

ADVISORY COUNCIL ON HISTORIC PRESERVATION
GUIDANCE FOR REQUESTING AND COORDINATING
SECTION 213 REPORTS

Background. Section 213 of the National Historic Preservation Act (NHPA) [16 U.S.C. § 470u] directs the Secretary of the Interior (Secretary), if requested by the Chairman of the Advisory Council on Historic Preservation (ACHP) to provide a report to assist the ACHP in discharging its responsibilities under the Act. Specifically, Section 213 states:

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

The ACHP's regulations implementing Section 106, "Protection of Historic Properties" (36 CFR Part 800) specify at 36 CFR § 800.10(c) that when commenting on an undertaking affecting a National Historic Landmark (NHL), the Council may request a report from the Secretary under Section 213 of the act to assist in the consultation.

Beyond these references, no other direction exists on circumstances when "Section 213 Reports" are sought by the ACHP. Prior experience does show that Section 213 Reports have been sought by the ACHP for undertakings involving NHLs in which consultation was particularly difficult and/or controversial. It is the purpose of these guidelines to establish ground rules for when and how the Reports are sought, their content and related logistical issues regarding scheduling and distribution. Such clarification will help ensure that the Section 213 Report is timely and best able to contribute to the consultation process that is underway.

Guidance. The following outline is designed to identify the topics that should be addressed to provide this clarification.

1. What is a Section 213 Report and how does it relate to Section 106 consultation?

The following questions and answers clarify what constitutes a Section 213 Report and its purpose and impact.

What are the appropriate and relevant NPS and ACHP authorities?

Under the authority of Section 213 of the NHPA, the Chairman of the ACHP may request that the Secretary prepare a report about a historic property being considered in the Section 106 consultation process. The ACHP's operating procedures specifically delegate to the Executive Director the responsibility to request such a report of the Secretary where the undertaking would affect a NHL. As noted in Section 301(11) of the NHPA and because it is not otherwise specified, the Director of the National Park Service acts on behalf of the Secretary in such matters.

In addition, 36 CFR § 800.10(c) provides further direction for the ACHP to consider requesting the preparation of a Section 213 report when consulting on an undertaking that affects a NHL. Normally such requests will be limited to NHLs but in special cases, a request may be made for other resources of exceptional significance.

The NPS acts as the lead agency on behalf of the Secretary in managing the National Register of Historic Places and the National Historic Landmarks program. The NPS, also on behalf of the Secretary, sets national standards for the treatment of historic properties. The NPS is responsible for providing guidance and instruction on the nomination of NHLs and working with the National Parks Advisory Board's National Historic Landmarks Committee in reviewing and recommending properties for designation as NHLs by the Secretary. The NPS monitors the conditions of NHLs and works with NHL stewards to provide guidance, technical assistance, and grant aid to help in the preservation of these resources. Through its management of the nearly 400 units of the National Park System, the NPS is involved directly in the preservation and interpretation of many of the nation's most treasured cultural resources.

What is the purpose of the Section 213 Report?

Section 213 Reports are intended to provide useful, independent, and authoritative information to consulting parties regarding a historic property that is the subject of the Section 106 consultation process. They provide a vehicle for the NPS to share its expert opinions on the significance of a historic property, the effects of the proposed undertaking on the property, and the recommendation of measures to avoid, minimize, or mitigate adverse effects to the property. The Report can be used as a tool in the Section 106 consultation and is made public record.

2. Under what circumstances should the ACHP request a Section 213 Report?

The following questions and answers discuss the factors the ACHP will consider in reaching a decision whether to request a Section 213 Report.

What consideration should be given to the type or significance of the historic properties to be affected?

The ACHP, in consultation with NPS, will consider requesting a Section 213 Report where there are impacts on NHLs or other properties of national significance. The ACHP may also seek a report when historic properties of exceptional or unusual significance are affected. For example, a Section 213 Report could be valuable where an undertaking would affect a property or property type whose significance may not be well understood by Section 106 participants. In such cases, the ACHP may seek the views of the NPS on a property's unusual or exceptional historic qualities and actions to address adverse effects on those qualities.

What consideration should be given to the potential impacts to historic properties and other factors?

The ACHP will consider requesting a Section 213 Report where the proposed undertaking would result in the loss of an important historic property or in changes that would substantially harm the property's historic integrity, including potential loss of NHL designation or National Register listing or eligibility. The ACHP will also consider how information provided by the NPS might address public concerns or controversy when determining whether to request a Section 213 Report.

What consideration should be given to the status and timing of the Section 106 consultation?

While the information and recommendations of a Section 213 Report may have value at any stage of the Section 106 consultation process, the ACHP, in consultation with the Federal agency, will consider whether adequate time is available for a Section 213 Report to be developed and its information and recommendations fully considered by the Section 106 consulting parties before a decision is made. The ACHP will consult with the NPS to determine the effect of time constraints on the development of a Report. The ACHP may request an addendum to a final Section 213 Report where it determines it is necessary due to the special circumstances of a given case.

The ACHP will specify a preferred timeframe for the delivery of the Section 213 Report based upon the project schedule and status of the Section 106 consultation. The ACHP shall seek to make a request for a Section 213 Report as early as possible in the consultation process to provide maximum time to the NPS for its development.

Should Section 106 consultation stop while the Section 213 Report is being developed?

The Section 106 consultation should continue while the Section 213 Report is being developed. Multiple issues are typically addressed through consultation. The information contained in a Section 213 Report may only relate to certain aspects of that consultation; thus, consultation may progress on other aspects of the undertaking, or the consultation may allow for a placeholder for additional discussion or alternate outcomes pending the conclusion of the Section 213 Report.

3. What information should accompany a request from the ACHP for a Section 213 Report?

The following questions and answers discuss how the ACHP will request a Section 213 Report.

What are the objectives of the Section 213 Report?

The ACHP request for a Section 213 Report will clearly describe the reasons why the Section 213 Report is needed for a specific Section 106 consultation. In general, the Section 213 Report should provide the ACHP with NPS' opinion on the significance of the affected historic property, the nature and extent of the undertaking's impact on those character defining features that qualify the historic property for NHL designation or National Register listing or eligibility, and steps that could be taken to avoid, minimize, or mitigate those effects. This information is intended to benefit all parties involved in the Section 106 consultation.

How should notification be given to consulting parties that a Section 213 Report is to be requested?

The ACHP will ensure that the Federal agency official and other consulting parties are provided with timely notice that a request for a Section 213 Report has been made.

What documentation should accompany the request for a Section 213 Report?

The ACHP will provide the NPS with all relevant information in its possession at the time of the request relating to the Section 106 consultation, the undertaking, and the historic properties to be affected. The NPS should seek any information it needs beyond that provided with the request directly from the Federal agency official.

What is the appropriate agency contact information and is there any other necessary documentation from the relevant Federal agency that might be shared?

The ACHP will contact the Federal agency official to determine who will be the appropriate agency contact and what assistance might be needed to access certain information.

Who are the appropriate points of contact for the request, development, and final receipt and distribution of the Report?

The ACHP Executive Director will submit a request for a Section 213 Report to the NPS Director, with a copy to the NPS Associate Director for Cultural Resources. The ACHP Executive Director will identify in the request the appropriate ACHP staff points of contact for working with the NPS. The NPS Associate Director for Cultural Resources will forward the request for the Report to the appropriate NPS Regional Office. The completed report will be forwarded by the appropriate NPS Regional Director with appropriate cover sheet, in electronic (PDF) format to the ACHP Executive Director, with a copy to the NPS Director and NPS Associate Director for Cultural Resources. The ACHP will transmit the Report to the consulting parties upon receipt from the NPS, and shall make the Report available to the general public on its website (www.achp.gov).

4. How will the NPS develop the Section 213 Report?

Which NPS office will develop the Section 213 Report?

The NPS Associate Director for Cultural Resources, in consultation with her staff and NPS Regional Directors and their staffs, shall assign responsibility for the Report and identify a project lead who will be responsible for communicating with the ACHP and the lead agencies and coordinating with other NPS staff in producing the report.

What is the general schedule for the Report's development?

The ACHP and NPS will consult to determine the schedule for each individual Section 213 Report prior to the development of said Report. The schedule for completion of the Report shall be no longer than sixty (60) days from the time the request is submitted unless agreed to by both the ACHP and the NPS identified staff points of contact. The ACHP will notify the consulting parties of the Report's projected schedule for completion.

Will progress reports be provided to the ACHP and consulting parties?

The NPS will take reasonable steps to keep the ACHP informed of the progress of the Report until the final Report is submitted. The ACHP will forward the progress reports to the other consulting parties upon request.

What will be the components of the Section 213 Report?

The necessary components for any Section 213 Report are an analysis of the historic property's significance, the potential effects that would result from the proposed undertaking, and the suggested measures for avoidance, minimization, and/or mitigation for those effects. The ACHP and NPS will consult to determine the specific additional components for each individual Section 213 Report prior to the development of said Report.

5. What is the role, if any, of the NPS in the Section 106 consultation after submission of the Report?

Will the NPS be involved in the Section 106 consultation after the final Report is submitted to the ACHP?

The NPS may continue to participate in the Section 106 consultation process after submitting the Report, especially in cases where a severe adverse effect has been identified. The NPS may or may not participate in the development of any subsequent agreements depending on the need and the availability of NPS staff. NPS may further elect to amend the evaluation section of the Section 213 Report to address subsequent proposals or modifications of proposals as warranted.