



National Historic Preservation Act (NHPA)

The Section 106 Process

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties.



http://globegazette.com/outrage-lingers-among-those-who-love-effigy-mounds/article_a54afe80-fa37-11df-9fa2-001cc4c03286.html

*36 CFR 800 Subpart B –
The section 106 Process continued*

- Initiation of the Process
- Identification of historic properties
- Assessment of adverse effects
- Resolution of adverse effects
- Failure to resolve adverse effects
- Coordination with the National Environmental Policy Act (NEPA) - Vast majority of undertakings are resolved by this point

800.3 Initiation of the Process

- (a) Undertaking? Yes or No.
 - (1) Potential to cause effects on historic properties? Yes or No.
- (b) Coordinate with other reviews? Yes, always NEPA

This is usually where “No Change in Land Use” reviews end – Vast majority of the time it is a categorical exclusion under NEPA with “no potential to cause effects to historic properties (800.3 (a) (1)).

- (c) Identify the appropriate SHPO/THPO? Yes, Tribes with THPO do not have to consult with the SHPO (with some exceptions). Typically in the fee to trust documents there is a THPO letter or signature.
- (f) Identify other consulting parties? Only if historic properties are present and will be affected. SHPO, other Tribes, THPOS, local governments, etc. can those other consulting parties.

§ 800.4 Identification of historic properties.

- (a) Determine scope of identification efforts. In consultation with the SHPO/THPO, the agency official shall:
 - (1) Determine and document the area of potential effects, as defined in § 800.16(d). APE no set standard for determining the APE – varies by project.
 - (2) Review existing information on historic properties within the area of potential effects? Confine background research and archaeological research to a 1-mile parameter of the APE.
 - (3) Seek Information as appropriate from consulting parties? Request info from State/THPO; etc.

§ 800.4 Identification of historic properties continued

- (b) Identify historic properties? Yes or No (if no, process ends)
- (c) Evaluate historic significance
 - (1) Apply National Register criteria? Yes
 - (d) Results of identification and evaluation – Historic property?
 - (2) Historic properties affected? Yes or No (if no, process ends)

§ 800.5 Assessment of adverse effects

- (a) Apply criteria of adverse effect. In consultation with the SHPO/THPO and any Indian tribe.
 - (1) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. 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.
 - (2) Examples of adverse effects. Adverse effects on historic properties include, but are not limited to: **(i) Physical destruction of or damage to all or part of the property; ...**
- (c) (2) Adverse effect. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects

- (a) Resolution of adverse effects. Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties
 - (1) Notify the Council and determine Council participation.
- (b) Resolve adverse effects
- (c) Memorandum of agreement.

Working with/for Tribes to protect cultural resources

- Vast majority of BIA projects are Tribally initiated –
 - BIA does not generate projects like other federal agencies
 - BIA due to its role as a quasi land management agency is tasked with NHPA compliance
 - Tribes generate projects, BIA archeologists ensures those projects comply with NHPA
- BIA archeologists role does not start or end with NHPA, we also have to be versed in NAGPRA, NEPA, ARPA, executive orders, etc.
- Ultimately, our goals are to assist Tribes while ensuring compliance requirements are met – a somewhat unique mission in Federal Service

Government Performance Results Act (GPR)/Strategic Goal:

GPR – "... enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives."

Strategic Goal – Protect Cultural and Natural resources when processing house leases ("enhance the quality of life), Casino development and timber sales ("promote economic opportunity), fee-to-trust applications ("to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives"), etc.



Questions?