

# INTRODUCTION TO SECTION 106 REVIEWS

HERITAGE OHIO  
ANNUAL CONFERENCE  
OCTOBER 6, 2015



# National Historic Preservation Act

- Passed by Congress in 1966
- States that “...the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” [54 U.S.C. 300101 b(2)]
- Established several institutions:
  - Advisory Council on Historic Preservation
  - State Historic Preservation Office
  - National Register of Historic Places
  - Section 106 review process



# Section 106 of the National Historic Preservation Act of 1966

The head of any **Federal agency** having direct or indirect jurisdiction over a proposed **Federal or federally assisted undertaking** in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, **prior to the approval** of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, **take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register**. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act **a reasonable opportunity to comment** with regard to such undertaking.



# Purpose of Section 106

The Section 106 process seeks to balance historic preservation concerns with the needs of Federally funded and/or approved projects.



# The Section 106 process

- Federal agencies carry out a **consultation** among the responsible agency officials and other consulting parties with an interest in the effects of the undertaking on historic properties
- The goal of consultation is to
  - **identify historic properties** potentially affected by the undertaking,
  - **assess the effects** of the undertaking,
  - **seek ways to avoid, minimize or mitigate any adverse effects** on historic properties



# The Section 106 process: Consultation

Consultation is at the heart of the Section 106 process.



# Making the most of consultation

Consultation involves participants with a wide variety of concerns and goals. While the focus of some may be preservation, the focus of others may be time, cost, and the purpose to be served by the project. In any case, effective consultation requires that the Agency acknowledges that others have legitimate interests, and seeks to understand and accommodate them



# Participants in the Section 106 process

- Federal agencies
- Advisory Council on Historic Preservation
- SHPO/THPO
- Other consulting parties
  - Local governments
  - Applicants
  - Individuals with a demonstrated interest (legal, economic, preservation) in the undertaking
- Public





# The role of Federal Agencies in the Section 106 process

- Primary responsibilities of Section 106 rest on the responsible Federal Agencies.
- For projects with multiple federal authorities, a Lead Agency can be designated.
- Actions carried out by Agencies under Section 106 should meet professional standards.
- Agency official is ultimately responsible for content and findings in all documents.

# The role of the Advisory Council on Historic Preservation in the Section 106 process

- Independent Federal agency created by NHPA
- Advises the President and Congress on historic preservation matters
- Oversees Section 106 process
- Reviews Federal agency historic preservation programs and policies
- Encourages public interest and participation in preservation



# The role of the Advisory Council on Historic Preservation in the Section 106 process

- Council may take part in project reviews, but typically the review process can conclude without Council participation
- May choose to enter process when necessary to ensure purposes of Section 106 and NHPA are met
- May provide guidance or advisory opinion on request



# The role of the State Historic Preservation Office

- Represents the interests of the State and its citizens in the preservation of their cultural heritage
- Advises and assists Federal agencies in carrying out their Section 106 responsibilities
- Advises the public & other consulting parties about their role in the review process
- Works with consulting parties to help ensure that historic properties are taken into consideration in all levels of planning and development



# The role of the Tribal Historic Preservation Office (THPO) in the Section 106 process

- Agencies must consult under Section 106 with any Indian tribe that attaches religious and cultural significance to affected historic properties (Government to Government basis)
- Regulations authorize tribes to assume SHPO Section 106 responsibilities on tribal lands
- There are no federally recognized Indian tribes in Ohio
  - There are numerous sites and properties in Ohio to which Indian tribes attach religious and/or cultural significance



# The role of the Local Government in the Section 106 process

- Those officials with jurisdiction over the area in which the effects of an undertaking may occur; may be a county or city manager or their deputies, the planning director, or the local historic preservation planner officer, or Certified Local Government contact.
- Should advise the Agency about local planning, regulatory, and environmental issues that may intersect with the Section 106 project.



# The role of the Applicant in the Section 106 process

- Agency may authorize applicant to initiate consultation; may use applicant info & analyses in making decisions
- Agency must notify SHPO/THPO when an applicant has been authorized to initiate consultation
- Agency still remains legally responsible for all findings and determinations; they must understand their basis



# Additional Consulting Parties in the Section 106 process

- Individuals and organizations with demonstrated legal, economic, or preservation interest may ask to participate in consultation
- Agency is responsible for providing project info to all consulting parties so that they have an informed basis for comment
- Agency, SHPO/THPO, and Council may also agree to invite other consulting parties later in the process, especially when resolving adverse effects





# The role of the Public in the Section 106 process

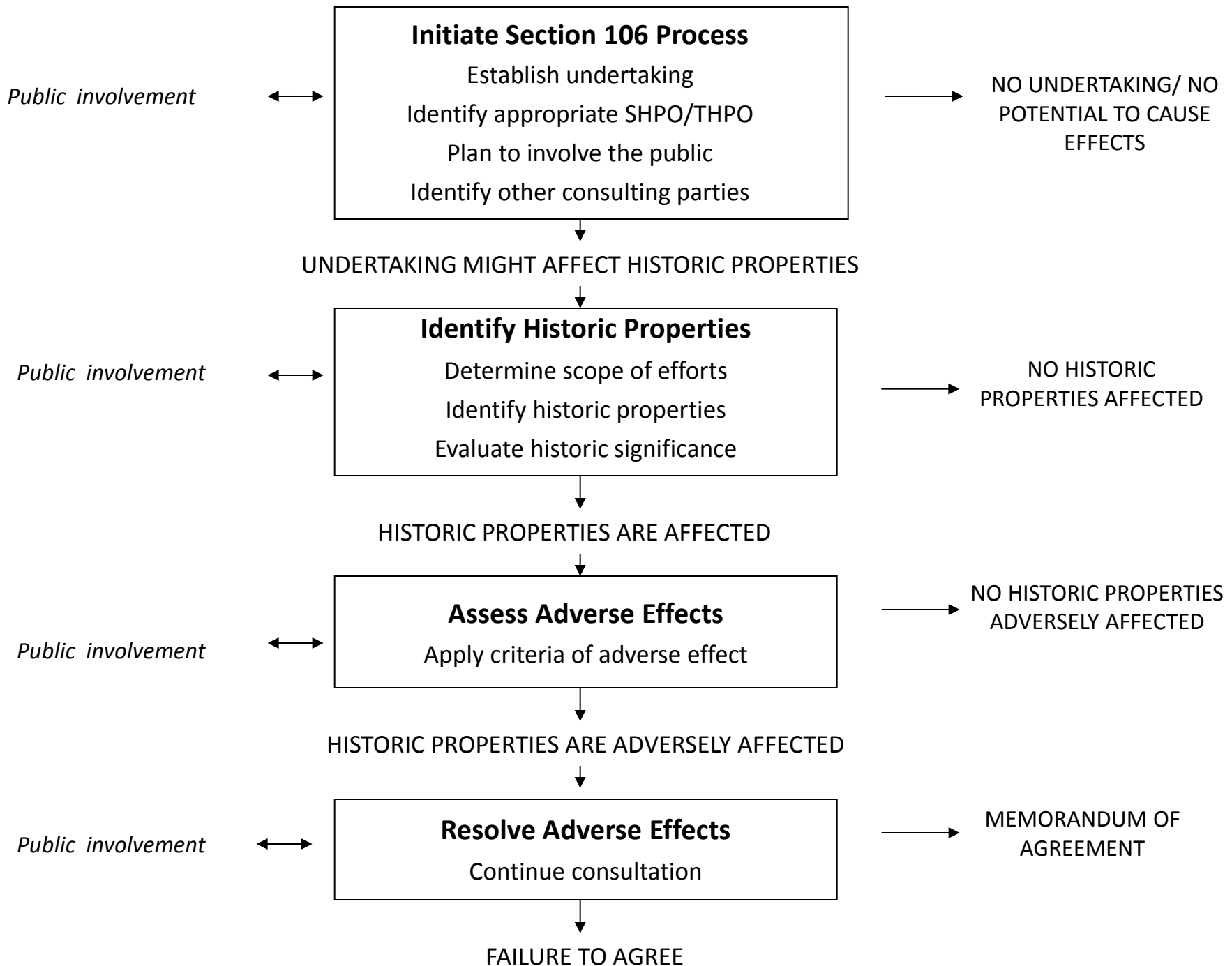
- Agencies must “seek and consider the views of the public”
- Public views are “essential to informed Federal decision-making”
- No set rules for public involvement, but Agencies may use existing mechanisms for public involvement if they are consistent with 106 regulations
  - Use scheduled public meetings
  - Provide info to affected property owners
  - Advertise to seek comments
  - Meet with representatives from local organizations



# Basic steps in the Section 106 process

- Step I: Initiate the Process
- Step II: Identify historic properties
- Step III: Assess adverse effects
- Step IV: Resolve any adverse effects





# Step I: Initiate Section 106 Process

Establish undertaking

Identify appropriate  
SHPO/THPO

Plan to involve the  
public

Identify other  
consulting parties

*Public  
involvement*



**No  
Undertaking/No  
Potential To Cause  
Effects**



**Undertaking Might Affect Historic Properties**



## Step I: Initiate the process

Agency makes decision about whether a project is considered an “**undertaking**” for the purpose of Section 106 review



## Step 1: What is an Undertaking?

Project, activity, or program funded **in whole or in part** under **the direct or indirect jurisdiction of a Federal agency**, including those carried out by or on behalf of a Federal Agency; those carried out with Federal financial assistance; those requiring a Federal **permit, license or approval**; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. [36 CFR 800.16]



# Step 1: Initiate the process- Ask questions

- Is your project subject to review under 106?
  - Does the project involve the use of federal property?
  - Will the project use any federal funding, even federal funds delegated to state agencies?
  - Do you need a federal permit or approval for any aspect of your project?
- Deciding whether an activity constitutes an undertaking is Agency responsibility



# Step I: Initiate the process

Agency starts consultation by notifying appropriate SHPO and/or THPO

- Agency and SHPO and THPO consult regarding potential consulting parties and plan how to involve the public
- Agency is responsible for formally inviting other consulting parties to participate and to respond to requests for consulting party status





# Step I: Initiate the process-

## Ask more questions

Do I have a PLAN for completing 106 review for my project?

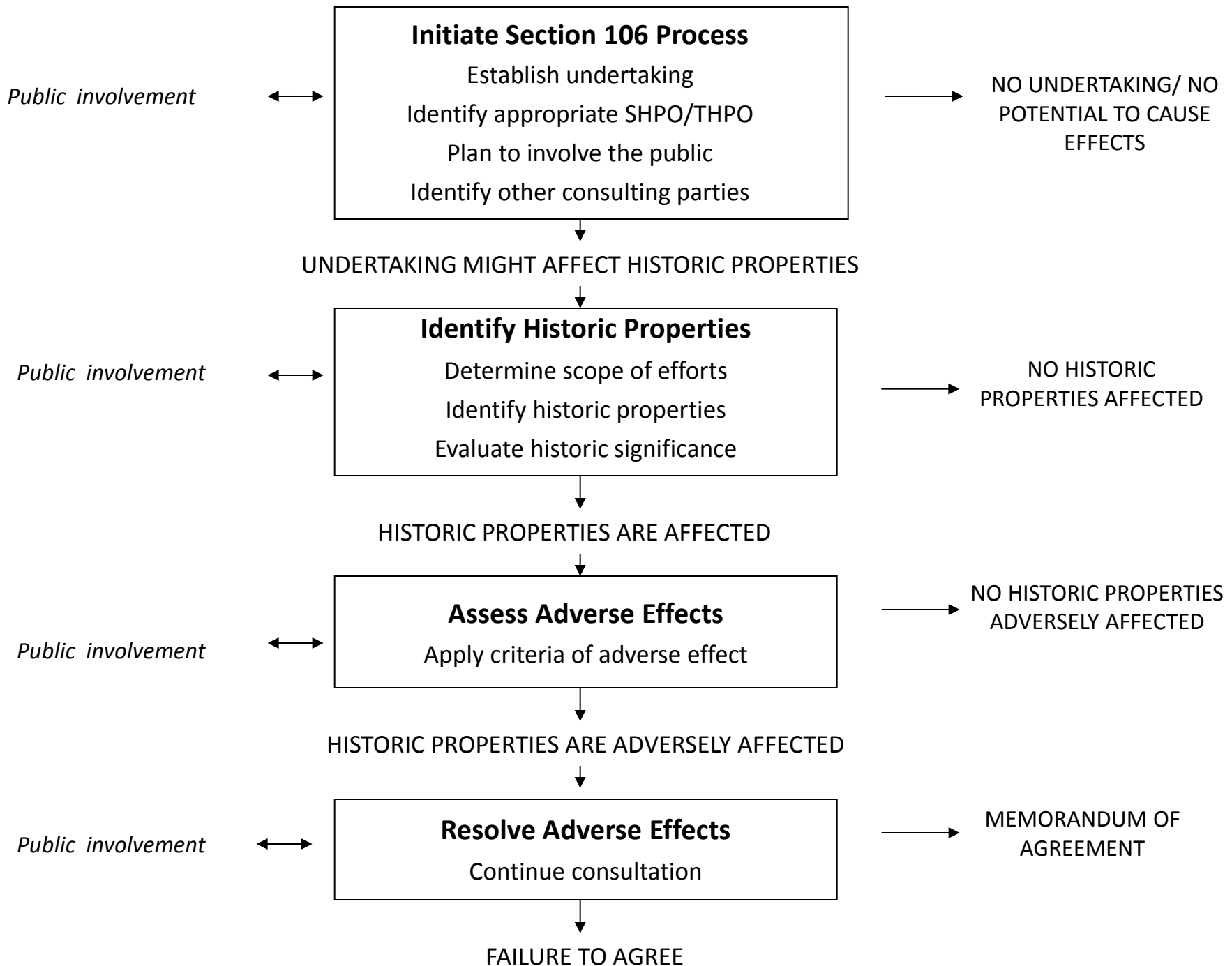
- How can the public learn about historic properties near this project and when will you consider their comments?
- Who do you need to consult with who might have an interest in historic properties and this project?
- When will you involve the SHPO? Are there complex issues involved that they could help you consider?



# Step I: Timing of the Section 106 process

- **Timing** is important, since the 106 process must be completed prior to the agency's approval of federal expenditures, or the issuance of any license/permit
- Don't leave Section 106 consultation until the last minute
  - If you're ready to proceed with your project before you submit it for review, then there is no real opportunity to consider alternatives that would avoid effects to historic properties





## Step II: Identify Historic Properties

Determine scope of  
efforts

Identify historic  
properties

Evaluate historic  
significance

*Public  
involvement*



NO HISTORIC  
PROPERTIES  
AFFECTED



HISTORIC PROPERTIES ARE AFFECTED



## Step II: Identifying Historic Properties:

Questions you will need to answer

- How would you describe your project?
- Are there any previously identified historic properties near your project area?
- How did you decide where to look for historic properties?



## Step II: Determine Scope of Efforts

The Agency in consultation with SHPO must determine and document the area of potential effects (APE)



## Step II: Area of Potential Effects Definition

**Area of potential effects** means the geographic area or areas within which an undertaking may **directly** or **indirectly** cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.  
[36 CFR § 800.16 (d)]



## Step II: Area of Potential Effects

- The APE is developed before you start looking for historic properties, based on your evaluation of the likely scope of the effects
- Be objective- try not to draw your APE to purposely exclude areas with known historic properties
- Include all areas likely to be impacted by the undertaking





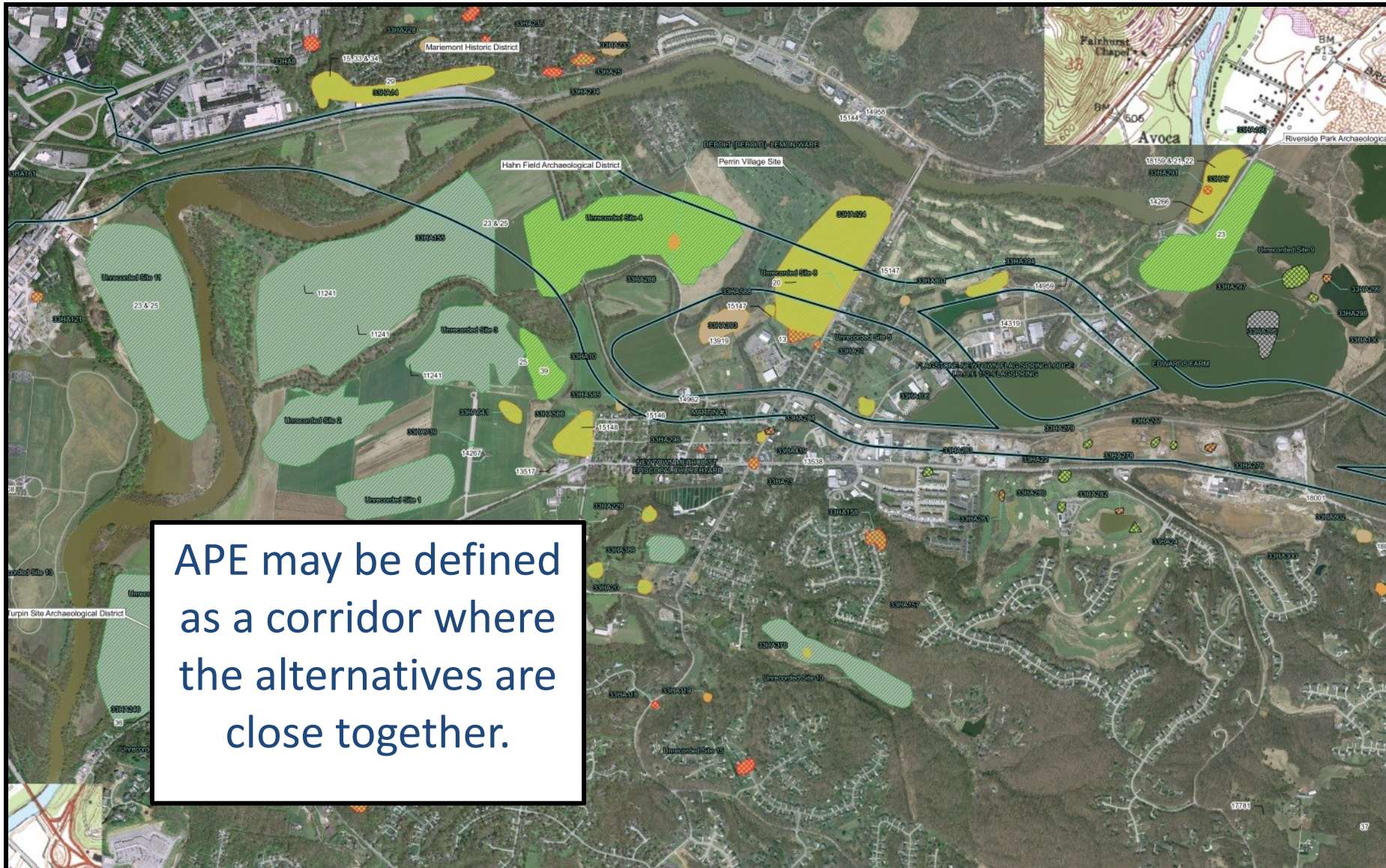
## Step II: The APE should include:

- Locations where the undertaking may result in ground disturbance (Direct Effects)
- Locations from which elements of the undertaking (e.g. structures or land disturbance) may be readily visible or audible (Indirect Effects)
- Places where the activity may result in changes in traffic patterns, land use, public access, etc. (reasonably foreseeable Indirect Effects)

## Step II: Documenting the Area of Potential Effects

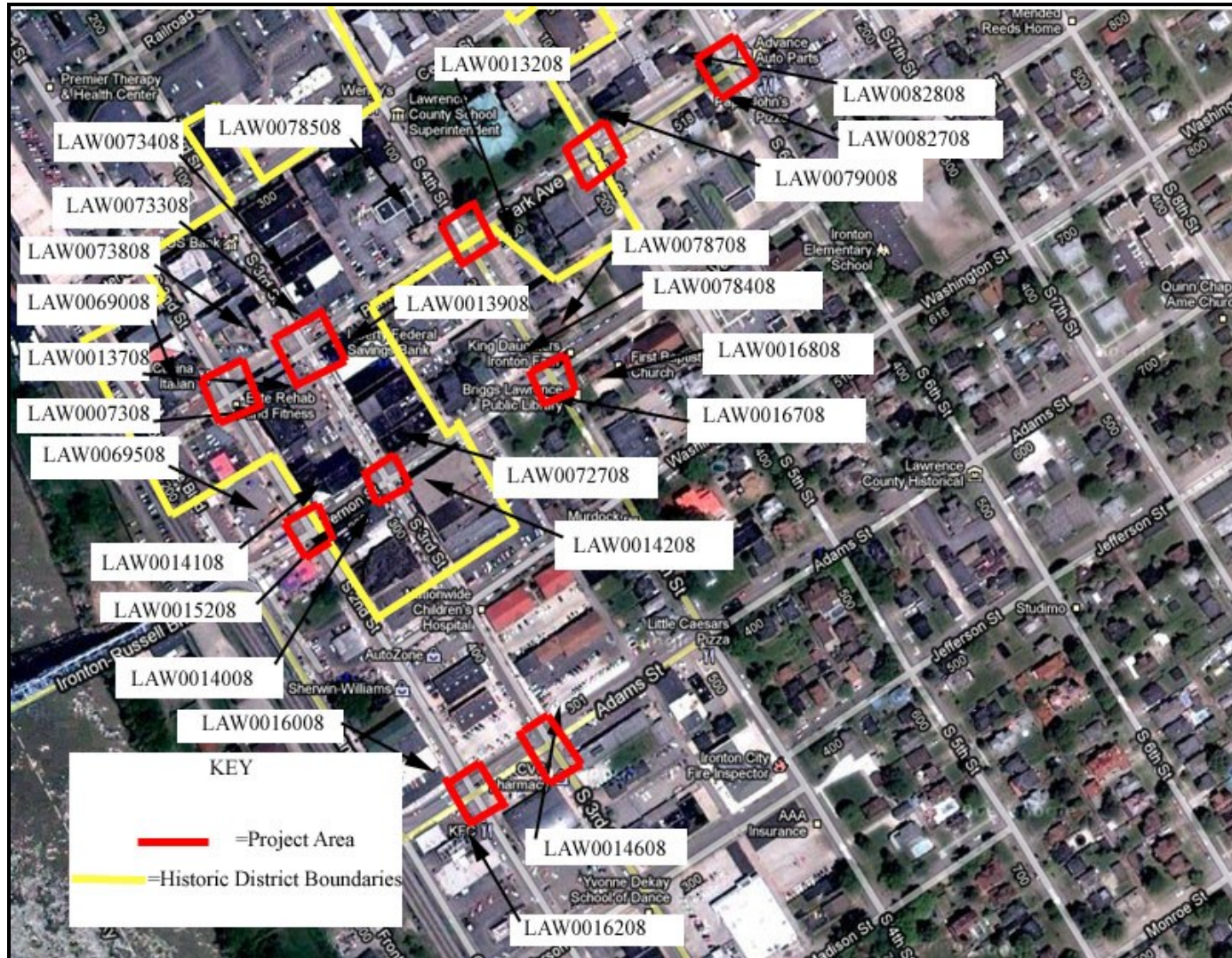
- Documenting the APE - Justification for the APE should be documented so that the SHPO, consulting parties, and the public can understand the factors taken into account in defining the APE.
- Boundaries of the APE - Graphically depict the APE (i.e. aerial photographs, maps or drawings, with the extent of the APE superimposed on the base graphic).

# Step II: APE Example





## Step II: APE Example



APE may be dispersed, as illustrated by this ADA ramp undertaking.

## Step II: Level of Effort required to identify Historic Properties

The agency must make a **reasonable and good faith effort** to carry out the appropriate **identification efforts**, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of **historic properties** within the **area of potential effects**. [36 CFR § 800.16 (b)(1)]



## Step II: What is a Historic Property?

*Historic property* means any prehistoric or historic district, site, building, structure, or object **included in, or eligible for inclusion in, the National Register of Historic Places** maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. [36 CFR 800.16(l)(1)]



## Step II: What is a Historic Property?

A historic property is any property that is included in, or eligible for inclusion in, the National Register of Historic Places. National Register properties fall into five broad categories:

- Buildings
- Structures
- Sites
- Objects
- Districts

Threshold tests: age and integrity





# Historic Properties





## Step II: Historic Properties

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity and are :

- **Criterion A:** Properties that are associated with events that have made a significant contribution to the broad patterns of our history
- **Criterion B:** Properties that are associated with the lives of significant persons in our past



## Step II: Historic Properties (cont.)

- **Criterion C:** Properties that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction
- **Criterion D:** Properties that have yielded or may be likely to yield, information important in history or prehistory



## Step II: Identifying Historic Properties

Background research to assist in identifying historic properties can include:


Review of the state inventories at OHPO or online


- National Register of Historic Places (NR)
- Ohio Historic Inventory (OHI)
- Ohio Archaeological Inventory (OAI)

Reviewing available local histories and historic maps at OHPO, local libraries



# Step II: State Historic Preservation Office Online Mapping System

 **OHIO HISTORY CONNECTION**

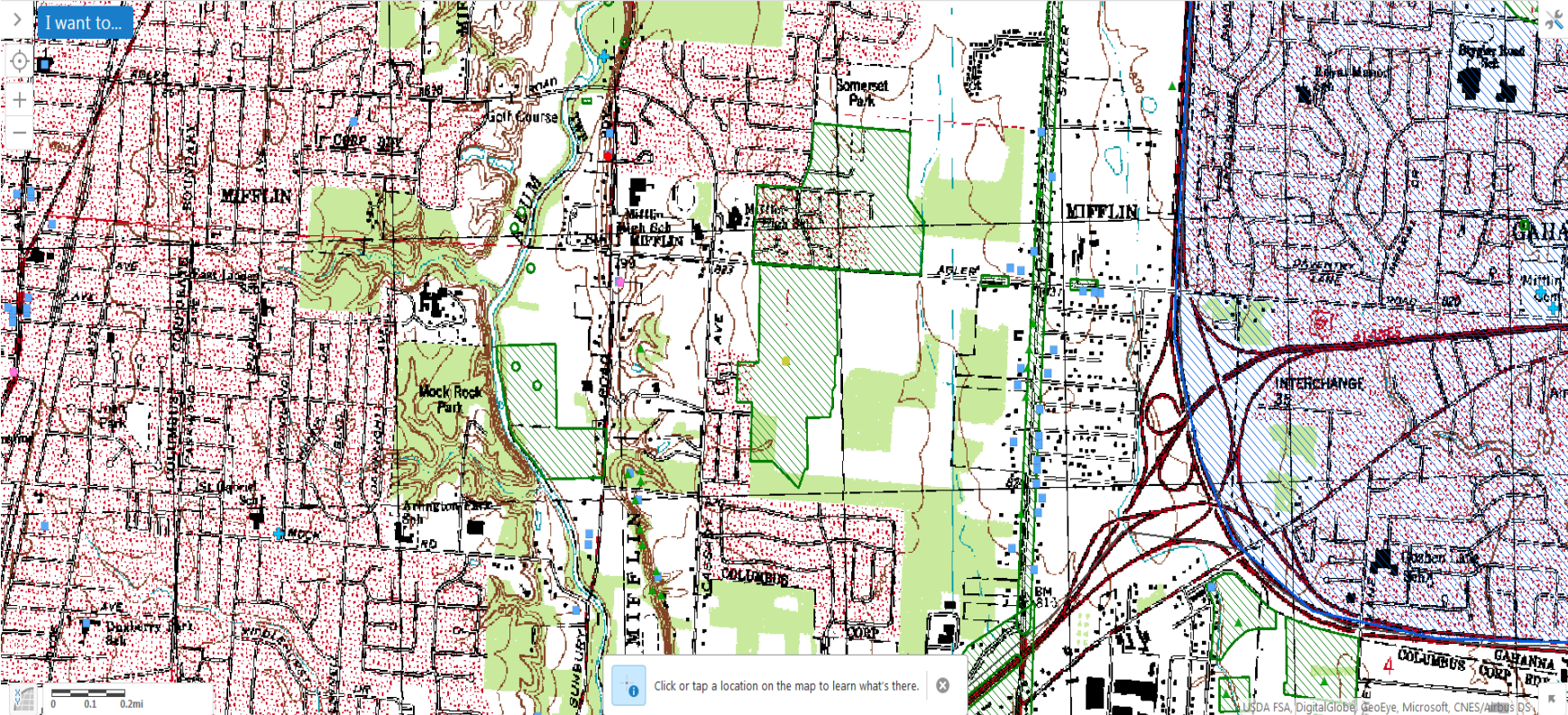
Search...  Sign out ▾

Tools Data Drawing Measurement

Identify Zoom To Area Buffered Shape Search Clear Buffered Shape Find Data

Zoom To X/Y Coordinates Zoom To UTM Coordinates Get X/Y Coordinates Get UTM Coordinates Coordinates

I want to...



Click or tap a location on the map to learn what's there.

USDA FSA, DigitalGlobe, GeoEye, Microsoft, CNES/Airbus DS

# OHIO HISTORIC INVENTORY

Ohio Historic Preservation Office

1985 Veima Avenue  
Columbus, Ohio 43211  
614/297-2470



No. STA-1044-10		2. County Stark		4. Present Name(s) Massillon City Schools Administrative Offices		<input type="checkbox"/> Coded	
Location of Negatives City of Massillon				5. Historic or Other Name(s) Massillon Post Office			
# No. 4 Picture No.(s) 5+6							
Specific Address or Location 14 Federal Avenue, NE. Lot, Section or VMD Number				16. Thematic Association(s) politics/government		28. No. of Stories 1	
City or Village Massillon If Rural, Township & Vicinity				17. Date(s) or Period 1912-13		29. Basement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Site Plan with North Arrow 				18. Style or Design Neo-classical Revival		30. Foundation Material brick tile (?)	
				18a. Style of Addition or Element(s)		31. Wall Construction concrete, steel, brick	
				19. Architect or Engineer James Knox Taylor		32. Roof Type & Material flat/built-up	
				19a. Design Sources		33. No. of Bays Front 5 Side 8	
				20. Contractor or Builder		34. Exterior Wall Material(s) masonry panels	
				21. Building Type or Plan		35. Plan Shape rectangular	
				22. Original Use, if apparent post office		36. Changes Addition <input type="checkbox"/> Alter <input type="checkbox"/> Moved <input type="checkbox"/>	
				23. Present Use school offices		37. Window Type(s) 6 over 6 <input type="checkbox"/> 2 over 2 <input type="checkbox"/> 4 over 4 <input type="checkbox"/> Other 15/15	
U.T.M. Reference Quadrangle Name 455830 4516190				24. Ownership Public <input checked="" type="checkbox"/> Private <input type="checkbox"/>		38. Building Dimensions	
On National Register? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				25. Owner's Name & Address, if known		39. Endangered? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Part of Estab. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>						40. Chimney Placement No chimney observed	
Hist. Dist. No <input type="checkbox"/> Potential? No <input type="checkbox"/>				26. Property Acreage less than 1 acre		41. Distance from and Frontage on Road	
Name of Established District (N.R. or Local) Downtown Massillon				27. Other Surveys in Which Included			
<p>2. Further Description of Important Interior and Exterior Features (Continue on reverse if necessary) Features of the Neo-Classical style include round-arched windows separated by Doric pilasters, a central entry on both west and south facades, and a classical entablature cornice with triglyph frieze, modillions, and parapet balustrade. The entries are embellished with decorative copper metalwork and light fixtures. Only the doors themselves have been altered with metal replacements.</p> <p>3. History and Significance (Continue on reverse if necessary) This building is significant as Massillon's early 20th century post office, built in 1913. The post office was first established in Massillon in 1827. In 1870 the post office was located in the Opera Block on Erie St., S., and was located at 55 Erie St., N. prior to the opening of this building.</p> <p>4. Description of Environment and Outbuildings (See #52) Occupies prominent corner location on northern edge of downtown.</p>							
<p>5. Sources of Information Kane, R. Wheat, Glass, Stone &amp; Steel: The Story of Massillon. 1976.</p>							
46. Prepared by Judy Williams for						47. Organization Mass. Hist. Pres. Comm.	
48. Date Recorded in Field 9/89						49. Revised by	
50b. Reviewed by SCG EFR 2.0 1991							



567 East Hudson Street  
Columbus, Ohio 43211-1030  
614/297-2470  
Fax: 297-2496



OHIO  
HISTORICAL  
SOCIETY  
SINCE 1885

\*Site No. 33 - FR - 1539

RECEIVED MAY 20 1999  
for official use only

## OHIO ARCHAEOLOGICAL INVENTORY

\*Response required for acceptance of form

Coder \_\_\_\_\_  
Date \_\_\_\_\_

### A. Identification

\*1. Type of Form (select as many as appropriate):

☒ New Form ☐ Revised Form ☐ Transcribed Data

2. County Franklin \*3. Trinomial State Site Number 33 - FR - 1539

4. Site Name(s) 755 Macon Alley

5. Project Site Number \_\_\_\_\_

6. Other State Site Number (OHI): FRA-5102-22

7. Source (of Item A.5. and/or A.6.) \_\_\_\_\_

### B. Location

\*1. UTM Zone 16 or ☒ 17

Easting 3 2 9 7 4 0

Northing 4 4 2 3 6 1 0

2. Latitude \_\_\_\_\_

Longitude \_\_\_\_\_

\*3. Township 5N Range 22W Not Applicable \_\_\_\_\_

Section 21 1/4 Section: \_\_\_\_\_ SW \_\_\_\_\_ SE ☒ NW \_\_\_\_\_ NE

Township Name N/A; City of Columbus

\*4. Quadrangle Name Southeast Columbus, Ohio

\*5. Quadrangle Date 1964; photorevised 1973

\*6. Confident of Site Location ☒ Yes ☐ No

### C. Ownership

\*1. Name(s) William M. (Marty) Ellis

Address 754 Mohawk Street

City/Town, State, Zip Columbus, OH 43206

Phone (614) 443-0420

2. Tenant (if any) See Above

Address \_\_\_\_\_

City/Town, State, Zip \_\_\_\_\_

Phone ( ) \_\_\_\_\_

\*3. Ownership Status (select only one, as appropriate):

☒ Private (single)

☐ Private (multiple)

☐ Local Govt.

☐ State Govt.

☐ Federal Govt.

☐ Multiple Govt.

☐ Mixed-Govt./Private

☐ Unknown

### D. Temporal Affiliations

\*1. Affiliations Present (select only one, as appropriate):

☐ Prehistoric

☒ Historic

Prehistoric and Historic

☐ Unknown

☐ Unrecorded

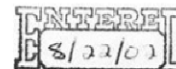
\*Site No. 33 - FR - 1539  
Printed 12/14



(Oct. 1990)

United States Department of the Interior  
National Park Service

National Register of Historic Places  
Registration Form



This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name Law, Henry, Farm Historic District

other names/site number John Q. Law Farm, Reed Farm, Huss Farm

2. Location

street & number 87675 Reed Road N/A ☐ not for publication

city or town Uhrichsville ☒ vicinity

state Ohio code OH county Harrison code 067 zip code 44683

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this ☒ nomination ☐ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ☒ meets ☐ does not meet the National Register criteria. I recommend that this property be considered significant ☐ nationally ☐ statewide ☒ locally. (☐ See continuation sheet for additional comments.)

Brian P. ...  
Signature of certifying official/Title

June 10, 2002  
Date

Ohio Historic Preservation Office -- OH SHPO  
State or Federal agency and bureau

In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. (☐ See continuation sheet for additional comments.)

\_\_\_\_\_  
Signature of certifying official/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
State or Federal agency and bureau

4. National Park Service Certification

hereby certify that the property is:

- ☐ entered in the National Register.  
☐ See continuation sheet.
- ☐ determined eligible for the National Register.  
☐ See continuation sheet.
- ☐ determined not eligible for the National Register.
- ☐ removed from the National Register.
- ☐ other, (explain): \_\_\_\_\_

\_\_\_\_\_  
Signature of the Keeper

\_\_\_\_\_  
Date of Action



## Step II: Identifying Historic Properties: Finding properties through professional surveys

What's a survey? A study designed to locate previously unidentified historic properties.

- NPS and OHPO have guidelines about how to do professional level surveys- see OHPO website
- Use OHPO Fact Sheet for advice about hiring consultants
- Consultant lists are available from OHPO
- Get references and call them
- Make sure that you understand what you're hiring them to do and that it meets the project's needs.
- Talk to OHPO!





## Step II: Identifying Historic Properties

The Federal Agency is responsible for determining which cultural resource properties within the APE are eligible for listing on the National Register of Historic Places



## Step II: Identifying Historic Properties

Documentation is the key: You must be prepared to justify and explain your identification efforts and eligibility decisions to SHPO and the public.



## Step II: Identify Historic Properties

*Public involvement* ↔

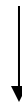
Determine scope of efforts

Identify historic properties

Evaluate historic significance



**No Historic Properties Affected**



**Historic Properties Are Affected**

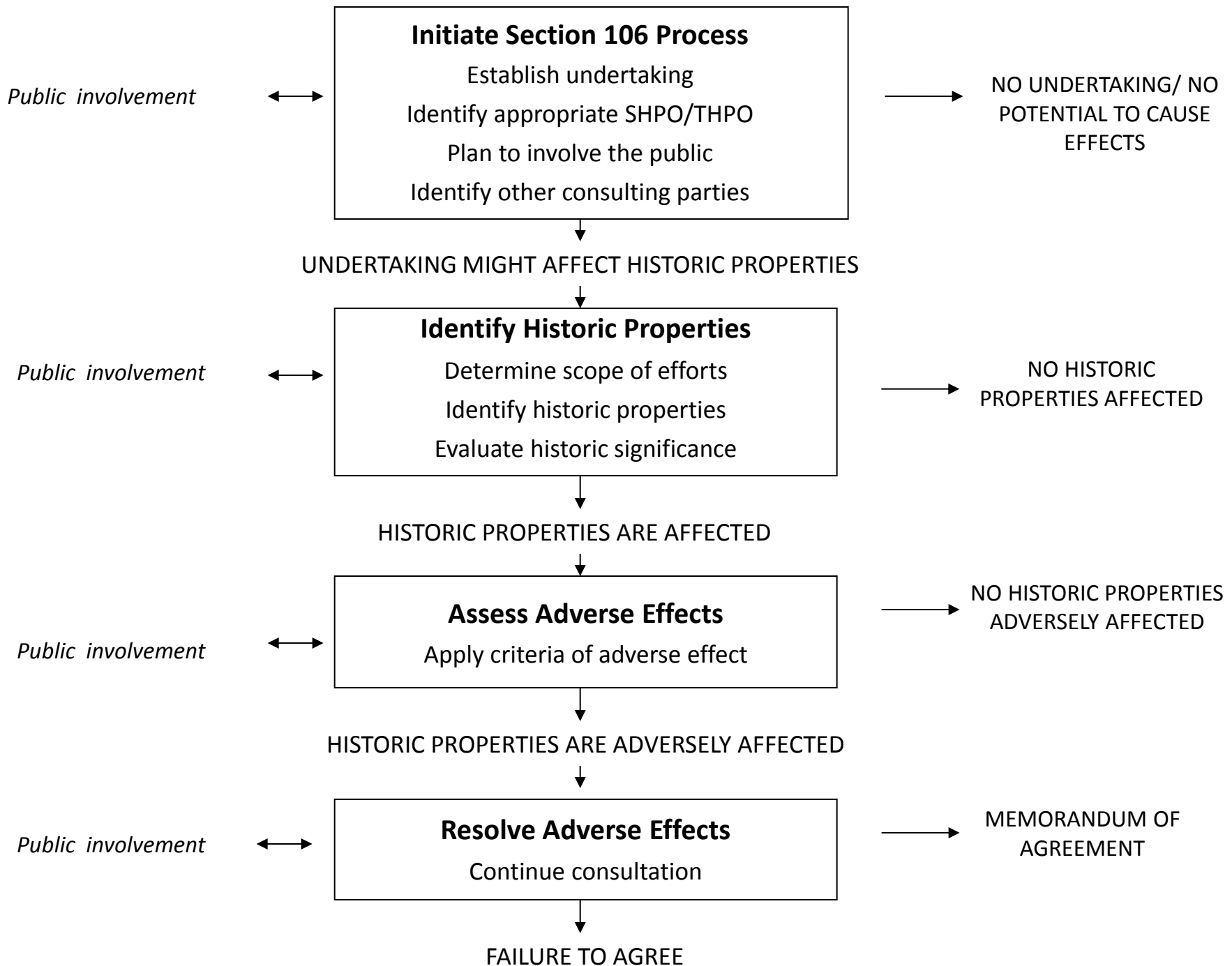


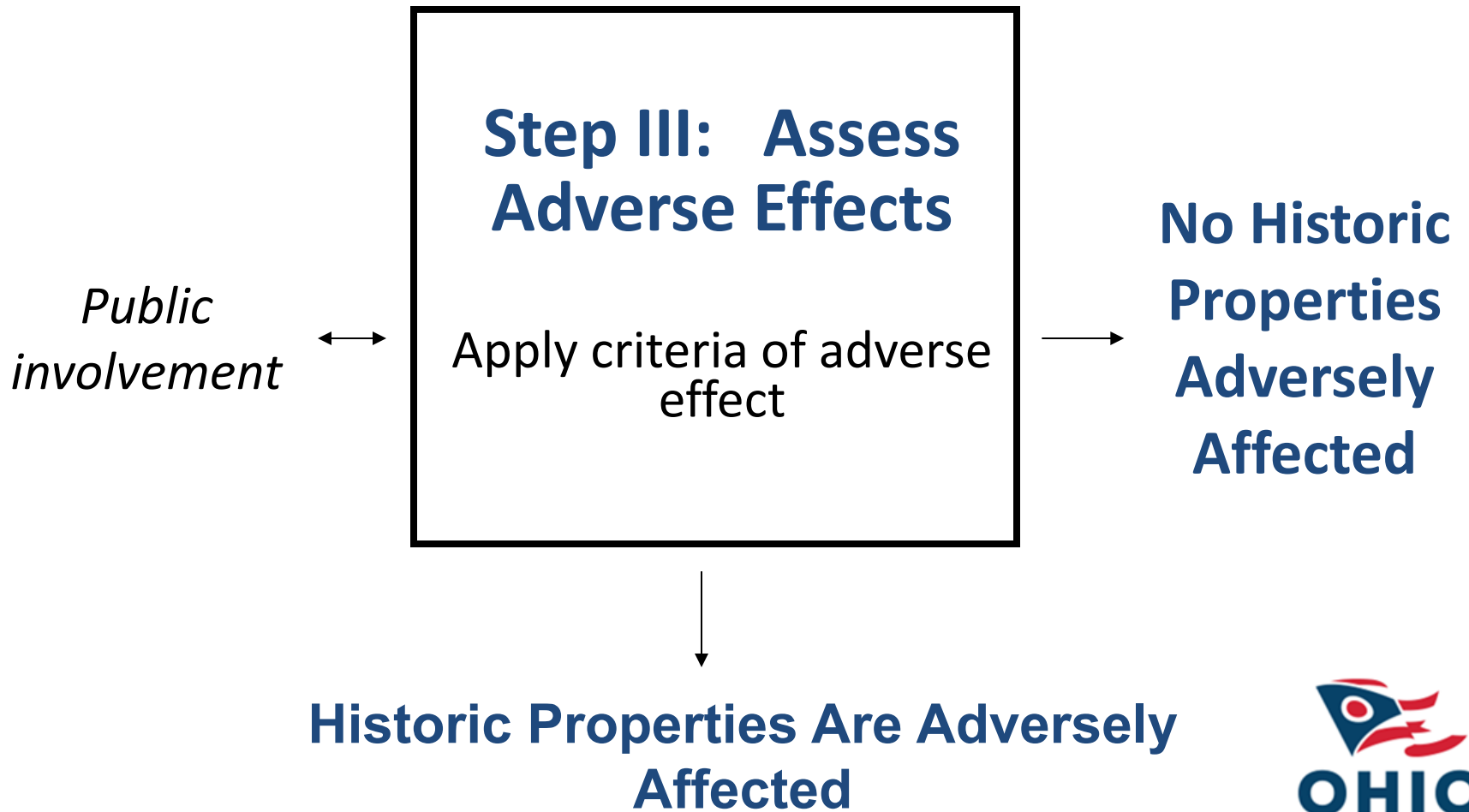
# No Historic Properties Affected Finding

- Agency has determined through consensus determination with SHPO that no historic properties are present in the APE;
- **Or,** Agency and SHPO/THPO concurs that there are historic properties present but the undertaking will not have any effects on them.

**IF NO OBJECTION, SECTION 106 PROCESS IS  
COMPLETE**







## Step III: Assess Adverse Effects

- If the Federal Agency has identified historic properties within the APE, it must assess the effects of the proposed project on those properties
- Significant characteristics of a historic property should already be known from identification process
  - May include characteristics that have been identified subsequent to the original evaluation of the property's eligibility for the National Register

## Step III: Criteria of Adverse Effects

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. [36 CFR 800.5(a)(1)]





## Step III: Examples of Adverse Effects

- Physical destruction of or damage to all or part of the property
- Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provisions of handicapped access, that is not consistent with the Secretary of the Interior's Standards for the treatment of historic properties [36 CFR 68]
- Removal of the property from its historic location



## Step III: Examples of Adverse Effects (cont.)

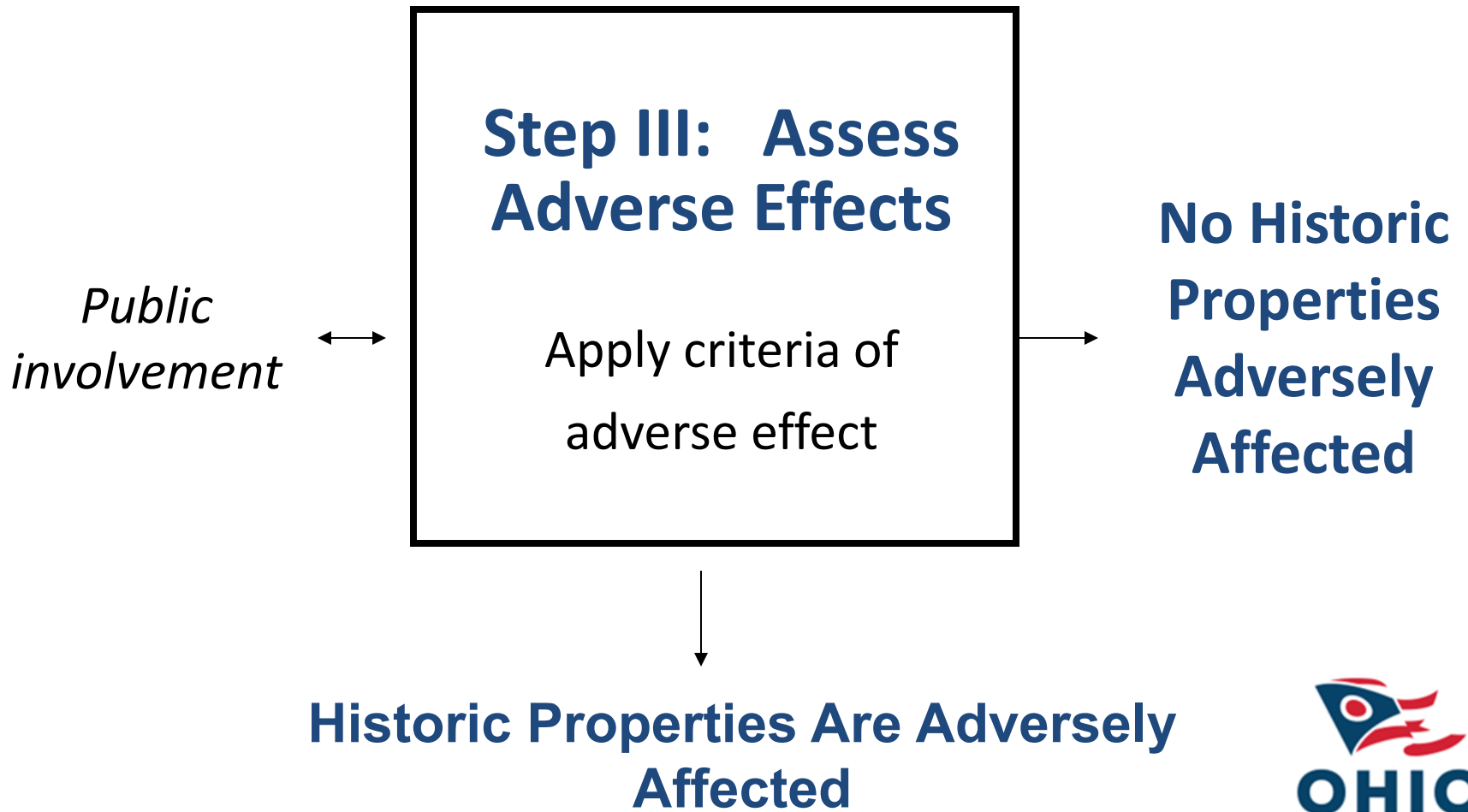
- Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance
- Introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features
- Transfer, lease, or sale of a property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance



## Step III: Assess Adverse Effects

- Agency notifies consulting parties about potential adverse effects, provides required documentation, and invites their views on project
- Agency applies Criteria in consultation with:
  - SHPO/THPO and other consulting parties
  - any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property
- Agency must consider views provided by other consulting parties & public





## Step III: Possible effect findings

- Agency applies the Criteria of Adverse Effects and makes formal effect finding
- Possible effect findings after applying Criteria:
  - No Adverse Effect
  - Adverse Effect

# No Adverse Effect Finding

- Agency and SHPO/THPO concur that the Criteria of Adverse Effect are not met for any property within the project's APE;
- Or, Agency and SHPO/THPO concur that with conditions (such as rehab plans meeting the Secretary's Standards), the project will have no adverse effect

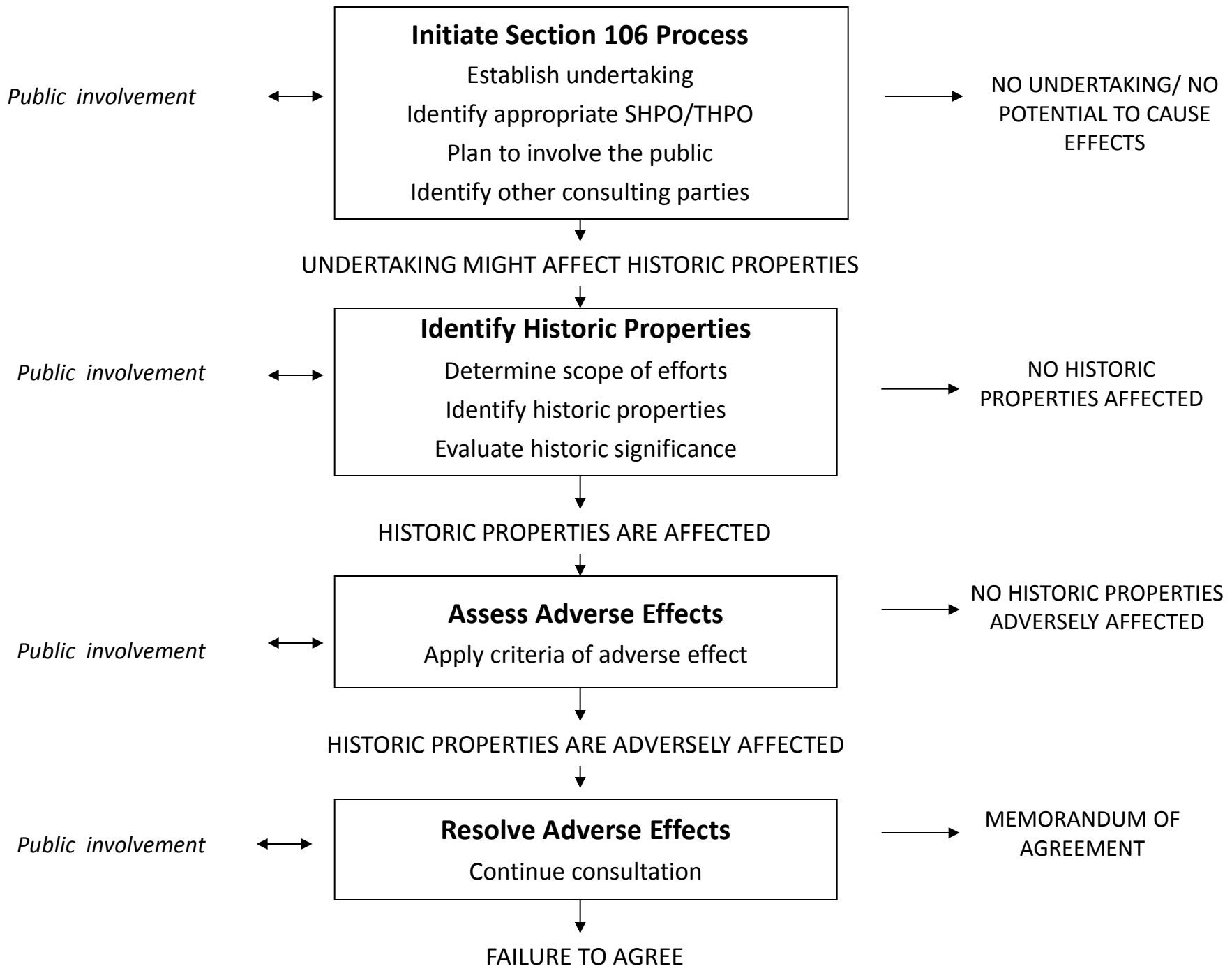
**IF NO OBJECTIONS, SECTION 106 PROCESS IS COMPLETE**



## If Criteria of Adverse Effect are met:

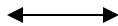
- Agency continues to **Step IV:** Resolve Adverse Effect
- Goal of continued consultation will be to explore project alternatives that could avoid, minimize, or mitigate adverse effects





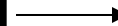


*Public  
involvement*



**Step IV:  
Resolve  
Adverse  
Effects**

Continue  
consultation



**Memorandum  
of Agreement**

## Step IV: Consultation to Resolve Adverse Effects

- Agency continues consultation with SHPO/THPO and other consulting parties to evaluate alternatives that might avoid or reduce adverse effects.
- If adverse effects cannot be avoided, then all of the consulting parties work to find creative mitigation options for the project's adverse effects.



## Step IV: Agency invitation to the Council to participate in Consultation

- For all adverse effect findings
- When a National Historic Landmark is adversely affected
- When a Programmatic Agreement is proposed
- To help with complex consultation



## Step IV: Criteria for Council Involvement

Council is likely to enter a review when there are:

- Substantial impacts on important properties.
- Important questions of policy or interpretation.
- Procedural problems
- Issues of concern to American Indians.



## Step IV: Possible Outcomes: Consulting to Resolve Adverse Effects

- Projects can be changed so that adverse effects are completely avoided; or
- Projects are changed to reduce number of properties affected or severity of effects; or
- Agency and consulting parties negotiate Memorandum of Agreement to establish terms for the mitigation of project effects.
  - MOAs can be negotiated and finalized without Council involvement.



## Step IV: What is a Memorandum of Agreement?

- An MOA is, in part, a summary of the consultation that occurred to resolve adverse effects.
- The MOA lists any mitigation that will be carried out by the Agency or the applicant, and is similar to a contract.
- Agencies and consulting parties complete review process by executing MOA, and implementing its terms.



## Step IV: Effective consultation

Effective consultation occurs when you:

- keep an open mind;
- state your interests clearly;
- acknowledge that others have legitimate interests, and seek to understand and accommodate them;
- consider a wide range of options;
- identify shared goals and seek options that allow mutual gain; and
- bring forward solutions that meet the agency's needs.
- Creative ideas about alternatives (not complaints)



## Step IV: The MOA: The Signatories

Agency and SHPO/THPO are usually the minimally required signatories

- Council is only an MOA signatory if formally participating in consultation





## Step IV: The MOA: Invited Signatories

The Agency may invite the following parties to be full signatories:

- Any consulting parties with responsibilities to carry out under the MOA
- Indian tribes that attach religious & cultural significance to properties off tribal lands



## Step IV: The MOA: Concurring Parties

Other parties may be invited to **concur** in the MOA

- Consulting parties without responsibilities under the MOA may still be asked to simply concur with the MOA
- Having consulting parties concur with the MOA can be an indication that their views were adequately considered during the consultation
- Their refusal to concur does not block MOA, and they may decline with no explanation



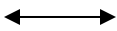
## Step IV: Finalizing the MOA

- Agency signs MOA after terms are settled, circulates MOA among other signatories
- OHPO is the last signature added to MOA
- Agency must submit a copy of the executed MOA to Council
  - Final project documentation must accompany MOA
  - If you don't submit MOA to Council, Section 106 process has not been completed
  - Helps Council to monitor overall application of Section 106 process

**ONCE THE SIGNED MOA HAS BEEN SUBMITTED TO  
COUNCIL, SECTION 106 PROCESS IS COMPLETE**

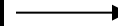


*Public  
involve-  
ment*



## **Step IV: Resolve Adverse Effects**

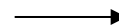
Continue  
consultation



**Memorandum  
of Agreement**



**Failure To  
Agree**



**Council  
Comment**



# Failure to Agree:

## Deadlocks don't have to happen in 106 process

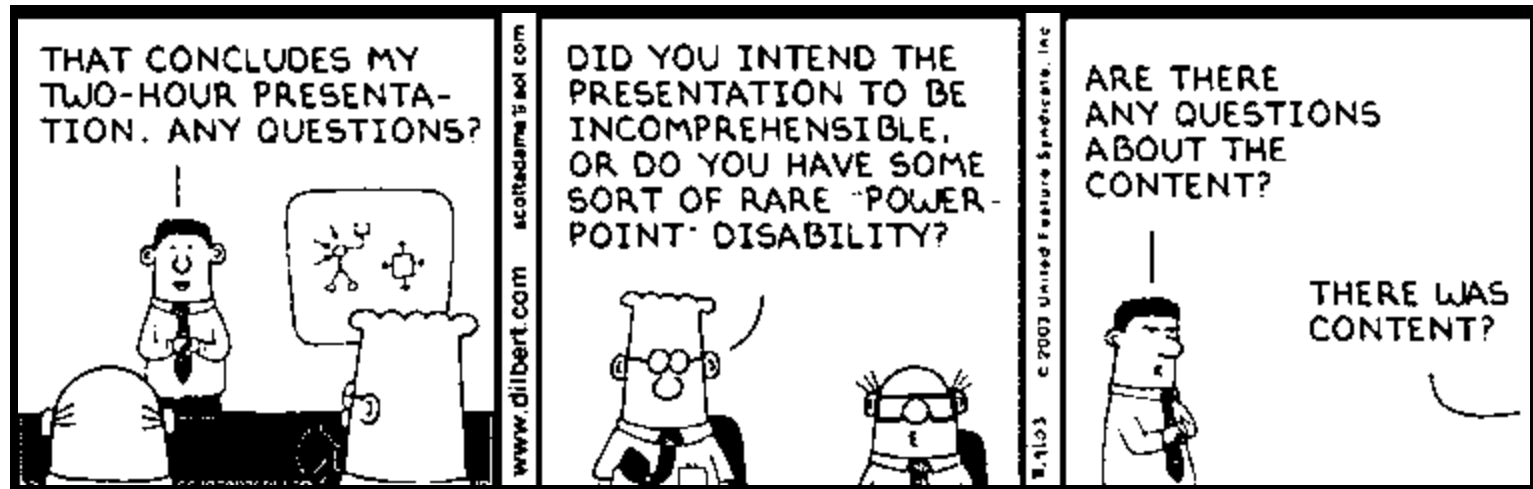
- Any consulting party can ask for Council assistance at any point in the process
- Agree to disagree by **terminating consultation**, allowing consultation to end without concurrence between Agency and SHPO/THPO, with assistance of Council
- Agencies can justify granting federal assistance when 106 process is not fully completed through consultation with Council



# Termination of Consultation

- **Agency** termination must be by Agency head or other policy-level official
- If **SHPO** terminates, Council may execute an MOA with the Agency rather than comment; if **THPO** terminates, Council must comment
- Prior to **Council** termination, Council may consult Federal Preservation Officer of Agency to seek resolution





Any questions?

# Thomas Grooms State Historic Preservation Office

614-298-2000

[tgrooms@ohiohistory.org](mailto:tgrooms@ohiohistory.org)

[section106@ohiohistory.org](mailto:section106@ohiohistory.org)

