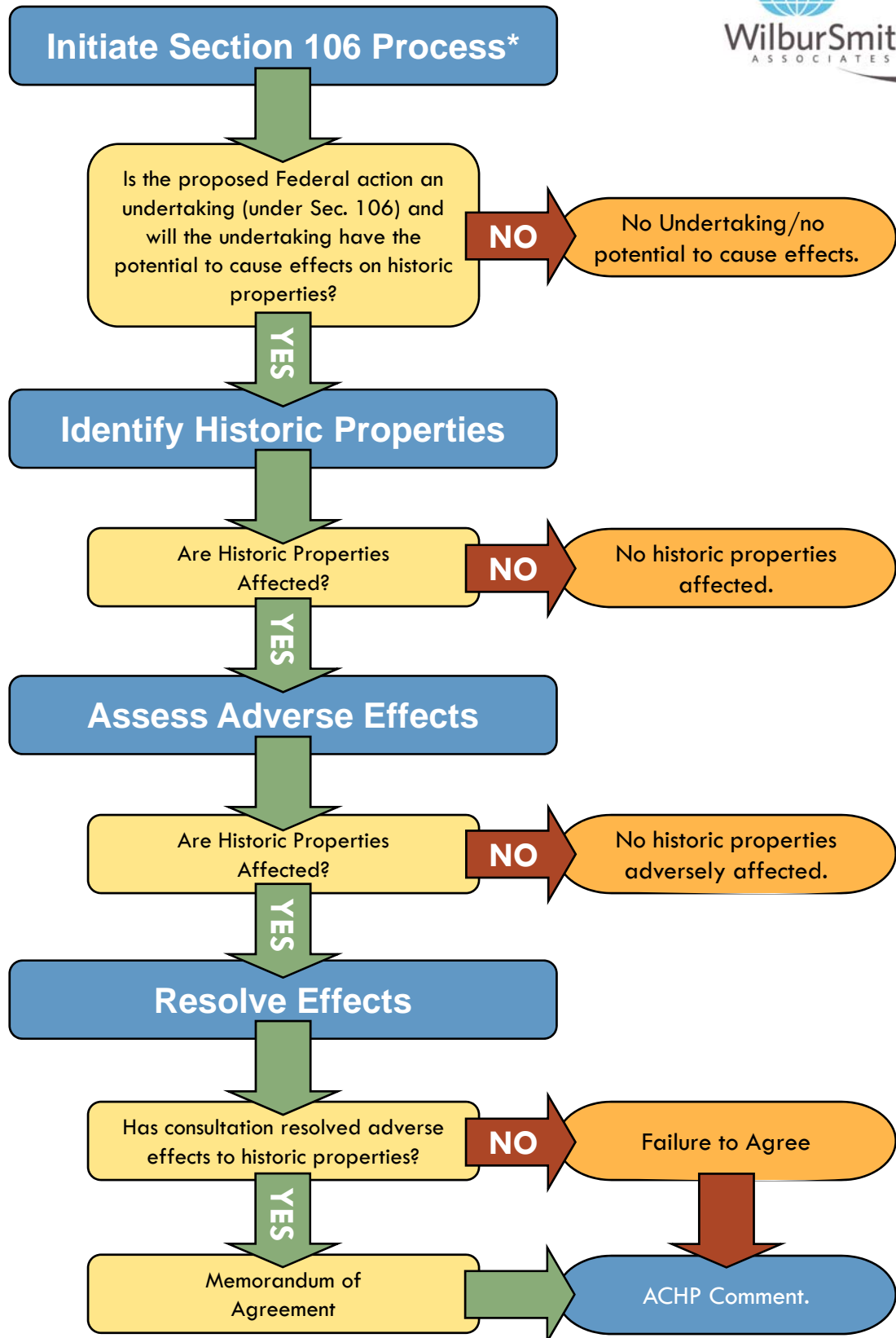


Section 106 Process



*Agency officials shall involve consulting parties in the findings and determinations made during the Section 106 process. Consultation should occur at a level appropriate to the scale of the undertaking and the scope of Federal involvement.

What is Section 106?

Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to take into account the effects of their undertakings on properties listed or eligible for listing in the National Register and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment. While it does not require the preservation of such properties, it does require that their historic or prehistoric values be considered in weighing the benefits and costs of federal undertakings to determine what is in the public interest.

When is Section 106 invoked?

Section 106 is invoked when "any project, activity, or program that can result in changes in the character or use of historic properties" whether federal agency jurisdiction is direct or indirect. Section 106 consultation should begin as the scope of a proposal or alternative proposals is identified. The process should start early in planning or project development so that comments received can be fully considered in shaping the undertaking or planning proposal.

What is an "undertaking"?

Pursuant to the October 1992 Amendments to the National Historic Preservation Act, an "undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including (A) those carried out by or on behalf of the agency; (B) those carried out with federal financial assistance; (C) those requiring a federal permit, license, or approval; and (D) those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

What is a historic property?

For purposes of Section 106, any property listed in or eligible for the National Register of Historic Places is considered historic. The National Register is this country's basic inventory of historic resources and is maintained by the Secretary of the Interior. The list includes buildings, structures, objects, sites, districts, and archaeological resources. The listed properties are not just of nationwide importance; most are significant primarily at the state or local level. The protections of Section 106 extend to properties that possess significance but have not yet been listed or formally determined eligible for listing.

Who initiates Section 106 review?

The federal agency involved in the proposed project or activity is responsible for initiating and completing the Section 106 review process. Under certain circumstances, local governmental bodies may act as the responsible agency. The agency consults with the State Historic Preservation Officer and the Advisory Council to do so. There can be other participants in the Section 106 process as well. At times, local governments, representatives of Indian tribes, applicants for federal grants, licenses, or permits, and others may join in the review process when it affects their interests or activities.

What are the penalties for not conducting Section 106 reviews?

Failure to conduct adequate Section 106 reviews may result in delays and costs. Section 110(k) of the National Historic Preservation Act "prohibits a Federal agency from granting 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, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant" (36 CFR Part 800. 9(c)(1). In other words, a federal agency can withhold permits and licenses when the Section 106 review process is not followed.

What is the Consultants role in the Section 106 Process?

As a consultant, we are to advise our client of the potential Section 106 involvement and if requested act on their behalf in coordination with the appropriate federal agencies.

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