



## FDM 26-1-1 Introduction

November 17, 2010

### 1.1 Originator

This chapter originates from the Director of the Bureau of Technical Services (BTS). The Director has been designated as the Historic Preservation Officer (HPO) for the Wisconsin Department of Transportation (WisDOT). As WisDOT's HPO, the Director of BTS is responsible for ensuring that WisDOT projects meet the requirements of federal and state historic/cultural preservation laws explained in this chapter. Comments and questions about historic buildings and structures should be directed to the Department's Historian at (608) 266-0369. Questions and comments about archaeological sites, traditional cultural properties, and human burials should be directed to the Department's Archaeology Program Manager at (608) 261-0137. All matters pertaining to Tribal governments, protocols, and guidance should be directed to the WisDOT Tribal Liaison at (608) 266-3761. For specific Tribal contacts, please refer to the Tribal contact and geographical areas of Tribal interest found at [FDM 5-15 Attachment 10.1](#) and 10.2.

### 1.2 Objective

The objective of this chapter is to help project managers develop their projects in compliance with federal and state laws regarding historic preservation and burials. The chapter will explain the user how to:

- Complete specific steps placed forth by policy and regulations for these laws
- Conduct effective and meaningful consultation with Tribes and other consulting parties
- Recognize when the assistance of a qualified professional (e.g., archaeologist, historian, tribal historian, or tribal expert) is needed for the identification, evaluation, and mitigation of historic properties
- Recognize and follow laws applicable to Tribal, federal, and state lands

### 1.3 Background

This chapter focuses on Section 106 of the National Historic Preservation Act of 1966 (NHPA). An important premise of the NHPA is that cultural resources are important to our nation's heritage and should be preserved. In this chapter, these resources are referred to as "historic properties" (listed on or eligible for the National Register of Historic Places).

Section 106 requires that the head of a federal agency with jurisdiction over an undertaking "take into account" the project's effects on historic properties. To do that, the federal agency must make a "good faith" effort to locate, identify, and evaluate historic properties (e.g., historic buildings and structures, archaeological sites, Traditional Cultural Properties). The federal agency, in consultation with the State Historic Preservation Office (SHPO), interested THPOs/Indian Tribes, and other interested consulting parties, next assesses effects upon eligible properties and takes steps to avoid, minimize, or compensate for any adverse effects. Additionally, it requires that the Advisory Council on Historic Preservation (ACHP) be given "a reasonable opportunity to comment" on projects.

These regulations are published as "Advisory Council Regulations 36 CFR Part 800: Protection of Historic Properties," and the process they specify has become known as the "106 Process." The Advisory Council also offers Section 106 guidance (URL: <http://www.achp.gov/archguide/>).

Other applicable laws and agreements include, but are not limited to, Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act of 1979 (ARPA), Executive Order 13007, Wis. Stats. 157.70, Wisconsin Executive Order 39, and WisDOT Tribal Partnership Agreement (refer to [FDM 26-35](#)).

### 1.4 Participants

For most projects overseen by WisDOT, and for most initial activities regarding those projects, the participants in the 106 Process are the project development team, consulting parties and the public (see 26-5-1 Attachment 1). Consulting parties include the SHPO and Indian Tribes [either the Tribal Historic Preservation Officer (THPO) or the Designated Tribal Representatives, as appropriate]. FHWA will generally not become involved unless formal consultation and/or resolution of effects to Historic Properties is required. For projects on Tribal lands (lands in trust, reservation, or allotted status), the THPO may assume the duties of the SHPO under 101(d)(2) of the NHPA, and consultation is conducted with the THPO in lieu of the SHPO. The goal of Section 106 is to allow all participants in the process an opportunity to provide their views concerning the identification, evaluation, and effects of the project on historic properties. Indian Tribes must be consulted when they attach religious or cultural significance to a historic property. This consultation occurs regardless of the location or ownership of the

property.

## **1.5 Section 106 Duties & Requirements**

### **1.5.1 Project Manager Duties and Responsibilities**

The WisDOT project manager or designee is responsible for coordinating compliance with Section 106 and integrating the requirements of Section 106 into the environmental document. The project manager communicates the need for the project to participants in the Section 106 Process and seeks comments from consulting parties. The project manager also initiates Tribal consultation and is responsible for adhering to the WisDOT Tribal Partnership Agreement where applicable, and is responsible for carrying out the results of the Tribal consultation process (See [FDM 5-15-10](#); <http://www.dot.wisconsin.gov/localgov/docs/partnership-agreement.pdf>). The project manager is responsible for documenting how comments received were taken into account in the development of the project.

### **1.5.2 WisDOT Cultural Resources Team Duties and Responsibilities**

The WisDOT BTS Cultural Resource Team monitors project compliance with Section 106 for archaeology, historic buildings/structures, and other types of historic properties. This Team advises the Regional Environmental Coordinators (REC) and Project Managers on the Project Manager's Section 106 responsibilities. It also assists the Project Manager to

- consult with Indian Tribes, tribal experts and interested parties.
- locate professional Cultural Resource consultants

Members of the Cultural Resource Team work directly with the SHPO and THPO (or Designated Tribal Representative) in compliance with the Section 106 Process and may attend as needed consultation meetings with Indian Tribes, THPOs, or other interested groups.

### **1.5.3 WisDOT Tribal Liaison and Regional Tribal Liaisons Duties and Responsibilities**

The WisDOT Tribal Liaison assists interested parties in the Tribal consultation process when requested. The Tribal Liaison, in cooperation with the Regional Tribal Liaison, is responsible for providing assistance and expertise on inter-governmental relations when working with tribal governments. In addition, the WisDOT Tribal Liaison and Regional Tribal Liaison work with departmental compliance officers on incorporating tribal initiatives into appropriate policies and procedures.

### **1.5.4 Federal Agency**

The federal agency has statutory obligation to fulfill Section 106. FHWA requires compliance to the Section 106 Process before approval of the Environmental Document.

### **1.5.5 Results**

The results of the 106 Process, including commitments for compensation for effects (also referred to as mitigation), are included in the project's environmental documentation.

### **1.5.6 Professional Cultural Resource Consultants**

These consultants must meet professional guidelines ([FDM 26-30-1](#), Qualifications: History/Architecture; Anthropology/Archaeology; Tribal Experts). In addition to providing appropriate professional research and evaluation, they are responsible for assisting the Project Manager in understanding the results and impacts of any studies they conduct or recommendations they make.

## **1.6 Overall Process**

As mentioned previously in this procedure, the ACHP provides general guidance on the Section 106 Review Process. WisDOT has followed that guidance found at <http://www.achp.gov/regsflow.html> (see [Figure 1.1](#)) and supplemented it in this manual with additional text and flow charts (See [FDM 26-5](#)). This additional material takes into account WisDOT's specific mission, organization and nomenclature. WisDOT also has formal and informal relationships with a variety of stakeholders. Any conflicts between ACHP guidance and this manual should be resolved in favor of the ACHP guidance.

# Section 106 Regulations Flow Chart

Click on parts of the flow chart for more information. (Flow chart best viewed in Netscape 4.0 or higher)

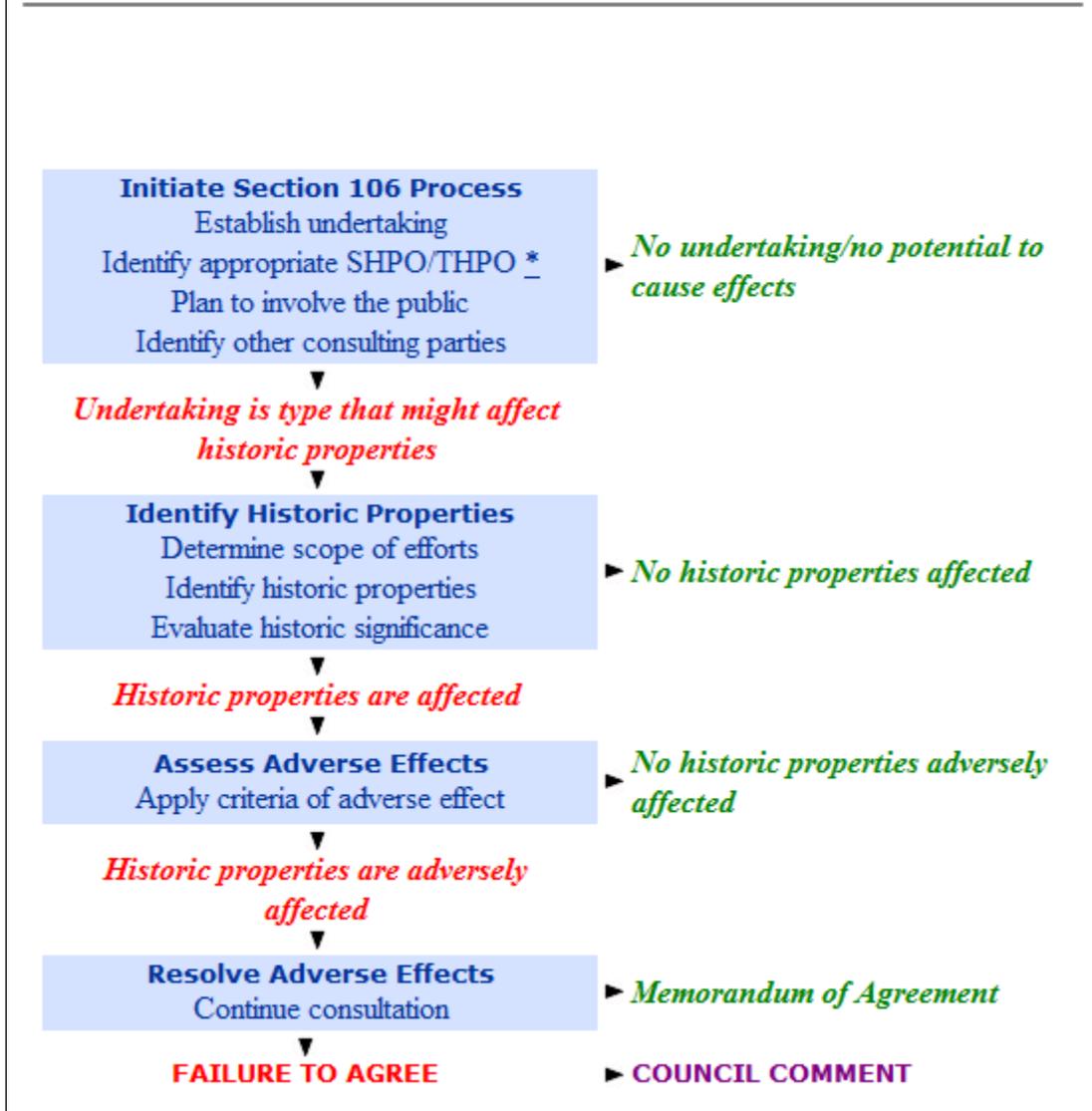


Figure 1.1 ACHP Section 106 Flow Chart as found at: <http://www.achp.gov/regflow.html>

**LIST OF ATTACHMENTS**

- [Attachment 1.1](#)      Glossary