

# Federal and State Laws Protecting Historic Resources: *Getting your community involved*

There are two laws that state and federal agencies follow to ensure that they consider how their project activities will affect historic and archaeological resources. The federal law is “Section 106,” which refers to section 106 of the National Historic Preservation Act. The state law is Oregon Revised Statute 358.653. Federal and state agencies are responsible for consulting with the Oregon State Historic Preservation Office (SHPO) to identify historic properties in their project areas and avoid adverse effects to those properties. If they can’t avoid adverse effects, they are required to provide mitigation. Typical projects that trigger these laws include construction, rehabilitation, demolition, licensing, permitting, or conveyance of public property.

Generally the consultation process takes place between the agency undertaking the project, the appropriate Native American tribe if they wish to be involved, and the Oregon SHPO. However, sometimes county and city governments may choose to “weigh in” in a more formal manner, or find themselves playing a peripheral role in the consultation process. The discussion below outlines how local governments may intersect with Section 106 or ORS 358.653.

## **Section 106 of the National Historic Preservation Act (federal process)**

The Section 106 process is triggered by those projects permitted, licensed, or funded by federal agencies, including local projects using pass-through federal funding. Counties and cities may be involved in this process by:

- **Acting as the permitting authority for construction on a federally-funded project, reviewing the impact of a project on local landmarks or National Register-listed properties through the local landmarks or planning commission, or being asked to provide comment by the federal or state agency.** Acting as the permitting authority, reviewing the project through the local landmarks or planning commission, or providing official comments to a federal agency can be handled as any other case would be; however, it is a good idea to copy the SHPO on any correspondence.
- **Spending or receiving federal funds.** If receiving or spending federal funds, it is the responsibility of the federal agency to clearly communicate to the recipient who will be responsible for ensuring historic properties are properly considered. While a federal agency may ask a local government to take on this task, the ultimate responsibility for the protection of historic and archaeological resources lies with the federal agency.
- **Asserting the right to serve as a “consulting party” under 36 CFR 800.2c (implementing regulations for Section 106).** Generally local governments would serve as a consulting party only if the community expected to have a specific role in the process, such as suggesting mitigation for negative outcomes on historic properties or having a role in ensuring that the agreement reached between all the consulting parties is carried out.

- Local governments can always insert themselves into the consultation process by specifically requesting in writing that they be included as an interested party. Such a letter should be sent to the federal agency and copied to the Oregon SHPO.

### **ORS 358.653 (state process)**

Oregon Revised Statute (ORS) 358.653 is an Oregon state law obligating state agencies and all “political subdivisions” of the state—including counties, cities, universities, school districts, and local taxing districts—to consult with the SHPO to avoid inadvertent impacts to historic properties for which they are responsible (own or lease). Counties and cities may find themselves involved in this process in two main ways:

- **First, cities or counties may be an “applicant” who must consult with SHPO if they are spending funds on their own historic property (a city hall or courthouse, for example).** For the purposes of this statute, “historic” properties are those that are at least 50 years old and retain their historic integrity (relatively minor alterations only). SHPO works with them to explore options that minimize impacts to the historic property. Adverse effects that cannot be avoided must be mitigated in a manner worked out between the applicant and the SHPO. Mitigation may involve preservation, education, or documentation activities.
- **Second, local governments may also get involved in this process as a “reviewer” if a project involves a publicly owned historic property that is subject to review by the local landmarks commission.** Typically these are properties listed in a local register or in the National Register. SHPO may allow the local landmark review to suffice as the state review called for by ORS 358.653. SHPO is available for advice and assistance as needed, but generally prefers to honor the local process whenever circumstances permit. If mitigation is needed because adverse effects cannot be avoided, then SHPO may have to play a more prominent role.