

How to comply with Section 106 of the National Historic Preservation Act

New Grantee Training
June 2019



National Historic Preservation Act of 1966 (as amended)

- Established the National Register of Historic Places.
- Established the Advisory Council on Historic Preservation and authorized them to develop implementing regulations.
- Established a required review process which is now commonly known as “106 Review”.
- Required all Federal Agencies to develop a Preservation Program.

Overview of Section 106

- Section 106 of the National Historic Preservation Act requires all federal agencies to take into account the effects of their undertakings on historic properties.
- Section 106 is “triggered” by federal involvement; not by the presence of historic properties.



Why Do I have to Comply?

Assessment and Cleanup Grant T&Cs

“Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall *consult with EPA* regarding potential applicability of the NHPA and, if applicable, shall *assist EPA* in complying with any requirements of the Act and implementing regulations.”



Section 106 Process

Step 1: Initiate Review

Step 2: Determine if activities have potential to cause “effect”

Step 3: Determine if property is historically or culturally significant

Step 4: Mitigate, if necessary

Step 1: Initiate Review

Do you have an “undertaking”

Definition of an “undertaking”:

“...a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those...carried out with federal financial assistance...”

BROWNFIELD ACTIVITY = UNDERTAKING

Note: No federal dollars, no NHPA.

Step 2: Determine if Undertaking has the potential to cause an “Effect”

An adverse “effect” is found when an action alters, 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 diminishes the integrity of the location, design, setting, materials, workmanship, feeling or association, now or in the future.

Examples of Activities that do not have potential to cause an “Effect”

- Phase I Site Assessments
- Surficial Soil Sampling
- Surface Water/ Sediment/ Soil Boring
- Monitoring Well Installation
- Excavation of previously disturbed land *
- Concrete/ Wood Floor Sampling
- Sub-slab sampling
- Haz. Bldg Materials inventory
- Demolition of non historic buildings and structures (<50 yrs)*

If No Effect

If there is an undertaking but it is not the type of activity that has the potential to cause effects on historic properties, then

That concludes the Section 106 review.

EPA Project Officer documents decision for file and communicates information to Grantee and State Agency.

If your Activities have Potential to Cause an “Effect”, for example

- Test Pitting
 - Exception: area already disturbed, such as tank grave
- Soil Excavation
- Capping or covering of contaminated soil
- Building Renovation – Examples:
 - Changes to interior floor plan
 - Installation of new windows
- Building Demolition



Continue to Step 3:

**Determine if it is a Significant
Historic Property**

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Is it a Historic Property?

- Is the property/building listed in or eligible for listing on the National Register of Historic places?
- Is the building greater than 50 years old?
- Is the property in an archaeologically sensitive area?
- Is the site in an area where traditional cultural properties are located?



What is a Historic Property cont.

- Associated with Significant Events
- Associated with significant people
- Embodying Distinctive Characteristics
- Containing important Precontact Information



How do you determine if it is a historic property?

- EPA Project Officer consults the SHPO and/or THPO.
- Town/Grantee
- US Department of the Interior
- Consult the local historical society
- Ask members of the public

If property is not a cultural resource

- Grantee will provide documentation to EPA and DEP that cultural resources are not at risk from activities.
- EPA will document final determination that there are no historic properties affected and 106 review process is complete.

Step 3 – If Yes

- EPA PO makes a determination and asks for concurrence from the SHPO, regarding the historical status of the property and potential for adverse effects.
- If there will be an adverse effect, EPA will consult with SHPO and the case team and go on to Step 4.

Step 4: Resolve Adverse Effects

Avoid

Minimize

Mitigate



Consider alternatives to avoid or minimize effects....

- Shift in alignment
- Relocation to a different area
- Design or process modification

....or you may need to mitigate.

- Recordation
- Education and outreach (exhibits, pamphlets, reports, etc.)
- Data recovery (archaeological excavation)

Memorandum of Agreement

- Activities to that result in an adverse effect require that mitigation must be agreed upon in a MOA before work begins.
- MOA is usually between, EPA, SHPO and Grantee.
- ACHP may be consulted if there is a dispute, but ultimately, the decision is EPA's.

Contacts

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