

Section 106 Review:

Consulting Party Responsibilities

Section 106 Steps

Initiate Consultation

Identify Historic Properties

Assess Adverse Effects

Resolve Adverse Effects

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Step II: Identify Historic Properties

- In consultation with SHPO and/or THPO, agency must determine and document the area of potential effects
- Agency must seek information from individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area
- Agency applies National Register criteria in consultation with the SHPO/THPO/Tribe

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National Register Criteria

- A. Association with events
- B. Association with people
- C. Distinctive design/construction/entity
- D. Data potential

Integrity - setting, location, design, materials, workmanship, feeling and association

36 CFR 60.4

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National Historic Landmarks

- NHPA 110(f)
“Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm...”
- 36 CFR 800.10
 - Minimize harm
 - Invite ACHP
 - Invite SOI
 - ACHP reports outcome to SOI and head of agency



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National Historic Landmarks

Section 110(f) of the National Historic Preservation Act

- Higher standard of care for projects that may directly or adversely affect National Historic Landmarks
- “To the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark”
- Agency should consider all prudent & feasible alternatives to avoid effect on National Historic Landmarks

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Step III: Assessment of Adverse Effect

- Agency notifies consulting parties of potential effects and invites their views
- Agency applies criteria of adverse effect with:
 - SHPO/THPO
 - any tribe that attaches religious and cultural significance to a property
- Agency must consider views provided by other consulting parties & public

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Criteria of Adverse Effect

- Integrity of property is diminished
- Must consider:
 - Direct and indirect effects
 - Reasonably foreseeable effects: cumulative, later in time, or at a distance
 - All qualifying characteristics



36 CFR 800.5(a)(1)

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Step IV: Resolution of Adverse Effects



- Consultation - dynamic, good faith process to seek, discuss, and consider the views of participants
- Goal is agreement on ways to avoid, minimize, or mitigate adverse effects – MOA/PA
- Council participates only in limited circumstances, but must be notified

36 CFR 800.6

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Resolving Adverse Effects

When dealing with adverse effects

Avoid



Minimize



Mitigate

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Memorandum of Agreement

- Legally binding document
- Agency and SHPO and/or THPO are usually the minimally required signatories
- Council is signatory if participating
- Others with responsibilities assigned by the MOA may be invited signatories

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Ground Rules

PLEASE

- Silence your cell phones
- Treat everyone with respect
- Listen to each other
- Do not interrupt
- Be succinct
- Do not monopolize
- Stay on topic

ALL IDEAS WILL BE HEARD

ALL IDEAS HAVE VALUE

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