FEDERALLY FUNDED PROJECTS AND HISTORIC RESOURCES:

What all Project Managers Should Know About

SECTION 106
SECTION 106 of the NATIONAL HISTORIC PRESERVATION ACT of 1966

- NHPA is the key law that establishes a federal policy regarding historic preservation based on identification, evaluation, registration, and protection of historic resources.

- Established the National Register of Historic Places, overseen by the National Park Service, as a list of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology and culture.

- Established the legal framework for the State and Tribal Historic Preservation Offices (SHPO/THPO).

- SHPO coordinates the state historic preservation program and consults with federal agencies during the Section 106 process.
SECTION 106

- Requires Federal agencies to take into account the effects of their undertakings on historic properties and seek ways to avoid, minimize or mitigate any adverse effects on historic resources.

- **Undertaking** is any project that is assisted, permitted, licensed, approved or funded by a federal agency including construction, renovation, repair, or rehabilitation; ground disturbances; and changes to an area’s visual characteristics.

- Affords the Advisory Council on Historic Preservation (ACHP) and consulting parties a reasonable opportunity to comment prior to the expenditure of any federal funds.

SECTION 106

The fundamental goal is to ensure that federal agencies consult with interested parties to identify and evaluate historic properties, assess the effects of their undertakings on historic properties, and attempt to negotiate an outcome that will balance project needs and historic preservation values.
WHAT IS AN HISTORIC RESOURCE?

“…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 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 …and that meet the National Register criteria.” (36 CFR Section 800.16(I)(1))
### SECTION 106 PARTICIPANTS

- **Federal Agencies:**
  - FHWA
  - HUD/CDBG
  - FCC
  - EPA
  - DOE
  - NOAA/CZM
  - DOJ
  - FAA
  - FEMA
  - USFW
  - GSA
  - DOD
  - FEE
  - FDIC
  - FERC
  - GSA
  - DHS
  - USPS
  - USDA/NRCS/WMNF
  - NHARNG
  - NHANG

- Advisory Council on Historic Preservation

- Consulting Parties

- Public/Commenting Parties
SECTION 106 STEPS

STEP 1: INITIATE PROCESS

- Federal agency determines whether an undertaking exists
- Budget for a qualified historic preservation consultant that meets the Secretary of the Interior’s Professional Qualification Standards
- Define the Area of Potential Effect (APE)
SECTION 106 STEPS

STEP 2: IDENTIFY HISTORIC PROPERTIES

- Research and consultation

- Resources listed in or determined eligible for listing in the National Register are considered

- Any property over 50 years old is considered eligible

- If no historic properties are present or affected, the agency provides documentation to the SHPO/THPO for a 30-day review period followed by project commencement

- If historic properties are present, it proceeds to assess possible adverse effects
SECTION 106 STEPS

STEP 3: ASSESS ADVERSE EFFECTS

- The agency, in consultation with the SHPO/THPO, makes an assessment of adverse effects on the identified historic properties based on criteria found in ACHP's regulations.

- If no adverse effect, the agency proceeds with the undertaking and any agreed-upon conditions.

- If an adverse effect, or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.
SECTION 106 STEPS

STEP 3: ASSESS ADVERSE EFFECTS

- Adverse effects occur when an undertaking may directly or indirectly alter characteristics of a historic property that qualify it for inclusion in the Register.

- Examples of adverse effects include physical destruction or damage; alteration not consistent with the Secretary of the Interior’s Standards; relocation of a property; change of use or physical features of a property’s setting; visual, atmospheric, or audible intrusions; neglect resulting in deterioration; or transfer, lease, or sale of a property out of Federal ownership or control without adequate protections.
CASE STUDY #1:
D ST. IMPROVEMENTS - CITY OF LAS VEGAS

1938

1969
SECTION 106 STEPS

STEP 4: RESOLVE ADVERSE EFFECTS

- The agency begins consultation process

- ACHP may participate in consultation when:
  - There are substantial impacts to important historic properties
  - Questions arise regarding policy or interpretation
  - There is a potential for procedural problems
  - There are issues of concern to indigenous cultures

- Consultation usually results in a Memorandum of Agreement (MOA) prepared by project sponsor or lead agency

- Mitigation may include avoidance, redesign, relocation, data recovery, documentation, public education or interpretation.
CASE STUDY #2: MODULAR TRAILER @ I-515 OVERPASS
CASE STUDY #2:
MODULAR TRAILER @ I-515 OVERPASS

SECTION 110(k) of the NHPA “ANTICIPATORY DEMOLITION”

- Prohibits federal agencies from providing grants, licenses, permits, or other assistance to applicants who intentionally significantly and adversely affect historic properties

- Designed to prevent applicants from destroying historic properties prior to seeking Federal assistance in an effort to avoid the Section 106 review process

- Start the process early to avoid complications
SECTION 106 STEPS

STEP 5: IMPLEMENTATION

- If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA.

- If consultation proves unproductive, the agency or the SHPO/THPO, or ACHP may terminate consultation.

- If still no agreement, the head of the federal agency makes a final decision.

- If an agreement is reached, the agency must implement all agreed upon measures set forth in the resulting MOA or PA.
CASE STUDY #3:
US BUREAU OF RECLAMATION DATE STREET CAMPUS – BOULDER CITY, NV
CASE STUDY #3:
US BUREAU OF RECLAMATION GREEN BUILDING - BOULDER CITY, NV
CASE STUDY #4:
US BUREAU OF RECLAMATION BUILDING 200-
BOULDER CITY, NV
CASE STUDY #4:
US BUREAU OF RECLAMATION BUILDING 200-
BOULDER CITY, NV
SECTION 106 TIMELINE

- Section 106 regulations do not mandate a timeframe within which a federal agency must complete its review
- Allow for research and document preparation time
- Agencies should plan for consultation time to resolve adverse effects at the beginning of the project planning process – each consultation is a minimum of 30 days – 45 days
- Consulting parties and the federal agency may need to prepare a Memorandum of Agreement (MOA) or Programmatic Agreement (PA)
- If an agreement cannot be reached, the agency must request and consider ACHP comments
- Time is money!
FOR MORE INFORMATION

Advisory Council on Historic Preservation [www.achp.gov]
Nevada State Historic Preservation Office [www.shpo.nv.gov]
National Register of Historic Places [www.nps.gov/nr]
TIMING AND COMMUNICATION
Section 106 and CE

INITIATE the process

IDENTIFY historic properties

ASSESS adverse effects

RESOLVE adverse effects

Agreement (MOA/PA) or Council Comment

Proposed Action is Described in Agency CE

Does the Proposal Have Extraordinary Circumstances?

Decision

Implementation with Monitoring as Provided in the Decision

Note: these graphics present generic depictions of the two review processes. For more details, see NEPA and NHPA: A Handbook for Integrating NEPA and Section 106, published by the Council on Environmental Quality (CEQ) and Advisory Council on Historic Preservation, March 2013.
TIMING AND COMMUNICATION
Section 106 and EA

INITIATE the process

IDENTIFY historic properties

ASSESS adverse effects

RESOLVE adverse effects

Significant Environmental Effects Uncertain or No Agency CE

Develop EA with Public Involvement to the Extent Practicable

Significant Environmental Effects?

FONSI

Implementation with Monitoring as Provided in the Decision

Agreement (MOA/PA) or Council Comment

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INITIATE the process

IDENTIFY historic properties

ASSESS adverse effects

RESOLVE adverse effects

Significant Environmental Effects May or Will Occur

Notice of Intent

Public Scoping and Appropriate Public Involvement

DEIS

Public Review and Comment and Appropriate Public Involvement

FEIS

Public Availability

ROD

Implementation with Monitoring as Provided in the Decision

Agreement (MOA/PA) or Council Comment

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