

Historic Preservation

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Section 106 Compliance and HUD

The purpose of this tutorial is to build the technical capacity of State, Local, and Tribal government grant recipients in historic preservation compliance, and to familiarize users with the basics of the Section 106 Review process.



Why do I need this training?

Section 106 is a Federal law that places requirements on federal agencies whose actions may affect Historic Properties.



Steps of the Section 106 Process

Step 1
Initiate Consultation

Step 2
Identify & Evaluate Historic Properties

Step 3
Assess Effects

Step 4
Resolve Adverse Effects

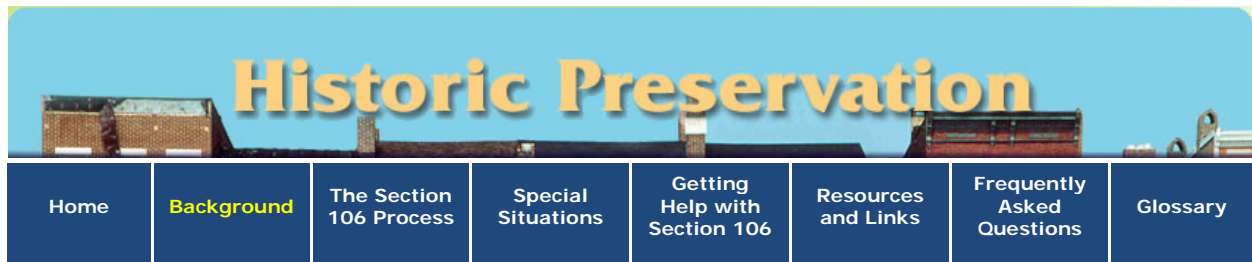


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Background

Introduction to Historic Preservation

What is Historic Preservation?

Historic preservation is a way of thinking about the relationship between our modern life and the places that are physical remnants of our shared heritage as U.S. citizens.

Historic preservation is also a body of knowledge and standards about how to be good stewards of that shared heritage.

Why Do Historic Places Matter in Modern Life?

Section 1 of the National Historic Preservation Act says:

"The spirit and direction of the Nation are founded upon and reflected in its historic heritage; The historic 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."

Why Is Historic Preservation Important to Us as a Nation?

Recognizing significant parts of our past gives us a sense of "place" and visual images of how our country was formed and developed. Education about our past helps us to make future decisions regarding who we are as a people. Experiencing tangible remains from our history instills in younger generations a special awareness of our heritage as Americans. Every community offers a significant perspective of our nation's history whether it is the annual Peach Festival or the re-enactment of a Civil War battle.

What Does it Mean When We Talk About "Preserving" Historic Properties?

Preservation means retaining as much as possible of what is called the "historic fabric" of important places from our past through conservation, maintenance, and repair. Preferred methods and technologies change constantly, so it is wise to seek [up-to-date advice](#).

When **historic buildings** are being retrofitted (for weatherization or seismic insufficiency, for example) or when they are being adapted for new uses, historic preservation means retaining as much as possible of the materials, features, finishes, spaces, and spatial relationships that together give a property its historic character.

For **archaeological sites**, preservation means either avoiding physical disturbance of the archaeological site or carrying out scientific excavation and recordation of the site, along with reporting of the results and curation of the recovered materials in a museum.

What Kinds of Places Do We Want to Preserve?

People use different terms for important places from our past. The term used most often is "historic properties," but you may also encounter the terms "heritage resources" or "cultural resources." Native Americans may call these important places "cultural sites" or "sacred sites."

Whatever we call them, these important places from our past include many different kinds of places, such as archaeological sites, historic structures and districts, objects like locomotives or sculptures, historic shipwrecks, designed landscapes like parks or arboretums, culturally defined landscapes valued by particular groups or communities, and places associated with traditional cultural practices.



Why Does Historic Preservation Matter to my Community?

- **Planning:** Communities may utilize their history to define future land use plans and development models.
- **Job creation:** Money spent on goods and services for rehabilitating historic properties stays in the community.
- **Tourism:** Heritage tourism is built on authenticity and a sense of place that cannot be manufactured or created by fake reconstructions.
- **Increasing the tax base:** Successful preservation projects increase property values and make neighborhoods and commercial districts more desirable.
- **Sustainability:** Demolition of old buildings and construction of new ones is often more expensive than preserving the existing buildings and may have far greater adverse environmental impacts.
- **Quality of life:** Preserving our history preserves the vibrant cultural diversity of communities built by indigenous people and immigrants from Africa, Asia, Europe, South America, and every other corner of the world.

Brief History and Legal Background

Ideas have changed through time about what kinds of historic places are worthy of preservation:

- For much of the 19th century, preservation efforts in the United States were focused on battlefields, public buildings, and the high-style private homes associated with the events and important figures of first the Revolutionary War and then the Civil War.
- In the late 19th and early 20th centuries, the significance of the archaeological record was recognized as was the historical value of modest buildings and districts, both commercial and residential.
- By the end of the 20th century, we had added shipwrecks and landscapes and places associated with traditional cultural practices to our definition of historic properties worth preserving.
- Over time, places of every greater cultural and economic diversity have been added to the set of things considered worthy of preservation.

Deciding which Historic Properties are Important

- The [National Historic Preservation Act of 1966](#) established the National Register of Historic Places under the jurisdiction of the National Park Service. The Register, which is the subject of the last section of this module, is described as “the nation’s official list of historic places worthy of preservation.”
- The HUD has developed [guidance](#) and established processes for deciding which historic properties are important and for recognizing and planning to preserve those places.
- Properties listed on or eligible for listing on the National Register can be significant at a regional or local level, not just at a national level.
- In addition, many states and local governments maintain similar registers for significant historic properties within their jurisdictions.

Local Governments and Historic Preservation

Local governments have a long history of leadership in historic preservation initiatives:

- In 1813, the City of Philadelphia purchased the Old Pennsylvania State House (Independence Hall) to prevent it from being demolished and to preserve it for the people of the city, the Commonwealth, and the United States.
- In 1939, Charleston, SC, adopted historic land use regulations for the antebellum sections of the city, providing a model for historic districts and overlay zones in communities throughout the country.
- In the mid1960s, the U.S. Conference of Mayors was instrumental in securing passage of the National Historic Preservation Act.



Adams Morgan is a culturally diverse neighborhood in Northwest Washington, D.C., centered at the intersection of 18th Street NW and Columbia Road NW. Adams Morgan is considered the heart of Washington's Latino community, and is a major night life area with many bars and restaurants, particularly along 18th Street, the main commercial street. Much of the neighborhood is composed of 19th- and early 20th-century row houses and apartment buildings.

Federal Historic Preservation Laws

- The first federal law concerning the protection of historic properties, the [Antiquities Act of 1906](#), prohibited excavation of archaeological sites on the public lands without a permit and authorized the President to designate historic, prehistoric, and natural areas of scientific interest as national monuments.
- The second federal historic preservation law, [The Historic Sites Act of 1935](#), made several of the New Deal jobs programs into permanent preservation programs within the National Park Service. Some of these programs, the [National Historic Landmarks](#) and Historic American Buildings Survey and [Historic American Engineering Record \(HABS/HAER\)](#) in particular, have important roles in Section 106 compliance.

Development and Preservation Come into Conflict

By the early 1960s it was clear that existing federal laws were not sufficient to address the large-scale destruction of historic properties that resulted from construction of the interstate highway system and from the mass demolitions referred to as “urban renewal.”

The response was passage of a series of landmark federal preservation laws in the 1960s, including:

- [Section 4\(f\)](#) of the Department of Transportation Act, which prohibits use of land from a historic site for federally funded road building unless there is no prudent and feasible alternative. Special natural resource sites are also protected under the Section 4(f).
- [The National Environmental Policy Act of 1969](#) which includes among its purposes preservation of “important historic, cultural, and natural aspects of our National Heritage.”

The Cornerstone of Federal Historic Preservation Law is the National Historic Preservation Act of 1966

- In 1965, the U.S. Conference of Mayors documented the increasing loss of municipal historic resources in a moving and influential book entitled *With Heritage So Rich*.
- This documented need for legislative action inspired grass-roots efforts by the Conference of Mayors, the National Trust for Historic Preservation, and private citizens throughout the country.
- This widespread support urging Congress to draft national historic preservation legislation led to the passage of the [National Historic Preservation Act of 1966 \(NHPA\)](#).



What is the Purpose of NHPA?

NHPA established federal policy relative to the preservation of historic properties:

It shall be the policy of the Federal Government . . . to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.
16 U.S.C. 470-1

What Did the NHPA Establish?

The NHPA, as originally passed and subsequently amended, established:

- The [National Register of Historic Places](#), maintained by the Department of Interior, National Park Service.
- The [Advisory Council on Historic Preservation](#), the federal agency with oversight for Section 106 of the Act (ACHP).
- The [State Historic Preservation Offices](#) in 50 states, the trust territories, [Tribal Historic Preservation Offices](#).
- A strong role for Indian tribes and Native Hawaiian organizations in the management of places of traditional religious and cultural significance to them.

What Does NHPA require?

- NHPA has both proactive and reactive components.
- The proactive part of NHPA – found in [Section 110](#) of the law – requires federal agencies to be good stewards of historic properties under their jurisdiction or affected by their actions.
- The reactive part of the law is [Section 106](#), which requires agencies to take into account effects on historic properties as part of their planning process.
- NHPA also provides for funding of preservation activities, including funding for [Certified Local Governments](#).

What Must Agencies Do to Comply with Section 106?

Before they approve any expenditure of federal funds and before they grant any license, permit, or other approval, federal agencies must consider the possible effects of their actions on historic properties. And agencies must give the Advisory Council on Historic Preservation a reasonable opportunity to comment on those effects. The Responsible Entity (RE) assumes the role and responsibilities of the federal agency for HUD-assisted programs and projects.

What Does NHPA Mean when it Refers to “Historic Properties”?

- Although people use the term in a more general, generic sense, for NHPA, and specifically for Section 106, “historic property” is a specific codified term, defined at 36 CFR §800.16(l)(1) and (2) and referenced in 24 CFR 58.5(a).
- It means any prehistoric or historic district, site, building, structure, or object included in, or eligible for the National Register of Historic Places, a list maintained by the Secretary of the Interior.
- The term includes artifacts, records, and remains that are related to or located within such properties.
- Places of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization are included among the places that may be eligible to be placed on the register.

The National Register of Historic Places

What Is the National Register of Historic Places?

- A list of historic properties nationwide that have been found worthy of preservation.
- These places may be sites, buildings, structures, objects, or districts with many individual properties within their boundaries.
- Properties listed on the register may be significant at a local, state, or national level, and they may be privately owned or under municipal, state, or federal jurisdiction.

More About the National Register

- The National Park Service (NPS) operates and maintains the National Register Program in accordance with [36 CFR Part 60](#).
- Listing a property on the Register makes it eligible for certain grants and tax-credit provisions.
- Private owners may choose to have their properties listed or not, and listing does not limit the owner's use of the property in any way.
- Some municipalities tie zoning or other restrictions to listing on the National Register; in those cases, private owners may encounter some restrictions, but they have to do with local zoning, ordinances, etc., not with listing on the Register per se.

How Is a Property Listed on the Register?

- If a property meets the NPS-specified [National Register criteria](#), it can be nominated for listing by the owner or by another party with the owner's consent.
- The National Register nomination forms are comprehensive and technical, and generally are reviewed first by SHPO staff, who make a recommendation to the State Review Board as to whether the property merits listing or not.
- If the State Review Board decides that the property merits listing, their recommendation and the completed form are sent to the Keeper of the National Register, who oversees a professional staff and administers the review process for nominated properties.
- If the National Register Staff approves the property for listing, the Keeper signs the nomination form, and the listing is published in the *Federal Register*.
- Alternatively, the Keeper may return the nomination form with a request for changes or improvements; the nomination may then be re-submitted.

Why Does the National Register Matter for This Training?

An understanding of the National Register and its requirements is key to successful compliance with Section 106.

The Section 106 process requires that REs make decisions and recommendations about the eligibility of properties to the National register and about effects that their projects may have on eligible and listed properties.

Knowledge of the basic National Register requirements is essential in order for REs to make appropriate decisions within the Section 106 process.

What Are the Requirements for National Register Eligibility and Listing?

The requirements for listing are established in regulation at [36 CFR 60.4](#) and detailed guidance is provided in National Register Bulletin 15 "How to Apply the [National Register](#)

[Criteria for Evaluation](#). This bulletin is a critical resource for working with National Register and Section 106.

Briefly put, in order to be listed in or eligible for the National Register:

- A property must meet at least one criterion out of four (labeled A, B, C and D in the National Register terminology).
- It must possess at least some elements of *integrity* (in National Register terms these are location, design, setting, materials, workmanship, feeling, or association).
- AND generally it must be at least 50 years old, but see the discussion of this issue below.

Criteria of Eligibility

Criterion A – a property may be eligible because it is associated with events that have made significant contributions to broad patterns in history:

- These events may be single, short-term events like a mine disaster or a Civil War skirmish
- Or the “event” may be a long-term pattern of events like the civil rights movement or the rise of labor unions

The association between the historic property and the event has to be specific, and it has to be important.





A National Treasure. The building is an integral part of Seattle's Pioneer Square National Historic District and is significant on its own as an example of a working man's hotel and as one of eight structures built immediately after the fire that remain relatively unaltered today. The renovation has brought this once shabby corner of Pioneer Square back to economic and civic life. The building received a National Preservation Honor Award from the National Trust in 2006.

Criteria of Eligibility

Criterion B – a property may be eligible for the National Register because it is associated with lives of significant people in our past.

- This criterion is specific to individuals – not ethnic enclaves or families or other kinds of groups.
- The relationship to the person must be documented, and the place should be associated with the person's major accomplishments or with important periods or events in his or her life.

As with Criterion A, the association between the person and the place must be specific and important.



Located in North East Los Angeles near the [Southwest Museum](#), the Ziegler Estate is a historic building on [Figueroa Street](#) in the [Highland Park](#) section of [Los Angeles, California](#). Built in 1904, the building was designed by Charles Hornbeck and Alfred P. Wilson with elements of both [Queen Anne](#) and [American Craftsman](#) architecture.

Criteria of Eligibility

Criterion C – a property may be eligible for the National Register because it embodies the distinctive characteristics:

- of a type – usually an architectural style
- of a time period – doors, windows, chimneys and other features go through “fads” just like styles of clothes or cars
- of a method of construction - stone farmhouses in New England and adobe structures in the Southwest are regionally distinctive

A property may be eligible under Criterion C because it represents the work of a master or possesses high artistic values.



This home represents an architectural period style and is a classic example of American Gothic, with high artistic value.

Criterion C and Historic Districts

Properties eligible under Criterion C frequently include sets of related properties that wouldn't qualify for the National Register individually, but that, as a group, "represent a significant and distinguishable entity whose components may lack individual distinction."

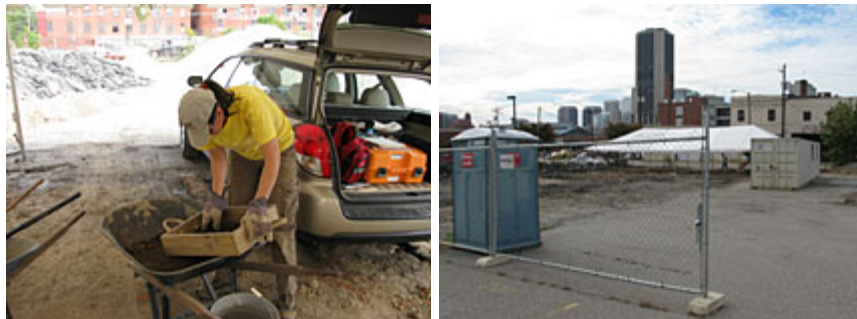


Former Lafitte public housing complex, New Orleans architectural styles, similar to those of the surrounding neighborhoods, that respect the history and culture of the community.

Criteria of Eligibility

Criterion D – a property may be eligible for the National Register because it has produced or is likely to contain information important in prehistory or history.

This criterion most often applies to archaeological sites, which can add depth to our understanding of periods with written records or oral histories and may be our only source of information about more ancient periods.



Archaeological site excavating to document prehistory or history information.

Photos, Examples, Descriptions of Eligible Properties

- Examples will include local, regional, national properties that have been determined eligible under one of the four criteria.

Historic Properties and “Integrity”

- To be eligible to the National Register, a property must not only meet one or more of the criteria of eligibility just described, it also must have sufficient integrity to convey its historic significance.
- The integrity of a property is evaluated in terms of seven qualities: location, design, setting, materials, workmanship, feeling, and association.
- These aspects of integrity are described briefly here, but to really understand this issue – which is an important one for Section 106 compliance – you should review the discussion of integrity in National Register Bulletin 15, How to Apply the [National Register Criteria for Evaluation](#)

The Seven Aspects of Integrity

Integrity of Location means that the property is still in the place where it was constructed or where the historic or prehistoric events occurred. Generally, a property that has been moved will not be eligible to the National Register.

Integrity of Setting, on the other hand, means that the character of the place where the property was constructed or the event occurred is generally the same as it was historically.

Properties in urban areas often have lost their integrity of setting, but still retain many of their other important qualities.

Integrity of Design means that a property still exhibits the features that resulted from conscious decisions about form, plan, use of space, scale, style, etc.

Important elements of design for buildings include the placement of windows and doors, surface finishes, roof lines, and ornamental details. Design elements for districts or landscapes include spatial relationships between major features, plantings, layout of roads and walkways, setbacks, and streetlamps, benches, fountains, and other fixtures.

Integrity of Materials refers to the physical elements that were combined or deposited during a particular time and in a particular place to form the property.

A building needs to have key exterior materials (clapboards can't have been replaced by vinyl siding, for example); an archaeological site should have substantial undisturbed areas. Properties must be original and not replicated.

Integrity of Workmanship is the physical evidence of the crafts and technology of people of a particular era. A property or components of a property can illustrate the practices and aesthetic principles of workmanship in a specific place and time.

Integrity of Feeling means that the property conveys to an observer a clear sense of the aesthetic or historic quality of a particular period in time.

Integrity of Association means that the property conveys to an observer a sense of a direct link between that place and a particular historic event or person.





How Much Integrity is Enough?

- In order to be eligible to the National Register, a property doesn't have to exhibit all seven qualities of integrity – some of them aren't even relevant for some kinds of properties.
- For example: a Civil War battlefield wouldn't be expected to have integrity of design because it was never a designed landscape in the first place. But a formal garden created by a famous landscape architect, even though it consists entirely of natural materials, would have integrity of design as one of its most important aspects of integrity.
- An eligible historic property will have several, and frequently most, of the appropriate aspects of integrity.

Other Considerations for Eligibility

- In general, cemeteries, birthplaces, religious properties, structures that have been moved, reconstructed historic buildings, commemorative properties, and properties that have achieved significance within the last 50 years are not eligible, EXCEPT . . .
- There are examples of all of the types of properties listed above that are either listed on the National Register or have been considered eligible for the National Register.

What Are the Exceptions that May Make These Properties Eligible?

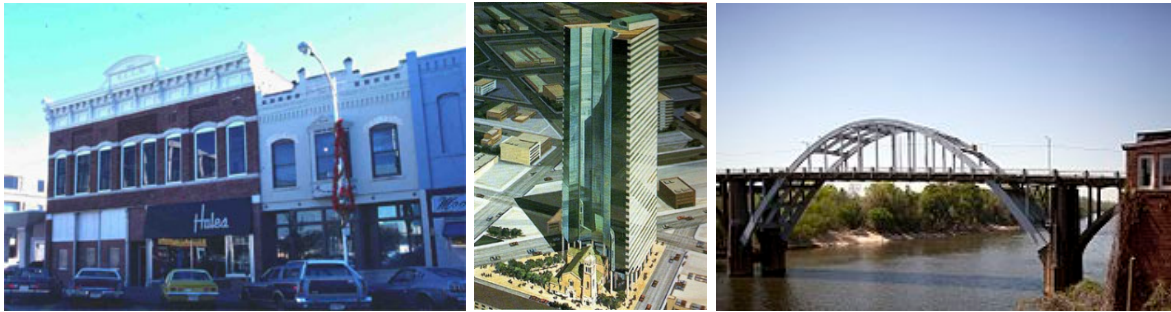
- If a religious property derives its primary significance from architectural, artistic, or historical distinction.
- If a building has been moved but is significant for its architectural value or its association with an important historic person or event.
- If a birthplace or grave of an outstanding person is the only remaining property associated with him or her, or if there is not a more appropriate property associated with the person's productive and significant life.

More Exceptions that May Make Properties Eligible

- A cemetery may be eligible if it is important for its age, distinctive design features, or its association with historic events.
- A reconstructed building may be eligible if the reconstruction is accurate and part of a restoration master plan and if no other building with the same association has survived.
- A property that is commemorative in intent may be eligible if its design, age, traditional, or symbolic value are of exceptional significance.

What About the “50 Years Old or Older” Rule?

- A property that is less than 50 years old can be eligible or listed if it is of “exceptional significance.”
- Generally these are properties of considerable national significance. For example, the Trinity Site in New Mexico where the world’s first atomic bomb was exploded, the route of the Selma-to-Montgomery civil rights march, and the Cape Canaveral facilities where the Apollo program launches occurred were all listed on the National Register long before they were 50 years old.
- Interestingly, the HUD building in Washington D.C., built in 1966, was listed well before its 50th birthday because it was found to have exceptional significance!

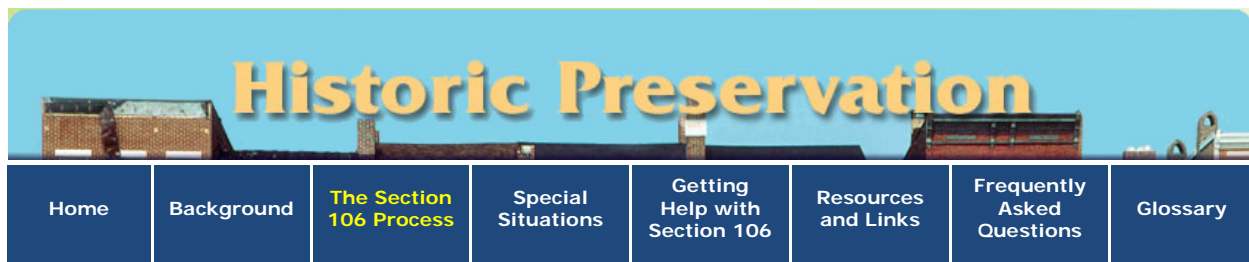


What Are National Historic Landmarks?

- National Historic Landmarks (NHLs) are nationally significant historic properties designated as landmarks by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States.
- A list of NHLs in your state can be obtained at <http://www.nps.gov/nhl/designations/listsofNHLs.htm>
- As will be discussed in the [Special Situations](#) module, effects to NHLs require special procedures under [Section 106](#) so it is important to be aware of NHLs within your local, tribal, or state jurisdiction.

To Learn More About This Topic . . .

- [Resources & Links](#)
- [Frequently Asked Questions](#)



The Section 106 Process

Introduction to Section 106

What is Section 106?

- Section 106 is part of the [National Historic Preservation Act of 1966](#)
- As discussed in the [Historic Preservation Background](#) module, Section 106 requires that federal agency officials (that is, REs for HUD-assisted programs and projects) take into account the effects of their undertakings (that is, projects that they fund, carry out, or approve) on historic properties and give the federal Advisory Council on Historic Preservation (ACHP) an opportunity to comment on those effects.

Why Does Section 106 Matter to Me as a HUD Grant Recipient?

- All HUD grant programs and projects are “undertakings” in Section 106 terms and require compliance with the [Section 106 regulation 36 CFR Part 800](#).
- As described in HUD’s Environmental Procedures regulation 24 CFR Part 58, HUD grant recipients or [Responsible Entity](#) (RE) assume responsibility for environmental compliance, including Section 106 compliance, for HUD-assisted projects.
- The RE must demonstrate that compliance with Section 106 has been completed in the Environmental Review Record, which must, in turn, be completed before the FONSI issued. Only after these steps have been completed can the Notice of Intent and Request for Release of Funds be submitted to HUD.
- The purpose of this module is to help you, as the RE, understand what is involved in Section 106 compliance. Links to a [variety of resources](#), [frequently asked questions](#), and [glossary terms](#) are provided throughout this training to assist you.

What Is the Purpose of the Section 106 Process?

- In the [Historic Preservation Background](#) module, there is a discussion of the benefits that historic preservation provides for communities. But the development projects funded by HUD and carried out by state, local, and tribal governments **also** provide important economic and quality of life benefits for our communities.
- The Section 106 process is designed to help communities find creative, effective ways to **accommodate and balance** both of these important community values – needed development and the benefits of historic preservation – through consultations and discussions among affected and interested parties.

Section 106 in a Nutshell

Two of your most valuable tools as an RE attempting to understand your responsibilities under Section 106 are this Section 106 [flowchart](#) and the Section 106 [checklist](#) provided on the [Historic Preservation section](#) of the HUD Community Development and Planning Web site. Consultation and Consulting Parties

- Before we begin our discussion of the actual process of Section 106 compliance, it is important to understand a little bit about consultation and consulting parties.
- Most of what happens in the Section 106 process is done in consultation with others. The ultimate **responsibility** and the ultimate **authority** to make decisions rest with the **Responsible Entity**. In making those decisions, however, the RE needs to “seek, discuss, and consider the views” of other participants in the process, and “where feasible seek agreement with them.” This is the Section 106 definition of consultation.

Who Are the Section 106 Participants?

As established in 36 CFR §800.2, the participants in Section 106 consultations are:

- Federal agencies – that is, the RE who has assumed HUD’s responsibilities and any other federal agencies who may be involved in this undertaking
- The ACHP, if they choose to participate in consultations (more on this later)
- Consulting parties – this includes:
 - The State Historic Preservation Officer or Tribal Historic Preservation Officer
 - Indian tribes and Native Hawaiian Organizations
 - Representatives of local governments (for projects where the State is serving as the RE)
 - Applicants for federal assistance or approvals (a nongovernmental HUD grant recipient, for example)
 - Others with a demonstrated legal or economic interest in the project or a concern about the potentially affected historic properties
- The Public – public participation is essential to the Section 106 process

Working with Consulting Parties

Specific issues about consultation and consulting parties will be addressed in the discussions of the various steps in the Section 106 process, but here are some general recommendations:

- Invite consulting party participation early in the process
- Proactively invite groups and individuals who are likely to have an interest in the effects of your project on historic properties to participate in consultations
- Keep consulting parties informed about changes in project scope or schedule
- Consult before you make decisions, not after you make them

Most state and local government REs are familiar with the process of working with community groups and activists, but *tribal consultation is unfamiliar territory for most REs*, so additional information on this subject is provided in the next section of this module.

Section 106 and Native People

- NHPA and the Section 106 regulation require that federally recognized Indian tribes and Native Hawaiian organizations be consulted as part of the Section 106 process if they attach religious and cultural significance to historic properties that might be affected by a project.
- **Alaskan Regional Corporations** are considered Indian tribes for the purpose of HUD's Environmental Review Procedures.
- A **Native Hawaiian** is defined as a descendant of the aboriginal people who occupied the islands, now the State of Hawaii, prior to 1778. [36 CFR §800.16(s)(1) & (2)]
- A [Native Hawaiian Organization](#) is any organization that serves and represents the interests of Native Hawaiians and has demonstrated expertise in aspects of preservation for Hawaiian culture.
- **State recognized or non-federally recognized tribes** may be a consulting party if they express a desire to do so and the RE agrees – they are treated like any other consulting party without federal tribal status, however.

Who Do I Consult and What Do I Consult About?

- Sometimes just knowing which tribes might want to be consulted is the most complicated part, especially where tribes with links to a particular area were relocated by the U.S. government to other parts of the country. HUD has provided a [Tribal Directory Assessment Tool](#) to assist REs with this process. Additional help is provided in the [FAQ](#) module.
- This tribal consultation requirement applies to properties **off** tribal lands as well as on tribal lands.
- Properties with religious and cultural significance to native people may include ancestral archaeological sites and natural areas where traditional practices or ceremonies have been carried out as well as more familiar historic properties like schools or reservation buildings.
- Some traditionally used places have very strong religious associations, and it may be difficult or even inappropriate for native people to talk about their significance. If this situation arises, hiring a qualified professional with experience in tribal consultation may be very helpful.

How Do I Consult about Projects Off Tribal Lands?

- If there is any possibility that a tribe might be interested, you should consult them as early as possible in project planning.
- Contact the tribal government, describe the nature of your project, and ask if they wish to participate in consultations.
- Obtain an interpreter, if requested, for meetings and field visits, as English may not be the tribal members' first language.
- Not everyone has e-mail – allow enough time to schedule meetings through mail, phone calls, and faxes.
- Be sure to allow enough time for everyone to express his or her thoughts; do not set time limits on discussions.
- Try to have people focus on their issues, not on positions.

What Are Some Things I Should and Shouldn't Do When Consulting with a Tribe?

- Meet in a tribal facility or a “neutral” meeting place, not a government building, if possible.
- Ask first if you may record or take notes of the meeting.
- Ask if they would like to open the meeting with a prayer; this is common practice among tribes and gets the meeting off to a familiar start.
- LISTEN more than you talk and do not interrupt a speaker.
- Because decision-making within tribal societies involves a lot of internal consultation and consensus building, it may take longer than you expect to get a decision. Emphasize your project timeframe, but be flexible.
- Cultural differences may make it difficult to understand their issues at first, but building a relationship of trust will pay off for your project and for future consultations with this tribe.

When are Tribes, Alaska Native Villages, and Native Hawaiian Organizations Responsible Entities?

- An Indian tribe, Alaska Native Village, or the Department of Hawaiian Home Lands may assume the environmental responsibilities when it is the recipient of a HUD-assisted program. [24 CFR §58.2(7)(ii)]
- As the Responsible Entity under HUD regulations, these entities are responsible for initiating and completing Section 106; they fill the role of “agency official” for the tasks described in 36 CFR Part 800.
- Under the Native American Housing Assistance and Self-Determination Act of 1996, the Indian tribe is the RE whether or not a Tribally Designated Housing Entity is authorized to receive grants on behalf of the tribe.
- The Indian tribe is also the RE under the Section 184 Indian Housing Loan Guarantee program.
- Tribal REs should be aware that other tribes may ascribe traditional cultural and religious significance to places on your lands and consultation with these other tribes is required for Section 106 compliance.

Step #1: Initiating Section 106 Consultation

What Do I Do First?

- First, you determine whether your project, activity, or program is an “undertaking” [36 CFR §800.16(y)], since only undertakings require compliance with Section 106.
 - Is the project funded, in whole or in part, with federal money?
 - Are you requesting a federal permit, license, or approval?
- If your answer to either of these questions is YES, then your project is an undertaking and you must complete Section 106.
- By definition, of course, a HUD grant makes a project a federal undertaking, so this is a pretty easy question for REs to answer!

OK, It's an Undertaking; What Next?

Next you have to answer the question: Does my undertaking have the “potential to cause effects” to historic properties?

At this point, you may not even know whether there are any historic properties in your project area, but the nature of the project itself can give you a hint about “potential to affect.”

- Is your proposed project new construction in an area of older buildings?
- Does it involve demolition of an existing building?
- Does it involve any ground disturbance, perhaps new sewer lines, utility lines, or paving for access from an existing street?
- These and similar activities can cause visual and/or physical impacts to historic structures, districts, or archaeological deposits if there are any in your project area.

The HUD environmental review regulation includes lists of activities that are considered “no potential to cause effects” at 24CFR 58.34 and 58.35(b). These lists will be very helpful but do not include all the possible “no effect” undertakings.

In Some Cases, the Potential to Affect Historic Properties Is Pretty Clear

- Is your project an adaptive reuse of an old building? Maybe converting an old hotel to senior citizen housing?
- Is the old train station being converted to a restaurant or boutique shops?
- Is Main Street or the downtown business area being spruced up with new lighting or a pedestrian mall complete with new paving and landscaping?
- These kinds of projects have a strong potential to affect historic properties

Are you unsure about the potential effects?

- You can get advice from the SHPO, maybe the City Engineer, City Manager, or perhaps the local historical society or others knowledgeable about the history of your project area.

RE Decision: Does this Undertaking Have the Potential to Affect Historic Properties?

- The SHPO and other knowledgeable groups or individuals can provide valuable help and advice, but *the RE makes the final decision* as to whether the undertaking has the potential to affect historic properties or not.
- If the RE's decision is NO, then no further action is required and Section 106 is complete. The RE should document the rationale for this decision in the environmental review record [36 CFR §800.3(a)(1)]. Documentation standards for this and all findings of effect for Section 106 are found at 36 CFR §800.11.
- If there is no potential to affect historic properties **You're DONE** with Section 106!

If the RE's decision is YES, the undertaking might affect historic properties depending on what is out there, then continue on to . . .

Early Consultation

- Once the RE decides that the project might affect historic properties, he or she should initiate consultation about the project and begin planning for public involvement.
- If you haven't already talked to them, your first stop is the SHPO (and/or THPO where tribal lands are involved).
- The SHPO has information about the types of properties found in different communities and parts of the state. They also have information on the results of previously completed Section 106 projects in your area.
- The SHPO/THPO may also have ideas about who else might be interested in consulting about your project.

Other Consulting Parties

- At this point, the RE must also decide whether there should be consultation with Indian tribes or Native Hawaiian organizations. This depends on the nature and location of your project. **Hint: If there is any doubt, consult.**
- Review the [Consulting with Native People](#) section of this module for information about tribal consultation.
- As for other consulting parties, remember to involve groups or individuals with a demonstrated legal or economic interest in the project and those with concerns about impacts to historic properties as a result of the project. These parties can often provide important information about historic properties.
- It is the RE's decision (made in consultation with the SHPO/THPO) whether or not to grant consulting party status to groups or individuals who request such status.

Planning for Public Involvement

- As the regulation notes, "The views of the public are essential to informed decision-making in the Section 106 process." [§800.2(d)(1)]
- Section 106 public involvement can be scaled to the nature and complexity of the undertaking and the likely extent of effects on historic properties. The RE can also take into account confidentiality concerns (of private property owners, for example) as well as the extent of the federal involvement.

- You can use the same public process for compliance with Section 106, National Environmental Policy Act, and Environmental justice if the timing works for you. If you do this, however, be sure to inform the public about all applicable laws, and about the different opportunities that these laws afford for public input.
- HUD encourages REs to use their existing public outreach strategies, including use of all applicable public commission meetings, to achieve public involvement. Many HUD programs also require REs to develop citizen participation plans.
- Use of local historic preservation commission meetings is an excellent way to satisfy this Section 106 requirement, as long as the meetings are properly advertised.

Red Flag

- Remember as you move forward with Section 106 that you are now in a decision-making process. Until the decisions are all made and the process has been completed, you should be careful not to take any action that might cause irreparable harm to an old building, a possible archaeological site, or other possible historic properties.
- Both HUD regulations (24 CFR §58.22) and ACHP regulations (36 CFR §800.9(b) and (c)) require that you not damage or destroy a historic property without having given it thorough consideration in the Section 106 process.
- Intentional destruction of a historic property (called “anticipatory demolition”) and failure to allow the ACHP to comment on the effects of an undertaking (called “foreclosure”) are both violations of §58.22, which could prevent HUD from approving an environmental certification and Request for Release of Funds.

Step #2: Identifying Historic Properties

What Do I Do First?

- During this step in the Section 106 process, the RE must identify historic properties that may be affected by the undertaking.
- Remember that, for Section 106 purposes, “historic properties” are sites, structures, buildings, districts, and objects that are listed on or eligible for listing on the National Register of Historic Places (NRHP) as described in the NRHP section of the [Historic Preservation Background](#) module
- There are three parts to this second Section 106 step:
 - You have to find places that might meet this definition of historic properties
 - Then you have to decide whether the places that you have identified actually are listed on or eligible for listing on the NRHP
 - And finally, you have to decide whether any of the listed or eligible places – the historic properties – are going to be affected by your project.

Important Note

- For the sake of clarity, this section and the following sections of the training discuss each Section 106 task individually – as if each had to be entirely completed before the next task could begin.
- In actual practice, however, several tasks or even several steps can be, and often are, combined, especially for smaller projects. For a very small project, Section 106 steps 1 and 2 or even steps 1-3 might all be combined and submitted for consultation with SHPO in a single letter. Or a single consultation might be completed with Indian tribes for several small projects that are very similar in nature and effects.
- As the regulation notes, multiple steps in the Section 106 process may be combined “as long as the consulting parties and the public have an adequate opportunity to express their views” ([36 CFR §800.3\(g\)](#)).

Finding Places that May Be Historic Properties

- In order to find places that are potentially historic properties, the RE has to
 - Decide where to look for them – this is called “defining the area of potential effects,” or APE for the undertaking
 - Find out what is already known about historic properties within the APE
 - And, if necessary, have additional work done by qualified historic preservation professionals (or by experts in tribal culture for properties of religious and cultural significance to tribes) to identify previously unknown or unrecorded historic properties

Let’s examine each of these tasks in order:

Defining the Area of Potential Effects

- The *area of potential effects* or APE for an undertaking is “the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.” [§800.15(d)]
- The APE is, in effect, a line on a map. Your decision about where to draw that line should be based on four things:

- The nature and scale of your project
- The kinds of effects the project may cause
- The kinds of historic properties that may be located in the project vicinity
- Input from the SHPO/THPO

How to Think about the APE

Start with your project, its nature and scale, and the resultant effects:

- Are you putting something new into the area (new construction) or taking away something that has historically been there (demolition) or radically altering something that is there now (remodeling/reuse)?
- Over how big an area would these changes to the streetscape or local neighborhood be visible?
- Will your project be similar to what's there or different?
- Will your project create new audible or visual intrusions? Over how wide an area?
- Will everything you are doing be inside existing structures and not make visible changes beyond the structure walls?
- Will you be digging foundations, putting in utility lines, or otherwise disturbing the ground? If so, where?

Next, Think about the Kinds of Historic Properties that Are or Might Be in the Project Vicinity

- ***Is the project being built in a new part of town or an old part of town?*** If the answer is “old,” there may be historic buildings or districts and possibly historic archaeological deposits.
- ***If it is an old part of town, does it still have a lot of the original buildings or have most of them been torn down or remodeled beyond recognition?*** If much of the building stock is original and your project will be incompatible in design, the effect could be substantial. If there are only a few original buildings with many other incompatible buildings already in place, the effects of your project would be much less widespread.
- ***If it is a new part of town, has the ground been previously disturbed in this area?*** Areas in which the ground has never been disturbed by modern development may contain intact prehistoric archaeological sites.
- ***Is the project location on a high point or near a spring or other water source?*** These kinds of places may have traditional religious and cultural importance to native people.

RE Decision: Defining the APE

- After thinking about the nature of the project and its effects and about the kinds of historic properties that might be affected, the RE makes a decision about the extent of the physical area within which he or she believes the undertaking might affect historic properties.
- If you are not sure, you can consult with the SHPO/THPO, or any other party that you think might be able to help you in determining what types of historic properties may be in the project vicinity and what effects the project might have on such properties.

Once You Have Defined the APE, Gather Information about Known Historic Properties Within It

- Discuss what might be in the APE with the SHPO/THPO to determine what types of historic properties may exist and, if necessary, what kind of survey or inventory to identify currently unknown properties might be appropriate.
- Environmental Site Assessments may provide information on relevant site conditions, such as areas of previous ground disturbance.
- Search the State files of registered and previously identified historic properties. Some SHPO/THPOs will do this for you for a fee, or you may need to hire a qualified professional to find known properties in your APE.
- Land office records, archives, old photos, the local historical society, the public library, reports from previous Section 106 projects, the Internet – all of these might help you to identify places that could be historic properties.
- PEOPLE! Often the self-appointed town historian, a cultural group that founded the city, a tribe or Native Hawaiian organization, and others may know more about the area than any other sources.
- Sometimes if nothing at all is known about historic properties in the general vicinity of the APE, it will be worthwhile to hire a qualified professional to do a quick, informal reconnaissance of the area to assist you in your planning.

Photos, Descriptions of Multiple Types of Properties, Districts, Objects that Are Eligible or Listed on the National Register of Historic Places

What Else Needs to Be Done to Identify Historic Properties within the APE?

- In addition to doing background research to identify already known historic properties, sometimes some level of onsite examination of the APE may be needed in order to locate historic properties that have not been previously recorded.
- Simply put, this involves someone with the appropriate expertise walking around the project area and looking for visual clues or details that will allow them to identify and record additional historic properties.
- An architectural historian might evaluate older neighborhoods and commercial areas, an archaeologist might check for the presence of historical or prehistoric archaeological materials, or a Native American traditional practitioner from a tribe that resides or once resided in the area might examine the area for evidence of traditional uses.
- Unless the RE has the appropriate expertise on staff, this generally requires hiring qualified professionals from universities, tribes, or private consulting firms.
- For HUD guidance on when archaeological surveys may be appropriate, see http://portal.hud.gov/hudportal/documents/huddoc?id=env_factsheet_6.pdf

RE Decision: What Additional Efforts Will We Make to Identify Historic Properties Within the APE?

- As with all of the decisions in the Section 106 process, the RE in its role as the “agency official” for Section 106, makes the final decision about what needs to be done to identify historic properties within the APE.
- Identification, like the rest of the Section 106 process, is guided by a standard of “reasonable and good-faith effort.”

- The RE, as the legally responsible entity, needs to ensure that a reasonable and good-faith effort is made to identify historic properties within the APE.
- The RE should make clear the justification for this decision about the level of effort in the project file.
- Most important, the level of effort should be sufficient to ensure that historic properties are not discovered after the project is underway, causing delays and additional costs and inadvertent loss of part of the community's heritage.

What if the SHPO/THPO Disagrees with the RE's Decision about Level of Effort to Identify Historic Properties?

Options:

- Discuss their viewpoint and attempt to understand why they have a concern about the proposed identification effort.
 - Remember, they have reviewed Section 106 compliance for thousands of projects just like or similar to yours – there may be a very good reason why they are concerned.
 - Although the RE is the ultimate decision-maker, sometimes being persuaded by good advice can really pay off.
 - Sometimes, extra time and effort invested in identification now can save months of effort later.
- Seek ACHP comment on the issue, or
- If the RE remains unconvinced of the need for additional identification efforts, notify the consulting parties of the decision to proceed.

Identifying Historic Properties

- If the RE decides that additional efforts to identify historic properties within the APE are needed, the services of an individual with specific professional qualifications may be needed.
- See the [Getting Help with Section 106](#) module as well as the associated [Resources and Links](#) and [FAQs](#) for help with this issue.
- The professionally qualified individual's job is to carry out archival research and field reconnaissance and provide the RE with documentation of newly recorded historic properties and specific recommendations about the eligibility of these properties to the National Register of Historic Places (NRHP).
- The RE remains legally responsible for all findings and determinations.

RE Decision: National Register Eligibility

- Once a historic property has been identified, the RE must evaluate its eligibility to the NRHP, based on the criteria and other considerations discussed in the [Historic Preservation Background](#) module.
- The RE makes this decision based on [National Park Service guidance](#) and the advice of its qualified professionals, with input from SHPO/THPO and others who may value the property.
- Indian tribes and Native Hawaiian organizations must be consulted if it is a property with religious and cultural significance for them.

Consensus Determination of Eligibility

- Once the RE has decided, for each of the newly recorded historic properties, whether he or she thinks that it is eligible to the NRHP (and thus a “historic property” for the purposes of Section 106), the RE (or qualified professional) prepares documentation describing the significant characteristics that qualify (or do not qualify) the property for listing on the NRHP.
- This information is then submitted to the SHPO/THPO with the RE’s decisions about the eligibility of each property, and the SHPO/THPO has the opportunity to agree with this determination or to object.
- **Hint:** The best results often are achieved if there is informal consultation with SHPO/THPO prior to submission of the formal determinations.
- If the SHPO/THPO concurs with the RE’s findings of eligibility, the property is treated as “eligible” or “not eligible” for the purposes of this undertaking, and you move on to assessing the effects of the undertaking on the eligible and listed historic properties.

What if the SHPO/THPO Disagrees with Our Determination of Eligibility?

- The RE and its qualified professional should discuss with the SHPO/THPO the reasons for the differences in viewpoint.
- If the RE and SHPO/THPO cannot reach a consensus, the RE can send the documentation to the Keeper of the National Register and request a formal determination of eligibility from this office of the National Park Service.

Hint: It generally takes quite a bit of time and additional documentation efforts to secure a determination from the Keeper. Before you take that step, discuss with SHPO/THPO whether the property will be affected or not. If you can agree that it won’t be affected, you can leave its eligibility undetermined. If it appears that the disputed property will be affected by the undertaking, then you need to find a way to come to consensus or request a Keeper’s determination of eligibility.

Keeper’s Review of Eligibility

- The Keeper of the National Register’s staff may request additional documentation and may seek other information.
- The referral takes at least 45 days to process, and if additional documentation is requested, the clock starts over.
- The Keeper’s decision about the eligibility of a property is final.

The Next Step in Identifying Historic Properties that May Be Affected by Your Undertaking

- Once you have defined the APE, learned about known historic properties within the APE, carried out any additional efforts to identify other historic properties, evaluated the eligibility of the known and newly identified properties, and secured a concurrence with your findings from the SHPO/THPO, you have one thing left to do that will either complete your Section 106 responsibilities at this point or move you forward to Step #3 – the next section of this module.
- This next task is to determine whether any of the historic properties – that is, NRHP eligible or listed places – within your APE will be affected by your undertaking.

***Note:** it is worth mentioning again at this point that for many, probably most small and medium-sized HUD-assisted projects, all of the tasks in Step 2 of the Section 106 process, including this next one, can be combined into a single submission/consultation with SHPO/THPO.

RE Decision: Historic Properties Affected/No Historic Properties Affected

- In Section 106 terms, “effect” on a historic property means “alteration to the characteristics . . . that qualify it for inclusion in or eligibility for the National Register.” [[§800.16\(i\)](#)]
- This is the point at which [National Register Bulletin 15](#) and access to assistance from a professionally qualified individual will be invaluable to you. The eligibility documentation for the properties in your APE must be very specific about WHAT characteristics qualify the property for the NRHP. If you are going to be altering any of those qualities, you need to go on to Step #3. If not, then **You’re DONE** with Section 106!
- In the latter case, the RE documents (see [36 CFR §800.11\(d\)](#)) the decision and notifies the SHPO/THPO and other consulting parties of a “No Historic Properties Affected” decision. If the SHPO/THPO does not object within 30 days, Section 106 is complete.
- At this point, notwithstanding any other environmental concerns, the RE may convert the project to an “exempt activity” per 24 CFR §58.34(a)(12) and avoid having to do a NOI/RROF.

What If there is an Objection to a “No Historic Properties Affected” Finding?

Options:

- The RE may consult further to resolve the disagreement, or
- The RE may provide documentation to the ACHP and requests their comments on the finding.
- The RE then takes the ACHP comments into account in making a final decision. If the RE still does not believe that there is an effect on historic properties, the decision stands and Section 106 is complete.
- If the RE is persuaded by the SHPO/THPO objection and/or by the ACHP comments that there is at least some effect, then the RE moves on to Step #3 of the Section 106 process.

Step #3: Assessing the Effects on Historic Properties

What Happens Next If the RE Has Found that Historic Properties Will Be Affected?

- The RE must determine whether the effects will be “adverse.”
- As we learned in the previous section, an *effect* on a historic property is anything that **alters** one or more of the characteristics that make it eligible to the NRHP.
- An *adverse effect* is defined as something that **diminishes** one or more of those characteristics.
- The characteristics of interest here are those having to do with the property’s **integrity**: its location, setting, design, materials, workmanship, feeling, and association. If you are not going through this training as a tutorial, you should review the discussion of the concept integrity in the [Historic Preservation Background](#) module. You should also consider reviewing the discussion of integrity in [National Register Bulletin 15](#).

What’s the Difference Between “Alter” and “Diminish” the Integrity of a Historic Property?

Some examples to think about:

- **Installing a wheelchair ramp for ADA accessibility.** If the ramp is designed so that it leaves most of the railing and front steps and pillars of a character-defining porch on a historic home in place and accesses the porch from the side, it is an effect but probably not an adverse effect. If the ramp went straight up to the front of the building, taking out the steps, pillars, and the front view of the porch, it would be an adverse effect.
- **Noise abatement for windows in a historic school building.** A historic school building under the flight path of a new airport runway needs noise abatement because the sound of the planes is interfering with teaching activities. If the windows of the building are fitted with clear plexiglass inserts over the existing historic windows, it would be an effect, but probably not an adverse effect. If the historic windows, a character-defining feature of the building, were to be removed and replaced with aluminum double-pane low-sound windows, the effect would be adverse.

What Are Common Kinds of Adverse Effects?

- **Removal from historic setting**
- **Physical destruction or damage**
- **Introduction of visual or audible intrusions**
- **Alterations that are out of character**
- **Changes in use or setting if those are important characteristics of the property**

These are the most commonly encountered adverse effects for HUD projects, but there are other kinds as well. Anything that diminishes the historical integrity of a property may be an adverse effect if that quality of integrity has been identified as being **important** for that property.

Adverse Effect: Is It or Isn't It?

- The RE, usually with help from its qualified professional, looks at the documentation for each historic property in the APE (remember that we are now looking only at the listed and eligible properties – the historic properties that aren't eligible have dropped out of consideration).
- For each property, the RE should ask:
 - “What qualities of integrity does it have?” (an experienced qualified professional will have laid out that information clearly for each property in the report)
 - “Will anything we are planning to do for this project **diminish** – not just alter, but diminish – the integrity of this property in any way?”
- The answer to this latter question will determine whether you are finished with Section 106 at this step or you will need to continue on to Step #4 in the process.

RE Decision: A Determination of No Adverse Effect or Adverse Effect for the Undertaking

- The RE may determine that none of the effects of the project on historic properties will diminish their integrity and therefore that the project will have no adverse effect.
- Or, in consultation with the SHPO/THPO and other parties, the RE may determine that the effects will not be adverse **if** the project meets certain conditions. For example, a rehabilitation of a historic building will not be adverse if it is done in ways that are consistent with the Secretary of the Interior's [Standards and Guidelines for Rehabilitation](#).
- The RE documents (see 36 CFR §800.11(e)) the decision of “no adverse effect,” and sends this finding to the SHPO/THPO and other consulting parties for review.
- If there is no objection to the “no adverse effect” finding within 30 days, Section 106 is completed and **You're DONE!**

What If There Is an Objection to the No Adverse Effect Finding?

- The process is the same as for a SHPO/THPO objection to a finding of No Historic Properties Affected.
- The RE tries to understand the reason for the objection and to resolve it at a local level.
- If that doesn't work, the RE sends the documentation about the dispute to the ACHP and requests their comments.
- The RE then takes those comments into consideration in making a final determination of effect and documents the decision and the rationale for it.
- If the RE's decision is still “**no adverse effect**,” Section 106 is completed and **You're Done**.
- If the RE is persuaded by consulting party or ACHP comments that the integrity of one or more of the historic properties will be diminished, the RE documents a finding of “**adverse effect**” for the undertaking and continues on to Step #4.

Step # 4: Resolving Adverse Effects

The Last Step in the Section 106 Process is called “Resolving Adverse Effects”

- Resolving adverse effects means, continued consultation to “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.” [§800.6(a)]

The RE puts together all the documentation for this undertaking (see 36 CFR §800.11(e)), notifies the consulting parties of the “adverse effect” decision, and invites them to participate in the consultations for resolving the adverse effects.

Notify the ACHP

- The RE also sends the documentation package to the ACHP and notifies them of the adverse effect.
- The RE may invite the ACHP to participate in consultations if that is desired or simply notify them of the finding.
- The ACHP must be invited to participate if there will be an adverse effect on a [National Historic Landmark](#)
- ACHP has 15 days after receipt of the notification in which to decide whether to participate. The RE will be notified of the ACHP’s decision. In general, they choose not to participate unless there is a great deal of controversy or the consulting parties are not satisfied that their concerns are being considered.

Identifying Measures to Resolve Adverse Effect

- The RE then organizes and facilitates discussions with the consulting parties about possible measures to minimize or mitigate the adverse effects of the project.
- **HINT:** There is no 30-day timeframe that applies at this stage – it is important for the RE to manage this step diligently.
- This is one of the points in the Section 106 process where it is especially important to secure input from the public; sometimes citizens concerned about the impacts of the project have the most creative ideas about how to lessen those impacts.
 - **HINT:** Use local historic preservation commission meetings, if available, for public input.
- The discussions should be organized around measures to address the specific adverse effects that you have identified, but don’t discount the value of more generalized measures that will be good for historic preservation in your community overall.
- This is the most creative part of the Section 106 process and your chance to work with your community to accommodate both the benefits that your project will bring and the long-term benefits of historic preservation.
- Keep in mind that mitigation should be commensurate with the adverse effect(s).

RE Decision: Measures that Will Be Taken to Resolve the Adverse Effects

- After getting input from the other parties and the public, and incorporating their views to the greatest extent possible, the RE decides what measures will be taken to resolve the adverse effects of the undertaking.

- The result is embodied in a Memorandum of Agreement (MOA), a legally binding agreement signed by the signatories – the RE, the SHPO/THPO, and the ACHP, if participating (also the tribe for undertakings on tribal land).
- Other parties may be invited to become signatories. Usually these are entities that have an assigned task or are required to perform a function under the terms of the agreement.
- Others who participated in consultation may be invited to concur in the agreement, but have no rights to seek amendments or termination. Their refusal to sign doesn't negate the agreement.
- HUD has provided a [Section 106 Agreements Database](#) that will provide you with ideas and models for developing MOAs.

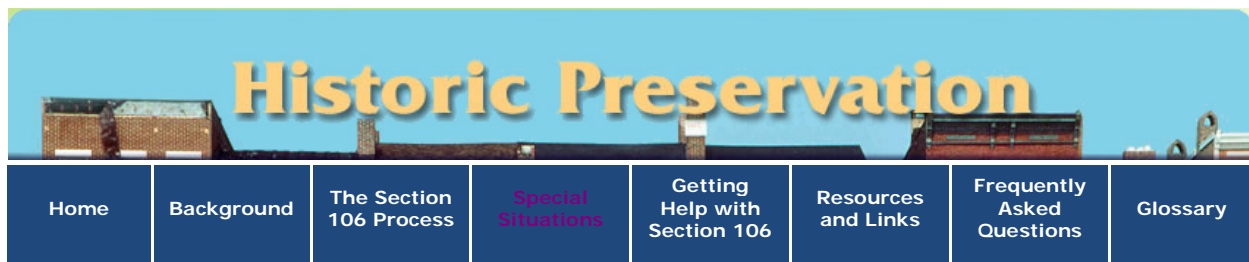
Completing the Section 106 Process

- Once the MOA is filed with the ACHP, Section 106 is completed and **You're REALLY DONE!** (as long as you remember to do all you promised to do in the MOA!)

The execution of the MOA indicates that all signatories are satisfied with the proposed resolutions of adverse effect and that the RE has successfully carried out the responsibilities for Section 106 assumed under the HUD environmental procedures. The MOA is a legal contract, and all of the stated provisions must be carried out as they are described. If the MOA is not fully implemented, the RE will be out of compliance with Section 106.

To Learn More About This Topic . . .

- [Resources & Links](#)
- [Frequently Asked Questions](#)



Special Situations

Situation #1: What Happens If Consultation Breaks Down?

- There are no time limits for the consultation process on an MOA.
- If consulting parties become polarized or reach an impasse, a good-faith effort should be made to move past the problem:
 - Focus on areas of agreement and consensus
 - Hire a professional mediator to facilitate discussion
 - Change the venue; meet at a different place or time, have different parties open the meeting
 - Move discussions from positions to issues
- Remember that you don't have to get all of the consulting parties to agree; if the SHPO/THPO, the RE, and the ACHP (if they are participating) can reach agreement, the consultations can still conclude with these parties signing an MOA.

What If the Signatories Still Can't Reach Agreement?

- If after a good-faith effort to reach resolution, it becomes clear that no agreement can be reached, one of the signatory parties – that is, the RE, SHPO/THPO, ACHP (if participating), or a tribe (if the project is on tribal land) – may terminate consultation.
- The process to be followed at that point is covered in the Section 106 regulation at 36 CFR §800.7. This is a very rare event, and you should seek the advice of your FEO if it looks like things might go in this direction.
- In the event of a termination for a HUD-funded project, the RE sends a letter to the ACHP with any additional documentation, explaining the facts of the termination, and requesting ACHP comments.
- The ACHP will issue their comments to the "Head of the Agency" – for an RE, this would be the highest authority in the system such as the Governor or Mayor – and notify HUD. The RE then takes these comments into account in reaching a final decision on the undertaking.

Situation #2: What Is Anticipatory Demolition?

Section 110(k) of the National Historic Preservation Act says:

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate.

This is called “anticipatory demolition.”

- A potential HUD grant recipient who engages in anticipatory demolition may be denied funding or assistance because this action would be a violation of [24 CFR §58.22\(a\)](#).
- If, as RE for a project, you feel that this may have occurred, you should contact your FEO and discuss the situation with him or her.

Situation #3: What Is Foreclosure?

- “Foreclosure” means that a federal project has been approved and started prior to completion of Section 106. The term means that the ACHP’s opportunity to comment on the undertaking has been “foreclosed.”
- In the case of a HUD-funded project, the RE must ensure that no physical activities that could affect historic properties or choice-limiting actions are carried out before the completion of the Section 106 process, such as signing of an MOA in cases where there will be an adverse effect. As with anticipatory demolition, an action that forecloses the ACHP’s opportunity to comment would be a violation of [24 CFR §58.22\(a\)](#).
- Failure to comply with 24 CFR §58.22(a) could not only prevent approval of release of funds by HUD, but could result in receipt of a letter from the ACHP stating that the RE has foreclosed their opportunity to comment.
- An ACHP foreclosure letter opens the door for litigation by an advocacy group.

Situation #4: What Do I Do About Section 106 During an Emergency?

- **“Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106” - 36 CFR § 800.12(d)**
- The HUD regulation at 24 CFR §58.33 and the Section 106 regulation at 36 CFR §800.12 address emergencies. Both regulations define an “emergency” as a disaster or emergency declared by the U.S. President, a tribal government, or the Governor of a State.
- Local government REs also must comply with this requirement when an imminent threat to public health or safety as a result of a natural disaster or emergency has been declared by that government’s chief elected officer.
- Generally 36 CFR §800.12 applies only to undertakings that will be implemented *within 30 days* after the emergency or disaster has been formally declared; prior to the expiration of the 30 days, an RE may request an extension (an additional 30 days) from ACHP.

RE Responsibilities and Emergencies

- The ACHP encourages REs in areas prone to particular types of emergencies to consult with SHPO/THPOs and other parties to develop procedures for treatment of historic properties in the event of such an emergency and to have these procedures approved by the ACHP and in place prior to a natural disaster or emergency.
- If there are no existing approved procedures, the RE should notify the ACHP and SHPO/THPO, of its planned response to the situation and of any anticipated effects to historic properties as a result. If the situation is such that properties of religious and cultural significance to a tribe might be affected, the tribe should be notified as well. The parties should have the opportunity to comment on the situation within 7 days.
- If the RE determines that a decision for how to proceed with activities that may affect historic properties cannot wait 7 days, the ACHP, SHPO/THPO, and tribes should be notified and asked to provide comments within the time available.

What Kind of Emergency Situation Might Require a Response in Less than 7 Days?

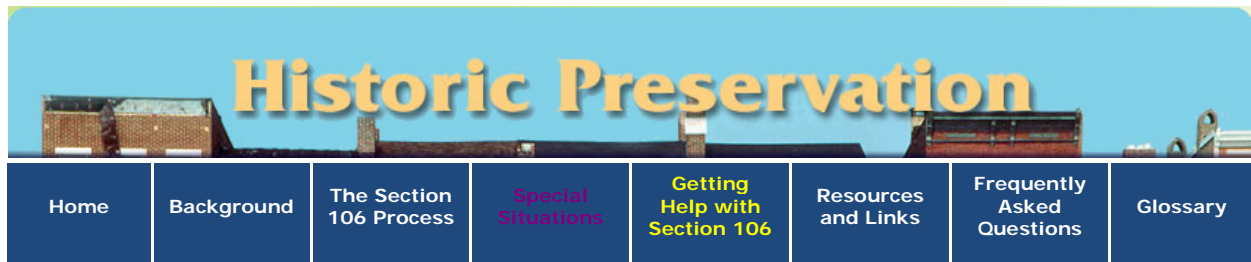
- In general, these are natural disasters or emergencies that have nearly destroyed historic properties to the extent that people’s lives or safety may be jeopardized by waiting a week to take action.
- For example, after an earthquake, if historic buildings have been damaged to the point where emergency responders cannot access people that may still be in the building or where natural gas pipes or other major hazards must be addressed immediately, a delay for Section 106 comments is obviously not appropriate!
- This does not mean, however, that historic buildings that have been damaged but are not impeding rescue and salvage or jeopardizing health and safety can be bulldozed without Section 106 consideration.

Situation #5: Unanticipated Discoveries

- No matter how carefully the Section 106 process is carried out, there is always the possibility of a discovery during implementation -- either a previously undiscovered historic property is encountered or it turns out that there will be an unanticipated effect to a known historic property.
- For this reason, it is usually a good idea to have a provision in your project MOA outlining an expedited review and consultation process that will be followed by the signatories should there be an unanticipated discovery.
- If you have a discovery on a project that doesn't have an MOA (because the project as designed was found to have "no effect" or "no adverse effect" on historic properties), 35 CFR §800.13(b) requires that the RE "make reasonable efforts to avoid, minimize or mitigate adverse effects" to the discovered property and provides a process for consultation about those effects.

Situation #6: National Historic Landmarks and Section 106

- 36 CFR §800.10 describes the special requirements for protecting National Historic Landmarks (NHLs) as part of Section 106 compliance.
- As discussed in the [Background](#) module, NHLs are nationally significant historic properties designated as landmarks by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States.
- REs should take special care to avoid affecting NHLs, if possible, and to minimize the harm to an NHL that will be adversely affected.
- The Secretary of the Interior should be notified (through the National Register of Historic Places) of any Section 106 consultations involving an NHL and should be invited to participate in efforts to resolve any adverse effects.
- In the case of adverse effects to an NHL, the ACHP, too, must be invited to participate in consultations about resolving the adverse effects.



Getting Help with Section 106

HUD Field Environmental Officers

HUD has expert staff in locations around the country to assist you with Section 106 reviews of HUD-funded projects.

Get to know the nearest HUD professional environmental staff person. They can help you understand how to use the environmental assessment process to improve the quality of your project.

When to Contact the HUD FEO

- When you have a question about how Section 106 applies to a specific HUD program.
- When you are unclear or uncertain about existing HUD guidance or policy on certain Section 106 issues.
- When you are having a problem completing the Section 106 review process.

The HUD FEO can help when . . .

- On occasion, some new SHPO/THPO staff may be unfamiliar with HUD's "assumption authority" (§58.4) and how REs are the "agency official" for Section 106 purposes.
- If you encounter such misunderstandings, ask the HUD FEO to intervene.
- HUD FEOs also offer regular classroom training. Sign up for a course!

Contact Your Local FEO

- Contact a local HUD FEO by clicking here - http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

SHPO and ACHP as Resources

- What kinds of help are available from the State Historic Preservation Office and from the Advisory Council on Historic Preservation?
- When can I ask for help?
- What should I ask for?

SHPOs have lots of information that will help you do your job in the Section 106 process, some of which includes:

- Information on known historic and prehistoric sites
- Nomination forms for all the properties in your area listed on the National Register
- Historic contexts that describe the significance for particular property types and how to identify their important characteristics
- Guidance documents that they have prepared as well as guidance from the National Register, private preservation organizations, and others
- Information about Indian tribes with interests in your area

SHPOs Also Offer Training and Other Assistance

- Some SHPOs have annual or biennial training sessions for local government staff who have Section 106 responsibilities.
- Consider becoming a Certified Local Government (CLG) if your community is not already a CLG – you not only become eligible for small grants through the SHPO, but you become eligible for training through national organizations.
- Many SHPOs also provide training on recording historic buildings and other handy skills.

SHPOs and Section 106 Handholding

- Especially for REs who are new to Section 106, SHPO staff can be lifesavers who help to guide you through the process.
- Most SHPOs have very small staffs and very big workloads, however. If you try to maneuver them into doing your job FOR you, you probably won't find them very receptive.
- But if you are truly doing your best to work your way through the Section 106 maze, you will find some very nice people at the SHPO who will do *their* best to help you.
- And don't forget to check out your SHPO's Web site. Lots of information can be found there, including contact information for SHPO staff.

Help from the ACHP Web Site

- The ACHP also provides a number of helpful resources on their Web site: www.achp.gov. Some especially useful guidance documents are listed in the [Resources & Links](#) for this training module.
- Staff Directory – if you want to talk to a real person, use the directory to determine who on staff reviews HUD or other federal agencies – names and direct phone numbers are listed.
- Case Digests – these are Section 106 cases where the ACHP has been involved in the consultation and resolution; staff writes a summary of the proceedings and the outcomes.

Special Reports may also be downloaded or purchased, such as Federal Historic Preservation Case Law, 1966 – 1996, Thirty Years of the National Historic Preservation Act

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The ACHP and Your Section 106 Case

- 36 CFR §800.2(b)(2) allows REs and others to seek ACHP assistance *at any stage* of the process.
- Remember that you **must** ask the ACHP to participate in consultations if a National Historic Landmark will be adversely affected by your project.
- You **may** ask the ACHP to participate in consultations about resolving the adverse effects of a particular project on historic properties if you think that their participation would make a significant difference.

Working with Consultants

- Unless there is a staff position filled by a historic preservation professional in your organization that reviews HUD-assisted projects, it is often a good idea to hire a consultant with expertise in the particular types of historic properties that may be within your project area.
- If you are a non-recipient RE you may request that the applicant or the applicant's consultant provide information, analyses, and recommendations that you need to make Section 106 decisions.
- Even when a consultant is hired, the RE is still responsible for ensuring that the consultant's reports are adequate and that the requirements of Section 106 are met.

Who is a Qualified Historic Preservation Professional?

- The Secretary of the Interior has [published professional qualification standard](#) for historic preservation professionals in a variety of fields, including history, archaeology, and architectural history.
- HUD provides a [summary](#) of these standards in its fact sheet on the professional qualification standards
- For additional guidance see [FAQs](#)

How Do I Find a Consultant?

- SHPOs often have a list of historic preservation specialists working in the state.
- Ask other local governments or federal agencies which consulting firms have done work for them in the past.
- Some consultants belong to professional organizations that have a directory of members and list their area of expertise.
<http://www.preservationdirectory.com/HistoricalPreservation/Home.aspx>
- For additional guidance [see FAQs](#)

How Do I Work Effectively with a Consultant?

- Make sure the contract or scope of work is specific to your needs and to the Section 106 process; don't use a generic contract for services.
- A consultant can only make recommendations as to what might be an appropriate finding – the RE must make any final decisions or determinations.
- Start early: Section 106 involves many parties and the consultant and coordination can take longer than you expect, especially if controversy arises.
- Don't wait until there is a problem and then hire a consultant to try to fix it.

What Do I Need to Tell the Consultant?

- A consultant is only as good as the information you give him or her. Tell the consultant everything you know about the design of the project; ancillary facilities or activities; the potential consulting parties; any other federal permits, funding, or authorizations involved; time constraints; and possible problems.
- The consultant needs to be kept in the loop. If an engineer changes the design plan or the budget is reduced or there is a new controversy on the horizon – the consultant needs to know. A change in the project scope, for example, may require rethinking the APE.

- Be sure to include the consultant in your meetings with SHPO/THPO – they will be able to express the issues in “historic preservation lingo.”

What Do I Need to Ask the Consultant?

- Does the consultant know the Section 106 process? Is he or she capable of producing the correct documents?
- What is their training? What previous projects have they completed? It's OK to ask for references from previous clients.
- Ask about the consultant's experience in handling public meetings, tribal meetings, and developing Section 106 agreement documents.
- Ask whether they have a good relationship with the SHPO/THPO.
- For sensitive or controversial projects, you may want to ask whether there is any potential conflict of interest with regard to the consultant's other clients or projects.

What Do I Tell the Consultant to Do?

- Ask the consultant to go over the steps in the Section 106 process with you and tell you how he or she plans to approach the compliance at each step for your project.
- Ask questions and make suggestions based on what you have learned from this training. But remember that you are paying good money for his or her advice, so unless something really raises a red flag for you, be inclined to take that advice!
- Go over the timeframes with the consultant and ask whether there are going to be any pinch points.
- The consultant should keep you informed of progress, problems, and give you advanced notice when key letters and reports will need to be sent to the SHPO/THPO.

How Do I Ensure that the Consultant Gives Me What I Need?

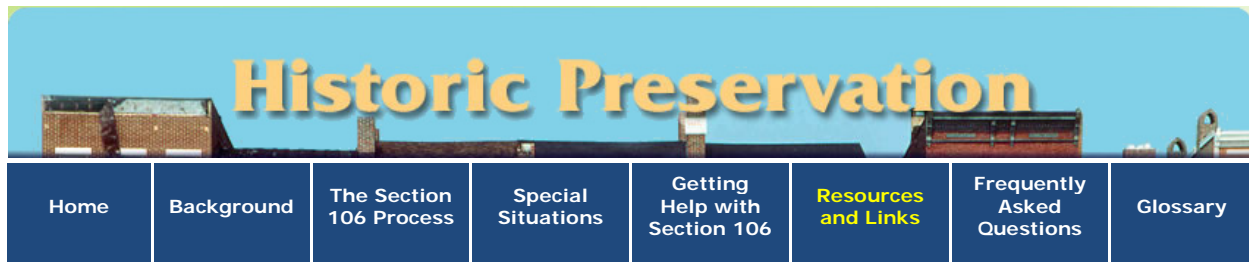
- You need to know the Section 106 requirements well enough to write a contract or scope of work for the consultant that identifies precisely what you need.
- You also need to know enough to be able to read the consultant's reports and determine, for the most part, whether it will meet the SHPO/THPO's expectations.
- Don't hesitate to question the consultant about why he or she is making particular recommendations or taking particular steps.
- Don't make price your only consideration when hiring a consultant. As with many things, this can be an expensive “savings.”

Insist on Clear Recommendations about Eligibility

- In Section 106, historic places are either eligible for or listed on the National Register or they are not.
- If a consultant states that a place is “potentially” eligible, this does not give you the information that you need to complete Section 106.
- If there is insufficient information available to make an eligibility recommendation for a historic place, the consultant should state that clearly and make recommendations about how to resolve the question.
- Calling a bunch of properties “potentially eligible” will just delay the consultation process.

To Learn More About the Topics in this Module . . .

- [Resources & Links](#)
- [Frequently Asked Questions](#)



Resources and Links

Historic Preservation Background

Resources from HUD

- Linking Historic Preservation to CDBG
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13716.pdf
- Preserving America (funding historic preservation and heritage tourism)
portal.hud.gov/hudportal/documents/huddoc?id=DOC_14212.doc

Resources from the National Register of Historic Places

- The National Register of Historic Places main Web site
<http://www.nps.gov/history/nr/index.htm>
- National Historic Landmarks
<http://www.nps.gov/history/nhl/designations/listsofNHLs.htm>
- National Register Bulletins and Brochures
<http://www.nps.gov/history/nr/publications/#bulletins>

Resources from the National Park Service Historic Preservation Program

- Working in Local Historic Districts
<http://www.nps.gov/tps/education/workingonthepast/index.htm>
- Historic Preservation and the Certified Local Governments Program
<http://www.nps.gov/history/hps/clg/index.htm>
- National Park Service Tribal Heritage Preservation Grants
<http://www.nps.gov/history/hps/tribal/>
- Historic preservation tax incentives
<http://www.nps.gov/hps/tps/tax/>
- Secretary of Interior's standards and guidelines for preservation planning
<http://www.nps.gov/hps/pad/PLngStds/index.htm>

Other useful resources

- The National Trust for Historic Preservation
<http://www.preservationnation.org/>
- The National Historic Preservation Act
<http://www.achp.gov/docs/nhpa%202008-final.pdf>
- Historic Preservation Learning Portal
<https://www.historicpreservation.gov/web/guest/home>
- Preserving America's Past (brief summaries of historic preservation laws)
<http://www.srifoundation.org/pdf/SAACURRI.PDF>

- Field environmental officer training
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/training
- National Preservation Institute's Tools for Cultural Resources Practitioners
<http://www.npi.org/tools.html>
- USDA Historic Preservation Resources
<http://www.nal.usda.gov/ric/ricpubs/preserve.html> EPA American Indian Environmental Office Tribal Portal
<http://www.epa.gov/indian/>
- EPA American Indian Environmental Office Tribal Portal Maps & Data
<http://www.epa.gov/indian/datamaps/index.htm>
- Tribal Leaders Directory (Spring 2011)
<http://www.bia.gov/idc/groups/xois/documents/text/idc002652.pdf>

Contact Us

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For technical assistance, please contact your local HUD Environmental Officer:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

The Section 106 Process

HUD-Specific Resources

- Assessment Tools for Environmental Compliance
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/atec
- Historic Preservation/Section 106 Consultation Checklist
<http://www.hud.gov/offices/cpd/environment/sec106checklist.pdf>
- Summary of Section 106 Compliance
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13725.pdf
- Neighborhood Stabilization Program Section 106 Toolkit: How to Comply with Historic Preservation Requirements
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12984.pdf
- Section 106 Guidance for NSP Land Banking
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12986.pdf
- Historic Preservation
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/historic
- HUD Tribal Consultation Policy
http://www.hud.gov/offices/pih/ih/regs/govtogov_tcp.cfm
- HUD Resources for Tribes
<http://www.hud.gov/offices/pih/ih/codetalk/>

Additional Guidance from HUD

- Guidance for categorizing an activity as maintenance for compliance with HUD's environmental regulations, 24 CFR Parts 50 and 58
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13720.pdf
- Historic Properties and the Lead Safe Housing
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12311.pdf
- HUD Environmental Regulations and Section 106 Agreement Documents
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13722.pdf Advisory Guidance for Converting Projects Subject to Historic Preservation Requirements to "Exempt Activities" under 58.34(a)(12)
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13723.pdf
- Tribal Consultation & Assumption Authority
http://portal.hud.gov/hudportal/documents/huddoc?id=env_notice_tribe_con.pdf
- Tribal Directory Assessment Tool (TDAT) v1.0
<http://egis.hud.gov/tdat/Tribal.aspx>

Resources from the [Advisory Council on Historic Preservation](#)

- The Section 106 regulation: 36 CFR part 800
<http://www.achp.gov/regs-rev04.pdf>
- The Section 106 regulation users' guide
<http://www.achp.gov/usersguide.html>

- Working with Section 106
<http://www.achp.gov/work106.html>
- Guidance for working with Native Americans and Native Hawaiians
<http://www.achp.gov/nap.html>
- ACHP Policy Statement on Affordable Housing and Historic Preservation
<http://www.achp.gov/docs/fr7387.pdf>
- National Register Evaluation Criteria
<http://www.achp.gov/nrcriteria.html>

Resources from the National Park Service

- How to apply the National Register criteria for evaluation of historic properties
<http://www.nps.gov/nr/publications/bulletins/nrb15/>
- The Secretary of the Interior's Standards for Rehabilitation
http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_standards.htm
- The Secretary of the Interior's Standards for Preservation
http://www.nps.gov/history/hps/tps/standguide/preserve/preserve_index.htm
- The Secretary of the Interior's Standards for Architectural and Engineering Documentation
<http://www.nps.gov/hdp/standards/index.htm>
- Federally-recognized Indian Tribes Native American Consultation Database
http://grants.cr.nps.gov/nacd/nacd_help_files/nacd_help.html
- National Register of Historic Places
<http://www.cr.nps.gov/nr/index.htm>
- Technical Preservation Services
<http://www.cr.nps.gov/hps/tps/index.htm>

Resources from the Office of Personnel Management

- GoLearn Knowledge Portal: course on *Working Effectively with Tribal Governments*
<http://golearn.gov/>

Contact Us

Please send questions or comments about this site to ATEC@hud.gov.

For technical assistance, please contact your local HUD Environmental Officer:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

NSP Section 106 Toolkit:

http://www.hud.gov/offices/cpd/environment/nsp_toolkit.pdf

Contacting HUD for Help

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/contact/localcontacts

<http://www.hud.gov/offices/cpd/environment/atec.cfm>

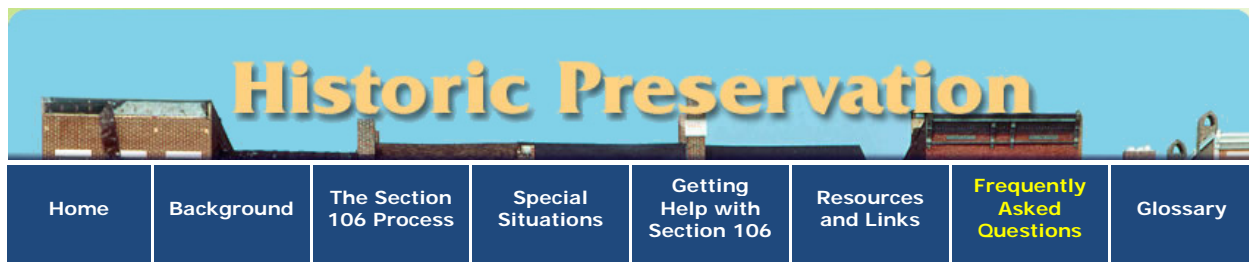
- The Advisory Council on Historic Preservation
<http://www.achp.gov/>
- State Historic Preservation Officers
<http://www.ncshpo.org/>
- Tribal Historic Preservation Officers
<http://www.nathpo.org/>
- The National Center for Preservation Technology and Training
<http://www.ncptt.nps.gov/>
- National Park Service Preservation Briefs
<http://www.nps.gov/history/hps/tps/briefs/presbhom.htm>

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Frequently Asked Questions

Historic Preservation Background

Affordable Housing and Historic Preservation

Are there examples or models for creating quality affordable housing through the preservation of historic buildings?

Answer: The Advisory Council on Historic Preservation has provided examples from around the country at <http://www.nps.gov/history/hps/tps/affordable/>. See also the ACHP policy on Affordable Housing and Historic Preservation at <http://www.achp.gov/docs/fr7387.pdf>. See also the National Trust/HUD Secretary Awards for Excellence in Historic Preservation http://www.huduser.org/portal/about/ExcellenceHistPres_2012_1.html

EZ/EC and Historic Properties

Does Section 106 for historic preservation processing apply to the Empowerment Zone/Enterprise Communities (EZ/EC) program?

Answer: Compliance with environmental review procedures including historic preservation processing is required for EZ grants proposed for property acquisition, repairs and rehabilitation of an existing structure, conversion of land use, demolition, and new construction. Environmental review procedures do not apply to the tax incentive aspects of the EZ/EC program.

SHPO/THPO Response within 30 Days

Is the failure of the SHPO/THPO to respond within the 30-day period considered agreement of the SHPO/THPO with the finding required at 36 CFR 800.5(c)(1) and fulfillment of the SHPO/THPO 106 review responsibilities?

Answer: From 36 CFR Part 800.3(a)(4) and 800.5(c)(1), it is clear that if the SHPO/THPO fails to respond within 30 days from receipt of the finding, it shall be considered agreement of the SHPO/THPO with the finding. It is prudent to have proper documentation that proves the dates on which the SHPO/THPO received/logged the information (i.e., a USPS return receipt).

The Section 106 Process

Emergency Demolition of Public Housing Structures and Section 106

What Section 106 procedural and documentation requirements apply to emergency undertakings?

Answer: Under the Section 106 regulations (see 36 CFR 800.12), "Emergency Situations", there are specific times when emergency undertakings may occur with federal assistance. First, §800.12 applies only to undertakings that will be implemented within 30 days after a disaster or emergency has been formally declared by the appropriate authority (President, Tribal government, Governor, local government's chief executive officer or legislative body). Second, the types of emergency undertakings intended to be covered under §800.12 include, but are not limited to, immediate and essential responses to storms, floods, acts of war or terrorism, and other threats to life and property. Sec. 800.12 is not intended to cover cases of property-owner neglect or mismanagement. For more information on applying §800.12, see

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/qa/historicproperties#emergency

The Need for an Archaeological Survey

How do I know whether I need to do an archaeological survey as part of identification of historic properties?

Answer: HUD's guidance on this question is found at http://portal.hud.gov/hudportal/documents/huddoc?id=env_factsheet_6.pdf

Information on National Register Listings

How do I find out if something is listed on the National Register of Historic Places (NRHP)?

Answer: State Historic Preservation Office (SHPO) maintains files of NRHP listings; some are computerized, others may require an onsite visit. For SHPO contact information [click here](#). The National Register maintains an online database, but it is of limited utility. Local Planning and Zoning offices and local historical societies are often good sources for this information. Be aware that National Register listings frequently are not address based; often a property is listed by name, such as the Simms Mansion or the Howell-Johns House.

In the Context of HUD Funded Programs

Who is responsible for compliance with 36 CFR Part 800? [800.2(a)]

Answer: Under 24 CFR Part 50, HUD; under 24 CFR Part 58, the Responsible Entity

Who is the "head of the agency"? [800.16(k)]

Answer: Under 24 CFR Part 50, the Secretary of HUD; under 24 CFR Part 58, the chief elected official (e.g., Mayor or County Executive)

Section 106 Agreement Documents

Are there models that I can use for developing an MOA or a PA for a HUD project?

Answer: HUD has compiled a database of agreement documents from across the country that can be used as models. See:

<http://www.hud.gov/offices/cpd/environment/section106/index.cfm>

Tribal Consultation

How do I know which Native American tribes to consult?

Answer: HUD has developed a Tribal Directory Assessment Tool to assist REs with this issue/. See: <http://egis.hud.gov/tdat/Tribal.aspx>

Other potentially useful resources include:

- <http://www.cast.uark.edu/home/research/archaeology-and-historic-preservation/archaeological-informatics/native-american-consultation-database.html>
- <http://www.ncsl.org/IssuesResearch/StateTribal/StateTribalRelationsStateCommittee/sandCommi/tabid/13279/Default.aspx>

Does HUD allow bids for construction or demolition before the Environmental Review is complete?

Answer: The Officer of Environment and Energy (OEE) at HUD Headquarters has confirmed that OEE policy does not allow bids before the environmental review is complete. **The purpose of this statement is to confirm that it is HUD policy to *not* allow bids for choice-limiting actions (such as construction, demolition, etc.) before the environmental review is complete.** HUD's policy is consistent with CEQ NEPA regulations at [40 CFR 1501.2](#) that require Agencies to, "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." The environmental review must be completed before bidding to in order to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

What does the Endangered Species Act (ESA) Mean?

Answer: The purpose of the [Endangered Species Act](#) (ESA) is to conserve threatened and endangered plants and animals and the ecosystems upon which they depend. Congress passed the ESA in 1973 with recognition that the natural heritage of the United States was of aesthetic, ecological, educational, recreational, and scientific value to our Nation and citizens. Congress understood that, without protection, many of our nation's living resources would become extinct. Species at risk of extinction are considered "endangered," whereas species that are likely to become endangered in the foreseeable future are considered "threatened." Today, about 1,900 species are listed as threatened or endangered under the ESA.

The U.S. Fish and Wildlife Service (FWS) and the U.S. National Oceanic and Atmospheric Administration (NOAA) Fisheries Service share responsibility for implementing the ESA. Section 9 of the ESA prohibits anyone from "taking" or "harming" endangered wildlife, and similar protection is extended to threatened wildlife. That means that the ESA applies to all individuals, groups, businesses, property owners, and others. If an intended action might harm a threatened or endangered species, authorization must be obtained from one of the

Frequently Asked Questions—

two Services - namely, Fish and Wildlife or NOAA Fisheries. Further, Section 7 of the ESA requires that each federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or destroy or adversely modify any critical habitat.

Getting Help with Section 106

Qualifications for Historic Preservation Consultants

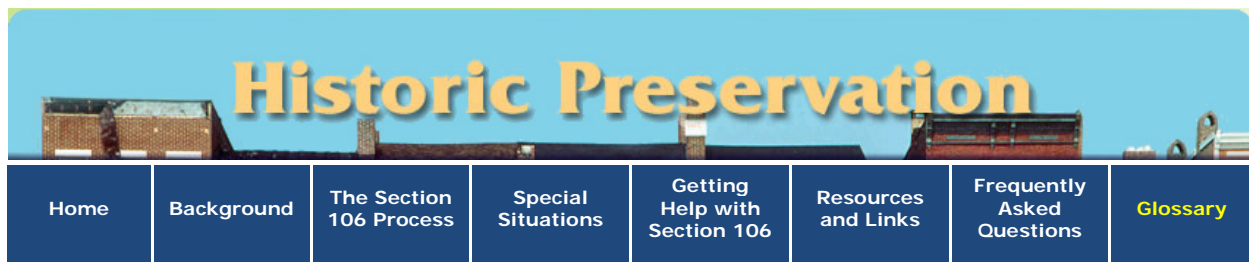
What qualifications should I look for if I hire a consultant?

Answer: The Secretary of the Interior has published suggested Professional Qualification Standards summarized here http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13729.pdf For archaeological consultants, if they are Registered Professional Archaeologists (<http://www.rpanet.org/>) their qualifications will have been vetted by the Register, and if you have complaints about their work, there is a grievance process available to you through the Register.

Finding a Local Consultant

How do I find a consultant in my area?

Answer: Many State Historic Preservation Offices maintain lists of potential consultants. The American Cultural Resources Association (<http://www.acra-crm.org/>) and the Register of Professional Archaeologists (<http://www.rpanet.org/>) also list potential consultants by geographical area. Congratulations! This completes use of this Web-based training as a tutorial. Use the navigation buttons at the top of the page to return to any section of this training.



Glossary

Important Terms

ACRA - a non-profit trade association that supports the business needs of the diverse cultural resource management industry. Our more than 140 ACRA members represent all aspects of the cultural resource industry including historic preservation, history, archaeology, architectural history, historical architecture, landscape architecture and specialty subfields such as geoarchaeology, soil science, and ethno botany.

Adverse effect - When a project will affect a historic property, the agency must apply the criteria of adverse effect to determine if the effect will be adverse, or negative. Adverse effect is defined in 36 CFR § 800.5(a)(1) as an action that may: "alter, directly or indirectly, any of the characteristics 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. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative." Adverse effects include, but are not limited to: demolition; alteration; removal of a property from its original setting; neglect; abandonment; or the introduction of visual, atmospheric, or audible elements.

Advisory Council on Historic Preservation (ACHP) – The Advisory Council on Historic Preservation (ACHP) is an [independent agency of the United States government](#) that promotes the preservation, enhancement, and productive use of the nation's historic resources, and advises the [President](#) and [Congress](#) on national historic preservation policy.

Applicant - participates in the process by providing project plans and documentation to the SHPO and to NEH, by preparing studies and analyses, as required, and by assisting NEH in coordinating public involvement.

Archaeological field survey - the methodological process by which archaeologists (often [landscape archaeologists](#)) collect information about the location, distribution and organization of past human cultures across a large area (e.g. typically in excess of one [hectare](#), and often in excess of many km²). It may be: (a) intrusive or non-intrusive, depending on the needs of the survey team (and the risk of destroying [archaeological evidence](#) if intrusive methods are used) and; (b) extensive or intensive, depending on the types of research questions being asked of the [landscape](#) in question. Surveys can be a practical way to decide whether or not to carry out an [excavation](#) (as a way of recording the basic details of a possible site) and may also be ends in themselves, as they produce important information about past human activities in a regional context.

Area of Potential Effects (APE) – 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.

Certified Local Government (CLG) – a preservation partnership between local, state and national governments focused on promoting historic preservation at the grass roots level. The program is jointly administered by the National Park Service (NPS) and the [State Historic Preservation Offices](#) (SHPOs) in each state, with each local community working through a certification process to become recognized as a Certified Local Government (CLG). CLGs then become an active partner in the Federal Historic Preservation Program and the opportunities it provides.

Comment – the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

Consultation – the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

Council – the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Day or days – calendar days

Effect – alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register

Eligible for inclusion – in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Field Environmental Officers (FEO) - Individuals involved in preparing Environmental Reviews, including individual representatives for state and local governments as well as nonprofit organizations submitting applications or existing grantees for HUD programs.

FONSI - Finding of No Significant Impact (FONSI) - A FONSI is one of the two possible results of an Environmental Assessment (EA). The other result is a Finding of Significant Impacts (FOSI). All EAs result in either a FOSI or a FONSI. An EA resulting in an FOSI requires an Environmental Impact Study (EIS) to proceed.

Foreclosure – an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

Historic Preservation – Historic preservation or heritage conservation is an endeavor that seeks to preserve, conserve and protect buildings, objects, landscapes or other artifacts of historic significance. Other names for the discipline include urban conservation, landscape preservation, built environment conservation, built heritage conservation, object conservation, and immovable object conservation; however, "historic preservation" is generally used in reference to activities in the United States and Canada.

Historic property – 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.

Indian tribe – an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and service provided by the United States to Indians because of their status as Indians.

Integrity - the ability of a property to convey its significance, based on its location, design, setting, materials, workmanship, feeling, and association. Adverse effects can be direct or indirect. They include reasonably foreseeable impacts that may occur later in time, be farther removed in distance, or be cumulative.

Memorandum of Agreement (MOA) – the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Historic Landmark – a historic property that the Secretary of the Interior has designated a National Historic Landmark.

National Historic Preservation Act of 1966 (NHPA) – The National Historic Preservation Act (NHPA; Public Law 89-665; 16 U.S.C. 470 et seq.) is legislation intended to preserve historical and [archaeological](#) sites in the [United States of America](#). The act created the [National Register of Historic Places](#), the list of [National Historic Landmarks](#), and the [State Historic Preservation Offices](#).

Senate Bill 3035, the National Historic Preservation Act, was signed into law on October 15, 1966, and is the most far-reaching preservation legislation ever enacted in the United States. Several amendments have been made since. Among other things, the act requires Federal agencies to evaluate the impact of all Federally funded or permitted projects on historic properties (buildings, archaeological sites, etc.) through a process known as Section 106 Review.

National Register – the National Register of Historic Places maintained by the Secretary of the Interior.

National Register criteria – the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60)

Native Hawaiian – any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian organization – any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of 16 historic preservation that are significant to Native Hawaiians.

No adverse affect – when a SHPO agrees with the determination and finding, and the project results in a "No Historic Properties Affected" or a "No Adverse Effect" to historic properties, consultation with them is complete.

Professional Archaeologists (RPA) and American Cultural Resources Association (ACRA) – THE REGISTER OF PROFESSIONAL Archaeologists is a listing of archaeologists who have agreed to abide by an explicit code of conduct and standards of research performance, who hold a graduate degree in archaeology, anthropology, art history, classics, history, or another germane discipline and who have substantial practical experience. Registration is a voluntary act that recognizes an individual's personal responsibility to be held accountable for their professional behavior. By formally acknowledging this relationship between personal actions and the wider discipline of archaeology, the act of registration is truly what sets the professional archaeologist apart from all others who are involved with or interested in archaeology.

Programmatic agreement -a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with 800.14(b)

State Historic Preservation Officer (SHPO) – the official appointed or designated pursuant to section 101(b) (1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

Tribal Historic Preservation Officer (THPO) - the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Tribal Lands – all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Trust Territories – Unincorporated territories are legal terms of art under the laws of the United States denoting areas controlled by the government of the [United States](#) which are not part of the United States proper and which are not [possessions](#) Federally administered and governed. The convoluted legal language in essence means they are more or less self governing, but still owned by the United States.

Undertaking – a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.