



## Section 106 Consultation

The City of Bismarck requests participation in Section 106 Reviews as a consulting party. Reviews may involve the Bismarck Historic Preservation Commission.

The National Historic Preservation Act (NHPA) (54 U.S.C. 300101 et seq.), enacted in 1966, is the primary federal historic preservation law. Among its many provisions, the law establishes a regulatory review process known as Section 106 Review. Section 106 of the NHPA requires federal agencies to consider the effects of any project they carry out, permit, approve or fund that could potentially have an impact on a property listed or eligible to be listed on the National Register of Historic Places. Various consulting parties participate in the review process, including local governments. The process requires each federal agency to consider public views and concerns about historic preservation issues when making final project decisions.

### Consultation with the City of Bismarck

City of Bismarck staff and/or the Historic Preservation Commission reviews Section 106 Review projects submitted to the City for evaluation and comment. Reviewers will evaluate the proposed finding provided by the submitting entity and provide a recommendation to the submitting agency and the North Dakota State Historic Preservation Office (SHPO). During the review, reviewers may also provide comments regarding the identification of historic properties, effects to historic properties, and ways to mitigate or avoid adverse effects to historic properties and districts.

### Section 106 Review Steps

Whenever a Section 106 Review is conducted, reviews follow four basic steps:

1. Initiate consultation by notifying the appropriate consulting parties. Consultation is between the federal agency, SHPO and other consulting parties including, but not limited to, the Advisory Council on Historic Preservation (ACHP), Bismarck staff and/or Historic

Preservation Commission and members of the general public with an economic, social or cultural interest in the project.

2. Identify properties that may be affected by the project and determine if the property or properties are historic as determined by eligibility or listing on the National Register of Historic Places.
3. Assess the effects of the undertaking on the resources in consultation with the SHPO and establish if they are adverse. Determining adverse effects on historic resources is based on criteria established by the regulations, 36 CFR Part 800 of the ACHP.
4. Resolve adverse effects by developing and evaluating alternatives that could avoid, minimize, or mitigate these impacts on historic resources. The result of consultation is a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA). The MOA or PA is a legally binding document, which evidences the agency's compliance with Section 106 and records the outcome of consultation and the effects of an agency's project, projects or program on historic resources.

### Area of Potential Effect

The area of potential effect or APE is *"the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any exist."* (36 CFR §800.15(d)). The APE is typically based on the following:

- The nature and scale of the project
- The kinds of effects the project may cause
- The kinds of historic properties that may be located in the project vicinity
- Input from the SHPO

## Findings and Determinations

All projects that require a Section 106 Review will be found to have one of the following proposed findings or determinations:

Proposed determination of **Adverse Effect**. The term “effect” is defined under [36 CFR §800.16\(i\)](#) as an “alteration to the characteristics of historic property qualifying it for inclusion in, or eligibility for, the National Register.” The project’s impact on the property’s use, character, location, and setting will be considered when determining its effect on the historic property. An effect is considered adverse under [36 CFR §800.5\(a\)\(1\)](#) when it will endanger those qualities that make the property eligible for inclusion in the National Register. Adverse effects of a project can be direct or indirect. The following are common kinds of Adverse Effects:

- Removal from historic setting
- Physical destruction or damage
- Introduction of visual or audible intrusions
- Alterations that are out of character
- Changes in use or setting if those are important characteristics of the property

Proposed determination of **No Adverse Effect**. This finding is used when there is a historic property affected but the effect is not considered adverse.

Proposed finding of **No Historic Properties Affected**. Any property affected is not on the National Register of Historic Places or Eligible for listing. Or the properties, whether historic or not, are not affected by the undertaking.

When there is insufficient information from a Class 1 literature search, **Survey Recommended** may be a proposed finding. A Class 1 literature search is documentary research and the starting place for inventory efforts.

## Submittal Procedures

The following procedures are typically followed for City of Bismarck consulting party reviews and comments on Section 106 project:

1. Prior to submittal to the SHPO, a consulting party request for Section 106 review should be sent to:

Will Hutchings, Planner  
City of Bismarck  
Community Development Department  
221 N Fifth Street / PO Box 5503  
Bismarck, ND 58506  
(701) 355-1850  
[whutchings@bismarcknd.gov](mailto:whutchings@bismarcknd.gov)

The review should define the area of potential effects (APE), include the results of any research conducted in the APE, summarize the findings of the literature search and provide a proposed determination or finding. A request for pre-consultation may be requested prior to a formal Section 106 review but only initial comments will be provided.

2. If the project is likely to affect historic resources, the Historic Preservation Commission will be involved in the review. Submittals must be received at least nine (9) days prior to the Historic Preservation Commission meeting. The Historic Preservation Commission typically meets the third Wednesday of every month at 3:30 PM. Representation is not required but is encouraged in case the Historic Preservation Commission has additional question.
3. If the review is conducted by staff, comments will be returned within two weeks. If the project is forwarded to the Historic Preservation Commission for review, they will meet and review the proposed project and the proposed determination or finding. Any potential concerns will be noted and discussed during the meeting. Staff and/or the Historic Preservation Commission may agree or disagree with the proposed determination or finding and may note additional concerns or considerations.
4. A declaration of staff/Historic Preservation Commission review action will be completed and returned to the submitting agency and the SHPO.

## Additional Resources

*The following additional hyperlinked resources are available online:*

- [A Citizen’s Guide to Section 106 Review \(ACHP\)](#)
- [Section 106 Applicant Toolkit \(ACHP\)](#)

*For additional information, contact Will Hutchings in the Community Development Department - Planning Division at 355-1850 or visit the City-County Office Building 221 N. 5th St. during standard office hours.*