

HISTORIC PRESERVATION/SECTION 106 CONSULTATION CHECKLIST (Suggested Format)

Project Name: _____ Address: _____

The Section 106 process, as described in 36 CFR Part 800, consists of four basic steps, with each step having a series of tasks to complete. You may use this checklist to track the progress of your review.

- Remember that Section 106 needs to be completed “prior to the approval of the expenditure of any Federal funds”

Step 1: Initiate Consultation (§ 800.3)

- ___ Yes/No - Project meets the definition of an “undertaking”¹
- ___ Yes/No - “Undertaking” has no potential to cause effects to historic properties¹
- ___ Yes/No - Review of “undertaking” is subject to an existing Programmatic Agreement (PA)²
- ___ Identify appropriate State/Tribal Historic Preservation Office (SHPO/THPO) and federally-recognized Indian tribes/Native Hawaiian organizations, as appropriate
- ___ Plan to involve the public (may use existing agency public participation procedures)
- ___ Consider if, what, and how some project information may need to remain confidential
- ___ Identify other consulting parties (e.g., developers, interested parties, local government); proceed to Step 2

¹If no, then you have completed Section 106 review and are in compliance. These first two Step 1 tasks do not require consultation with SHPO/THPO. Refer to the lists of “exempt activities” and/or “categorical exclusions not subject to related laws” in Part 50 or 58.

²If yes, once you record how the project complies with the terms of the PA, Section 106 review is complete and you are in compliance. To remain in compliance, you must implement the project in accordance with the PA.

Step 2: Identify and Evaluate Historic Properties (§ 800.4)

- ___ Define the Area of Potential Effects (APE)
- ___ Review existing information regarding the APE (e.g., previous historic surveys, land use records, maps, SHPO information)
- ___ Seek information from consulting parties to identify issues related to the undertaking’s potential effects
- ___ Gather information from federally-recognized Indian tribes, as appropriate
- ___ Identify any known National Register (NR)-eligible or -listed properties
- ___ Evaluate all other properties in APE for NR eligibility, regardless of age
- ___ Submit finding and supporting documentation of “no historic properties affected” or “historic properties affected” to SHPO/THPO for 30-day review
- ___ Notify all consulting parties of finding and provide supporting documentation
- ___ If SHPO/THPO does not object to a “no historic properties affected” finding, make the finding/documentation available for public review before approving the undertaking (e.g., through the appropriate NOI/RROF process)³
- ___ If historic properties are affected, proceed to Step 3

³If there are no objections to a “no historic properties affected” finding, then you have completed Section 106 review and are in compliance. Per § 58.34(a)(12), if there are no other environmental circumstances which require compliance, you may at this point convert the project to an exempt activity and forego the EA/FONSI and NOI/RROF process. If SHPO/THPO does objection, you must consult with them to resolve the matter. For further assistance, contact your HUD Field Environmental Officer.

Step 3: Assess Effects (§ 800.5)

- Apply criteria of adverse effect, in consultation with SHPO/THPO and consulting parties
- Submit finding and supporting documentation of “no adverse effect” or “adverse effect” to all consulting parties for 30-day review
- If adverse effect, consider modifications to the project or agree to conditions that avoid adverse effects
- Notify all consulting parties of finding and provide supporting documentation
- If SHPO/THPO and/or consulting parties do not object to a “no adverse effect” finding, make the finding/documentation available for public review before approving the undertaking (e.g., through the appropriate NOI/RROF process)⁴
- If there are still adverse effects, proceed to Step 4

⁴If there are no objections to a “no adverse effect” finding, then you have completed Section 106 review and are in compliance. If there are objections, you must consult with each objecting party to resolve the matter. For further assistance, contact your HUD Field Environmental Officer.

Step 4: Resolve Adverse Effects (§ 800.6)

- Notify the Advisory Council on Historic Preservation (ACHP) of the adverse effect finding and provide documentation outlined in § 800.11(e)
- Invite ACHP to participate 1) if you want to, 2) if the project directly and adversely affects a National Historic Landmark, or 3) if you will develop a PA
- Continue consultation with consulting parties to consider ways to avoid, minimize, or mitigate adverse effects
- Negotiate and draft agreed upon terms in an agreement document (Memorandum of Agreement or Programmatic Agreement (MOA/PA))⁵
- Have signatories and concurring parties sign the MOA/PA, as appropriate, and distribute copies to all consulting parties
- File a copy of the signed MOA/PA with ACHP and make it available for public review before approving the undertaking (e.g., through the appropriate NOI/RROF process)⁶
- Implement the undertaking in accordance with the signed MOA/PA

⁵If consultation does not produce an agreement, you must seek ACHP participation. Should ACHP participation not result in agreement, the “Head of the Agency” may consider terminating consultation. For further assistance, contact your HUD Field Environmental Officer.

⁶At this point, you have completed Section 106 review and are in compliance.

- YOU MAY NEED TO RECONCILE THE PROCESS DESCRIBED HEREIN WITH SPECIFIC REQUIREMENTS ESTABLISHED BY THE VARIOUS SHPO/THPOs.
- IF PROJECT PLANS CHANGE AFTER COMPLETION OF THE ENVIRONMENTAL/SECTION 106 REVIEW, YOU MUST NOTIFY THE CONSULTING PARTIES AND REEVALUATE YOUR FINDINGS (SEE 24 CFR § 50.36 OR § 58.47).