INTRODUCTION TO SECTION 106

Chester County Historic Preservation Network Workshop
March 12, 2011

LEARNING OBJECTIVES

- How does the National Historic Preservation Act apply to federal project planning?
- When is a Section 106 review required?
- Who participates?
- How is a review conducted?
- What are the possible outcomes of a Section 106 review?

SECTION 106 OF THE NHPA

- Federal agency has two responsibilities:
  - Take into account the effects of its actions on historic properties
  - Provide the Advisory Council on Historic Preservation an opportunity to comment
SECTION 106 OF THE NHPA

- Procedural, not substantive, requirement
- Must have federal involvement
- Federal agency responsible for compliance
- Timing = “commencing at the early stages of project planning”

WHEN DOES SECTION 106 APPLY?

- Is there FEDERAL INVOLVEMENT?
  - See definition of undertaking, §800.16(y)
- Is it the TYPE of activity that may AFFECT HISTORIC PROPERTIES?

DOES SECTION 106 APPLY?

- A telecommunications company is installing buried cable across Bureau of Land Management property
DOES SECTION 106 APPLY?

- FAA plans to upgrade the air traffic control software at Dulles International Airport

DOES SECTION 106 APPLY?

- A developer proposes construction of a new apartment building in a historic district

PARTICIPANTS

- Federal agency official
- Consulting parties
  - State or Tribal Historic Preservation Officer (SHPO/THPO)
  - Indian tribes and Native Hawaiian organizations
  - Applicants for federal assistance
  - Local governments
  - Organizations and individuals
- ACHP
- The public
AGENCY OFFICIAL

- Has approval authority for the undertaking
- Can commit the federal agency to take appropriate action for a specific undertaking
- Leads the Section 106 process

APPLICANTS

- State and local governments
- Private entities
- Individuals
- Non-profits
- Licensees

STATE HISTORIC PRESERVATION OFFICER

- Diverse responsibilities
- Role created by NHPA
- Consult in most Section 106 reviews
### INDIAN TRIBES

- Federally-recognized; defined in regulations
- Government-to-government consultation responsibility for federal agencies
- Properties of religious and cultural significance
- May ascribe significance to properties located off tribal lands

### LOCAL GOVERNMENTS

![Image](image.png)

### INDIVIDUALS AND ORGANIZATIONS

- May have a legal or economic interest or an interest in the undertaking’s effects on historic properties
- Can request consulting party status by writing to the agency official
ADVISORY COUNCIL ON HISTORIC PRESERVATION

- An independent federal agency
- Mission: Promotes the preservation, enhancement, and sustainable use of our nation’s diverse historic resources, and advises the President and the Congress on national historic preservation policy.
- Participates in some individual Section 106 cases

HISTORIC PROPERTIES

- Listed or eligible for listing in the National Register of Historic Places
- National Register
  - Maintained by National Park Service
  - SHPOs run program at state level
  - NPS develops criteria for listing
  - Properties considered eligible if they meet the criteria
  - Must possess significance and integrity
THE FOUR STEPS OF SECTION 106

1. Initiate the process
2. Identify and evaluate historic properties
3. Assess effects
4. Resolve adverse effects

THE SECTION 106 PROCESS

1. INITIATE the process
   - Determine undertaking
   - Notify SHPO/THPO
   - Plan to involve the public

2. IDENTIFY historic properties
   - Assess CPE
   - Identify historic properties
   - Consult with SHPO/THPO, Tribes, Other Consulting Parties
   - Involve the public

3. ASSESS adverse effects
   - Apply criteria of adverse effect
   - Consult with SHPO/THPO, Tribes, Other Consulting Parties
   - Involve the public
   - Avoid, minimize, or mitigate adverse effects
   - Notify ACHP
   - Consult with SHPO/THPO, Tribes, Other Consulting Parties
   - Involve the public

4. RESOLVE adverse effects
   - Identify ACHP

No undertaking/potential to cause effects?
No historic properties present/affected?
No historic properties adversely affected?
Agreement (MOA/PA) or Council Comment
THE SECTION 106 PROCESS

Step 2

36 CFR § 800.4
Determine APE
Identify historic properties
Consult with SHPO/THPO Tribes, and Other Consulting Parties
Involve the public

No historic properties present/affected?

1. INITIATE the process
2. IDENTIFY historic properties
3. ASSESS adverse effects
4. RESOLVE adverse effects

WILL HISTORIC PROPERTIES BE AFFECTED?

Effect: Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register
Apply the definition to an undertaking:
- Does not have to be a certainty
- Does not need to be direct and physical
- Reasonably foreseeable must also be considered

THE SECTION 106 PROCESS

Step 3

36 CFR § 800.5
Apply criteria of adverse effect
Consult with SHPO/THPO Tribes, and other consulting parties
Involve the public

No historic properties adversely affected?

1. INITIATE the process
2. IDENTIFY historic properties
3. ASSESS adverse effects
4. RESOLVE adverse effects
THE SECTION 106 PROCESS

Step 4

- Avoid, minimize, or mitigate adverse effects
- Notify ACHP (can be done electronically)
- Consult with SHPO, tribes, and other consulting parties
- Involve the public

WHAT IF YOU DON’T AGREE?

- With a federal agency’s eligibility determination:
  - SHPOs concur at their discretion
  - Referral to the Keeper of the National Register when there’s no agreement or if ACHP requests

WHAT IF YOU DON’T AGREE?

- With a federal agency’s finding of no adverse effect:
  - SHPO or any other consulting party can send a written objection to federal agency during 30-day review period
  - Agency must consult to resolve the objection or request the ACHP review its finding
CONSULTATION

Benefits of participation:
- Ensure that properties of significance to the community are identified
- Coordination between local and federal reviews
- Opportunity to identify mitigation measures that are meaningful to the community

CONSULTATION DOs

- Keep an open mind
- State your interests clearly
- Acknowledge that others have legitimate interests
- Consider a wide range of options
- Identify shared goals and creative solutions
- Put it in writing

CONCLUDING SECTION 106

- Exit points for Steps 1, 2, or 3
- Memorandum of Agreement (MOA) or Programmatic Agreement (PA)
  - Records decisions
  - Legally binding
  - Road map for implementation of the project
- Formal ACHP comments

Any outcome should be documented.
### SECTION 106...

- **Does:**
  - Offer a framework for problem-solving
  - Provide stakeholders with access to federal decision making
  - Recognize that historic preservation is not the only public purpose
  - Require consultation

- **Does not:**
  - Guarantee that historic properties will be preserved
  - Require any specific type of mitigation
  - Mean only a conversation between the agency and SHPO

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**FOR MORE INFORMATION**

Advisory Council on Historic Preservation  
[www.achp.gov](http://www.achp.gov)  
(202) 606-8503