documents, can also be found at the ACHP internet website (www.achp.org). The following are steps used for identifying and reviewing historic properties.

Step 1: Identify and Evaluate Historic Properties



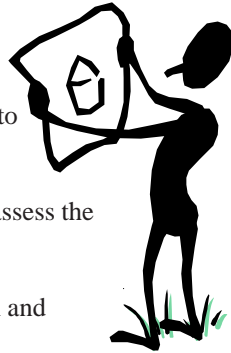
The first step in initiating a project is to assess whether there are historic properties that are present that might be affected by a project. If the agency determines that there are properties present, it must take steps to conduct a full survey and evaluation of the potential significance of these properties. For projects conducted by the Pennsylvania Department of Transportation (PENNDOT), cultural resource professionals at the District level must coordinate in order to assess the project and its potential cultural resource requirements. Field efforts (in Pennsylvania) should begin with a file search at the Pennsylvania Historical and Museum Commission to investigate whether there are any known resources within the general project vicinity. In addition, contact should be made with local and county historical societies to see if any other surveys have been undertaken.



The identification of standing historic structures will include background research, field survey, completion of survey forms, and the preparation of a Determination of Eligibility Report. This document should contain a historic context statement, a detailed historical development section, as well as the discussion of standing historic resources. Discussions of each resource should contain a physical description, history of the property, and an assessment of its potential significance according to *National Register* criteria.

The identification of archaeological resources is also a critical element in the Section 106 process. Archaeological resources associated with Native American occupations are often present within a project area, with sites dating to as early as 13,000 B.C. Archaeological sites relating to historic land use could also be present in a project area. These land uses usually involved agriculture, industry, residential, and/or commercial activities. The Section 106 process can include:

- a Phase IA Survey (background research);
- a full Phase I Archaeological Survey (field testing to identify the presence or absence of sites);
- a Phase II Archaeological Survey (field survey to assess the size and significance of an archaeological site);
- and a Phase III Data Recovery (full site excavation and mitigation if a significant site cannot be avoided).

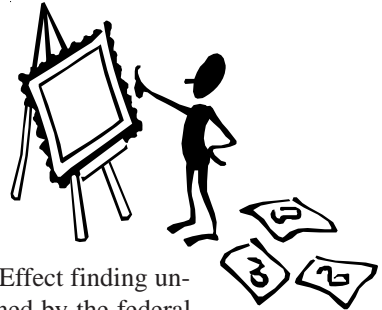


The evaluation of a site's significance is the responsibility of the federal agency, in consultation with the SPHO. If disagreements occur regarding the eligibility of a specific resource, the agency may request a formal determination of eligibility from the Secretary of the Interior.

Step 2: Assess Effects

If historic properties are found to be within the limits of the proposed project, the federal agency must assess what effect the undertaking will have on those significant resources. The agency works closely with the SHPO and also considers the views of other interested parties. The types of effects a project can have on a resource might include direct impacts like, the taking of a building or a portion of a property, increases in noise levels, visual changes to a property's setting. Indirect impacts on a resource might comprise changes in traffic patterns and/or access to a property. To accurately assess a proposed project's impacts, both direct (immediate) and indirect (in the foreseeable future) impacts must be addressed and documented.

It is the goal of all resource agencies to avoid and/or minimize any negative impacts to cultural resources. Thus, projects evolve over time during the planning process to ensure the most sensitive alternative is carried forward. If it is determined that a proposed project will negatively effect a significant resource, the project will have an Adverse Effect finding under Section 106. This finding is determined by the federal agency that is funding, designing, building, and/or permitting the proposed project. The SHPO is given the opportunity to comment and concur on the finding. If the SHPO disagrees with an Effect finding (perhaps determining that the project would have an Adverse Effect when the Agency found No Adverse Effect) then the matter is referred to the ACHP for comment.



If an adverse effect is expected to occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted may include local governments, Native American tribes, property owners, other members of the public, and the ACHP. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

Step 3: Consultation



If consultation proves unproductive, the agency, SHPO, or ACHP itself may terminate consultation. The agency must submit appropriate documentation to the ACHP and request written comments. Consultation usually results in a successful resolution of Section 106 concerns.



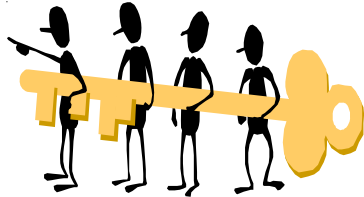
Step 4: Advisory Council on Historic Preservation Comment

The ACHP may comment during the aforementioned Step 3 by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains ACHP comment by submitting the MOA to the ACHP for review and acceptance. The ACHP can accept the MOA, request changes, or opt to issue written comments. If consultation is terminated, the ACHP issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed with Project

If the MOA is executed, the agency can proceed with its undertaking under the terms of the MOA. In the absence of a MOA, the agency head must take into account the ACHP's written comments when deciding whether or how to proceed.

Helpful Tips for Successful Section 106 Efforts:



- Involve the SHPO early in the process.
- Notify and involve local and regional historical groups and societies.
- Build upon previous studies in the specific project area.
- Place all resources within regional historic contexts.
- Listen to all opinions.
- Remember that it is the agency who has the legal responsibility to carry out Section 106, and the SHPO's role is to consult and comment. The agency can and should make its own eligibility determinations, as well as Effect determinations.

Key Agencies and Contacts

I. Federal Agencies

U.S. Department of the Interior, National Park Service

National Register Program

1849 C Street NW, NC 400

Washington, D.C. 20240

Contact: Carol Shull, Keeper of the *National Register of Historic Places*
202-343-9536

Advisory Council on Historic Preservation

Office of Planning and Review

Old Post Office Building

1100 Pennsylvania Avenue, NW, Suite 809

Washington, D.C. 20004

Contact: John M. Fowler, Executive Director
202-606-8503



National Trust for Historic Preservation

1785 Massachusetts Avenue, NW

Washington, D.C. 20036

Contact: Richard Moe, President
202-588-6000 (FAX 202-588-6038)

U.S. Department of Transportation

Stephen M. Shapiro, Historic Preservation Officer, Environmental Division

Office of Transportation Regulatory Affairs, Department of Transportation

400 Seventh Street, S.W.,

Washington, D.C. 20590

202-366-4866 (FAX 202-366-7618)

Federal Highway Administration

HEPH Room 3301

400 Seventh Street, S.W.

Washington, D.C. 20590

Contact: MaryAnn Naber, 202-366-2060

II. State Agencies

Pennsylvania:

State Historic Preservation Office – Pennsylvania Historical and Museum
Commission, Bureau for Historic Preservation
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120-0093



PHMC Executive Director: Dr. Brent Glass
For architectural questions, contact Dan Diebler, Chief, Division of Historic
Preservation, 717-783-8946
For archaeological questions, contact Dr. Kurt W. Carr, Chief,
Division of Archaeology and Protection, 717-783-9926

Pennsylvania Department of Transportation
Environmental Quality Assurance Division
Commonwealth of Pennsylvania
Forum Place - 7th Floor
555 Walnut Street
Harrisburg, PA 17101-1900
717-772-0830 (FAX 717-772-0834)
Contact: Dr. Ira Beckerman

New Jersey:

State Historic Preservation Office
State of New Jersey Department of Environmental Protection
Division of Parks and Forestry
P.O. Box 404, Trenton, NJ 08625-0404
609-292-2023 (FAX 609-984-0578)
Director: Dorothy Guzzo, 609-984-0176
For general questions related to Section 106 review:
Charles Scott, 609-633-2396
For archaeological questions: Michael Gregg, 609-633-2395



New Jersey Department of Transportation
Bureau of Environmental Analysis
Cultural Resources
1035 Parkway Avenue
Trenton, NJ 08625
609-530-2824 (FAX 609-530-3767)

Maryland:

State Historic Preservation Office
 Maryland Historical Trust
 Department of Housing and Community Development
 100 Community Place
 Crownsville, Maryland 21032-2023
 410-514-7629 (FAX 410-987-4071)
 Chief, Office of Research,
 Survey and Registration:
 Orlando Ridout, 410-514-7642
 For general questions related to Section 106 review:
 Andrew Lewis, 410-514-7630
 For archaeological questions:
 Elizabeth Cole, 410-514-7631

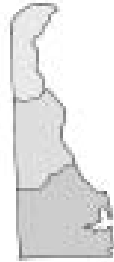


Maryland State Department of Transportation
 State Highway Administration
 707 North Calvert Street
 Baltimore, Maryland 21202
 For archaeological questions: 410-545-8559
 For architecture questions: Anne Bruder, 410-545-2879

Delaware:

Delaware State Historic Preservation Office
 15 The Green
 Dover, Delaware 19901-3611
 302-739-5685 (FAX 302-739-5660)
 Daniel R. Griffith, State Historic Preservation Officer
 For archaeological questions: Alice Guerrant

Delaware Department of Transportation
 P.O. Box 778
 Dover, DE 19903
 800-652-5600
 302-760-2080
 Contact Kevin Cunningham, 302-760-2125



Section 106 Acronyms

APE	Area of Potential Effect
ACHP	Advisory Council on Historic Preservation
CRM	Cultural Resources Management
CFR	Code of Federal Regulations
HABS	Historic American Building Survey
HAER	Historic American Engineering Record
MHT	Maryland Historical Trust
NHPA	National Historic Preservation Act
NPS	National Park Service
NR	<i>National Register of Historic Places</i>
PHMC	Pennsylvania Historical and Museum Commission
SHPO	State Historic Preservation Office



Useful Websites for Section 106 Issues

National Park Service: www.cr.nps.gov

Advisory Council on Historic Preservation: www.achp.gov

Cultural Resource Management Magazine: www.cr.nps.gov/crm

National Register of Historic Places: www.nrhpo.org

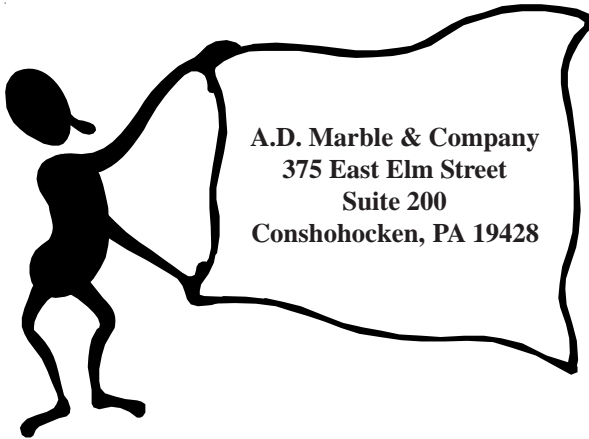
National Trust for Historic Preservation: www.nationaltrust.org

Federal Highway Administration: www.fhwa.dot.gov

We Can Help

Now that you know how the Section 106 process works, you may be ready to try it for yourself -- with help.

Your best bet is to hire an expert who has been through all the quagmires. We at A.D. Marble & Company would like to help you. We have a staff of cultural resource specialists who have done everything discussed in this book, and then some. If you would like more information, contact us at:



Phone: 484.533.2500

Fax: 484.533.2599

Email: genlmail@admarble.com

If you would like additional copies of this book, please contact Kim Mallatratt at A.D. Marble & Company (kmallatratt@admarble.com).

©2001 by A.D. Marble & Company
Conshohocken, PA
All rights reserved.

Inquiries should be addressed to Kim Mallatratt at kmallatratt@admarble.com. No part of this booklet may be reproduced without the written consent of A.D. Marble & Company.

A.D. Marble & Company Contributors:

Alan Tabachnick

Barbara Copp

Anne D. Marble

Elaine L. Branigan, Editor/Desktop Publisher

Kimberly D. Mallatratt, Marketing Administrator