

# An Introduction to Section 106

of the National Historic Preservation Act

(36 CFR PART 800 -- PROTECTION OF HISTORIC PROPERTIES)

For OBD Projects in Kentucky



Presented by the KY SHPO

# The National Historic Preservation Act of 1966 (NHPA):

- Was created in response to public pressure.
- Built upon previous legislation, such as the Historic Sites Act of 1935.
- Created the National Register of Historic Places (NRHP), a national list of Historic Properties.
- Called for the National Park Service to develop a uniform criteria of significance applicable to historic/cultural sites.
- Made room for sites significant at the local or state level (not just national).

- Established the Advisory Council on Historic Preservation (ACHP).
- Mandated the establishment of a State Historic Preservation Officer (SHPO) in each state, and the creation of a State Historic Preservation Office (also called SHPO).
- Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties.
- A 1976 amendment specified that not only listed properties, but also properties found eligible for listing on the NRHP must be considered for protections from federal impacts.

# What's a historic property?

- Any “prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.” – 54 U.S.C. §300308



# What's the National Register of Historic Places?

- A list of properties that meet the National Park Service's Criteria of eligibility.
- Properties should be assessed by a professional meeting the Secretary of the Interior's Qualifications for the corresponding property type.
- Properties can be Not Eligible/Ineligible, Unassessed, Potentially Eligible, Eligible, or Listed.
- A 1976 amendment to the NHPA specified that not only listed properties, but also properties found eligible for listing on the NRHP must be considered for protections from federal impacts.
- Properties can be significant at the local or state level.

# What's Section 106?

“Section 106 of the National Historic Preservation Act requires Federal Agencies to take into account the

effects of their undertakings on historic properties and afford the Council (Advisory Council on Historic Preservation [ACHP]) reasonable opportunity to comment on such undertakings.”

— 36 CFR 800.1



# The Section 106 Process is a Conversation

The NRHP was crafted largely by bureaucratic process, but its origin lies in the attempt to protect those places that speak to the community.

- “The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process.” – 36 CFR 800.2
- Paragraph C:
- State historic preservation officer.
- Indian tribes and Native Hawaiian organizations.
- Representatives of local governments.
- Applicants for Federal assistance, permits, licenses and other approvals.
- Additional consulting parties (the public).



# Common Misconceptions about Section 106 of the National Historic Preservation Act and my office.

The reality is:

Having a property listed on the  
NRHP  
does NOT automatically protect it

Section 106 does NOT stop  
construction  
or slow down projects

The goal of Section 106 is NOT to  
protect every cultural resource

SHPO Cannot Issue  
Permits

SHPO Cannot “Clear” a  
Project

SHPO letter IS  
REQUIRED

The State Historic Preservation Office (SHPO) provides comments on the impacts of federally funded or permitted projects, or projects on federal land.

- The NHPA mandated SHPOs but did not tell them how to run.
- Each state, each tribe, and each other consulting party has their own way of doing things.
- Our office has developed a Policy for OBD projects.



# Kentucky Heritage Council State Historic Preservation Office

## Who We Are

An agency of the Kentucky Tourism, Arts and Heritage Cabinet, the Kentucky Heritage Council is the State Historic Preservation Office, responsible for the identification, protection and preservation of prehistoric resources and historic buildings, sites and cultural resources throughout the Commonwealth.

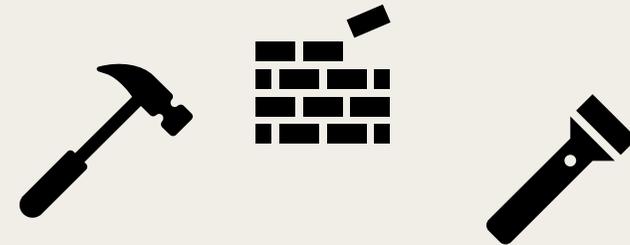
# KHC's Historic Preservation Team and Tools

## Site Identification

- Kentucky Main Street Program
- Heritage Commissions
- National Register Program
- Certified Local Government Program
- Survey Coordinator

## Administration

- **State Historic Preservation Officer**
- Budget Specialist
- Administration Specialists



# KHC's Historic Preservation Team and Tools *(Part 2)*

## Site Development

- Preservation Easements
- Historic Rehabilitation Tax Credits

## Site Protection and Archaeology *(aka Section 106)*



# KHC Site Protection Team



Ellis



Steph



Nicole



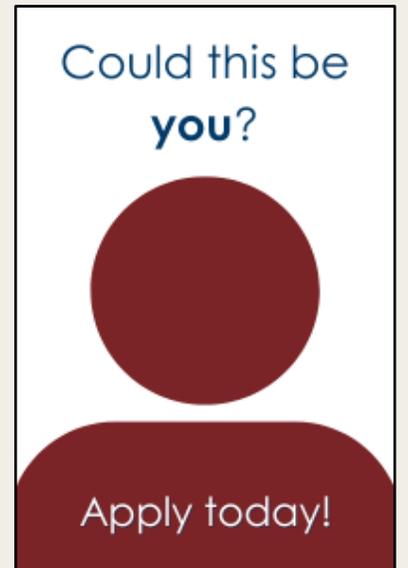
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Kim

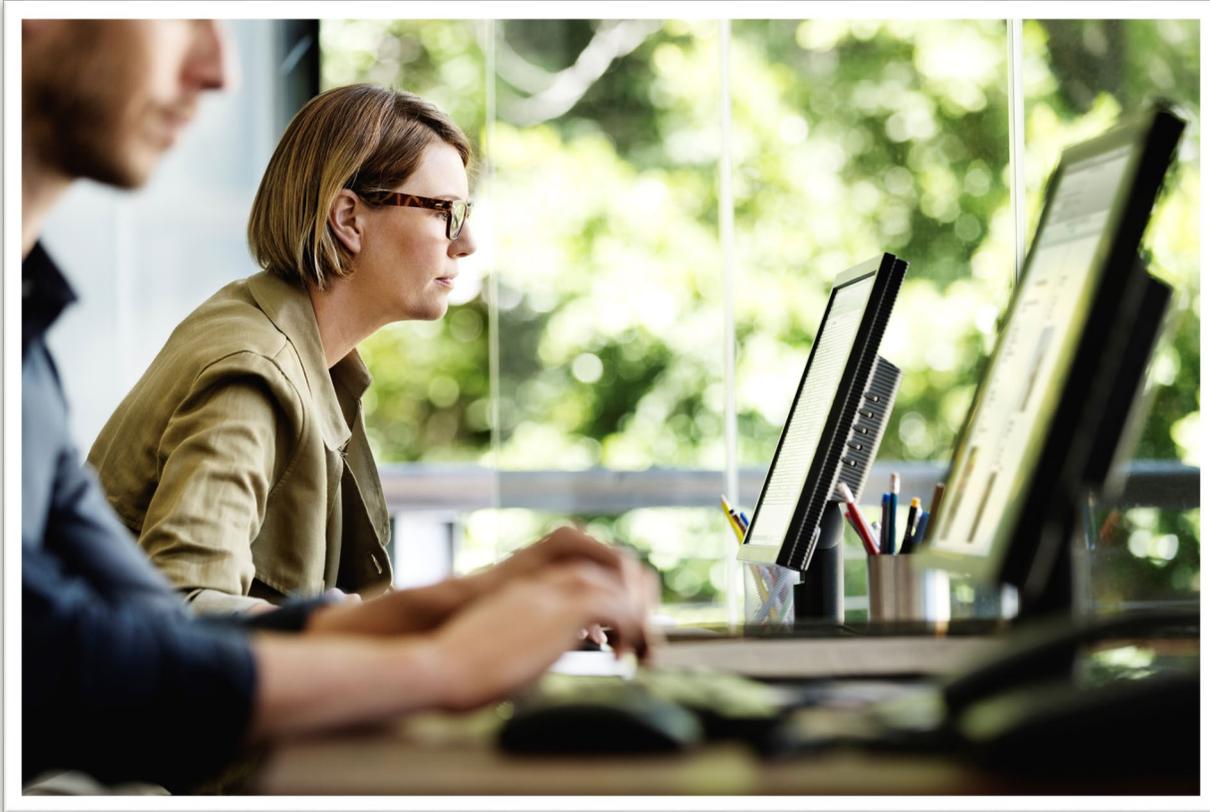


Patti



(Vacant)

# Site Protection and Archaeology (The Section 106 Team)



- When fully staffed, we have 3 archaeology reviewers and 3 above-ground reviewers.
- 4 are transportation liaisons, dedicated to transportation-focused federal agencies.
- There are about 45 federal agencies.
- We have about 250 active agreement documents.
- We reviewed about 750 submissions from April 1 – June 30, 2024. 650 to 750 is about average for our office.
- Most of these reviews require two reviewers.

# Administrative Requirements of SHPO

KHC ID	Document Type	Properties
Date In	Project Number	Ineligible
Date Out	Status	Unassessed
City	Determination	Potentially
County	Survey Acreage	Eligible
Federal Agency	No. of Survey	Eligible
Applicant	Forms	Listed
Staff	Total AG Properties	Demolished
Project Title	Total BG Properties	Notes



The Section 106 process helps us identify and possibly preserve important cultural resources. The SHPO provides comments on these resources and the projects that may impact them. **But how?**

# Submissions!

- The order of consultation (or, the things we need to concur on):
  1. Establishing the Area of Potential Effects (APE).
  2. Establishing if Historic Properties are present.
    - Do we need reports?
    - Do we need survey forms?
  3. Establishing Effects.
  4. Establishing Avoidance, Minimization,
    - or Mitigation (if needed).

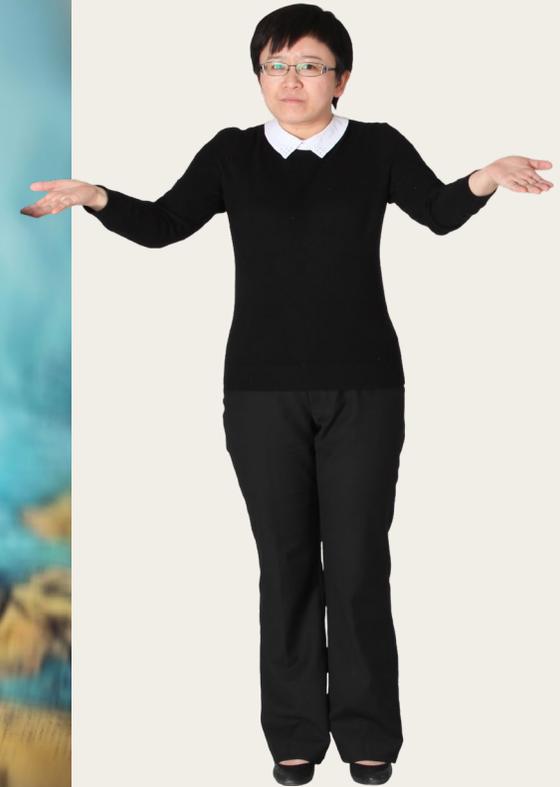
# What are you doing?



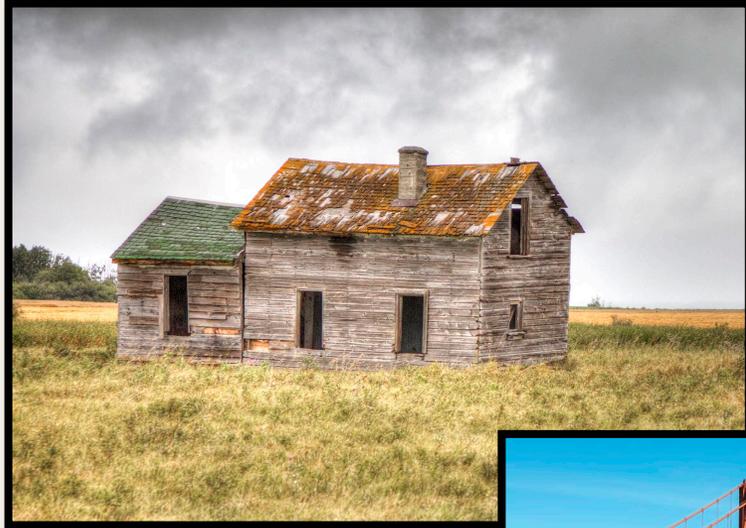
We need details.

# Where are you doing it? The area of potential effect (APE)

The APE includes height, width, depth...and time.



# Are there Historic Properties?



# Record Checks

- Archaeology:
  - At last count, there are over 30k recorded sites, and less than 10% of the state has been surveyed.
  - The Office of State Archaeology at the University of Kentucky
    - <https://anthropology.as.uky.edu/office-state-archaeology>
    - Not in our office
    - Two types of checks:
      - Preliminary Records Review:
        - Has your APE been surveyed?
        - Are there known sites within or adjacent to your APE?
        - Are any of the sites Historic Properties?
        - \$40
      - Project Registration and Request for Archaeological Site and Project Area Information
        - May only be submitted by professional archaeologists who meet the Kentucky Heritage Council's qualifications for a Principal Investigator (SOI-qualified)
        - Details about sites
        - \$140
- Above-Ground Resources:
  - The Kentucky Heritage Council
    - <https://heritage.ky.gov/historic-places/resources-survey/prelim/Pages/default.aspx>
    - Is in our office (but a different department)
  - Historic Structure Records
    - Are there known sites within or adjacent to your APE?
    - Are any of the sites historic?
    - A site check of historic structures can be performed by an applicant free of charge through the KHC Cultural Resource Web Portal .

[Preliminary Site Check Instructions](#) [PDF, 256KB]

[FCC Guidance](#) [PDF, 156KB]

[Guidelines for Search Buffers](#) [PDF, 147KB]

# Standard Submission Process

- Section 1 – Applicant Information
- Section 2 – Lead Federal Agency Information
- Section 3 – Project Information
- Section 4 – Project Type(s)
- Section 5 – OSA data, Disturbances
- Section 6 – Attachments, KHC Data

KENTUCKY HERITAGE COUNCIL COVER SHEET FOR SECTION 106 REVIEW AND COMPLIANCE	
<i>When federal (and some state) funds, permits or approvals are needed for a project, regulations such as 36 CFR Part 800 require these agencies or their delegates to consult with the Kentucky Heritage Council/State Historic Preservation Office regarding the project's potential effects on historic properties. To facilitate our review, please provide the following information and applicable attachments. Our office will generate a response within 30 days of receipt. Incomplete submissions may be returned for more information.</i>	
<b>SECTION 1: APPLICANT INFORMATION</b>	
Project Sponsor or Applicant:	
Contact Person (name & position):	
Return Address:	
Telephone:	E-mail:
Project Title:	
<b>SECTION 2: AGENCY INFORMATION</b>	
Funding/Permitting Agency:	
Agency Contact Person (name & position):	
Telephone:	E-mail:
<b>SECTION 3: PROJECT LOCATION</b>	
E911 Street Address (or other description):	
City/Township:	County:
Latitude:	Longitude:
<b>SECTION 4: PROJECT TYPE (please check all that apply)</b>	
Proposed Activity: <input type="checkbox"/> Demolition <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Structural Relocation <input type="checkbox"/> Trails	
<input type="checkbox"/> New Construction <input type="checkbox"/> Land and/or Building Acquisition <input type="checkbox"/> Sewer/Water Lines <input type="checkbox"/> Roads/Bridges	
<input type="checkbox"/> Non-Construction Planning/Refinancing <input type="checkbox"/> Other (describe):	
<b>SECTION 5: IDENTIFICATION OF KNOWN HISTORIC PROPERTIES</b>	
OSA Preliminary Site Check #:	
If your project involves ground disturbance, has the site been previously disturbed?	
<input type="checkbox"/> Yes (describe in detail below) <input type="checkbox"/> No	
Is there anything over 50 years of age in or visible from the project location? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>SECTION 6: ATTACHMENTS - Attach all as applicable</b>	
<i>All documentation should be labeled with the project name or site address.</i>	
<input type="checkbox"/> Clear, current photographs of the project site and anything over 50 years of age in or visible from it.	
<input type="checkbox"/> Site map/plan indicating the exact location and boundaries of the project area.	
<input type="checkbox"/> Detailed description of the project (may include plans, scope of work, and other available information.)	
<input type="checkbox"/> Documentation of prior ground disturbance (e.g. maps, photographs, underground utility plans, etc.)	
<input type="checkbox"/> Any known information about the history/use of the property and local significance.	
NOTE: Submit all information to Craig Potts, Executive Director/SHPO Via E-mail to:	
khc.section106@ky.gov PAPER SUBMISSIONS WILL NOT BE ACCEPTED	

We are no longer accepting paper documents for above or below ground review. Please submit all electronic documents for Section 106 Review to [khc.section106@ky.gov](mailto:khc.section106@ky.gov). DO NOT SUBMIT ANY INITIAL SECTION 106 REVIEW MATERIALS TO AN INDEPENDENT REVIEWER. Failure to submit documents to the dedicated Section 106 email address will result in our staff not receiving these documents for review.

# SECTION 6:

- Clear, current photographs of the project site and anything over 50 years of age in or visible from it.
- Site map/plan indicating the exact location and boundaries of the project area.
- Detailed description of the project (may include plans, scope of work, and other available information.)
- Documentation of prior ground disturbance (e.g. maps, photographs, underground utility plans, etc.)
- Any known information about the history/use of the property and local significance.

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City/Township:	County:
Latitude:	Longitude:
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OSA Preliminary Site Check #:	
<i>If your project involves ground disturbance, has the site been previously disturbed?</i>	
<input type="checkbox"/> Yes (describe in detail below) <input type="checkbox"/> No	
Is there anything over 50 years of age in or visible from the project location? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>SECTION 6: ATTACHMENTS - Attach all as applicable</b>	
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NOTE: Submit all information to Craig Potts, Executive Director/SHPO Via E-mail to: khc.section106@ky.gov PAPER SUBMISSIONS WILL NOT BE ACCEPTED	

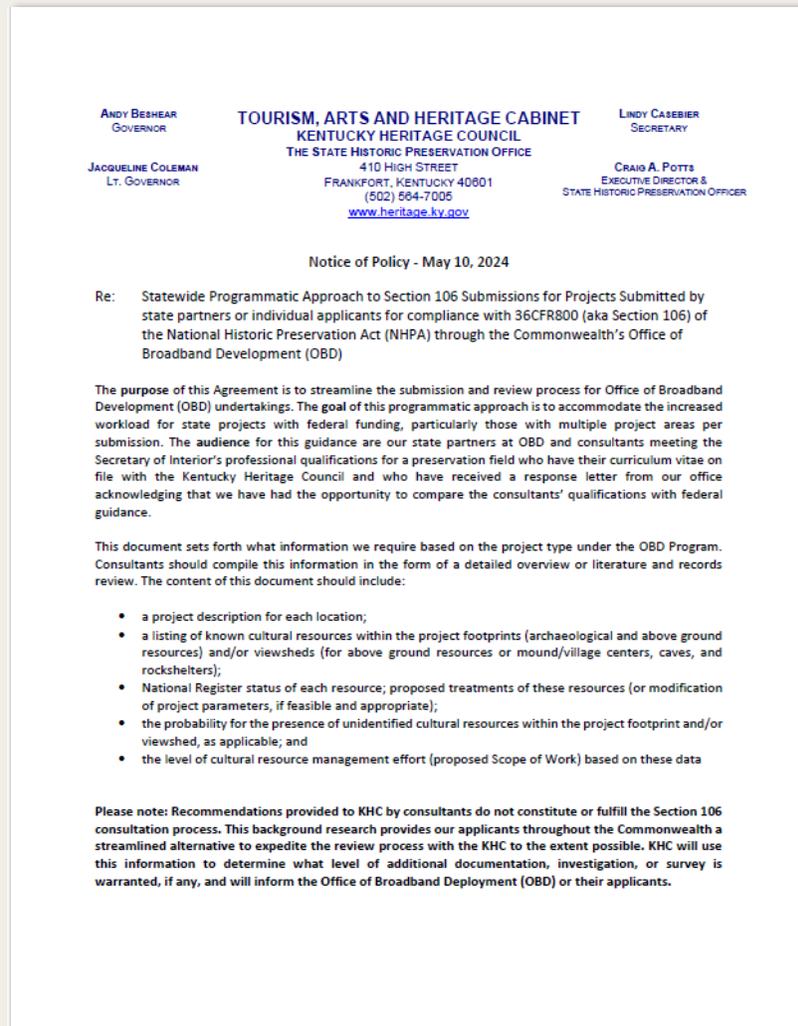
We are no longer accepting paper documents for above or below ground review. Please submit all electronic documents for Section 106 Review to [khc.section106@ky.gov](mailto:khc.section106@ky.gov). DO NOT SUBMIT ANY INITIAL SECTION 106 REVIEW MATERIALS TO AN INDEPENDENT REVIEWER. Failure to submit documents to the dedicated Section 106 email address will result in our staff not receiving these documents for review.

# The ACHP Program Comment on Federal Communications Projects

- Expanded to include broadband in spring of 2024.
- Includes Categories of projects that may be excluded from Section 106 review, but should be reported to the ACHP, NCSHPO, and NATHPO annually. These projects may be excluded “when certain thresholds are met.”
- What’s not excluded? Essentially, projects that may affect Historic Properties.
- Several categories include the condition “when a records check confirms no historic properties within the area of potential effect.”
- A FAQ is available at: <https://www.achp.gov/digital-library-section-106-landing/frequently-asked-questions-pc-federal-communications>

# Policy Submission

<https://heritage.ky.gov/compliance/applicants/Pages/default.aspx>



- Projects should be submitted to our office via [khc.section106@ky.gov](mailto:khc.section106@ky.gov)
- Our office has developed a policy for OBD undertakings
- Different types of project activities have different impacts and require different information
- Our policy is designed to tell us what we need to know in order to comment on your project

# Policy Submission *(Part 2)*

<https://heritage.ky.gov/compliance/applicants/Pages/default.aspx>

The screenshot shows a web browser window with the URL <https://heritage.ky.gov/compliance/applicants/Pages/default.aspx>. The page header includes the Ky.gov logo and a search bar. The main content area features the Kentucky Heritage Council logo and a navigation menu on the left. The central text reads: "Applicants. The following information is intended for use by applicants in complying with Section 106 guidelines in Kentucky. For questions, please email [Nicole.Konkol@ky.gov](mailto:Nicole.Konkol@ky.gov)." Below this, there is a link for "SECTION 106 COVER SHEET [PDF, 171KB]". The "Broadband - Notice of Policy" section includes a heading "Notice of Policy - Broadband - May 10, 2024" and a paragraph explaining the purpose of the policy to streamline submission and review processes for small-scale linear projects. A link for "NOTICE OF POLICY - BROADBAND PROJECT" is provided. A "Contact Us" button is located at the bottom of the main content area. The right sidebar contains links for "Applicants", "Consultants", and "Federal Agencies", as well as a "Helpful Documents" section with links to various PDFs and reports.

**Ky.gov** An Official Website of the Commonwealth of Kentucky

**KENTUCKY HERITAGE COUNCIL**  
STATE HISTORIC PRESERVATION OFFICE

ABOUT US  
EDUCATION AND OUTREACH  
KENTUCKY'S HISTORIC PLACES  
HELP FOR HISTORIC BUILDINGS  
COMMUNITY AND LOCAL GOVERNMENT  
REVIEW AND COMPLIANCE  
KENTUCKY ARCHAEOLOGY  
AFRICAN AMERICAN AND NATIVE AMERICAN HERITAGE  
AFFILIATED BOARDS AND COMMISSIONS  
DOCUMENTS SEARCH

Home / Review and Compliance / Applicants

## Applicants

The following information is intended for use by applicants in complying with Section 106 guidelines in Kentucky. For questions, please email [Nicole.Konkol@ky.gov](mailto:Nicole.Konkol@ky.gov).

[SECTION 106 COVER SHEET](#) [PDF, 171KB]

**Water & Sewer Project - Notice of Policy**

**Broadband - Notice of Policy**

*Notice of Policy - Broadband - May 10, 2024*

The purpose of this Policy is to streamline the submission and review processes for compliance with Section 106 of the National Historic Preservation Act for small-scale linear projects. The goal of this policy is to accommodate the increased workload for projects with federal funding. This document sets forth what information KHC requires based on project type. The audience for this guidance are our state partners, their applicants, and consultants meeting the Secretary of Interior's professional qualifications for a preservation field who have their curriculum vitae on file with the Kentucky Heritage Council and who have received a response letter from our office acknowledging that we have had the opportunity to compare the consultants' qualifications with federal guidance.

Please submit all required documents directly to our dedicated Section 106 email address, [khc.section106@ky.gov](mailto:khc.section106@ky.gov), with the subject line: Broadband

[NOTICE OF POLICY - BROADBAND PROJECT](#)

**Contact Us**

**Applicants**  
**Consultants**  
**Federal Agencies**

**Helpful Documents**

- [Section 106 Cover Sheet \[PDF, 171KB\]](#)
- [Cultural Resource Management Consultants \[PDF, 174KB\]](#)
- Results of a Preliminary Records Review from the [Office of State Archaeology](#)
- Results of a Preliminary Site Check from our [KHC Cultural Resource Portal](#)
- Results of a Full Literature and Background Search (for complex projects or project areas)

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**TEAM**

# Policy Submission *(Part 3)*

<https://heritage.ky.gov/compliance/applicants/Pages/default.aspx>

- OBD projects are often massive, and more expansive than other types of projects.
- The Literature and Records Review is a professional analysis of your project area. This must be completed by a professional meeting the Secretary of the Interior's Qualifications for the corresponding property type.
- This document sets forth what information we require based on the project type under the OBD Program. Consultants should compile this information in the form of a detailed overview or literature and records review. The content of this document should include:
  - a project description for each location;
  - a listing of known cultural resources within the project footprints (archaeological and above ground resources) and/or viewsheds (for above ground resources or mound/village centers, caves, and rock shelters);
  - National Register status of each resource; proposed treatments of these resources (or modification of project parameters, if feasible and appropriate);
  - the probability for the presence of unidentified cultural resources within the project footprint and/or viewshed, as applicable; and
  - the level of cultural resource management effort (proposed Scope of Work) based on these data

# Our Policy and the Program Comment

content of lit. and rec.:

agency shall have a QP:

1. a project description for each location;
2. a listing of known cultural resources within the project footprints (archaeological and above ground resources) and/or viewsheds (for above ground resources or mound/village centers, caves, and rock shelters);
3. National Register status of each resource; proposed treatments of these resources (or modification of project parameters, if feasible and appropriate);
4. the probability for the presence of unidentified cultural resources within the project footprint and/or viewshed, as applicable; and
5. the level of cultural resource management effort (proposed Scope of Work) based on these data

1. Consult with the SHPO/THPO, Indian Tribes, or NHO to confirm the APE for each individual undertaking and provide notification to the appropriate SHPO/THPO, Indian Tribes, or NHO of intent to follow this Program Comment.
- 2 and 3. Identify known eligible or listed historic properties within the relevant APE that may be affected by the undertaking by completing a Records Check.
4. If a Records Check reveals no information on the presence of historic properties within the APE, the qualified professional will consult with the SHPO/THPO, Indian Tribes, or NHO to determine whether, based on professional expertise, familiarity with the area, and similar geomorphology elsewhere, the APE includes areas that have a high probability of containing National Register-eligible properties
5. ... If they cannot be avoided, the federal agency and applicant will consult with the SHPO/THPO, Indian Tribes, or NHO to determine whether a survey or monitoring program should be carried out to identify historic properties

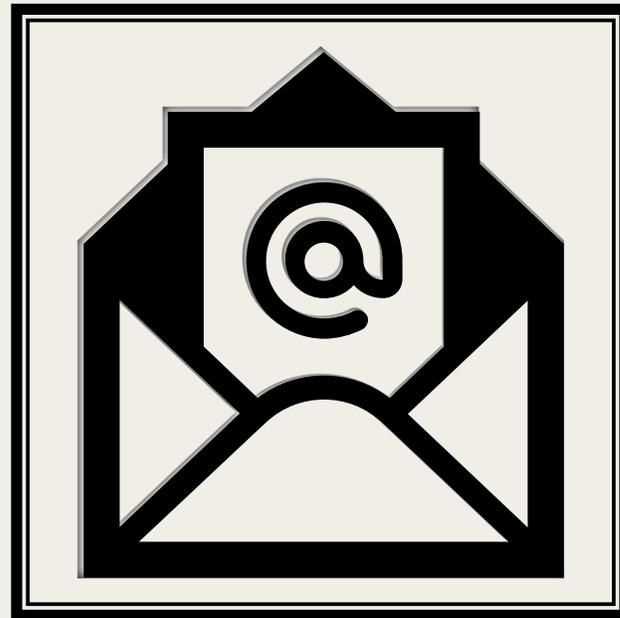
# Consultants

- Properties should be assessed by a professional meeting the Secretary of the Interior's Qualifications for the corresponding property type. (i.e., your consultant must be "SOI-Qualified"/ "A Qualified Professional"
  - "SOI-Qualified" is a national standard; it does not vary by state.
  - Many states maintain a list of consultants.
  - You are not limited to our list (or any state's list).
  - If your consultant does not have a letter from our office accepting their CV, they should obtain one prior to your project. All they need to do is send their CV to [khc.section106@ky.gov](mailto:khc.section106@ky.gov) and we will review it.
  - Kentucky SHPO maintains a list of Qualified consultants at:
  - <https://heritage.ky.gov/compliance/Documents/20240521%20Cultural%20Resource%20Management%20Consultants.pdf>
  - (On the side of the "Applicants" Page. Or, type "consultants" in our website's search bar.)
  - We can also email it to you if you request.
  - Please note: "Based upon information submitted to us, it appears the individuals representing the institutions and firms listed below meet the qualifications established by the Secretary of the Interior for professionalism in archaeology, history, or architectural history and can carry out Section 106 assessments for federally assisted undertakings in Kentucky. Inclusion on this list does not constitute a recommendation or an endorsement of any kind and we are not responsible for the work performed."
- 

# Your consultant will need to know:

- What you are doing.
- Where you are doing it.
- Kindly point them to our ODB Policy. This is a new policy from our office, and consultants will need to review it to ensure they send what we need.

You can let your consultant handle communication with our office, or you can do it yourself. It doesn't matter who sends in the submission. YOU will need our letter, though.



# Our letter regarding The Determination of Effect

**“Our office would concur with a determination (or finding) of...”**

- **No Historic Properties Affected:** There are no Historic Properties present. You typically don't need to do anything else.
- **No Adverse Effect to Historic Properties:** There are Historic Properties present, but the undertaking will not adversely affect it/them. You may have conditions you must follow, or else will need additional consultation.
- **Adverse Effect to Historic Properties:** This undertaking will/may impact the qualities that make the Historic Property eligible. This will require additional consultation, but we are available to help!



# Timelines

- SHPO officially has 30 days to provide comments.
- Each new submission is a new “30-day clock.”
- Additional information is a new “30-day clock.”



# Helpful tips

KENTUCKY HERITAGE COUNCIL COVER SHEET FOR SECTION 106 REVIEW AND COMPLIANCE	
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E911 Street Address (or other description):	
City/Township:	County:
Latitude:	Longitude:
<b>SECTION 4: PROJECT TYPE (please check all that apply)</b>	
Proposed Activity: <input type="checkbox"/> Demolition <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Structural Relocation <input type="checkbox"/> Trails	
<input type="checkbox"/> New Construction <input type="checkbox"/> Land and/or Building Acquisition <input type="checkbox"/> Sewer/Water Lines <input type="checkbox"/> Roads/Bridges	
<input type="checkbox"/> Non-Construction Planning/Refinancing <input type="checkbox"/> Other (describe):	
<b>SECTION 5: IDENTIFICATION OF KNOWN HISTORIC PROPERTIES</b>	
OSA Preliminary Site Check #:	
<i>If your project involves ground disturbance, has the site been previously disturbed?</i>	
<input type="checkbox"/> Yes (describe in detail below) <input type="checkbox"/> No	
Is there anything over 50 years of age in or visible from the project location? <input type="checkbox"/> Yes <input type="checkbox"/> No	
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- Ensure all needed information is submitted.
- Ensure your area of potential effect is clear.
- Ensure the scope of your project is clear.
- **START EARLY.** Allow time for proper consultation.

# Questions?



**Please reach out to us with any questions after today!**

**Nicole Konkol: [Nicole.Konkol@ky.gov](mailto:Nicole.Konkol@ky.gov)**

**Patti Hutchins: [Patricia.Hutchins@ky.gov](mailto:Patricia.Hutchins@ky.gov)**