



**INTRODUCTION
TO SECTION 106**

Chester County Historic Preservation
Network Workshop
March 12, 2011

ADVISORY COUNCIL ON HISTORIC PRESERVATION
PRESERVING AMERICA'S HERITAGE 

Photo credit: Vin Palmisano courtesy the Michigan Economic Development Corporation

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



OFFICE of
ARCHAEOLOGY
and HISTORIC
PRESERVATION



- ▶ 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



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

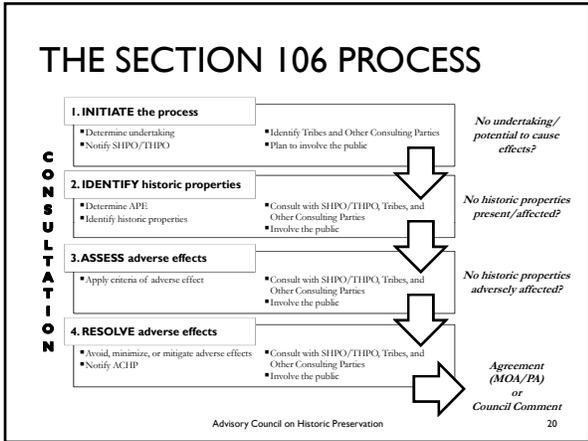


HISTORIC PROPERTIES

- ▶ 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

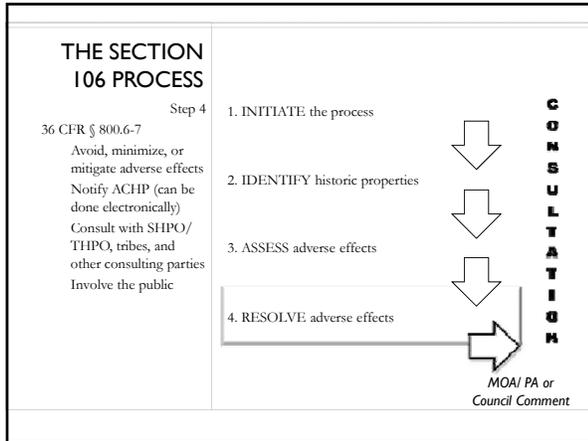


<h3 style="margin: 0;">THE SECTION 106 PROCESS</h3> <p style="margin: 0;">Step 1</p> <p style="margin: 0;">36 CFR § 800.3</p> <p style="margin: 0;">Determine undertaking</p> <p style="margin: 0;">Notify SHPO/THPO</p> <p style="margin: 0;">Identify Tribes and Other Consulting Parties</p> <p style="margin: 0;">Plan to involve the public</p> <p style="margin: 0;"><i>No undertaking/ potential to cause effects?</i></p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">1. INITIATE the process</div> <p style="margin: 0;">2. IDENTIFY historic properties</p> <p style="margin: 0;">3. ASSESS adverse effects</p> <p style="margin: 0;">4. RESOLVE adverse effects</p> <div style="writing-mode: vertical-rl; font-weight: bold; text-align: center; margin-top: 10px;">CONSULTATION</div>
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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	<p>1. INITIATE the process</p> <p>2. IDENTIFY historic properties</p> <p>3. ASSESS adverse effects</p> <p>4. RESOLVE adverse effects</p>
C O N S U L T A T I O N	
<i>No historic properties present/affected?</i>	

WILL HISTORIC PROPERTIES BE AFFECTED?	
Effect: <i>Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register</i>	Apply the definition to an undertaking: <ul style="list-style-type: none"> • 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	<p>1. INITIATE the process</p> <p>2. IDENTIFY historic properties</p> <p>3. ASSESS adverse effects</p> <p>4. RESOLVE adverse effects</p>
C O N S U L T A T I O N	
<i>No historic properties adversely affected?</i>	



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?

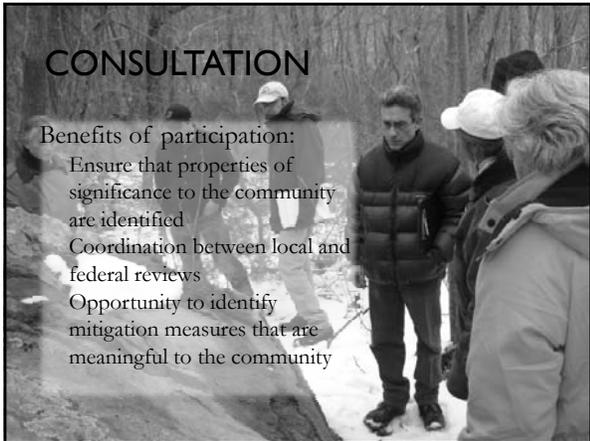
▶ With a federal agency's finding of no adverse effect:

- 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



**FOR MORE
INFORMATION**

Advisory Council on Historic Preservation
www.achp.gov
 (202) 606-8503

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