

## GUIDELINES FOR SECTION 106 COMPLIANCE FOR 319(H) PROJECTS

Kentucky Energy and Environment Cabinet  
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## Disclosure

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## Compliance for 319 Projects

In order to approve implementation of 319(h) projects that utilize federal dollars through the KY Division of Water's 319(h) program, it is necessary for contractors to comply with all State and Federal Laws, including a Section 106 review to ensure no historic structures, sites or properties are impacted by that undertaking. The

Kentucky Heritage Council (KHC)-State Historic Preservation Office (SHPO) has provided the attached *Notice of Policy –June 10, 2024*, for the 319(h) Projects.

The purpose of the Policy document is to present a streamlined submission and review process for compliance with Section 106 of the National Historic Preservation Act for small-scale projects.

**Please note: If a Best Management Practice (BMP) is not included in one of the 4 Categories, you will need to contact your Technical Advisor for guidance. The State Historic Preservation Office (SHPO) must be consulted prior to beginning any large-scale project (wetland construction, stream modification, new construction, bank stabilization, etc.).**

## Process for 319(h) Projects within Categories 1-3:

1. Identify which Category best fits the 319(h) Project or activity.
2. Submit proper documentation to KHC/SHPO based on Category requirements.
  - **All documentation submitted to KHC/SHPO for Section 106 review intended for inclusion in this policy modification shall include '319(h) Review' in the subject line for submission.**
  - **Please include in the '319(h) Review' subject line of email and subject line on the Cover Sheet submitted.**
3. Completed paperwork should be submitted electronically to [khc.section106@ky.gov](mailto:khc.section106@ky.gov)
4. Once approval is received from KHC/SHPO, project work may begin.
  - **Please note: Invoices containing projects that have not received KHC/SHPO approval PRIOR to breaking ground on a project will not be reimbursed.**
5. Approval from KHC/SHPO must be attached to 319(h) invoices in order to be processed.

## Process for 319(h) Projects within Category 4:

1. Identify which Category best fits the 319(h) Project or activity.
  - If you are unsure which category your projects best fits into, please contact your Technical Advisor.
2. Highlight the BMP included in the *Notice of Policy – June 10, 2024*, and attach to the 319(h) invoice to be processed.



ANDY BESHEAR  
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET  
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CRAIG A. PONS  
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STATE HISTORIC  
PRESERVATION OFFICER

## Notice of Policy - May 23, 2024

Re: Kentucky Heritage Council - State Historic Preservation Office Programmatic approach to Section 106 submissions for projects submitted for small-scale linear projects such as water or sewer lines and associated elements.

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 is 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.

Any projects falling outside the parameters presented in the categories described in this document shall follow all submission and review processes laid out in the Kentucky Heritage Council's (KHC) review and compliance guidance (<https://heritage.ky.gov/compliance/Pages/general-application.aspx>).

All reference to ground disturbance shall include and consider access and staging areas for the proposed activity.

Should there be more than one criterion presented for any category, all criteria listed must be met to qualify for that category. All documentation submitted to KHC/SHPO for Section 106 review intended for inclusion in this policy shall state explicitly “linear” in the subject line for the submission.

This document sets forth what information we require based on project type. 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.
- appropriately scaled maps of the project area(s)
- 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.

**Please note: Recommendations provided to KHC by consultants do not constitute or fulfill the Section 106 consultation process. This background research provides our applicants throughout the Commonwealth a streamlined alternative to expedite the review process with the KHC to the extent possible. KHC will use this information to determine what level of additional documentation, investigation, or survey is warranted, if any, and will inform the partner state agency or their applicants.**

**Category 1** consists of all projects that continue to require submission of all documentation requested on the Section 106 Coversheet (Attachment 1) in order for KHC to provide comment. These projects include, but are not limited to, the following project types. Please note that all modifications to properties 50 years of age or older, require submission of all requested Section 106 documentation.

**Table 1.** Category 1. ALL SECTION 106 DOCUMENTATION REQUIRED AS LISTED ON THE COVER SHEET.

Project Type	Criteria
New Construction	All new construction
Bank Stabilization	Unless limited to replacement of an existing stabilization system
New Placement	Any and all placement of above and/or below ground system elements
New Installation	Any and all placement of above and/or below ground system elements
Relocation	Any and all placement of above and/or below ground system elements

For **Category 2** projects, consultants or applicants 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 footprint(s) (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.

**Table 2.** Category 2. REQUIRES FULL LITERATURE AND RECORDS REVIEW.

Project Type	Criteria
Line Replacement	With vertical or horizontal ground disturbance beyond prior project footprint
Line Extension	With vertical or horizontal ground disturbance beyond prior project footprint
Relocation of below ground elements	All
Fence Installation	All
Dredging	All
Debris Removal	Unless it is completed without heavy equipment

**Category 3** projects consist of projects where no new ground disturbance is proposed.

**Table 3. Category 3.** REQUIRES ALL DOCUMENTATION **EXCEPT** OSA PRELIMINARY RECORDS RESULTS.

Project Type	Criteria
Bank stabilization	Without ground disturbance beyond severe erosion or slope failure
Elevated Water Tank	All modifications

Modifications to existing WWTP	Interior modifications to non-historic structure that do not involve ground disturbance
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No individual review is necessary for placement of lines or antennas on existing poles or for the placement of small containers as listed above (see image below). **Consultants or Applicants can list these separately within their Literature and Records Review. A corresponding quarterly table shall be provided to our office by the Division of Water team or the Area Development District team for ALL CATEGORY 4 PROJECTS on the first days of January, April, July, and October.**

For **Category 4** proposed projects, we would concur with a finding of **No Adverse Effect** (Table 4).

**Table 4.** Category 4. SHPO WOULD CONCUR WITH FINDING OF NO ADVERSE EFFECT.

Project Type	Criterion that must be met for finding of <i>No Adverse Effect</i> .
Line Replacement	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project
Line Rehabilitation	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project
Meter Replacement	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project In place and in kind
Line Evaluation	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project
Planning/Design	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project
Upgrades to Existing	No vertical or horizontal ground disturbance beyond prior project footprint

Systems	Ground surface/landscape is returned to conditions prior to project. In place and in kind
Maintenance of Existing Systems	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project In place and in kind
Installation of interior components	When no modifications are required to existing structure or framework No vertical or horizontal ground disturbance beyond prior project footprint
Manhole rehab	In place and in kind
Meter/Valve Placement	No modification to historic structure When no ground disturbance is required
Pump Station Replacement	When no modifications are made to historic structure When no ground disturbance is required
Software acquisition	All
Septic tank Replacement	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project
Replacement of Fencing	No vertical or horizontal ground disturbance beyond prior project footprint Ground surface/landscape is returned to conditions prior to project
Planting of Vegetation	As long as no ground disturbance occurs beyond 2 inches below ground surface
Debris Removal	Completed by hand without the use of heavy machinery

Criteria to be presented quarterly includes, but is not limited to: Applicant, County, Grantee, Project Title, Project Type, Brief Description, and Project Locations (latitude/longitude or street address). For Category 4 projects, we would concur with a finding of *No Adverse Effect*. This Policy shall be in place for two calendar years or until a fully executed Programmatic Agreement is in place, whichever occurs first.

**Submit all documents to [khc.section106@ky.gov](mailto:khc.section106@ky.gov). Include the word, “linear,” in the subject line of the email.** Sending directly to a staff reviewer or failure to submit the documentation requested **will** result in the delay of document distribution.

The State Historic Preservation Office is happy to work with our federal, state, and local partners. We look forward to continued conversations and the development of future agreements and processes that serve to protect significant cultural resources throughout the Commonwealth. Should you have questions or concerns please contact our Site Protection Program by emailing [nicole.konkol@ky.gov](mailto:nicole.konkol@ky.gov).



5/31/2024

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Craig Potts, State Historic Preservation Officer  
Kentucky Heritage Council Director

Date