



*Preserving America's Heritage*

## **SECTION 106 CHECKLIST FOR DEPARTMENT OF ENERGY OWIP PROJECTS**

(No Programmatic Agreement in place)

### Step 1: Initiate Section 106 (36 CFR 800.3)

- Determine whether there is an executed Programmatic Agreement (PA) for the state in which the project is proposed. If so, use the PA checklist.
- Identify the undertaking and all its components parts. This includes all federal actions/approvals that are necessary for project implementation.
- Identify other participating federal agencies, and decide whether DOE will act as lead agency. Have agencies document in writing the agreed upon arrangement so that it is understood by all consulting parties.
- Specify the state agency that is receiving funding from DOE for the undertaking or identify the direct recipient or non-governmental organization.
- Identify the appropriate SHPO/THPO including those involved in undertakings that may cross jurisdictional boundaries and involve multiple SHPOs and THPOs.
- Identify Indian tribes and Native Hawaiian organizations that may attach religious and cultural significance to historic properties within the APE(s) and invite them to participate in consultation. Recognize that many tribes now reside at a distance from their ancestral lands and will also need to be notified.
- Identify additional consulting parties that should be invited to participate in consultation per 36 CFR 800.3.
- Consider the appropriate scope and outreach necessary to convey project information to the public, taking into account project planning history, historic properties and landscapes in proximity to the project, proposed alteration of lands uses, and possible impacts to the access and use of traditional cultural properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004  
Phone: 202-606-8503 • Fax: 202-606-8647 • [achp@achp.gov](mailto:achp@achp.gov) • [www.achp.gov](http://www.achp.gov)

- Consider the use of websites and other creative forms of communication to provide ongoing status reports and solicit public views, as appropriate.

#### Step 2: Identify and Evaluate Historic Properties (36 CFR 800.4)

- Develop an APE or APEs that reflect the full range of possible effects from the undertaking, including ground disturbance, light, noise, access, construction staging, audible and visual effects, related induced development, and indirect and cumulative effects.
- Coordinate with the SHPO(s) and THPO(s) in defining the APEs and developing the scope of work for surveys required to identify various types of historic properties.
- Employ or contract consultants or contractors that are qualified professionals pursuant to 36 CFR Part 61 for the discipline in which they will carry out studies.
- If coordinating Section 106 with the NEPA review, , explicitly reference Section 106 in any project documentation shared with consulting parties, and notify the SHPO(s)/THPO(s) of DOE's intent to coordinate both reviews to address historic preservation issues.
- When identifying properties eligible for listing in the National Register, review local and state surveys, recently completed Section 106 reviews in proximity of the project, and information maintained by professional organizations such as AIA and SHA.
- Determine whether DOE should use phased identification and evaluation as outlined in 36 CFR Part 800.4(b)(2) due to the complexities of a particular undertaking.
- Document whether historic properties should be reevaluated given the passage of time or other historic preservation issues.
- Consult with Indian tribes during the identification and evaluation of historic properties within the APE consistent with the protocols established and the need for DOE to carry out government- to -government consultation.
- Submit documentation to SHPO/THPO for a thirty-day review to conclude the Section 106 review with determination of No Historic Properties Affected. Include the documentation outlined in 36 CFR Part 800.11\* and distribute to all consulting parties.

Step 3: Assess Adverse Effects (36 CFR 800.5)

**When an undertaking is determined to have an effect, DOE is required to complete Steps 3 and 4, as appropriate. DOE should make arrangements to involve all consulting parties during these steps of the Section 106 review.**

- Apply the criteria of effect outlined in 36 CFR 800.16 and criteria of Adverse Effect in 36 CFR Section 800.5(a)(1) to each property within the APE determined to be listed or eligible for listing in the National Register.
- Evaluate direct effects and indirect and cumulative effects, ( i.e. alteration of views from historic farmsteads by construction of wind turbines) that take into account long-term reasonably foreseen alterations of historic properties.
- If any one property is determined to be Adversely Effected, the undertaking in its entirety must be coordinated as an Adverse Effect and a Standard Mitigation Agreement, Memorandum of Agreement or Project based Programmatic Agreement developed. DOE may need to consult directly with Indian tribes on a government-to-government basis to discuss effects of projects on properties of religious and cultural significance if tribes so request.
- Evaluate and document efforts considered to avoid adverse effects. If Adverse Effects can be avoided, DOE will prepare a determination of No Adverse Effect and submit it to the SHPO/THPO and other consulting parties with the documentation outlined in 36 CFR Section 800.11(e) for a 30-day period.
- Should any of the consulting parties object to the determination of No Adverse Effect, the undertaking should be further discussed with the objecting party(ies) or referred to the ACHP for its review.
- Should all consulting parties concur with the determination of No Adverse Effect, DOE should document the files and the Section 106 review is completed.

#### Step 4: Resolve Adverse Effects (36 CFR 800.6)

- DOE should prepare a schedule with milestones to manage the consultation to resolve adverse effects. If the undertaking is complex, has widespread opposition in the community, or is otherwise considered a high profile project, consider the use of a facilitator to manage the Section 106 consultations.
- Notify the ACHP of the adverse effect finding and provide documentation outlined in 36 CFR 800.11 (e).
- Invite the ACHP to participate in the consultation if DOE feels its participation is warranted, an NHL is involved or a Project based PA is required. The ACHP will decide within 15 days whether it will participate based on the criteria set forth in Appendix A of its regulations.
- Determine if on-site meetings and site visits are warranted, and provide all consulting parties with a proposed consultation schedule. Be sensitive to the needs of consulting parties when scheduling meetings or proposing teleconferences.
- Provide all consulting parties with an analysis of alternatives, including a summary of how each alternative affects historic properties. Respond to all comments provided by consulting parties and follow up to consulting party requests for additional information and recommendations for ways to avoid, minimize, or mitigate adverse effects.
- DOE should maintain a summary of major historic preservation issues that were raised during consultation and the resolutions reached. If multiple drafts of MOA or PAs are prepared, keep copies of all as part of the administrative record.
- Be sensitive to the desires of Indian tribes for confidentiality during the discussion of effects to any historic properties of religious and cultural significance to them.
- When drafting the MOA or PA that was negotiated among consulting parties, be certain to clarify the signatories, the roles anticipated for other consulting parties, and the need for any appendices.
- When the PA is finalized, file a copy of the signed MOA/PA with ACHP and make it available for public review before approving the undertaking.
- DOE should ensure that the undertaking is implemented in accordance with the terms outlined in the signed MOA/PA.

Other:

- Encourage early coordination with SHPO(s)/THPO(s), Indian tribes, and the ACHP.
- Keep good written records that summarize all major decisions and Section 106-related findings and determinations, particularly those regarding historic preservation issues raised by consulting parties.
- Keep consulting parties informed when there may be project delays or DOE has decided to withdraw its funding from an undertaking.
- Inform grant recipients and sub-recipients about the requirements of Section 106 and 110(k) of the National Historic Preservation Act and applicable DOE policies and directives related to the coordination of historic preservation reviews.
- Use terms consistently and in keeping with regulatory definitions.

January 25, 2011