



## HERITAGE PRESERVATION COMMISSION AGENDA

PUBLIC MEETING ROOM

WEDNESDAY, MARCH 16, 2022

6:00 PM

1. Call to Order
2. Approval of the Minutes
3. General Heritage Preservation Items
  - A. Citizen Comment Period
  - B. Annual Review of Commission By-Laws
  - C. MnDOT Request to Participate in Section 106 Review Process regarding Sakatah Singing Hills Trail Improvement Plans
4. Design Reviews - None
5. Items for Discussion
  - A. Continued Discussion of Demolition by Neglect
6. Adjournment



**Request for Action**

**TO:** Faribault Heritage Preservation Commission  
**FROM:** Peter Waldock, AICP Planning Coordinator  
**MEETING DATE:** March 16, 2022  
**SUBJECT:** Annual Review of Commission By-Laws

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**BACKGROUND:**

The Heritage Preservation Commission (HPC) is asked to annually review and update or approve the Commission By-Laws. Last year the HPC updated the By-Laws to revise the meeting schedule to meet on the third Wednesday of each month instead of Mondays. The staff does not know of any needed revisions this year. The Commissioners are asked to review the current By-Laws and determine if updates are needed.

**REQUESTED ACTION:**

Review and approve the HPC By-Laws for 2022.

**ATTACHMENTS:**

1. By-laws HPC 2021 Approved November 8, 2021

Faribault Heritage Preservation Commission  
**BYLAWS**

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Section 1.     Annual Meeting

The annual meeting of the Heritage Preservation Commission shall be the first regular meeting in the month of February of each year. Such meeting shall allow for the election of officers for the ensuing year and such other business as shall be scheduled by the Heritage Preservation Commission.

Section 2.     Regular Meetings

Regular meetings of the Heritage Preservation Commission shall be held at the City Hall at 6:00 P.M. on the third Wednesday of each month. At such meetings the Commission shall consider all matters properly brought before the Commission. Notice of meetings to each member need only be in the form of the Agenda for said meeting. A regular meeting may be cancelled or rescheduled by the Commission at a prior meeting.

Section 3.     Special Meetings

The chairman or five members of the Commission may call a special meeting. Such meetings shall be called with a seventy-two hour notice to all Commission members and members of the news media.

Published notice in the official newspaper shall also be given; notice shall also be posted on the City Hall Bulletin Board. Either or both notices shall specify: (1) items to be considered at the meeting, and (2) the date, time and place of meeting. Special meetings shall be held in City Hall unless the Commission has determined that other facilities are to be used.

Section 4.     Quorum

At any meeting of the Heritage Preservation Commission, a quorum shall consist of a simple majority of members of the Commission, based on a commission size of seven members. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a subsequent date.

Section 5.     Voting

At all meetings of the Heritage Preservation Commission, each member attending shall be entitled to cast one vote. Voting shall be by voice. In the event that any member of the Heritage Preservation Commission shall feel that he has a conflict of interest in any matter that is on the agenda, he shall voluntarily excuse himself,

vacate his seat, and refrain from discussing and voting on said item as a Heritage Preservation Commissioner. The secretary shall record in the minutes that no vote was cast by such member. The affirmative vote of a simple majority of members of the commission as provided in Section 4 shall be necessary for the adoption of any Resolution or other voting matter.

Section 6. Proceedings

- a. At any regular meeting of the Heritage Preservation Commission the following shall be the order of business. (1) Call to Order; (2) Minutes of Previous Meeting; (3) General Heritage Preservation Items; (4) Designs Reviews; (5) Adjourn.
- b. Each formal action of the Heritage Preservation Commission required by law, city charter or ordinances shall be embodied in a formal Resolution duly entered in full in the Minute Book after an affirmative vote as provided in Section 5.

Section 7. Rules of Procedure

All meetings of the Heritage Preservation Commission shall be conducted in accordance with Robert's Rules of Order.

Section 8. Officers

The officer of the Heritage Preservation Commission shall consist of a Chairman and Vice-Chairman elected by the commission at the annual meeting for a term of one year. The Director of Community Development or designated staff liaison shall be the Secretary of the Commission. In the absence of the Secretary, the presiding officer shall designate an acting Secretary. No member may serve more than two full consecutive terms as chairman.

Section 9. Duties of Officers

The duties and powers of the officers of the Heritage Preservation Commission shall be as follows:

- a. Chairman:
  1. To preside at all meetings.
  2. To call special meetings in accordance with these By-Laws.
  3. To sign all documents of the Commission.
  4. To see that all actions are properly taken.
- b. Vice Chairman:
  1. During the absence, disability or disqualification of the Chairman, the Vice Chairman shall exercise or perform all the duties and be subject to all the responsibilities of the Chairman.

c. Secretary

1. To keep minutes of all meetings, in an appropriate minute book.
2. To give or serve all notices require by law or by these By-Laws.
3. To prepare the agenda for all meetings.
4. To be custodian of all records.
5. To handle funds allocated to the Commission.
6. To sign official documents of the Commission.

Section 10. Committees

The Heritage Preservation Commission may establish standing committees for a term of one (1) year. After the term of one year, a committee may be established upon review. Also Ad Hoc Committees may be established to address and study various issues.

Section 11. Attendance

Each member of the Heritage Preservation Commission who has knowledge of the fact that he will not be able to attend a scheduled meeting of the Commission shall notify the Community Development Department at City Hall at the earliest possible opportunity and, in any event, prior to 4:30 p.m. on the day of the meeting. The Director of Community Development or staff liaison shall notify the chairman in the event that the projected absences will produce a lack of quorum.

Section 12. Vacancies

Should any vacancy occur among the members of this Heritage Preservation Commission by any reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the City Administrator by the Secretary along with a recommended replacement to the vacancy. It is desired by the Heritage Preservation Commission that the new commission member have interest or knowledge in architectural design or a construction professional that has experience in the field of historic preservation. Should any vacancy occur among officers of the Commission, the vacant office should be filled in accordance with Section 8 of these By-Laws, such officer to serve the unexpired term of the office in which such vacancy shall occur.

Section 13. City Code Recognized

Chapter 30 of the Faribault Code of Ordinances establishing this Heritage Preservation Commission and all other chapters referring to this Commission are hereby recognized and are to be complied with.

Section 14. Amending By-Laws

November 08, 2021

These By-Laws may be amended at any meeting of the Heritage Preservation Commission provided that notice of said proposed amendment is given to each member in writing at least five days prior to said meeting.

These By-Laws shall take effect upon adoption and all prior rules and By-Laws are rescinded.

Adopted this 26<sup>th</sup> day of August 1981.

Amended this 15<sup>th</sup> day of July 2003

Amended this 20<sup>th</sup> day of November 2007

Amended this 15<sup>th</sup> day of July 2008

Amended this 16<sup>th</sup> day of March 2010

Amended this 16<sup>th</sup> day of December 2019

Amended this 17<sup>th</sup> day of November 2021

**ADOPTED AND APPROVED** by the Heritage Preservation Commission of the City of Faribault, Minnesota this 17<sup>th</sup> day of November 2021.

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David Sauer, Chairperson

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Deanna Kuennen, Director  
Department of Community and Economic Development



**Request for Action**

**TO:** Faribault Heritage Preservation Commission  
**FROM:** Peter Waldock, AICP Planning Coordinator  
**MEETING DATE:** March 16, 2022  
**SUBJECT:** MnDOT Request to Participate in Section 106  
Review Process regarding Sakatah Singing Hills  
Trail Improvement Plans

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**BACKGROUND:**

The Heritage Preservation Commission (HPC) has been invited by the Minnesota Department of Transportation (MnDOT) to participate in consultation on trail improvements proposed for the Sakatah Singing Hills State Trail through Faribault. MnDOT is proposing accessibility improvements to the trail for compliance with Americans with Disabilities Act (ADA) requirements. The project will include trail sections in LeSeur and Rice Counties. A portion of the trail passes through the City of Faribault. Federal funding requirements trigger historic preservation review from local jurisdictions that the trail serves.

**REQUESTED ACTION:**

Approve Participation in the Section 106 review process for the Sakatah Singing Hills State Trail Improvements through the City

**ATTACHMENTS:**

1. MnDOT Invitation Letter Dated 3/10/2022
2. Citizens Guide to Sec. 106 Review

March 10, 2022

Peter Waldock  
Faribault Heritage Preservation Commission  
Faribault City Hall  
208 First Avenue NW  
Faribault, MN 55021

Re: FRTP D006-16-4C, Sakatah Singing Hills State Trail: ADA Intersection Improvements, Le Sueur and Rice Counties

Dear Peter Waldock:

On behalf of the Federal Highway Administration (FHWA), I am extending an invitation to the Faribault Heritage Preservation Commission (HPC) to participate in the Section 106 process for the Sakatah Singing Hills State Trail ADA Intersection Improvements, a project sponsored by the Minnesota Department of Natural Resources (maps attached).

The project is federally funded by FHWA and must comply with Section 106 of the National Historic Preservation Act (54 USC 300108) and its implementing regulations, 36 CFR 800. Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties that are listed in, or are eligible for inclusion in, the National Register of Historic Places. The Minnesota Department of Transportation Cultural Resources Unit (MnDOT CRU) is acting on behalf of the FHWA in carrying out certain aspects of the Section 106 process for this project under the terms of the *Programmatic Agreement Among the Federal Highway Administration, the Minnesota State Historic Preservation Office, the Advisory Council on Historic Preservation; the Department of the Army, Corps of Engineers, St. Paul District; and the Minnesota Department of Transportation; Regarding Implementation of the Federal-Aid Highway Program in Minnesota* (Statewide PA).

The project consists of ADA accessibility improvements at 24 intersections along the Sakatah Singing Hills State Trail between Waterville in Le Sueur County and Faribault in Rice County. The trail is within the Chicago Great Western Railroad Corridor (XX-RRD-CGW001), which has been evaluated as eligible for inclusion in the National Register of Historic Places under National Register Criterion A in the areas of industry, commerce, agriculture, and transportation. Six of the trail intersections proposed for ADA improvements are within the municipal boundaries of the City of Faribault (Intersections #19 through #24). Proposed improvements include installation of concrete aprons, painting stop bars, cutting or filling steep or fluctuating grades

at intersections/stopping points, installation of concrete sidewalks, concrete curb and gutter, and culverts in limited locations. All proposed construction locations are on the previously developed state trail, at intersections with roads. The Area of Potential Effects (APE) is discontinuous and consists of the horizontal and vertical extent of the project's construction limits at each intersection slated for ADA improvements, including any known staging areas.

Local governments are entitled to participate in the Section 106 process as consulting parties, along with the Minnesota State Historic Preservation Office (MnSHPO), Indian tribes, and other interested organizations and individuals. Consulting parties can share their views, review pertinent project information, offer ideas, and consider possible solutions together with the Federal agency and other consulting parties. Consulting parties play an active and important role in determining how potential effects to historic properties will be avoided, minimized, or mitigated during the planning and implementation of a proposed project. For more information, see: <https://www.achp.gov/sites/default/files/documents/2017-01/CitizenGuide.pdf>.

We would welcome the involvement of the Faribault HPC in the Section 106 consultation for the project, especially if the HPC has information about historic properties within the project's APE or is concerned about potential effects to the Chicago Great Western Railroad Corridor. If you would like to participate in consultation, please let us know of your interest in writing within 30 days of your receipt of this letter. Please do not hesitate to contact me if you have any questions, require additional information on the historic properties or potential effects, or would like to schedule a meeting to discuss the project.

Sincerely,



Barbara A.M. Howard, Historian  
[Barbara.Howard@state.mn.us](mailto:Barbara.Howard@state.mn.us)  
651-366-3636

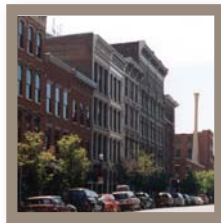
Encl. Area of Potential Effects (APE) Map

# *Protecting Historic Properties*

ADVISORY COUNCIL ON HISTORIC PRESERVATION

## *Protecting Historic Properties:*

# A CITIZEN'S GUIDE TO SECTION 106 REVIEW



**WWW.ACHP.GOV**

*Preserving America's Heritage*

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### COVER PHOTOS:

*Clockwise, from top left:* Historic Downtown Louisville, Kentucky; Section 106 consultation at Medicine Lake, California; bighorn sheep petroglyph in Nine Mile Canyon, Utah (photo courtesy Jerry D. Spangler); Worthington Farm, Monocacy Battlefield National Historic Landmark, Maryland (photo courtesy Maryland State Highway Administration).

## About the ACHP

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The mission of the Advisory Council on Historic Preservation (ACHP) is to promote the preservation, enhancement, and productive use of the nation's historic resources and advise the President and Congress on national historic preservation policy.

The ACHP, an independent federal agency, also provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Preserve America program.

The 23-member council is supported by a professional staff in Washington, D.C. For more information contact:

Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 803  
Washington, D.C. 20004  
(202) 606-8503  
[www.achp.gov](http://www.achp.gov)

## Introduction

Proud of your heritage? Value the places that reflect your community's history? You should know about Section 106 review, an important tool you can use to influence federal decisions regarding historic properties. By law, you have a voice when a project involving federal action, approval, or funding may affect properties that qualify for the National Register of Historic Places, the nation's official list of historic properties.

This guide from the Advisory Council on Historic Preservation (ACHP), the agency charged with historic preservation leadership within federal government, explains how your voice can be heard.

Each year, the federal government is involved with many projects that affect historic properties. For example, the Federal Highway Administration works with states on road improvements, the Department of Housing and Urban Development grants funds to cities to rebuild communities, and the General Services Administration builds and leases federal office space.

Agencies like the Forest Service, the National Park Service, the Bureau of Land Management, the Department of Veterans Affairs, and the Department of Defense make decisions daily

about the management of federal buildings, parks, forests, and lands. These decisions may affect historic properties, including those that are of traditional religious and cultural significance to federally recognized Indian tribes and Native Hawaiian organizations.

Projects with less obvious federal involvement can also have repercussions on historic properties. For example, the construction of a boat dock or a housing development that affects wetlands may also impact fragile archaeological sites and require a U.S. Army Corps of Engineers permit. Likewise, the construction of a cellular tower may require a license from the Federal Communications Commission and might compromise historic or culturally significant landscapes or properties valued by Indian tribes or Native Hawaiian organizations for traditional religious and cultural practices.

These and other projects with federal involvement can harm historic properties. The Section 106 review process gives you the opportunity to alert the federal government to the historic properties you value and influence decisions about projects that affect them.

### *Public Involvement Matters*



Dust from vehicles may affect historic sites in Nine Mile Canyon, Utah. (photo courtesy Jerry D. Spangler; Colorado Plateau Archaeological Alliance)

## What is Section 106 Review?

In the National Historic Preservation Act of 1966 (NHPA), Congress established a comprehensive program to preserve the historical and cultural foundations of the nation as a living part of community life. Section 106 of the NHPA is crucial to that program because it requires consideration of historic preservation in the multitude of projects with federal involvement that take place across the nation every day.

Section 106 requires federal agencies to consider the effects of projects they carry out, approve, or fund on historic properties. Additionally, federal agencies must provide the ACHP an opportunity to comment on such projects prior to the agency's decision on them.

Section 106 review encourages, but does not mandate, preservation. Sometimes there is no way for a needed project to proceed without harming historic properties. Section 106 review does ensure that preservation values are factored into federal agency planning and decisions. Because of Section 106, federal agencies must assume responsibility for the consequences of the projects they carry out, approve, or fund on historic properties and be publicly accountable for their decisions.

### *Conservation*



The National Soldiers Monument (1877) at Dayton (Ohio) National Cemetery was cleaned and conserved in 2009 as part of a program funded by the American Recovery and Reinvestment Act. (photo courtesy Department of Veterans Affairs)

## Understanding Section 106 Review

Regulations issued by the ACHP spell out the Section 106 review process, specifying actions federal agencies must take to meet their legal obligations. The regulations are published in the Code of Federal Regulations at 36 CFR Part 800, "Protection of Historic Properties," and can be found on the ACHP's Web site at [www.achp.gov](http://www.achp.gov).

Federal agencies are responsible for initiating Section 106 review, most of which takes place between the agency and state and tribal or Native Hawaiian organization officials. Appointed by the governor, the State Historic Preservation Officer (SHPO) coordinates the state's historic preservation program and consults with agencies during Section 106 review.

Agencies also consult with officials of federally recognized Indian tribes when the projects have the potential to affect historic properties on tribal lands or historic properties of significance to such tribes located off tribal lands. Some tribes have officially designated Tribal Historic Preservation Officers (THPOs), while others designate representatives to consult with agencies as needed. In Hawaii, agencies consult with Native Hawaiian organizations (NHOs) when historic properties of religious and cultural significance to them may be affected.

### **To successfully complete Section 106 review, federal agencies must do the following:**

- ▶ gather information to decide which properties in the area that may be affected by the project are listed, or are eligible for listing, in the National Register of Historic Places (referred to as "historic properties");
- ▶ determine how those historic properties might be affected;
- ▶ explore measures to avoid or reduce harm ("adverse effect") to historic properties; and
- ▶ reach agreement with the SHPO/THPO (and the ACHP in some cases) on such measures to resolve any adverse effects or, failing that, obtain advisory comments from the ACHP, which are sent to the head of the agency.

## What are Historic Properties?

In the Section 106 process, a historic property is a prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within these National Register properties. The term also includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization, so long as that property also meets the criteria for listing in the National Register.

## The National Register of Historic Places

The National Register of Historic Places is the nation's official list of properties recognized for their significance in American history, architecture, archaeology, engineering, and culture. It is administered by the National Park Service, which is part of the Department of the Interior. The Secretary of the Interior has established the criteria for evaluating the eligibility of properties for the National Register. In short, the property must be significant, be of a certain age, and have integrity:

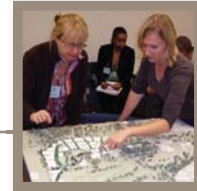
- ▶ **Significance.** Is the property associated with events, activities, or developments that were important in the past? With the lives of people who were historically important? With distinctive architectural history, landscape history, or engineering achievements? Does it have the potential to yield important information through archaeological investigation about our past?
- ▶ **Age and Integrity.** Is the property old enough to be considered historic (generally at least 50 years old) and does it still look much the way it did in the past?

During a Section 106 review, the federal agency evaluates properties against the National Register criteria and seeks the consensus of the SHPO/THPO/tribe regarding eligibility. A historic property need not be formally listed in the National Register in order to be considered under the Section 106 process. Simply coming to a consensus determination that a property is eligible for listing is adequate to move forward with Section 106 review. (For more information, visit the National Register Web site at [www.cr.nps.gov/nr](http://www.cr.nps.gov/nr)).

When historic properties may be harmed, Section 106 review usually ends with a legally binding agreement that establishes how the federal agency will avoid, minimize, or mitigate the adverse effects. In the very few cases where this does not occur,

the ACHP issues advisory comments to the head of the agency who must then consider these comments in making a final decision about whether the project will proceed.

Section 106 reviews ensure federal agencies fully consider historic preservation issues and the views of the public during project planning. Section 106 reviews do not mandate the approval or denial of projects.



## SECTION 106: WHAT IS AN ADVERSE EFFECT?

If a project may alter characteristics that qualify a specific property for inclusion in the National Register in a manner that would diminish the integrity of the property, that project is considered to have an adverse effect. Integrity is the ability of a property to convey its significance, based on its location, design, setting, materials, workmanship, feeling, and association.

### Adverse effects can be direct or indirect and include the following:

- ▶ physical destruction or damage
- ▶ alteration inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties
- ▶ relocation of the property
- ▶ change in the character of the property's use or setting
- ▶ introduction of incompatible visual, atmospheric, or audible elements
- ▶ neglect and deterioration
- ▶ transfer, lease, or sale of a historic property out of federal control without adequate preservation restrictions

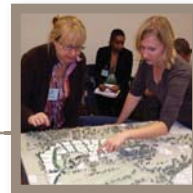
## Determining Federal Involvement

If you are concerned about a proposed project and wondering whether Section 106 applies, you should first determine whether the federal government is involved. Will a federal agency fund or carry out the project? Is a federal permit, license, or approval needed? Section 106 applies only if a federal agency is carrying out the project, approving it, or funding it, so confirming federal involvement is critical.

### Historic



*Falls of Clyde*, in Honolulu, Hawaii, is the last surviving iron-hulled, four-masted full rigged ship, and the only remaining sail-driven oil tanker. (photo courtesy Bishop Museum Maritime Center)



### IS THERE FEDERAL INVOLVEMENT? CONSIDER THE POSSIBILITIES:

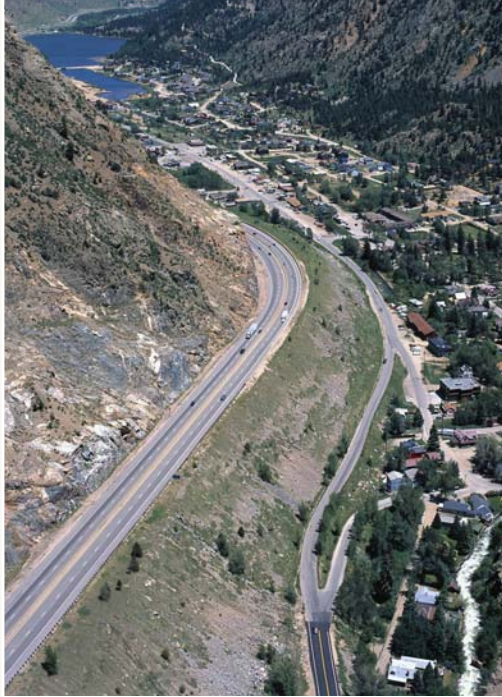
**Is a federally owned or federally controlled property involved, such as a military base, park, forest, office building, post office, or courthouse?** Is the agency proposing a project on its land, or would it have to provide a right-of-way or other approval to a private company for a project such as a pipeline or mine?

**Is the project receiving federal funds, grants, or loans?** If it is a transportation project, frequent sources of funds are the Federal Highway Administration, the Federal Transit Administration, and the Federal Railroad Administration. Many local government projects receive funds from the Department of Housing and Urban Development. The Federal Emergency Management Agency provides funds for disaster relief.

**Does the project require a federal permit, license, or other approval?** Often housing developments impact wetlands, so a U.S. Army Corps of Engineers permit may be required. Airport projects frequently require approvals from the Federal Aviation Administration.

Many communications activities, including cellular tower construction, are licensed by the Federal Communications Commission. Hydropower and pipeline development requires approval from the Federal Energy Regulatory Commission. Creation of new bank branches must be approved by the Federal Deposit Insurance Corporation.

## *Federal Funds*



Interstate 70 at the Georgetown-Silver Plume National Historic Landmark, Colorado (photo courtesy J.F. Sato & Associates)

Sometimes federal involvement is obvious. Often, involvement is not immediately apparent. If you have a question, contact the project sponsor to obtain additional information and to inquire about federal involvement. All federal agencies have Web sites. Many list regional or local contacts and information on major projects. The SHPO/THPO/tribe, state or local planning commissions, or statewide historic preservation organizations may also have project information.

Once you have identified the responsible federal agency, write to the agency to request a project description and inquire about the status of project planning. Ask how the agency plans to comply with Section 106, and voice your concerns. Keep the SHPO/THPO/tribe advised of your interest and contacts with the federal agency.

## MONITORING FEDERAL ACTIONS

The sooner you learn about proposed projects with federal involvement, the greater your chance of influencing the outcome of Section 106 review.

Learn more about the history of your neighborhood, city, or state. Join a local or statewide preservation, historical, or archaeological organization. These organizations are often the ones first contacted by federal agencies when projects commence.

If there is a clearinghouse that distributes information about local, state, tribal, and federal projects, make sure you or your organization is on its mailing list.

Make the SHPO/THPO/tribe aware of your interest.

Become more involved in state and local decision making. Ask about the applicability of Section 106 to projects under state, tribal, or local review. Does your state, tribe, or community have preservation laws in place? If so, become knowledgeable about and active in the implementation of these laws.

Review the local newspaper for notices about projects being reviewed under other federal statutes, especially the National Environmental Policy Act (NEPA). Under NEPA, a federal agency must determine if its proposed major actions will significantly impact the environment. Usually, if an agency is preparing an Environmental Impact Statement under NEPA, it must also complete a Section 106 review for the project.



## Working with Federal Agencies

Throughout the Section 106 review process, federal agencies must consider the views of the public. This is particularly important when an agency is trying to identify historic properties that might be affected by a project and is considering ways to avoid, minimize, or mitigate harm to them.

Agencies must give the public a chance to learn about the project and provide their views. How agencies publicize projects depends on the nature and complexity of the particular project and the agency's public involvement procedures.

Public meetings are often noted in local newspapers and on television and radio. A daily government publication, the *Federal Register* (available at many public libraries and online at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html)), has notices concerning projects, including those being reviewed under NEPA. Federal agencies often use NEPA for purposes of public outreach under Section 106 review.

Federal agencies also frequently contact local museums and historical societies directly to learn about historic properties and community concerns. In addition, organizations like the National Trust for Historic Preservation (NTHP) are actively engaged in a number of Section 106 consultations on projects around the country. The NTHP is a private, non-profit membership organization dedicated to saving historic places and revitalizing America's communities. Organizations

like the NTHP and your state and local historical societies and preservation interest groups can be valuable sources of information. Let them know of your interest.

When the agency provides you with information, let the agency know if you disagree with its findings regarding what properties are eligible for the National Register of Historic Places or how the proposed project may affect them. Tell the agency—in writing—about any important properties that you think have been overlooked or incorrectly evaluated. Be sure to provide documentation to support your views.

When the federal agency releases information about project alternatives under consideration, make it aware of the options you believe would be most beneficial. To support alternatives that would preserve historic properties, be prepared to discuss costs and how well your preferred alternatives would meet project needs. Sharing success stories about the treatment or reuse of similar resources can also be helpful.

Applicants for federal assistance or permits, and their consultants, often undertake research and analyses on behalf of a federal agency. Be prepared to make your interests and views known to them, as well. But remember the federal agency is ultimately responsible for completing Section 106 review, so make sure you also convey your concerns directly to it.

### *Learn About the Project*



Hangar I, a historic dirigible hangar at Moffett Field at NASA Ames Research Center; California

## Influencing Project Outcomes

In addition to seeking the views of the public, federal agencies must actively consult with certain organizations and individuals during review. This interactive consultation is at the heart of Section 106 review.

Consultation does not mandate a specific outcome. Rather, it is the process of seeking, discussing, and considering the views of consulting parties about how project effects on historic properties should be handled.

To influence project outcomes, you may work through the consulting parties, particularly those who represent your interests. For instance, if you live within the local jurisdiction where a project is taking place, make sure to express your views on historic preservation issues to the local government officials who participate in consultation.

### *Speak Up*



Residents in the Lower Mid-City Historic District in New Orleans express their opinions about the proposed acquisition and demolition of their properties for the planned new Department of Veterans Affairs and Louisiana State University medical centers which would replace the facilities damaged as a result of Hurricane Katrina.

You or your organization may want to take a more active role in Section 106 review, especially if you have a legal or economic interest in the project or the affected properties. You might also have an interest in the effects of the project as an individual, a business owner, or a member of a neighborhood association, preservation group, or other organization. Under these circumstances, you or your organization may write to the federal agency asking to become a consulting party.



## WHO ARE CONSULTING PARTIES?

The following parties are entitled to participate as consulting parties during Section 106 review:

- ▶ Advisory Council on Historic Preservation;
- ▶ State Historic Preservation Officers;
- ▶ Federally recognized Indian tribes/THPOs;
- ▶ Native Hawaiian organizations;
- ▶ Local governments; and
- ▶ Applicants for federal assistance, permits, licenses, and other approvals.

Other individuals and organizations with a demonstrated interest in the project may participate in Section 106 review as consulting parties "due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties." Their participation is subject to approval by the responsible federal agency.

When requesting consulting party status, explain in a letter to the federal agency why you believe your participation would be important to successful resolution. Since the SHPO/THPO or tribe will assist the federal agency in deciding who will participate in the consultation, be sure to provide the SHPO/THPO or tribe with a copy of your letter. Make sure to emphasize your relationship with the project and demonstrate how your connection will inform the agency's decision making.

If you are denied consulting party status, you may ask the ACHP to review the denial and make recommendations to the federal agency regarding your participation. However, the federal agency makes the ultimate decision on the matter.

Consulting party status entitles you to share your views, receive and review pertinent information, offer ideas, and consider possible solutions together with the federal agency and other consulting parties. It is up to you to decide how actively you want to participate in consultation.

### *Get Involved*



Section 106 consultation with an Indian tribe

## MAKING THE MOST OF CONSULTATION

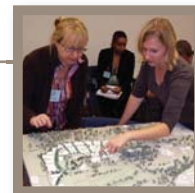
Consultation will vary depending on the federal agency's planning process and the nature of the project and its effects.

Often consultation involves participants with a wide variety of concerns and goals. While the focus of some may be preservation, the focus of others may be time, cost, and the purpose to be served by the project.

### **Effective consultation occurs when you:**

- ▶ keep an open mind;
- ▶ state your interests clearly;
- ▶ acknowledge that others have legitimate interests, and seek to understand and accommodate them;
- ▶ consider a wide range of options;
- ▶ identify shared goals and seek options that allow mutual gain; and
- ▶ bring forward solutions that meet the agency's needs.

Creative ideas about alternatives—not complaints—are the hallmarks of effective consultation.



## How the ACHP Can Help

Under Section 106 review, most harmful effects are addressed successfully by the federal agency and the consulting parties without participation by the ACHP. So, your first points of contact should always be the federal agency and/or the SHPO/THPO.

When there is significant public controversy, or if the project will have substantial effects on important historic properties, the ACHP may elect to participate directly in the consultation. The ACHP may also get involved if important policy questions are raised, procedural problems arise, or if there are issues of concern to Indian tribes or Native Hawaiian organizations.

Whether or not the ACHP becomes involved in consultation, you may contact the ACHP to express your views or to request guidance, advice, or technical assistance. Regardless of the

scale of the project or the magnitude of its effects, the ACHP is available to assist with dispute resolution and advise on the Section 106 review process.

If you cannot resolve disagreements with the federal agency regarding which historic properties are affected by a project or how they will be impacted, contact the ACHP. The ACHP may then advise the federal agency to reconsider its findings.



### CONTACTING THE ACHP: A CHECKLIST

When you contact the ACHP, try to have the following information available:

- ▶ the name of the responsible federal agency and how it is involved;
- ▶ a description of the project;
- ▶ the historic properties involved; and
- ▶ a clear statement of your concerns about the project and its effect on historic properties.

If you suspect federal involvement but have been unable to verify it, or if you believe the federal agency or one of the other participants in review has not fulfilled its responsibilities under the Section 106 regulations, you can ask the ACHP to investigate. In either case, be as specific as possible.

#### *Collecting Comments*



A panel of ACHP members listen to comments during a public meeting.

## When Agencies Don't Follow the Rules

A federal agency must conclude Section 106 review before making a decision to approve a project, or fund or issue a permit that may affect a historic property. Agencies should not make obligations or take other actions that would preclude consideration of the full range of alternatives to avoid or minimize harm to historic properties before Section 106 review is complete.

If the agency acts without properly completing Section 106 review, the ACHP can issue a finding that the agency has prevented meaningful review of the project. This means that, in the ACHP's opinion, the agency has failed to comply with Section 106 and therefore has not met the requirements of federal law.

A vigilant public helps ensure federal agencies comply fully with Section 106. In response to requests, the ACHP can investigate questionable actions and advise agencies to take corrective action. As a last resort, preservation groups or individuals can litigate in order to enforce Section 106.

If you are involved in a project and it seems to be getting off track, contact the agency to voice your concern. Call the SHPO or THPO to make sure they understand the issue. Call the ACHP if you feel your concerns have not been heard.

## Following Through

### *Stay Informed*



Milton Madison Bridge over the Ohio River between Kentucky and Indiana (photo courtesy Wilbur Smith Associates/Michael Baker Engineers)

After agreements are signed, the public may still play a role in the Section 106 process by keeping abreast of the agreements that were signed and making sure they are properly carried out. The public may also request status reports from the agency.

Designed to accommodate project needs and historic values, Section 106 review relies on strong public participation. Section 106 review provides the public with an opportunity to influence how projects with federal involvement affect historic properties. By keeping informed of federal involvement, participating in consultation, and knowing when and whom to ask for help, you can play an active role in deciding the future of historic properties in your community.

Section 106 review gives you a chance to weigh in when projects with federal involvement may affect historic properties you care about. Seize that chance, and make a difference!

## Contact Information

### Advisory Council on Historic Preservation

Office of Federal Agency Programs  
1100 Pennsylvania Avenue, NW, Suite 803  
Washington, D.C. 20004  
Phone: (202) 606-8503  
Fax: (202) 606-8647  
E-mail: [achp@achp.gov](mailto:achp@achp.gov)  
Web site: [www.achp.gov](http://www.achp.gov)

*The ACHP's Web site includes more information about working with Section 106 and contact information for federal agencies, SHPOs, and THPOs.*

### National Association of Tribal Historic Preservation Officers

P.O. Box 19189  
Washington, D.C. 20036-9189  
Phone: (202) 628-8476  
Fax: (202) 628-2241  
E-mail: [info@nathpo.org](mailto:info@nathpo.org)  
Web site: [www.nathpo.org](http://www.nathpo.org)

### National Conference of State Historic Preservation Officers

444 North Capitol Street, NW, Suite 342  
Washington, D.C. 20001  
Phone: (202) 624-5465  
Fax: (202) 624-5419  
Web site: [www.ncshpo.org](http://www.ncshpo.org)  
For the SHPO in your state, see [www.ncshpo.org/find/index.htm](http://www.ncshpo.org/find/index.htm)

### National Park Service

Heritage Preservation Services  
1849 C Street, NW (2255)  
Washington, D.C. 20240  
E-mail: [NPS\\_HPS-info@nps.gov](mailto:NPS_HPS-info@nps.gov)  
Web site: [www.nps.gov/history/hps](http://www.nps.gov/history/hps)

National Register of Historic Places  
1201 Eye Street, NW (2280)  
Washington, D.C. 20005  
Phone: (202) 354-2211  
Fax: (202) 371-6447  
E-mail: [nr\\_info@nps.gov](mailto:nr_info@nps.gov)  
Web site: [www.nps.gov/history/nr](http://www.nps.gov/history/nr)

### National Trust for Historic Preservation

1785 Massachusetts Avenue, NW  
Washington, D.C. 20036-2117  
Phone: (800) 944-6847 or (202) 588-6000  
Fax: (202) 588-6038  
Web site: [www.preservationnation.org](http://www.preservationnation.org)

*The National Trust has regional offices in San Francisco, Denver, Fort Worth, Chicago, Boston, and Charleston, as well as field offices in Philadelphia and Washington, D.C.*

### Office of Hawaiian Affairs

711 Kapi`olani Boulevard, Suite 500  
Honolulu, HI 96813  
Phone: (808) 594-1835  
Fax: (808) 594-1865  
E-mail: [info@oha.org](mailto:info@oha.org)  
Web site: [www.oha.org](http://www.oha.org)

## *Beneath the Surface*



Ohio Department of Transportation workers made an unanticipated archaeological discovery while working just north of Chillicothe along state Route 104. It is a remnant of an Ohio & Erie Canal viaduct. (photo courtesy Bruce W. Aument, Staff Archaeologist, ODOT/Office of Environmental Services)

## TO LEARN MORE

For detailed information about the ACHP, Section 106 review process, and our other activities, visit us at [www.achp.gov](http://www.achp.gov) or contact us at:

Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 803  
Washington, D.C. 20004  
Phone: (202) 606-8503  
Fax: (202) 606-8647  
E-mail: [achp@achp.gov](mailto:achp@achp.gov)



**[WWW.ACHP.GOV](http://WWW.ACHP.GOV)**

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**Request for Action**

**TO:** Faribault Heritage Preservation Commission  
**FROM:** Peter Waldock, AICP Planning Coordinator  
**MEETING DATE:** March 16, 2022  
**SUBJECT:** Continued Discussion of Demolition by Neglect

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**BACKGROUND:**

The Commissioners have asked to revisit the topic of "Demolition by Neglect" for continued discussion. The Commission members have listed this topic as a priority concern for Heritage Preservation in the City. As noted during a recent review of Johnstan Hall, Farmers Seed and Nursery and the original Woolen Mills building, the cost of necessary restoration of historic buildings can greatly exceed the building's value, making it financially unfeasible to restore or even repair to the extent needed to preserve them.

**REQUESTED ACTION:**

Continue Discussion of this issue and provide direction on this matter.

**ATTACHMENTS:**

1. Chapter 7 Special Legal Issues

# CHAPTER 7: SPECIAL LEGAL ISSUES

## A Starting Question

The owner of a historic house has applied to demolish the building, because otherwise keeping it would be an economic hardship. The building is badly deteriorated as well. How should you respond?

This chapter addresses two of the knottier issues the commissions may encounter: That of economic hardship and “demolition by neglect”.

### In This Chapter:

- A. Economic Hardship
- B. Demolition by Neglect
- C. Enforcement



## PENN CENTRAL DECISION:

The Supreme Court ruled in its decision regarding a takings claim by Penn Central in New York City that a taking had not been demonstrated, and that a local preservation commission had the right to regulate a property.

This case is the basis for hardship tests.

For more information, see:

**Case Briefs: Penn Central Transportation Co. v. City of New York**

<http://www.casebriefs.com/blog/law/property/property-law-keyed-to-cribbet/regulatory-takings/penn-central-transportation-co-v-city-of-new-york/>



## A. Economic Hardship

“Economic Hardship” is a specific condition that can only be determined using adopted criteria and carefully following procedures outlined in the ordinance. It is not something that commissioners should use their personal feelings about.

This is often an emotional issue, but commissioners should not feel that the question should be avoided. Sound legal precedent indicates that the government, including the preservation commission, can engage in regulations that may raise this question.

### What is it?

Economic hardship exists only when NO reasonable use of a property is available to the owner, due to the regulations in the preservation ordinance. It is based on language in the Fifth Amendment of the United States Constitution.

The term “reasonable use” is key. If a property is limited in its use due to the regulation, such that the owner cannot maximize the economic benefits, but there is still a reasonable return, then no taking is found to exist.

Also note that the “hardship” is with the PROPERTY itself, not with the owner. That is, one’s personal finances are not a part of the consideration.

The preservation ordinance should provide a specific process and criteria for determining if an economic hardship exists, and commissioners should follow them carefully.

### How Should a Hardship Claim Factor into Project Review?

The commission should consider an economic hardship claim separately from an application to demolish a building. The first step is to decide if demolition is permitted, regardless of economic circumstances. Then, if demolition is denied, a separate hearing should consider economic hardships. This separation of actions makes it clear that the demolition itself remains “inappropriate,” but is permitted because of economic hardship.

## The Permit to Demolish

An application to demolish requires a Demolition Permit, a Certificate of Appropriateness (COA) or a similar permit.

A demolition permit might be issued if:

- The property is a non-contributor in a historic district.
- The property, although presently listed as contributing, is found to have lost its integrity and thereby merits reclassification as non-contributing (e.g., through damage from a fire or a natural disaster).

The hearing for the demolition permit should be based on the facts related to the significance of the property. If it retains its integrity, then demolition should be denied.

## Finding Economic Hardship

While the claim for hardship may be made as a part of an application to demolish a building, it should be handled as a separate agenda item, and the specific test for hardship should be applied.

That is, the commission in the first hearing would find that demolition is inappropriate, but then in the second hearing find there is an economic hardship (if that is the case), which would then justify issuance of a demolition permit.

Usually, if no economic hardship claim is made, a commission will deny an application to demolish a historic building since its primary objective is preservation of such resources.

## Demolition Delay

Some ordinances do not give the commission the power to deny demolition, and only provide for a delay in issuing a demolition permit. The intent is to provide some time to find an alternative, such as selling the property to a buyer who will maintain it.

These provisions usually delay only for a defined period of time. The claim of economic hardship is less likely to occur in this situation.





## Economic Assistance

A special case of concern is the situation with an owner-occupied home, in which the owner lacks the financial means to maintain their property adequately. They may assert that a requirement to use proper rehabilitation procedures is an “economic hardship.”

Technically, this is not the same as the hardship related to the Fifth Amendment, but the public may confuse the two. Ideally, the local government will have assistance and incentives programs to help owners make appropriate improvements for these situations. Incentives may include state and local tax credits for rehabilitating historic structures. For more information about incentives, refer to Chapter 1.



## Evidentiary Checklist for Economic Hardship

What type of evidence should be reviewed when considering economic hardship? The National Trust for Historic Preservation, in its publication *Assessing Economic Hardship Claims Under Historic Preservation Ordinances*, provides this checklist of information that is a useful tool for local commissions and other regulatory agencies considering economic hardship claims:

**1. Current level of economic return**

**2. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents**

**3. Feasibility of alternative uses for the property that could earn a reasonable economic return**

**4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property**

**5. Knowledge of landmark designation or potential designation at time of acquisition**

**6. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs**

This paper is available at: <http://www.preservationnation.org/information-center/law-and-policy/legal-resources/preservation-law-101/resources/Economic-Hardship-Assessment.pdf>



## B. Demolition by Neglect

Simply put, intentionally allowing a property to deteriorate to the point that it cannot be saved is “demolition by neglect.” The assumption is that the owner is capable of maintaining the building, but chooses not to do so.

### What is the Issue?

The concern about demolition-by-neglect is that a building can lose so many of its key features that it will no longer retain sufficient integrity. If that happens, then the building will no longer have historic significance, at which point outright demolition may be permitted under other governmental regulations.

This is especially an issue when an owner may have been denied a permit to demolish a building and, in response, simply lets it decay, perhaps even opening it to the elements to accelerate damage.

### Demolition-Related Tools

Tools that prevent or discourage the demolition of historic resources are essential elements of a community’s preservation system.

Sometimes a property is neglected until it must be demolished. These cases of “demolition by neglect” may reflect many causes including:

- An owner cannot afford the necessary maintenance because of personal financial circumstances, or
- An owner is unwilling to invest in the structure, or



- An owner anticipates reuse opportunities for the site that seem to be greater without the historic structure being there, or
- There is no apparent viable economic use for the property, or
- An owner is disinterested or unaware of the condition of the property



At a certain point, the decay becomes so substantial that the City's building official must cite the property as a hazard to public safety. Most local preservation ordinances acknowledge that, when this state is reached, the property may be demolished. The objective, however, is to avoid having a property reach this state.



Typically, by the time a building reaches this stage, it has already passed a point at which many of the architectural details and building components that contribute to its significance have deteriorated to a point beyond repair. That is, when it reaches a public safety hazard stage, the building may have already lost its integrity as a historic resource. The challenge, therefore, is to interrupt the cycle before decay reaches this stage.

## Tools to Prevent the Loss of Historic Resources

Typically, the primary demolition prevention tool is a requirement for a demolition permit. Other strategies to protect historic resources from demolition include direct intervention, and incentives as well as working to create a climate that encourages good stewardship. Because the appropriate tools will vary with the circumstances of the case, the most effective preservation programs use these tools:

- Property owner notices of need to repair
- Publication of endangered property lists (often managed by preservation partners)
- Emergency protection clauses in the ordinance
- Minimum maintenance requirements
- Forced sale or condemnation
- Emergency preservation funds
- Removal of inverse incentives
- Creating a supportive economic environment



## How Should it be Handled?

Address this issue with care. Some local ordinances around Minnesota have provisions for dealing with cases of demolition-by-neglect, most allowing for:

- Issuing a civil (and sometimes criminal) citation
- Ability of the government to undertake necessary corrective work
- Putting a lien on the property

Citing for demolition-by-neglect requires discretion. Ideally, the commission will adopt specific criteria for identifying demolition-by-neglect.

The ordinance also may limit the use of this provision to specific classes of property, such as:

- Unoccupied structures
- Structures open to the elements
- Major landmarks
- Properties in designated revitalization areas

## Enforcement of demolition by neglect

The practical reality is that it is rare for a local government to step in and renovate or stabilize a deteriorated historic building and then bill the owner. Few local budgets have funds earmarked for such activities and it would be unpopular. At most, the local government may board up a building or cover a leaking roof with a tarp - a short-term solution.

After the housing recession occurred and foreclosures were on the rise, many Minnesota communities developed ordinances to protect the health, safety and welfare of the city and its residents. One such program in Stillwater involved the identification and registration of problem properties which includes a property that has been allowed to physically deteriorate. This program, as well as the City's abandoned or dangerous structure nuisance abatement program allows the City to rectify life, health and safety issues in which the payment for services rendered may be certified by the City as a service charge for collection with the real estate taxes. These programs help ensure

older housing stock is decent, safe and sanitary, and is maintained in a manner that does not measurably lessen the market values of properties nearby.

### **Use it with care**

For this reason, it is important to employ this provision with care. It is useful, however, to have such a provision in the ordinance. It serves as a potential deterrent and is then available for really critical conditions or highly valued buildings.

### **Communicate first**

Talk to owners first if substantial deterioration is identified, and document all efforts to communicate with them. Citing for demolition-by-neglect should only occur after demonstrating that the government has done everything possible to resolve the situation.





## C. Enforcement

A preservation ordinance should establish a procedure for enforcing its terms. The ordinance is usually enforced through stop-work orders and the assessment of fines and other penalties for individual violations.

The HPC may request that enforcement action be taken for a violation, if the situation is brought to their attention. Note that the HPC does not actually cite the property owner in violation, as it is not the HPC's role or responsibility to police violations.

### What is the HPC's role in enforcement?

The commission plays an advisory role. City or county staff is responsible for issuing citations and any related penalties, since this is a part of the zoning code. This may be a code enforcement official.

The HPC may request that enforcement action be taken for a violation, if the situation is brought to their attention, but it is not their responsibility to police violations.