Section 106: Myth vs Fact

National Trust for Historic Preservation®

Section 106 of the National Historic Preservation Act is one of the most important legal mechanisms protecting America's historic places.

Section 106 kicks in when the federal government takes an action that could impact a historic site (for example, constructing something, approving permits for a non-governmental project, or leasing public property to third parties). Before these actions reach the point of no return, Section 106 regulations require the federal government to determine if historic places would be harmed and to consider ways to either avoid, minimize, or mitigate that damage. They also mandate that the federal government provide state, local, and Tribal governments, and members of the public with an opportunity to express their views on these matters through a consultation process. The right of the public to be heard is one of the most fundamental principles of our democratic system.

The Section 106 review process tends to lead to better project outcomes, and reduce harm to nearby historic sites, resulting in a win-win for all parties involved.

MYTH: *Section 106 reviews are burdensome*

FACT: It is rare for projects to face any extra complications related to historic preservation because of the Section 106 review process. In fact, 98 percent of these reviews ultimately find that the projects in question will have no adverse effect on any nearby historic resources. Section 106 consultation is what helps achieve this tremendous percentage of win-win outcomes.

MYTH: *Section 106 reviews are often delayed because of preservation concerns*

FACT: In the small number of Section 106 reviews that do identify adverse impacts to historic resources, delays primarily result from incomplete project applications, poor project planning, understaffed federal agencies, and unrelated permitting requirements.

MYTH: *Section 106 reviews take too long*

FACT: The nationwide average for a Section 106 review is just 16 days. Many projects are reviewed in a single day. State Historic Preservation Offices and the public have short comment deadlines that ensure the process moves predictably and quickly. The only parties not subject to deadline are federal agencies and project applicants, even though they account for nearly all delays.

MYTH: *Section 106 is an example of big government*

FACT: Section 106 regulations protect America's historic places, and the right of the American people to have a say in what happens to them. The currently proposed regulatory changes would fundamentally increase the authority of federal agencies to make unilateral decisions about local historic places, while taking it away from those who are most familiar with these places: state and local governments, Tribal Nations, and the public.

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MYTH: *Section 106 creates too much litigation*

FACT: Section 106 reviews rarely result in lawsuits. In fact, the risk is extremely remote—less than your chances of being struck by lightning during your lifetime, which is 1 in 15,300. In an average year, more than 120,000 federal undertakings are reviewed under Section 106 of the National Historic Preservation Act, but only 7.6 cases are brought in federal court with a claim related to the NHPA, and nearly all of those primarily concern other legal issues.

Ironically, the current effort to change Section 106 regulations would likely lead to immediate litigation, because the changes are plainly inconsistent with the requirements of the National Historic Preservation Act and would require a departure from the longstanding and well-known consultation process.

MYTH: *Historic preservation and Section 106 are bad for economic growth*

FACT: Preservation is a proven economic development strategy that generates significant value for communities and business owners. Preserving older buildings boosts property values, supports high-quality jobs, and makes communities more attractive to residents, tourists, employers, and investors. The Advisory Council on Historic Preservation (which is now leading the effort to gut Section 106 regulations) previously commissioned a study that confirmed this economic benefit.

In recognition of the powerful economic effect created by historic preservation, 38 states have established their own historic tax credit programs, which can be combined with federal historic tax credits to enhance investment incentives. These state programs leverage public-private partnerships that spur local rehabilitation projects and deliver measurable economic returns almost immediately.