

# TEXAS HISTORICAL COMMISSION

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## SECTION 106 REVIEW FOR HOMEOWNERS

You may wonder why a project on your house has been submitted to the Texas Historical Commission (THC) for review. Section 106 of the National Historic Preservation Act of 1966 requires that federal agencies consider the effects their actions (or “undertakings”) may have on historic properties. We understand that many homeowners may not be aware of the requirements of Section 106, so we have prepared this document to help you understand this process and how it applies to your house.

The National Historic Preservation Act was introduced due to growing public concern that massive government-sponsored construction projects, such as the interstate highway system and urban renewal, were destroying our nation’s historic resources. This law established a national policy for the protection of important historic buildings and archeological sites, and outlined responsibilities for federal and state governments to preserve our nation’s heritage. Section 106 of the National Historic Preservation Act requires that federal agencies consider historic preservation as part of their planning process and initiate consultation with the State Historic Preservation Officer (SHPO). In Texas, the SHPO is the executive director of the THC.

Federal actions that require Section 106 consultation include projects performed by a federal agency, as well as those funded, permitted, or licensed by a federal agency. A reservoir built by the U.S. Army Corps of Engineers is an example of a federal undertaking, as is a reservoir requiring a permit from the Corps yet built by another entity. Federally funded undertakings can be less obvious, such as U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funds administered by the Texas Department of Housing and Community Affairs (TDHCA). Local governments may also use CDBG funds to rehabilitate or demolish housing. Since the original funding source is federal, Section 106 regulations apply. HUD typically delegates responsibility for Section 106 coordination to the organization receiving federal funds, so TDHCA or your city government may be responsible for handling Section 106 for your project.

How does Section 106 work for these types of projects? In a nutshell, the Section 106 process begins by the federal agency (or the responsible entity under HUD) identifying the federally funded action. This action might be rehabilitation of an existing residence, demolition and new construction, lead paint abatement, or a variety of other activities. Once the undertaking is identified, the second step of the Section 106 process is to determine whether the project will involve a historic building or site. This usually means that information on the property is submitted to the THC. If the THC determines the property is not historic or that there are no historic properties affected by the project, the Section 106 consultation process is complete. On the other hand, if a historic property is identified, the effects of the project on the historic property must be assessed. This can result in one of three determinations:

- 1. No Historic Properties Affected.** This determination means either there are no historic properties present or that there are historic properties present but the undertaking will have no effect upon them. In either case, consultation is complete and the project may proceed.
- 2. No Adverse Effect.** This determination means that a historic property is present and will be affected by the undertaking, but the project will not alter the property’s historic character or integrity. Consultation is complete and the project may proceed.
- 3. Adverse Effect.** An adverse effect determination means that a historic property is present and the project as planned will alter or destroy its historic characteristics or integrity. Section 106 requires that federal agencies seek ways to avoid, minimize, or mitigate any adverse effects on historic properties. This requires ongoing consultation with the THC, consulting parties, and the public to seek alternatives.

### Frequently Asked Questions

#### **What properties are considered historic in a Section 106 review?**

Historic properties are defined as any prehistoric or historic district, site, building, structure, or object that is listed in or eligible for the National Register of Historic Places. To be considered eligible, a property must generally be at least 50 years old, retain much of its historic appearance and materials, and be associated with events, activities, or developments that were important in the past.

**My house is not listed as a historic property. Why are you reviewing the project?**

Section 106 defines a historic property as one that is listed in or *eligible for* listing in the National Register. This means that your house may be considered “historic” even though it does not currently have any designations.

**If the SHPO determines my property is National Register eligible, does that mean it will be listed?**

A determination that a property is eligible for the National Register during the Section 106 process will not result in actual listing of the property. A property’s historic status must be assessed as part of the review of federal undertakings, but the formal nomination and listing process for the National Register is a separate action. Also, a privately owned property may not be listed in the National Register over the objection of its owner or, in the case of a district, over the objection of a majority of owners.

**Will the SHPO have a say in what I do to my house from this point forward?**

No. Just because your property has been determined National Register-eligible does not mean that our agency will have any ongoing review authority. The THC’s review applies only to the federal project. You will not need to coordinate with us on anything you do to your house in the future with private or non-federal funding.

**My house was determined National Register eligible, and now the SHPO is reviewing the rehabilitation and repair work that will be performed. How does the SHPO review the project?**

We evaluate proposed changes based on the Secretary of the Interior’s [Standards for the Treatment of Historic Properties](#). The *Standards* are guidelines for appropriate work to historic buildings, and a project that meets the *Standards* would be determined to have no adverse effect on the historic property.

**How long will it take for the SHPO to clear my project?**

There is no simple answer to this question. By law, the SHPO has 30 days to comment at each step of the review process. This does not necessarily mean that our review is completed in 30 days—if we are not provided sufficient information, we may have to request additional information before we can complete our review. If we determine that the project will have an adverse effect on your property, then steps must be taken to resolve the adverse effects. The timeframe will vary on a case-by-case basis.

**What types of activities are determined to be adverse effects?**

An adverse effect is an action that may directly or indirectly alter any of the characteristics that qualify the property for inclusion in the National Register. Adverse effects include demolition of an historic property, alteration that is not consistent with the *Standards* (such as replacement of historic windows or replacement of historic wood siding with fiber cement siding), or relocation of a property from its original setting.

**If there’s an adverse effect, does this mean my project can’t go forward?**

Section 106 is federally required consultative process that encourages historic preservation, but it does not mandate a preservation-oriented outcome. We try to work with the federal agency to alter a project in a manner that avoids adverse effects, but sometimes there is no way for a project to proceed without harming historic properties. When an adverse effect cannot be avoided, the federal agency must look at ways to mitigate the harm done to historic properties and enter into a legally binding agreement called a Memorandum of Agreement to ensure the agreed-upon mitigation is carried out.

If you have any questions, please call our office to speak with a project reviewer. Your project reviewer can be found on the THC website at <http://www.thc.state.tx.us/contactus/cot106reviewers.shtml>, or call our main number at 512.463.6100. Detailed information on the Section 106 process can be found on the Advisory Council for Historic Preservation web site (<http://www.achp.gov/>).

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