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DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

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National Historic Preservation Act, Section 106—Fact Sheet

What is Section 106?

Section 106 is the portion of the National Historic Preservation Act (NHPA) that is concerned with Federal undertakings.

What does Section 106 require?

Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment. Federal agencies are required to consult on the Section 106 process with State Historic Preservation Officers ((SHPO) in New Mexico the Historic Preservation Division (HPD)), Tribal Historic Preservation Officers (THPO), Indian Tribes and Native Hawaiian Organizations (NHO).

What role do SHPOs, THPOs, Tribes, and NHOs play in the Section 106 process?

The Section 106 regulations (*36 CFR 800*) place particular emphasis on consultation with SHPOs, THPOs, Tribes, and NHOs. Federal agencies must consult with SHPOs, THPOs, Tribes, and NHOs about undertakings when they may affect historic properties or historic properties to which a Tribe attaches religious or cultural significance. This requirement applies regardless of the location of the historic property.

What regulations govern the Section 106 process?

36 CFR Part 800 (Protection of Historic Properties) governs the Section 106 process and outlines how Federal agencies are to consult with SHPOs, THPOs, Tribes, NHOs, and other interested parties, as well as how to identify historic properties, determine whether and how such properties may be affected, and resolve adverse effects. Visit the ACHP website at www.achp.gov for more information.

What is a Federal undertaking?

A Federal undertaking is a project, activity, or program either funded, permitted, licensed, or approved by a Federal Agency. Undertakings may take place either on or off federally controlled property and include new and continuing projects, activities or programs and any of their elements not previously considered under Section 106.

What are historic properties?

Historic properties are any prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places. Also included are any artifacts, records, and remains (surface or subsurface) that are related to and located within historic properties and any properties of traditional religious and cultural importance to Tribes or NHOs.

What if an historic property is not listed in or has not been previously determined eligible for the National Register of Historic Places?

If an historic property is not listed in or has not previously been determined eligible for the National Register of Historic Places (NRHP) then, as part of the Section 106 process, it should be evaluated by the Federal agency in consultation with the SHPO, THPO, Tribe, or NHO, to determine if it meets NRHP eligibility.

If there are questions about the eligibility of an historic property, the Federal agency overseeing the undertaking can seek a formal Determination of Eligibility (DOE) from the Keeper of the National Register (see *36 CFR 63*). The Keeper will then determine if the property is eligible for listing in the NRHP.

Steps to navigate the compliance/Section 106 review process

1. Is it an undertaking? The Federal Agency determines a proposed action is an undertaking that may affect historic properties . This includes state agencies, municipalities, housing agencies, etc. that have undertakings (projects, activities, or programs that are funded, permitted, or licensed by a federal agency) and are applicable herein as “Agency” below.
2. Are historic properties located in the undertaking? The Agency shall identify historic properties in the project area that are listed in or eligible for listing in the National Register of Historic Places. If the Agency does not know if properties are listed in or eligible for the NRHP, the Agency shall contact SHPO for further information. A survey to identify historic properties may be necessary.
3. What effect will the undertaking have? Agency shall determine if the proposed undertaking will have no effect, no adverse effect, or an adverse effect to historic properties.
4. Agency Consults with SHPO. The Agency shall explain their findings (on eligibility and effect) in a letter or report sent to SHPO for consultation. The report shall include details about the Federal Agency’s involvement, project information, a determination of effect, and a list of historic
5. SHPO reviews report. SHPO reviews report within 30 days.
6. SHPO responds. SHPO will concur with findings or disagree with findings. If SHPO disagrees with agency findings on eligibility or effects, consultation shall continue.
7. If the Agency and SHPO agree. If the Agency and SHPO agree on eligibility and that the undertaking will have no effect or no adverse effect to historic properties, the undertaking may proceed.
8. An adverse effect determination results in an MOA. If the Agency and SHPO agree on an adverse effect to historic properties, a memorandum of agreement (MOA) must be executed between the Agency, the SHPO, and possibly other parties. An MOA codifies mitigation measures to be performed by the Agency.
9. If no agreement, consult ACHP. If the Agency and SHPO cannot agree on the effects of the undertaking, the Advisory Council on Historic Preservation may assist in the consultation.

Note:

- The agency provides a determination on eligibility and effect, and the SHPO concurs/ does not concur on those determinations.
- More information about Section 106 may be found on the Advisory Council for Historic Preservation’s website: www.achp.gov