

Protecting Historic Properties: The Section 106 Process

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ABOUT SECTION 106



About Section 106

Section 106 of the National Historic Preservation Act requires federal agencies to consider historic preservation values when planning their activities. In the Section 106 process, a federal agency must identify affected historic properties, evaluate the proposed action's effects, and then explore ways to avoid or mitigate those effects.

The federal agency often conducts this process with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officers, representatives of Indian tribes and Native Hawaiian organizations, and other parties with an interest in the issues.

Sometimes a Programmatic Agreement (PA) or a Memorandum of Agreement (MOA) is reached and signed by the project's consulting parties. A PA clarifies roles, responsibilities, and expectations of all parties engaged in large and complex federal projects that may have an effect on a historic property. An MOA specifies the mitigation measure that the lead federal agency must take to ensure the protection of a property's historic values.

Each year thousands of federal actions undergo Section 106 review. The vast majority of cases are routine and resolved at the state or tribal level without the ACHP's involvement.

A considerable number of cases, however, present issues or challenges that warrant the ACHP's attention. The criteria for ACHP involvement in reviewing Section 106 cases are set forth in Appendix A of the ACHP's regulations. In accordance with those criteria, the ACHP is likely to enter the Section 106 process when an undertaking:

- has substantial impacts on important historic properties;
- presents important questions of policy or interpretation;
- has the potential for presenting procedural problems; and/or
- presents issues of concern to Indian tribes or Native Hawaiian organizations.

REGULATIONS SUMMARY



SECTION 106 REGULATIONS SUMMARY

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP. Revised regulations, "Protection of Historic Properties" (36 CFR Part 800), became effective August 5, 2004, and are summarized below.

Initiate Section 106 process

The responsible Federal agency first determines whether it has an undertaking that is a type of activity that could affect historic properties. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. If there is an undertaking, the agency must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer * (SHPO/THPO*) to consult with during the process. It should also plan to involve the public, and identify other potential consulting parties. If it determines that it has no undertaking, or that its undertaking is a type of activity that has no potential to affect historic properties, the agency has no further Section 106 obligations.

Identify historic properties

If the agency's undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO* and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria, in consultation with the SHPO/THPO* and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them.

If questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the National Park Service. Section 106 review gives equal consideration to properties that have already been included in the National Register as well as those that have not been so included, but that meet National Register criteria.

If the agency finds that no historic properties are present or affected, it provides documentation to the SHPO/THPO* and, barring any objection in 30 days, proceeds with its undertaking.

If the agency finds that historic properties are present, it proceeds to assess possible adverse effects.

Assess adverse effects

The agency, in consultation with the SHPO/THPO*, makes an assessment of adverse effects on the identified historic properties based on criteria found in ACHP's regulations.

If they agree that there will be **no adverse effect**, the agency proceeds with the undertaking and any agreed-upon conditions.

If a) they find that there is an **adverse effect**, or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.

Resolve adverse effects

The agency consults to resolve adverse effects with the SHPO/THPO* and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public. ACHP may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may agree that no such measures are possible, but that the adverse effects must be accepted in the public interest.

Implementation

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA.

Failure to resolve adverse effects

If consultation proves unproductive, the agency or the SHPO/THPO*, or ACHP itself, may terminate consultation. If a SHPO terminates consultation, the agency and ACHP may conclude an MOA without SHPO involvement. However, if a THPO* terminates consultation and the undertaking is on or affecting historic properties on tribal lands, ACHP must provide its comments. The agency must submit appropriate documentation to ACHP and request ACHP's written comments. The agency head must take into account ACHP's written comments in deciding how to proceed.

Indian Tribes and Native Hawaiian Organizations

The regulations also place major emphasis on consultation with Indian tribes and Native Hawaiian organizations, in keeping with the 1992 amendments to NHPA. Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the Federal Government and Indian tribes. Even if an Indian tribe has not been certified by NPS to have a Tribal Historic Preservation Officer who can act for the SHPO on its lands, it must be consulted about undertakings on or affecting its lands on the same basis and in addition to the SHPO.

The Public

Public involvement is a key ingredient in successful Section 106 consultation, and the views of the public should be solicited and considered throughout the process.

***The regulations define the term "THPO" as those tribes that have assumed SHPO responsibilities on their tribal lands and have been certified pursuant to Section 101(d)(2) of the NHPA. Nevertheless, remember that tribes that have not been so certified have the same consultation and concurrence rights as THPOs when the undertaking takes place, or affects historic properties, on their tribal lands. The practical difference is that during such undertakings, THPOs would be consulted *in lieu of* the SHPO, while non-certified tribes would be consulted *in addition to* the SHPO.**

REGULATIONS

36 CFR PART 800 -- PROTECTION OF HISTORIC PROPERTIES (incorporating amendments effective August 5, 2004)

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Authority: 16 U.S.C. 470s.

Subpart A-Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of

project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.” This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the

implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106,

provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer.*

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations.*

(i) *Consultation on tribal lands.*

(A) *Tribal historic preservation officer.* For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.*

Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant

preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall

provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses and other approvals.* An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government to government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and

the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B-The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of

Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.*

Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews,

sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14 (b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

(1) *Apply National Register criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall

apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv)(A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in

accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.*

Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with, or no objection to, finding.* Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) *Disagreement with finding.*

(i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) *Council review of findings.*

(i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have

been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii)(A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) *Results of assessment.*

(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process.

Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility

in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse

effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a

memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.*

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories

shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the

agency official when it executes the memorandum of agreement.

(c) *Comments by the Council.*

(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) *General principles.*

(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan

their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a “major Federal action significantly affecting the quality of the human environment,” and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106.* During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.*

(i) The agency official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

(4) *Approval of the undertaking.* If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this

subpart shall then be satisfied when either:

- (i) a binding commitment to such proposed measures is incorporated in
 - (A) the ROD, if such measures were proposed in a DEIS or EIS; or
 - (B) an MOA drafted in compliance with § 800.6(c); or
- (ii) the Council has commented under § 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the

agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*

(1) *Agency responsibility.* Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council.* When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with

the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When

commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply with other laws to fulfill the

requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) Confidentiality.

(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) Memorandum of agreement.

When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the

Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C-Program Alternatives

§ 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public Participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until

it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories.*

(1) *Criteria for establishing.* The Council or an agency official may propose a program or category of undertakings that may be exempted

from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

- (i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;
- (ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and
- (iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic

properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) *Standard treatments.*

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views

into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and local program alternatives. (Reserved)

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day or days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has

been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of

historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

Appendix A to Part 800 -- Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under

the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other

authorities, such as the Native American Graves Protection and Repatriation Act.

SECTION 106
FLOW CHART



Section 106 Review Process

36 CFR § 800.3-7

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INITIATE the process

- Determine undertaking
- Coordinate with other reviews
- Identify SHPO/THPO, Indian tribes/NHOs, and other parties
- Plan to involve the public

No undertaking with potential to affect historic properties?

NO



IDENTIFY historic properties

- Determine APE and scope of effort
- Make reasonable and good faith effort to identify
- Determine National Register eligibility
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

No historic properties present or affected?

NO



ASSESS adverse effects

- Apply Criteria of Adverse Effects
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

No historic properties adversely affected?

NO



RESOLVE adverse effects

- Develop and consider alternatives or modifications to avoid, minimize, or mitigate adverse effects
- Notify the ACHP
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

AGREEMENT or Council Comment



PROCEED



Property Types

Buildings • Structures • Objects • Sites • Districts

Eligibility = Significance + Integrity

36 CFR § 60.4 Criteria for Evaluation (Significance)

A. Event

Associated with events that have made a significant contribution to the broad patterns of our history.

B. Person

Associated with the lives of significant persons in our past.

C. Design/Construction

Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

D. Information Potential

Has yielded or may be likely to yield information important in history or prehistory.

Aspects of Integrity

setting **MATERIALS**
LOCATION
Workmanship **design**
feeling **Association**

Measure Change from Present Condition

36 CFR § 800.5(a)(1) Criteria of Adverse Effect

An ADVERSE EFFECT is found when **an undertaking may alter, directly or indirectly,** any of the characteristics of a historic property that qualify the property for inclusion in the National Register **in a manner that would diminish the property's integrity.**

ADVERSE EFFECTS may include **reasonably foreseeable effects** caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative.

36 CFR § 800.5(a)(2) Examples of Adverse Effects

- Destruction or Damage of all or part of historic property
- Alteration not consistent with SOI Standards
- Removal from its Location
- Change in Use or Setting
- Addition of Visual, Audible, or Atmospheric Elements out of Character
- Neglect (when not an expected characteristic)
- Transfer, Sale, or Lease out of Federal Control

PROGRAM ALTERNATIVES



PROGRAM ALTERNATIVES

Federal agencies sometimes need a more flexible approach to ensure the requirements of Section 106 review are achieved and historic preservation concerns are balanced with other federal mission requirements and needs. The Section 106 regulations “Protection of Historic Properties,” (36 CFR Part 800), offer program alternatives through which agencies can tailor the Section 106 review process for a group of undertakings or an entire program that may affect historic properties.

Program alternatives can improve the effectiveness and efficiency of Section 106 reviews and streamline routine interactions while focusing effort on the more complex projects or historic properties most important to communities. They can also help interpret and raise awareness about important historic properties and strengthen the state, tribal, and local partnerships critical to their care.

The five program alternatives (36 CFR § 800.14) are:

- Programmatic Agreement, including Prototype Programmatic Agreement
- Exempted Categories
- Standard Treatment
- Program Comment
- Alternate Procedure

A program alternative might be considered in situations such as when:

- An agency will carry out a certain type of undertaking repeatedly
- Addressing effects to or treatment of a category of historic properties is more efficient or consistent than individual reviews
- Tailoring the four-step process to agency programs could increase specificity, reduce delays, or allow applicants to take on more responsibility.

Developing a Program Alternative

All of the program alternatives require consultation with stakeholders, though the specifics of the development procedure for each vary according to the regulations. Consultation may occur throughout development, both before the agency makes a formal request or notification to the ACHP and during the ACHP’s (and other parties’) consideration of the request.

First, the federal agency identifies and documents the challenges it is experiencing in applying the Section 106 review process to an undertaking or group of undertakings. Second, the agency identifies its goals for the program alternative, which may include metrics to assist the agency in selecting the best type of program alternative and evaluating its success once implemented. Agencies are advised to contact the ACHP at this point to discuss their ideas and to ensure the agency selects the program alternative best suited to addressing the identified needs. The schedule for this effort, before the formal request or notification to the ACHP, is set by the agency and will vary.

The various program alternatives have different time frames for action or approval by the ACHP, some of which only start once a fully-developed request, supported by documentation of a consultation effort, arrives at the ACHP.

Proposals for program alternatives can be refined through feedback from consulting parties and the public, reaction from other involved federal agencies, and ACHP review. Agencies should plan enough time for a concept to evolve through consultation.

To compare and contrast the five program alternatives – in terms of their objectives; roles and responsibilities for agency, ACHP, other stakeholders, and the public; approval action; and time frames for development – refer to the Program Alternatives Chart.



Program Alternatives (36 CFR 800.14)

	ALTERNATE PROCEDURES	PROGRAMMATIC AGREEMENTS	EXEMPTED CATEGORIES	STANDARD TREATMENTS	PROGRAM COMMENTS
Objective	Tailor Section 106 process to fit agency mission/programs through agency-wide restructuring of the review procedure	Govern implementation of a program or resolve adverse effects when: effects are repetitive or are regional or national in scope; effects cannot be fully determined prior to approval; nonfederal parties are delegated decision-making responsibilities; involve routine management at federally managed properties; other circumstances warrant a departure from standard process	The ACHP can exempt a program or category of undertakings from further review if potential effects are foreseeable and likely to be minimal or not adverse and exemption is consistent with purposes of NHPA	Establish standard methods for treatment of a category of effects, undertakings, or historic properties according to best practices; does not replace the normal Section 106 process but can expedite reviews	Alternate method for agency to meet Section 106 responsibilities; allows the ACHP to issue comments on a program or class of undertakings in lieu of commenting on a case-by-case basis
Who proposes?	Agency official, following consultation	Agency official	Agency official or the ACHP on own initiative	Agency official or any other party with an interest in the application of standard treatments in the Section 106 process, including the ACHP on own initiative	Agency official may request; the ACHP on own initiative
Who consults?*	Agency official consults with the ACHP, NCSHPO, individual SHPOs/THPOs as appropriate, Indian tribes and NHOs. The ACHP also recommends consultation with NATHPO.	Project-specific: federal agency consults with SHPO/THPO, Indian tribes, NHOs, other consulting parties, and the ACHP if participating. Program or nationwide: federal agency consults with the ACHP, SHPO/THPO or NCSHPO/ NATHPO, Indian tribes, NHOs, and other consulting parties.	Proponent of exemption (the ACHP or agency) notifies and considers the views of SHPOs/ THPOs. The ACHP consults Indian tribes and NHOs. The ACHP recommends agency proponents consult Indian tribes, NHOs, and others in developing proposal prior to submitting to the ACHP.	The ACHP notifies and considers the views of SHPOs/THPOs and consults with Indian tribes and NHOs, where appropriate.	The ACHP notifies and considers the views of SHPOs/THPOs and consults with Indian tribes and NHOs, where appropriate.

	ALTERNATE PROCEDURES	PROGRAMMATIC AGREEMENTS	EXEMPTED CATEGORIES	STANDARD TREATMENTS	PROGRAM COMMENTS
Public participation	<i>Federal Register</i> publication is required along with other appropriate steps to seek public input during development of alternate procedures	Agency responsibility; should be appropriate to the subject matter and the scope of the program or undertaking	Proponent responsibility (the ACHP or agency); should be appropriate to the subject matter and the scope of the exemption	The ACHP arranges for public participation appropriate to the subject matter and the scope of the standard treatment; the ACHP may request agency official to do this if an agency requested the standard treatment	Agency responsibility; required before request; should be appropriate to the subject matter and scope of the category; the ACHP recommends <i>Federal Register</i> notice
Approval action	The ACHP, after 60-day review period. Agency must publish notice of final alternate procedures in <i>Federal Register</i> if approved and notify parties with whom it consulted.	Execution by signatories	The ACHP must approve or reject, after 30-day review period; the ACHP notifies agency official and SHPOs/THPOs of decision	ACHP approval and publication in <i>Federal Register</i> ; included in MOAs/PAs as mitigation measures or used to support no adverse effect findings in regular reviews	The ACHP must approve or decline to comment after 45-day comment period following official request
Time frame	60 days for ACHP review following agency submission; development process leading to submission likely to be lengthy	No fixed time period	30 days for ACHP review unless it requests more information; development process leading to submission could be lengthy	No fixed time period	45 days for comments after request is made; total process could be as short as three months if preparation by agency before request is thorough

* Federal agencies are responsible for government-to-government consultation with Indian tribes. The party responsible for consultation must consult with Indian tribes and Native Hawaiian organizations when the program alternative has the potential to affect historic properties on tribal lands or properties of religious and cultural significance to tribes or NHOs.

Acronym Glossary

MOA — Memorandum of Agreement

NATHPO — National Association of Tribal Historic Preservation Officers

NCSHPO — National Conference of State Historic Preservation Officers

NHO — Native Hawaiian organization

NHPA — National Historic Preservation Act

PA — Programmatic Agreement

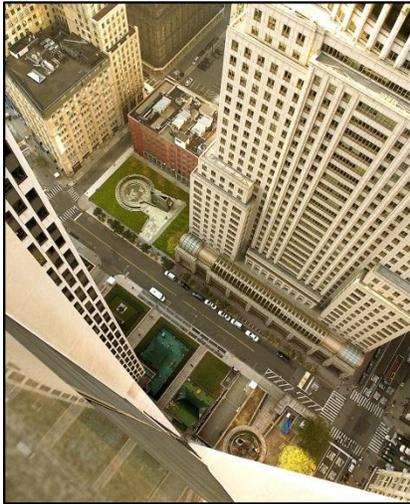
SHPO — State Historic Preservation Officer

THPO — Tribal Historic Preservation Officer

SECTION 106 SUCCESS STORIES



SECTION 106 SUCCESS STORIES



*Aerial view of African Burial Ground,
New York, New York*

In a testament to the success of the enactment of the National Historic Preservation Act (NHPA), as it turned 50 years old on October 15, 2016, most Americans were unaware of it being a primary reason for the survival of the historic places surrounding them that make our communities better, more beautiful places to live and work.

The Advisory Council on Historic Preservation (ACHP) believes all aspects of the NHPA deserve more public awareness and recognition. But there is one aspect of the NHPA that is particularly important to the ACHP: Section 106.

The ACHP was created by the NHPA. Among its prime purposes is the responsibility to administer Section 106 for the federal government. Section 106 was created due to grassroots efforts assisted by the National Association of Mayors and the National Trust for Historic Preservation out of concern for federal urban renewal and transportation efforts that had decimated the country's inventory of historic places in a somewhat heedless manner. Section 106 mandates that federal departments and agencies must consider the impact of their undertakings upon affected historic properties before making plans that could adversely affect these important and irreplaceable sites. Thanks to these requirements that Congress codified in the NHPA, the heritage of the United States of America has been protected so it may enrich and instruct the present as well as the future.

Beginning in 2012, the ACHP began collecting instructive examples of successful Section 106 actions that have taken place since the NHPA went into effect. To date, 108 of these examples are posted at <https://www.achp.gov/success-stories>. They are intended to convey the significance, range, and diversity of properties saved through Section 106, as well as the variety of organizations and individuals involved in the consultations and process.

One success story discusses how construction in Manhattan by the General Services Administration led to discovery, analysis, and preservation of the African Burial Ground and rewrote the history of what was known about the institution of slavery in the Americas, resulting in a new National Monument.

The success of Section 106 at Nine Mile Canyon in Utah underscores how both cultural values and energy development can co-exist while preserving a significant and unique site.



Nine Mile Canyon, Utah



Redstone Castle, Redstone, Colorado

The saga of Redstone Castle in rural Colorado recounts how a federal agency not usually associated with stewardship—the Internal Revenue Service—saved the home that interprets the history of an American business magnate who built a remarkably progressive company town in the 19th century.

Another story highlights how the General Services Administration discovered the Civil War-era offices of Clara Barton, founder of the American Red Cross, in downtown Washington, D.C. and not only saved them

from demolition but preserved them for posterity. Another story showcases artwork on an unusual canvas: highway bridges. Famous muralism artists from the Chicano Movement painted on the San Diego bridges' columns and abutments in the 1970s and '80s. A highway project's change of mind turned into a National Register of Historic Places-listed park of 7.4 acres containing 49 murals showcasing the art and artists.

These are only an indication of the rich character of stories brought to light and life through the functioning of Section 106 of the NHPA. The success stories cover every state and several territories, and have featured involvement by 31 federal agencies and departments.

The ACHP's intent is to continue to build a portfolio of these stories that illustrate the range and breadth of the impact of this important public preservation tool that has resulted in tens of thousands of historic places being preserved for the benefit of the nation and its communities.

The ACHP continues to celebrate the NHPA's first half-century by building greater awareness of the success and purpose of this wise and timely legislation. Part of the effort to build greater public awareness is by sharing these instructive case histories as they emerge.



Chicano Park, San Diego, California

As is true of any Section 106 effort, this process allows state, local, private, Native Hawaiian, and tribal entities a place at the table when federal undertakings may affect places important to American citizens. Please feel free to contact us if you would like more information about any particular case or any other historic preservation issue under the NHPA. Please share these success stories with those who should be aware of the significance of this process and these places: <https://www.achp.gov/success-stories>.

February 12, 2020

106 SUCCESS STORY

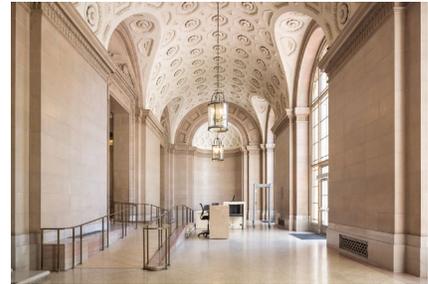
Reinvestment Yields State-of-the-Art Rehabilitation of Landmark Building

San Francisco, California



“This is one of San Francisco’s most cherished buildings. The MOA resulted in an exemplary model for modernizing office facilities for GSA to meet current needs, provide an open and stimulating working environment, while maintaining important historic features both inside and on the building’s exterior. A unique element of the planning process was that GSA made use of the California Historic Building Code, a state document, to meet code-related building standards.”

—MILFORD WAYNE DONALDSON,
FAIA
Former California SHPO



THE STORY

In spring 1945, the United Nations Conference on International Organization took place in San Francisco, within the commanding collection of government buildings and cultural institutions that formed its City Beautiful movement-inspired civic center. The momentous gathering of 850 delegates from 50 nations culminated in the execution of the Charter of the United Nations.

Among the masterpieces that defined this area was the Second Renaissance Revival federal building designed by Arthur Brown Jr., and built in 1934-36 as offices for the Department of the Navy. By 1978, the building was controlled by the General Services Administration (GSA), renamed 50 United Nations Plaza in recognition of the historic events that took place decades earlier, and listed in the National Register of Historic Places as contributing to the surrounding historic district. In 1987, it was designated a contributing structure to the San Francisco Civic Center National Historic Landmark District.

THE PROJECT

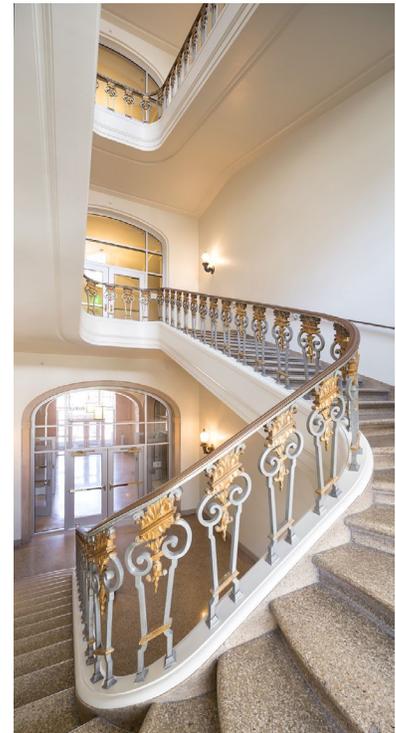
After the Loma Prieta Earthquake in 1989, GSA determined costly capital improvements were necessary to bring the building into compliance with building safety and seismic codes. In 2007, GSA considered disposal or a long-term ground lease for the building, but negotiations were unsuccessful. In 2008, GSA commissioned a special program development study, which demonstrated the historic property could be modernized and reused for GSA’s Pacific Rim Regional Office headquarters. Shortly after passage of the American Recovery and Reinvestment Act in 2009, GSA’s “shovel ready” rehabilitation and reuse project was allocated necessary funding, and project planning began in earnest.

THE 106 PROCESS

GSA was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires federal agencies to identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies also are required to consult with parties that have

Photos: Above, Cliff Garten Studio. Ribbons. 2013. 50 United Nations Plaza Courtyard; Right, San Francisco Civic Center with United Nations Plaza in center; rehabilitated lobby (photos by Blake Marvin—HKS, Inc.)

CONTINUED >>>



Photos: Above, southeast entrance; Right, rehabilitated stairway (photos by Blake Marvin-HKS, Inc.)

an interest in the fate of the property when adverse effects may ensue. By December 2009, consultation among GSA, the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and the National Park Service resulted in a Memorandum of Agreement (MOA) that addressed GSA's rehabilitation plans; seismic and accessibility upgrades; hazardous materials abatement; and installation of new mechanical, electrical, heating, and plumbing systems.

Following the design review process outlined in the MOA, the parties negotiated project details to minimize removal of character-defining corridor walls to accommodate modern work space needs. In addition, a discreet structural reinforcement system was planned. Finally, the building's existing historic climate-control systems, including operable windows, transoms, doors, and retrofitted steam radiators, became part of a cutting-edge passive ventilation system. The original wood window frames and sashes were restored, while new energy efficient glass was inserted to reduce solar heat gain. Ultimately, the system, paired with photo-voltaic rooftop units, allowed GSA to omit central air conditioning. The historic central courtyard, with a redesigned garden area, provides fresh air and daylight throughout interior spaces.

THE SUCCESS

The design review process outlined in the MOA yielded a project that reused the legacy building for its historic purpose and substantially preserved its features, materials, and finishes. Approximately 98 percent of the existing walls, floors, and roof structure were reused. More than 600 original oak doors were restored, historic hanging corridor lamps were rewired, and original tile floors were refreshed. Lobbies, stairwells, and an office suite once occupied by Admiral Chester W. Nimitz were carefully preserved.

Completed in 2013, GSA's rehabilitation retained a significant building in the federal inventory and achieved comprehensive systems and energy efficiency upgrades, an innovative workplace design, and a Leadership in Energy and Environmental Design Platinum rating.

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Consulting Parties:

General Services
Administration

ACHP

California State Historic
Preservation Officer

National Park Service

National Trust for Historic
Preservation

San Francisco Landmarks
Preservation Board

California Preservation
Foundation

San Francisco Architectural
Heritage

For more about
Section 106 and
the ACHP go to
www.achp.gov



Preserving America's Heritage

106 SUCCESS STORY

Stakeholders Ensure Long-Term Preservation of New Deal-Era Building

Modesto, California



“This building embodies a significant part of Modesto’s history and culture, as an agricultural community in the San Joaquin Valley, and we’re proud to do our part to protect it.”

—PATRICK KELLY, MPA, AICP
Planning Manager, City of Modesto

THE STORY

With considerable civic ceremony, the cornerstone of the Modesto Federal Building and Post Office was laid in the spring of 1933. The Mediterranean Classical Style building formally opened that fall. Constructed under the New Deal—a series of public work projects and federal programs that responded to the Great Depression—it was the first federal building for this San Joaquin Valley city. In 1936, under the New Deal’s Treasury Relief Arts Project (TRAP), various artists painted a rectangular mural and 12 lunettes depicting local agricultural activities such as plowing, grain harvesting, gathering fruit, and meat packing. The artworks were installed in the high-ceilinged postal lobby. The U.S. Postal Service (USPS) was a longstanding tenant in the building along with other various federal agencies, such as the U.S. Department of Labor. In the late 1960s and 1970s, the lobby was reconfigured, the postal workroom subdivided, and an elevator installed. In the 1980s, the building was spared from the widespread demolition and construction occurring in the civic center, and the General Services Administration (GSA) successfully nominated it for listing in the National Register of Historic Places.

THE PROJECT

In 2002, after the USPS relocated most of its operations elsewhere, GSA determined the historic property to be surplus to the needs of the federal government, and GSA’s preservation and disposal personnel worked together on next steps. GSA screened the property for homeless assistance and other public uses and planned to offer it to Stanislaus County via negotiated sale in 2006.

THE 106 PROCESS

As the federal agency carrying out the property disposal, GSA was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects on those properties of the projects they carry out, fund, or permit. Federal agencies also are required to consult with parties that have an interest in the historic properties when adverse effects may occur. Also in 2006, GSA commenced Section 106

Photos: Top, entranceway (photo by Paul Becker Photography, courtesy GSA); Bottom: “Packing Cheese,” by Ray Boynton (photo by Peter Hardholdt, courtesy GSA); Right, restored postboxes with murals in lobby (photo by Paul Becker Photography, courtesy GSA); Modesto Architectural Festival tour of former postal lobby (photo courtesy Modesto Art Museum/Nathan Thies)

CONTINUED >>>



Photos: From left, side and rear façades (photo by Paul Becker Photography, courtesy GSA); "Plenty" by Ray Boynton (courtesy GSA); historic postal scale (photo by Paul Becker Photography, courtesy GSA)



consultation with the California State Historic Preservation Officer (SHPO), stating its intention to transfer the property to the county with a historic preservation covenant, ensuring long-term preservation of the historic characteristics of the building. However, due to financing concerns during the Great Recession, the county terminated negotiations in 2010. The USPS moved out of the building in 2011 and, as the real estate market began recovering, GSA offered the property at public auction with a historic preservation covenant and stated its intention to award the property to the Finch Fund, LLC, a family trust. In 2013, GSA reinitiated consultation and proposed to resolve the adverse effects associated with the disposal via a Memorandum of Agreement (MOA). Two of the building's original TRAP lunettes, federal personal property missing since their removal in the 1970s, were located by the Finch Fund in 2011. They were turned over to GSA for stabilization and storage in accordance with its fine arts policy. The MOA and accompanying historic preservation covenant include provisions for adaptive use, maintenance, design review, inspection, and public access. The Modesto Landmarks Preservation Commission agreed to be the covenant enforcement entity, and the SHPO agreed to provide technical assistance in meeting the Secretary of the Interior's Standards for Rehabilitation. In late 2013, the Finch Fund agreed to its responsibilities. The MOA was executed, the property was transferred, and the historic preservation covenant was recorded in the deed shortly thereafter.

Consulting Parties:

- General Services Administration
- ACHP
- California State Historic Preservation Officer
- City of Modesto
- Modesto Landmarks Preservation Commission
- Finch Fund, LLC

THE SUCCESS

The Finch Fund completed its adaptive use of the property in 2014 and operates it as an office building. In accordance with the MOA, during business hours, the public can visit the restored historic lobby containing the New Deal artwork and reinstalled postal boxes. GSA completed conservation of the two recovered lunettes and plans to coordinate installation details with the new owners in the future. Due to GSA's laudable stewardship and diligent consultation, a local commission's commitment to preservation, and responsible private owners, an important local icon, built as a sign of hope during an era of national economic distress, will remain a community asset for many years to come.

For more about Section 106 and the ACHP go to www.achp.gov

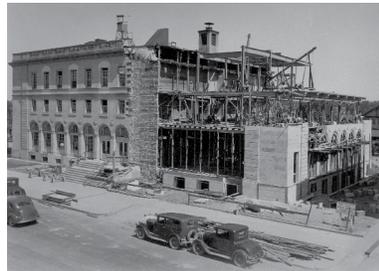
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Preserving America's Heritage

106 SUCCESS STORY

The Greenest Building: Wayne N. Aspinall Federal Building/Courthouse Grand Junction, Colorado



“As the late Congressman Aspinall of Colorado was an ardent supporter of energy self-reliance policy, it is fitting that his namesake building is the first target net-zero federal building on the National Register.”

— BETH SAVAGE
Federal Preservation Officer,
General Services Administration

THE STORY

The U.S. Post Office in Grand Junction, the largest city in western Colorado, was designed in the Second Renaissance Revival Style under the direction of James Wetmore, Acting Supervising Architect, Department of the Treasury, and built in 1918. In 1939, a complementary extension was completed, doubling the size of the building and adding space for the courts. When the U.S. Postal Service vacated the building in 1965, the post office area and elevator lobbies had been heavily modified, and heating, ventilation, and air conditioning improvements made. Nonetheless, numerous features, including a curved staircase, arched-windows, original flooring, and a historic mural, remained intact. The building was listed in the National Register of Historic Places in 1980 and renamed the Wayne N. Aspinall Federal Building and Courthouse.

THE PROJECT

In January 2010, the General Services Administration (GSA) received \$15 million in American Recovery and Reinvestment Act (ARRA) funds to rehabilitate the remaining original spaces and the exterior of the Aspinall Building to bring it into compliance with accessibility and safety standards, and to modernize the building infrastructure. ARRA funding requirements called for project completion in 2015. GSA commenced construction in March 2011 via a design-build contract.

THE 106 PROCESS

GSA was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies also are required to consult with parties that have an interest in the fate of the property when adverse effects may ensue.

The design-build project delivery method, regularly employed in the private sector, has become popular among federal agencies. Under this method, typically a contractor is hired, who hires an architect; construction occurs in parallel with design refinement.

Photos: Above, light fixture, Wayne N. Aspinall Federal Building and Courthouse, front façade (Carol M. Highsmith Photography, Inc./GSA); Right, construction of the addition, 1939 (photo courtesy GSA); front façade (Carol M. Highsmith Photography, Inc./GSA)

CONTINUED >>>



Photos: Left, rehabilitated postal lobby; Above, restored Works Progress Administration mural (Carol M. Highsmith Photography, Inc./GSA)

Agencies contract with the contractor, who is responsible for both design and construction subject to agency oversight.

GSA's contractor solicitation stated that rehabilitation needed to comply with the Secretary of the Interior's Standards for Treatment of Historic Properties, a requirement that would avoid adverse effects. During design, however, GSA determined there was potential for adverse effects and alerted the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation, and the City of Grand Junction. The fast-tracked design-build schedule required close coordination with consulting parties to meet contract terms as well as the mandatory ARRA completion date. With support from the SHPO and the City, consultation occurred expediently and productively.

In responding to GSA's solicitation, contractors recommended that by utilizing interior storm windows, on-site geothermal wells, photovoltaic (PV) panels, and increased insulation, the project could achieve both Leadership in Energy and Environmental Design (LEED) Platinum and "net-zero" energy performance. A relatively new concept, net-zero buildings utilize sustainable technology to produce as much or more energy than they would normally consume. Installing these innovative features in a historic public building, though, requires care and ingenuity.

A Memorandum of Agreement (MOA), executed in spring 2011, included baseline approved concept drawings. Importantly, the drawings indicated that the rooftop PV panels would be reduced in size. Based on consultation and input from GSA's regional and national preservation staff, GSA sympathetically incorporated green technologies while achieving targeted performance goals and respecting the building's historic character.

THE SUCCESS

The rehabilitated Aspinall Building, completed in 2014, continues to play an important role in the vitality of downtown Grand Junction and houses many federal offices. The courtroom, postal lobby, and elevator lobbies were rehabilitated; hardwood floors refurbished; and a historic mural was restored and reinstalled. The historic building, which incorporated the contractor's recommendations, has achieved LEED Platinum certification and unprecedented operational savings with green technology. GSA's enlightened stewardship, informed by the Section 106 consultative process, has ensured the long-term use and viability of this significant building, which serves as a model for adapting historic buildings to meet contemporary energy conservation needs.

Consulting Parties:

General Services
Administration
ACHP
Colorado State
Historic
Preservation
Officer
City of Grand
Junction Historic
Preservation
Board

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Preserving America's Heritage

106 SUCCESS STORY

Collaboration Saves Hidden Treasure: Clara Barton's Office and Home

Washington, D.C.



CLARA BARTON
From portrait taken in Civil War and authorized
by her as the one she wished to be remembered by

175801

“The Clara Barton Missing Soldiers Office Museum is a true time capsule and special experience. The GSA did an incredible job of preserving and returning the space to Barton’s time. You can feel her presence as we tell her incredible story in the very rooms where she lived and worked for years.”

—DAVID PRICE
National Museum of Civil War
Medicine Interim Executive Director

Photos: Above, portrait of Clara Barton during the Civil War (photo courtesy Library of Congress); Right, the original façade, removed during Metro construction, was replicated via public-private partnership; original office sign (photos courtesy GSA)



THE STORY

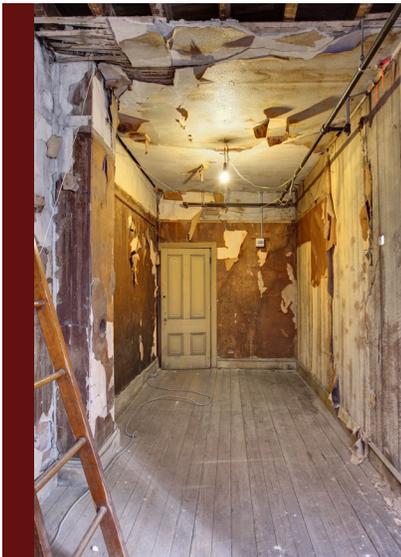
Clarissa “Clara” Harlowe Barton, before founding the American Red Cross, dedicated herself to caring for Union troops in the Civil War and later conceived of and headed the Office of the Missing Soldiers to help families locate unaccounted loved ones who served in the war. The Office responded to more than 63,000 inquiries with more than 100,000 handwritten and form letters. Barton operated the Office from rented space in downtown Washington, D.C. From 1865 to 1868, she and her small staff provided information to families about the fate of more than 21,000 men.

THE PROJECT

In 1996, the Pennsylvania Avenue Development Corporation’s real estate holdings were transferred to the General Services Administration (GSA) for management and disposition. The holdings included an 1853 building with shops and professional offices on the first and second floors, and boarding rooms on the third floor. Just prior to the property’s sale and anticipated demolition for residential redevelopment, a GSA employee discovered artifacts that indicated Barton had lived on the third floor of the building. In 1997, a National Park Service historian confirmed Barton resided in and worked out of Room 9 and other adjacent rooms between 1861 and 1868, during and immediately after the Civil War. GSA commenced consultation to determine next steps.

THE 106 PROCESS

GSA was the federal agency responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. In the process, federal agencies also must consult with parties that have an interest in the property when adverse effects may ensue. Given the newfound historic significance of the property and its pending transfer and redevelopment, GSA reached out to consulting parties to resolve adverse effects.



Photos: Left, the parlor before restoration (photo courtesy OLBN/GSA); Above, conservators found enough wallpaper fragments on the walls and in the attic to recreate the Civil War-era character of Barton's rooms (photo courtesy GSA); Right, the parlor after restoration (photo courtesy OLBN/GSA)



Original elements of Room 9 include interior doors and walls, piping for gas lighting, a chimney for a potbelly stove, and fragments of wallpaper selected by Barton and installed during her residency. A wood plank wall divided Barton's sleeping parlor from a large open space she used to store her battlefield supplies and later as the Missing Soldiers Office. Original hand-painted signage denoting the "Missing Soldiers Office" and boxes of Civil War-era documents were discovered in the attic above Room 9.

In 2000, GSA and consulting parties executed a Memorandum of Agreement (MOA) to ensure that the spaces associated with Barton on the third floor would be preserved in perpetuity in situ. According to the MOA, GSA stabilized the significant areas and, pursuant to a preservation covenant it attached to the deed, oversaw an \$8 million improvement effort by their private development partner, Jefferson at Penn Quarter, L.P. Between 2001 and 2006, the developer assumed responsibility for building systems, safety upgrades, and other improvements to support a future museum use. Under the covenant, GSA retains a perpetual easement to access, perform maintenance, and conserve and interpret significant spaces, while the developer funds base building utilities.

In 2012, GSA executed a management agreement with the non-profit National Museum of Civil War Medicine. Following the Secretary of the Interior's Standards, GSA completed utility work, restored interior finishes, and rehabilitated the museum reception area with proceeds from the property's earlier sale. Work included gaslight and wallpaper restoration, and ensured that evidence uncovered during construction was incorporated. Concurrently, museum personnel developed a marketing program and installed exhibits for the new Clara Barton Missing Soldiers Office Museum.

THE SUCCESS

Due to a timely discovery and diligent GSA compliance with Section 106, museum visitors can experience Barton and her meaningful work in the restored original venue. The valuable partnership among the federal government, a private developer, and a non-profit museum was able to restore this important historic property which will continue to inform the public about Barton's efforts and the Office of the Missing Soldiers.

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Consulting Parties:

General Services Administration

ACHP

District of Columbia Historic
Preservation Officer

Jefferson at Penn Quarter, L.P. (JPI
Apartment Development, L.P.)

National Capital Planning
Commission

For more about Section
106 and the ACHP go
to www.achp.gov



Preserving America's Heritage

106 SUCCESS STORY

Headquarters Consolidation Revives St. Elizabeths NHL West Campus

Washington, D.C.



THE STORY

Designated by Congress in 1852 and opened in 1855 as the first federal mental health hospital for members of the armed forces and District of Columbia residents, the Government Hospital for the Insane became known as St. Elizabeths after the name of the tract of land on which it was constructed. The expansive, 350-acre campus is a prominent example of a mid-19th century movement that promoted moral treatment for the mentally ill in well-designed buildings amid a verdant agrarian setting. After decades of steady growth and expansion, including construction of an East Campus, the hospital declined with the creation of the veterans' hospital system in the 1940s and the deinstitutionalization of care for the mentally ill in the 1960s. Some buildings on the West Campus and the entire East Campus were transferred from federal ownership to the District of Columbia ownership in 1987. By the late 1990s, the patient population had shrunk to less than 10 percent of its peak of 7,500 patients, leaving the earliest buildings on the West Campus largely vacant. The West Campus was transferred to the General Services Administration (GSA) in 2004. St. Elizabeths was listed in the National Register of Historic Places in 1979 and designated a National Historic Landmark (NHL) in 1990.

THE PROJECT

To consolidate the headquarters of the Department of Homeland Security (DHS), GSA was charged with accommodating 6 million square feet of tenant space for 14,000 employees at St. Elizabeths, which included about 1 million square feet of historic buildings, a cultural landscape, and numerous archaeological resources. The plan also included road and highway interchange improvements within portions of adjacent National Park Service (NPS) property, which required compliance with Section 4(f) of the Department of Transportation Act.

THE 106 PROCESS

GSA was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those

CONTINUED >>>

“The General Services Administration is extremely proud of the progress made in public consultation with local and national preservation organizations and the community. These groups worked tirelessly with GSA to improve the master plan and protect this National Historic Landmark. ...The GSA looks forward not only to reusing and renewing this long-vacant historic campus but also to continuing to reinvest in local economic recovery efforts.”

—ANTHONY E. COSTA
Acting Commissioner of Public
Buildings, GSA 2009

Photos: Above, Center Building, built in the Kirkbride Plan (photo courtesy Library of Congress); Right, aerial view (photo courtesy U.S. Coast Guard)



Photos: Left, ACHP members tour cemetery grounds on West Campus; Above, Hitchcock Hall, the former psychodrama theater

properties. Federal agencies also are required to consult with parties that have an interest in the fate of the property when adverse effects may ensue.

GSA initially proposed to redevelop the West Campus as a high-security campus by demolishing approximately half of both the historic buildings and the cultural landscape. In 2008, working with numerous consulting parties through the Section 106 process, GSA developed a viable master plan and a Programmatic Agreement (PA) that set forth a process for resolving adverse effects for each phase of the master plan's implementation. If adverse effects were found, they would be resolved in separate Memoranda of Agreement (MOAs). The consultation was informed by guidance from Advisory Council on Historic Preservation (ACHP) members, a collective consulting party consensus document regarding locations and density of new development, and a Section 213 Report requested of the Secretary of the Interior by the ACHP to address the master plan's cumulative effects on the significant characteristics of the NHL.

GSA agreed to minimize the effects of the DHS program by retaining the preeminence of the Center Building in the landscape, concentrating new development outside of the historic core, submerging structured parking, blending new construction with existing buildings on the site's sloping topography, and offsetting added density with landscape rehabilitation. Making a case for their viability, GSA planned to reuse 52 of the 62 contributing resources (eight greenhouses were deteriorated beyond repair), as well as rehabilitate numerous landscape features, and recover archaeological resources. GSA's dedicated team of experts also completed building condition assessments, landscape analyses, and a geothermal archaeological survey, and stabilized and mothballed several historic buildings for later reuse. GSA undertook numerous mitigation measures early on, including an education program with a local partner bringing about 5,000 visitors to the site; conservation and digitization of historic drawings; documentation of buildings and landscapes; and publication of an online history book. GSA is planning an exhibit with the National Building Museum.

THE SUCCESS

During eight years, seven MOAs have been executed under the PA. St. Elizabeths' West Campus is now home to the new LEED gold U.S. Coast Guard headquarters, and nearby rehabilitated historic buildings house support functions. By 2018, the historic Center Building will support the Office of the DHS Secretary. GSA has commenced consultation on two more MOAs to address reuse of 18 historic buildings. Using the framework of the Section 106 process to obtain ongoing input from consulting parties, GSA has guaranteed a future for the NHL's historic buildings and landscape while meeting the nation's critical 21st century homeland security needs. For more information: www.stelizabethsdevelopment.com

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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Consulting Parties:

General Services Administration
 Department of Homeland Security
 Federal Highway Administration
 National Capital Planning Commission
 District of Columbia Historic Preservation Office (SHPO)
 ACHP
 Many Others

For more about Section 106 and the ACHP go to www.achp.gov



Preserving America's Heritage

106 SUCCESS STORY

Community Rallies to Save Threatened Historic Lighthouse

Aquinnah, Massachusetts



“This lighthouse is far more than a beacon for approaching ships. It has become an essential component of the local economy—an economy which remains strongly tied to the tourism industry.”

— U.S. REPRESENTATIVE BILL KEATING

Massachusetts' 9th District, as quoted in the Martha's Vineyard Times

THE STORY

The Gay Head Lighthouse was built in Aquinnah, Martha's Vineyard, in 1856. Standing 51 feet tall and weighing 400 tons, it is constructed of clay bricks, a brownstone cornice, and topped with a cast iron light room. Located at the westernmost tip of the island, the light, a federal Aid to Navigation (ATON), guides traders, fishermen, cruise ships, and recreational boaters. It is the only lighthouse with a history of Native American lighthouse keepers, and was one of the first in the U.S. to receive a Fresnel lens (since removed) in 1856. It was individually listed on the National Register of Historic Places in 1987. For decades, the tower was owned by the U.S. Coast Guard (USCG) and leased to and maintained by the Martha's Vineyard Museum.

THE PROJECT

In 2013, the lighthouse was listed on the National Trust for Historic Preservation's 111 Most Endangered Historic Places because the adjacent Gay Head Cliffs, a National Natural Landmark owned by the Bureau of Indian Affairs in trust for the Wampanoag Tribe of Aquinnah, were rapidly eroding. With local and political support, the USCG declared the property excess, enabling property transfer by the General Services Administration (GSA) under the National Historic Lighthouse Protection Act (NHLPA), which makes such historic lighthouses available at no cost for education, recreation, or preservation purposes. The Town of Aquinnah applied for the property title in 2014, and the Secretary of the Interior recommended GSA award it. The Town's application included a plan to relocate the lighthouse.

THE 106 PROCESS

GSA was responsible for conducting the Section 106 process under the National Historic Preservation Act (NHPA). Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies also are required to consult with parties that have an interest in the fate of the property when adverse effects may ensue.

Photos: Above, Gay Head Lighthouse (iStockphoto © kickstand); Right, grandson of Len Butler, chairman of the Save the Gay Head Lighthouse Committee's Relocation Committee (photo by Len Butler); starting line at the Second Gay Head 10k Road Race "A Race Against Time" (photo by Meg Bodnar Photography)



Photos: Above, aerial view of Gay Head Lighthouse move (photo by Drew Kinsman); Right, another angle of the move (photo by Derrill Bazy)



Given the rate of erosion and the ready, willing, and able property recipient, GSA moved expeditiously, coordinating compliance with NHPA, National Environmental Policy Act, and NHLPA. Almost all consultation occurred remotely to speed the process. The resulting Memorandum of Agreement (MOA) and covenants addressed title transfer, lighthouse relocation, associated ground disturbance, rehabilitation, museum use, and ATON operation. The deed transferred the property to the Town for \$1 as a public benefit. To ensure the long-term structural stability of the lighthouse and return the Gay Head Cliffs to a more natural state, the Town planned to move the lighthouse farther away from the cliffs to a new foundation on Town-owned land.

The Save the Gay Head Lighthouse Committee raised more than \$3 million to fund the state-of-the-art move, with nearby towns pooling funds as well. Relocation necessitated ground disturbance, requiring advance archaeological surveys and soil remediation. During the move, the USCG established a temporary ATON nearby that was extinguished upon the lighthouse's successful relocation. The Town agreed to complete photo documentation of the lighthouse and to place interpretation about its history at the site of the lighthouse's former foundation. As part of the deed, the Town granted preservation covenants to the Massachusetts Historical Commission and the National Park Service to protect and preserve the lighthouse in perpetuity. The Town and the Martha's Vineyard Museum agreed to rehabilitate and maintain the lighthouse, operating it as a museum again. Finally, the Town agreed to a USCG easement for the permanent ATON within the relocated lighthouse.

THE SUCCESS

With less than 50 feet of earth left, and an erosion rate of approximately two feet per year, the Gay Head Lighthouse's days were numbered. Recognizing its importance, local leaders mobilized grassroots and regional support and significant financial backing. The Town of Aquinnah developed a plan, and all details were managed and formalized in the Section 106 process. The MOA was executed in February 2015, and by May 2015, the lighthouse's relocation was completed. With great fanfare, the lighthouse was relit and rededicated as a navigational aid and museum. Broad community efforts saved the cherished local landmark from certain destruction, for public use and enjoyment.

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General Services Administration
 ACHP
 Massachusetts Historical Commission (SHPO)
 National Park Service
 U.S. Coast Guard
 Town of Aquinnah
 Wampanoag Tribe
 Martha's Vineyard Museum
 U.S. Bureau of Indian Affairs
 National Trust for Historic Preservation

For more about Section 106 and the ACHP go to www.achp.gov



Preserving America's Heritage

106 SUCCESS STORY

African Burial Ground Discovery Rewrites History of American Slavery

New York, New York

“The fact there were so many Africans in colonial New York was a surprise for most people. The most fundamental thing was it established that slavery was as much an institution of the north as it was of the south.”

— DR. MICHAEL BLAKEY
Director, Institute for Historical
Biology, National Endowment
for the Humanities Professor,
College of William and Mary



THE STORY

The Dutch brought the first African slaves to New Amsterdam around 1625 to build a fort, mills, and residences for the early colony. After the British conquered what would become New York City in 1664, use of slave labor continued for more than 160 years to support the growing port and shipping operations. Information about slavery in New Amsterdam and subsequent New York City was relatively unknown until the discovery in 1991 of the African Burial Ground changed historical understanding of the practice and place of slavery in the early years of the United States of America and the colonial period preceding the nation's founding. An estimated 15,000 mostly enslaved people of African origin had been interred between 1650 and 1794 in what was described on old maps as the "Negros Buriel Ground (sic)."

THE PROJECT

Plans for a new federal building in Lower Manhattan began in 1987. Like much of Manhattan, the site chosen had been filled with 12 feet of dirt, and a variety of structures were built over the area for centuries. Anticipating that an adjacent alley could still have remnants of the cemetery, an agreement was crafted to direct how a modest discovery might be handled. However, surveys prior to construction revealed a surprising number of human remains in 1991, and it quickly became clear that they had found a portion of a sizeable cemetery, thickly covered by two centuries of urban growth.

THE 106 PROCESS

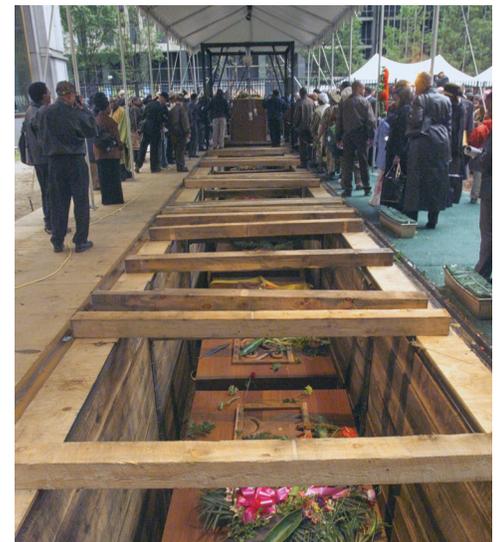
Under the National Historic Preservation Act, the General Services Administration (GSA) was the agency responsible for the project and therefore responsible for conducting the Section 106 review when the African Burial Ground re-emerged. Section 106 requires each federal agency to identify and assess the effects of its actions on historic resources and consult with the appropriate State or Tribal Historic Preservation Officer. It is also

From left, the memorial aerial view; exhibit at the memorial; a park ranger watches over the memorial

CONTINUED >>>



From left, inscription on the memorial; vaults being lowered into the ground



essential to inform and include in consultations other people, groups, levels of government and organizations that might have a demonstrated interest in the historic property in order to reach agreement on how to avoid, minimize harm, or mitigate the effects.

In the early stages of the project, the number of human remains was significantly underestimated. Initial burial discoveries were removed from the construction site before local archaeologists contacted the Advisory Council on Historic Preservation (ACHP) to determine an alternative approach and broaden consultation with the growing number of concerned parties.

Public interest and consultation in the project increased and, following an onsite congressional hearing in July 1992, GSA stopped work on the site until an acceptable resolution of the burial situation was reached. Ultimately, dozens of groups were formally involved as consulting parties, and through Section 106 consultation GSA and the community found a successful resolution. The building footprint was redesigned so more of the burial ground could be preserved without disruption. The descendant African American community worked with the academic and scientific communities on a respectful archaeological plan and eventual re-interment of the human remains removed from the project site — eventually totaling 419 individuals.

THE SUCCESS

The African Burial Ground is considered one of the most significant archaeological and historic finds in the United States of the 20th century, expanding understanding and knowledge of the lives and contributions to New York and the nation of generations of the African American Diaspora. At the urging of the ACHP and other consulting parties, the project was significantly redesigned, and the site was designated a National Historic Landmark in April 1993, memorializing the ongoing struggles of enslaved Africans. On February 26, 2006, President George W. Bush declared the African Burial Ground a National Monument.

Consulting parties involved in the African Burial Ground Section 106 process:

General Services Administration
 U.S. Army Corps of Engineers
 National Park Service
 Then-New York State Senator David Paterson
 ACHP
 Federal Steering Committee for the African Burial Ground
 New York City Landmarks Preservation Commission
 Mayor's Task Force on the African Burial Ground
 Schomburg Center for Research in Black Culture

Community Representatives:

African Burial Ground volunteers
 Descendants of the African Burial Ground
 Friends of the African Burial Ground
 Howard University

For more about Section 106 and the ACHP go to www.achp.gov

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Preserving America's Heritage

106 SUCCESS STORY

Iconic Pioneer Courthouse Gets 21st Century Makeover

Portland, Oregon



“It’s the single most important 19th century government building in the Pacific Northwest to survive into the 21st century. Opened in 1875 as the seat of the federal government in the region—incorporating the post office, judiciary, customs office, and tax department—the Pioneer Courthouse welcomed presidents, witnessed significant trials and court hearings, and has stood watch as Portland has grown from a small town to a large city.”

— PIONEER COURTHOUSE
HISTORICAL SOCIETY



THE STORY

Completed in 1875, Pioneer Courthouse is the oldest federal courthouse west of the Mississippi River still in use, and the oldest public building in Portland. Occupying a full city block facing the Pioneer Square Plaza in downtown Portland, the Italianate Style building is faced with smooth-cut sandstone and crowned with an octagonal wood cupola. In 1902, the building underwent its first major rehabilitation. In 1933, the courts and some post office functions relocated to a newly constructed courthouse nearby, and Pioneer Courthouse was unsuccessfully put up for sale despite community concerns. In 1939, Congress authorized its demolition, which was put on hold because of World War II and the Korean War. A second rehabilitation, in the early 1970s, increased the size of the building to better accommodate the U.S. Court of Appeals and a U.S. Postal Service (USPS) branch, reaffirming the building’s place as a civic asset. In 1973, Pioneer Courthouse was added to the National Register of Historic Places and designated a National Historic Landmark (NHL) in 1977. Following a series of major earthquakes and a diminished USPS presence in the building, the General Services Administration (GSA) commenced a planning effort to improve efficiency, safety, and security at the important community landmark.

THE PROJECT

In 2001, GSA received funding to complete a seismic retrofit, upgrade systems and security, introduce underground parking, and rehabilitate the building’s interior and exterior. An innovative seismic upgrade, a base isolation system, was proposed which included shear walls and anchoring of the floor to perimeter walls. In addition, for the courthouse to remain in the federal inventory and adequately house the Court of Appeals, GSA planned to recapture and reconfigure space formerly occupied by the USPS. The nature and extent of the proposed work posed serious challenges to the historic integrity of the courthouse.

THE 106 PROCESS

GSA was responsible for conducting the Section 106 process under the National

Photos: Above, restored façade and landscape (courtesy GSA); Right, Pioneer Courthouse circa 1950 (courtesy GSA); Pioneer Courthouse in Pioneer Square Plaza (courtesy M.O. Stevens, Wikimedia Commons)

CONTINUED >>>



Photos: Above, restored courtroom; Right, base isolators under the building installed to absorb the shock from a seismic event; the restored stairs (photos courtesy GSA)

Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies also are required to consult with parties that have an interest in the fate of the property when adverse effects may ensue.

Given the prominence of Pioneer Courthouse in the community, the project attracted significant public interest. The aspects of greatest concern were the introduction of an underground parking garage for the judges, an adverse effect, and the full removal of postal services. To resolve adverse effects, GSA consulted further with the Oregon State Historic Preservation Officer, the Advisory Council on Historic Preservation, the National Trust for Historic Preservation, the National Park Service, the city, and the building tenants and developed a Memorandum of Agreement (MOA).

The MOA set forth design review protocols, documentation standards for the building, and establishment of a Citizens Advisory Panel (CAP) to inform development of a public outreach and interpretation program. GSA also relocated the USPS function to the historic Gus J. Solomon U.S. Courthouse nearby. Immediately after execution of the MOA, the CAP developed a temporary interpretive plan for use during construction and then a permanent exhibit explaining the building's history, seismic upgrade, and rehabilitation. Following the protocols, GSA carried out an extensive restoration of the building's exterior and significant interior spaces along with the surrounding landscape.

THE SUCCESS

Through the Section 106 consultation process, GSA developed a comprehensive approach to restoration and necessary upgrades, responsive to the community and preservation needs. GSA committed to continued public access for tours and special events, a collaborative approach to interpretation, and continuing stewardship of the NHL. In doing so, GSA ensured long-term viability of Pioneer Courthouse through continued federal use, securing its future as a beloved icon of Oregon's heritage.

Consulting Parties:

General Services Administration
 ACHP
 Oregon State Historic Preservation Officer
 National Park Service
 United States Ninth Circuit Courts
 United States Postal Service
 City of Portland
 National Trust for Historic Preservation

For more about Section 106 and the ACHP go to www.achp.gov

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Preserving America's Heritage

106 SUCCESS STORY

Consultation Balances Preservation Solutions with Building Performance Philadelphia, Pennsylvania



“In short, this is a building worth keeping. This idea stands at the heart of the restorative work just completed, work that blended various needs and desires... that were unimagined in 1932.”

— DENNIS MONTAGNA
Historian, National Park Service



THE STORY

The First Congress of the United States established the U.S. Customs Service in 1789. As the nation grew and commerce expanded, it built customs buildings in port cities. By the turn of the 20th century, Philadelphia had become a prosperous center of industry and one of the nation's largest ports. After almost a century of operation, the U.S. Customs Service outgrew its original 1824 Greek Revival regional headquarters and constructed a new building to serve the port of Philadelphia. Designed by Ritter & Shay, the 17-story Art Deco building opened in 1934 as a product of the great federal building campaign of the Depression era. Distinguished in richness of materials, quality of design, and decorative program, the Custom House is an architectural icon in downtown Philadelphia and was listed in the National Register of Historic Places in 2011.

THE PROJECT

In response to the economic crisis of 2008, Congress passed the American Recovery and Reinvestment Act of 2009 (ARRA). The \$787 billion ARRA program spurred an unprecedented increase in federal infrastructure improvements, demanding condensed project delivery timeframes, design excellence, and exemplary regulatory and environmental compliance. This produced the largest surge in Section 106 reviews in decades. In March 2009, \$30 million in ARRA funding was allocated for the Custom House. Planned work included the restoration treatment of exterior masonry, replacement of multiple roofs, repair and replacement of windows and exterior lighting, restoration of the main entrance, and installation of a new, high-efficiency heating system.

THE 106 PROCESS

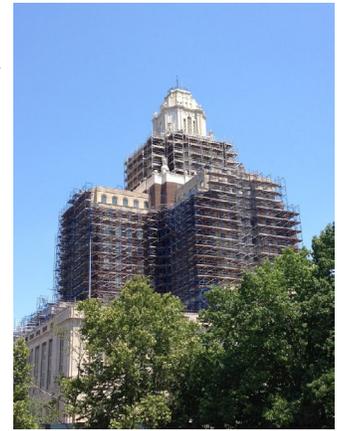
The General Services Administration (GSA) was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies also are required to consult with parties that have an interest in the fate of the property when adverse effects may ensue. GSA had completed an extensive restoration of prominent public

Photos: Above, U.S. Custom House, Philadelphia (photo by Bruce Andersen, Wikimedia Commons); Right, lobby ceiling and lobby interior (courtesy Library of Congress, Carol M. Highsmith Photography, Inc./GSA)

CONTINUED >>>



Photos: Left, historic view (courtesy GSA Center for Historic Buildings); Above, restored masonry (courtesy Sean Hearn/GSA); Right, exterior scaffolding (courtesy Thomas A. Rufo/GSA)



spaces in the 1990s, and by the mid-2000s, the agency began to evaluate solutions for the deteriorating façade of the Custom House. In January 2009, with ARRA funding on the horizon, GSA's Regional Historic Preservation Officer (RHPO) initiated early consultation with the Pennsylvania State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation provided technical assistance. Shortly thereafter, GSA began official consultation with consulting parties.

The consulting parties needed to consider alternative treatments to alleviate water infiltration in the masonry façade and address the existing windows with a sensitive hybrid design to meet energy and security needs.

THE SUCCESS

Through the Section 106 process, GSA administered the Philadelphia Custom House project in an efficient and effective manner, given the well-established relationship between the RHPO and all other parties. GSA's qualified team developed an innovative treatment for the failing masonry façade and a window solution that met energy, security, and preservation goals. Consultation was informed by original design documents, located at the SHPO's request, which helped the project plans comply with the Secretary of the Interior's Standards. GSA engaged the SHPO early and kept the consulting parties informed consistently throughout the course of the three-year project. The consultation for this complex undertaking was completed within six months after funding was secured.

The project earned several acknowledgements and awards in 2013. They include the following: Illuminating Engineering Society Illumination Award of Merit; Preservation Alliance for Greater Philadelphia Preservation Achievement Grand Jury Award; Mid-Atlantic Chapter Construction Management Association of America, Project of the Year; and, GSA Construction Management Award, Large Construction.

The Section 106 process was critical in making this ARRA-funded project a success. The outcome marks a milestone in GSA's long-term stewardship efforts for this prominent Philadelphia landmark.

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Consulting Parties:

- Pennsylvania State Historic Preservation Officer
- Philadelphia Historical Commission
- Preservation Alliance for Greater Philadelphia
- National Park Service

For more about Section 106 and the ACHP go to www.achp.gov



Preserving America's Heritage

106 SUCCESS STORY

ACHP Comment Helps Protect National Historic Landmark District Charleston, South Carolina



“The Section 106 process allowed the Courthouse to remain in its historic location and preserve the Four Corners of Law for our city and for all future generations. It is a marvelous process that, in this instance, helped preserve an important part of the city’s history and antiquity, and allowed for important civic uses to remain located in the center of the city. The outcome could not have been better.”

—JOSEPH P. RILEY JR.
Charleston Mayor, 1975-2016



THE STORY

Charleston, South Carolina, founded in 1670, was the cultural center of the antebellum South and is known for its rich collection of historic architecture spanning three centuries. The city adopted the country’s first historic preservation ordinance in 1931, and most of the city center has been designated a National Historic Landmark (NHL) District. A focal point of the district is the intersection of Meeting and Broad streets, commonly referred to as the “Four Corners of Law,” where each corner is anchored by a historic building representing an aspect of the law. They include St. Michael’s Episcopal Church (1751-1761), also an NHL, which symbolizes ecclesiastical law; the Charleston County Courthouse (1790-1792); Charleston City Hall (1800-1804); and the U.S. Post Office and Courthouse (1896). Individually listed on the National Register of Historic Places, the U.S. Post Office and Courthouse is an excellent example of Second Renaissance Revival architecture.

THE PROJECT

In 1980, the General Services Administration (GSA) announced plans to build an annex to the U.S. Post Office and Courthouse for the U.S. District Court for the District of South Carolina. The proposed site was an adjacent park. Due to growth in the court’s program needs, the original plan for a 12,000-square-foot addition soon almost tripled in size, sparking significant local controversy. The large scale of the project and its modern design led to objections regarding visual effects to the courthouse and the surrounding NHL district, particularly the Four Corners of Law. Project opponents also raised concerns regarding the potential seismic impacts of construction to the foundations of nearby historic buildings, notably St. Michael’s Church, and loss of part of the park.

THE 106 PROCESS

GSA, the federal agency carrying out the project, was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects on those properties of the projects they carry out, fund, or permit. Federal agencies also are

Photos: Above, a view of Meeting and Broad streets (photo by Lauren Northup); Right, historic postcard of the Four Corners of Law (courtesy Boston Public Library); east and south sides of courthouse, 1963 (Louis I. Schwartz, photographer, courtesy HABS/Library of Congress Prints and Photographs Division)



Photos: Left, courthouse and St. Michael's Church (Flickr photo by Ken Lund); Above, National Register plaque; Right, new Courthouse Annex and courtyard

required to consult with parties that have an interest in the fate of historic properties when adverse effects are likely to ensue.

Consultation among GSA, the courts, the Advisory Council on Historic Preservation (ACHP), the South Carolina State Historic Preservation Officer, the City of Charleston, and the Historic Charleston Foundation led to some changes in the project's design, but when the parties could not reach agreement, consultation was terminated. In accordance with the Section 106 regulations, the ACHP membership convened in Charleston in December 1983 to review the case and hear public testimony. In its resulting comments to the GSA Administrator, the ACHP recommended that GSA re-examine its proposal, consider building on another nearby site, and undertake engineering studies to avoid damage to St. Michael's Church. In response, GSA informed the ACHP that it intended to proceed with the project on the original site but would modify its plans to be responsive to the ACHP's comments in certain respects, such as addressing seismic impacts to St. Michael's. Local opposition continued, however, leading to introduction of legislation in Congress to eliminate authorization of the project.

Recognizing the federal responsibility to minimize harm to NHLs, GSA ultimately decided to take another look at the proposal as recommended by the ACHP and consulted further with local preservationists, city and state officials, and judges from the U.S. District Court. This led to development of a new design that situated the annex differently on land purchased by the city, preserved the park, and screened the annex from the Four Corners of Law intersection. Based on this compromise, construction began in 1986, and the courthouse annex opened in 1988.

THE SUCCESS

The Courthouse Annex is widely viewed to be harmonious with the NHL historic district and the Four Corners of Law. Building upon this successful solution, when more courthouse space was needed in later years, GSA elected to renovate properties on Broad Street to obtain the additional space. The Section 106 process was the primary forum for public involvement and proved essential to informed federal decision making. The process elevated the community's concerns to the level of GSA's leadership and positively influenced the project. In the end, GSA's new design fully addressed the concerns raised in the ACHP comments. The Section 106 process helped maintain the integrity of the Charleston NHL District and the historic U.S. Post Office and Courthouse while meeting the needs of the federal judiciary.

Consulting Parties:

General Services Administration
 ACHP
 U.S. District Court for the District of South Carolina
 South Carolina State Historic Preservation Officer
 City of Charleston
 Historic Charleston Foundation

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