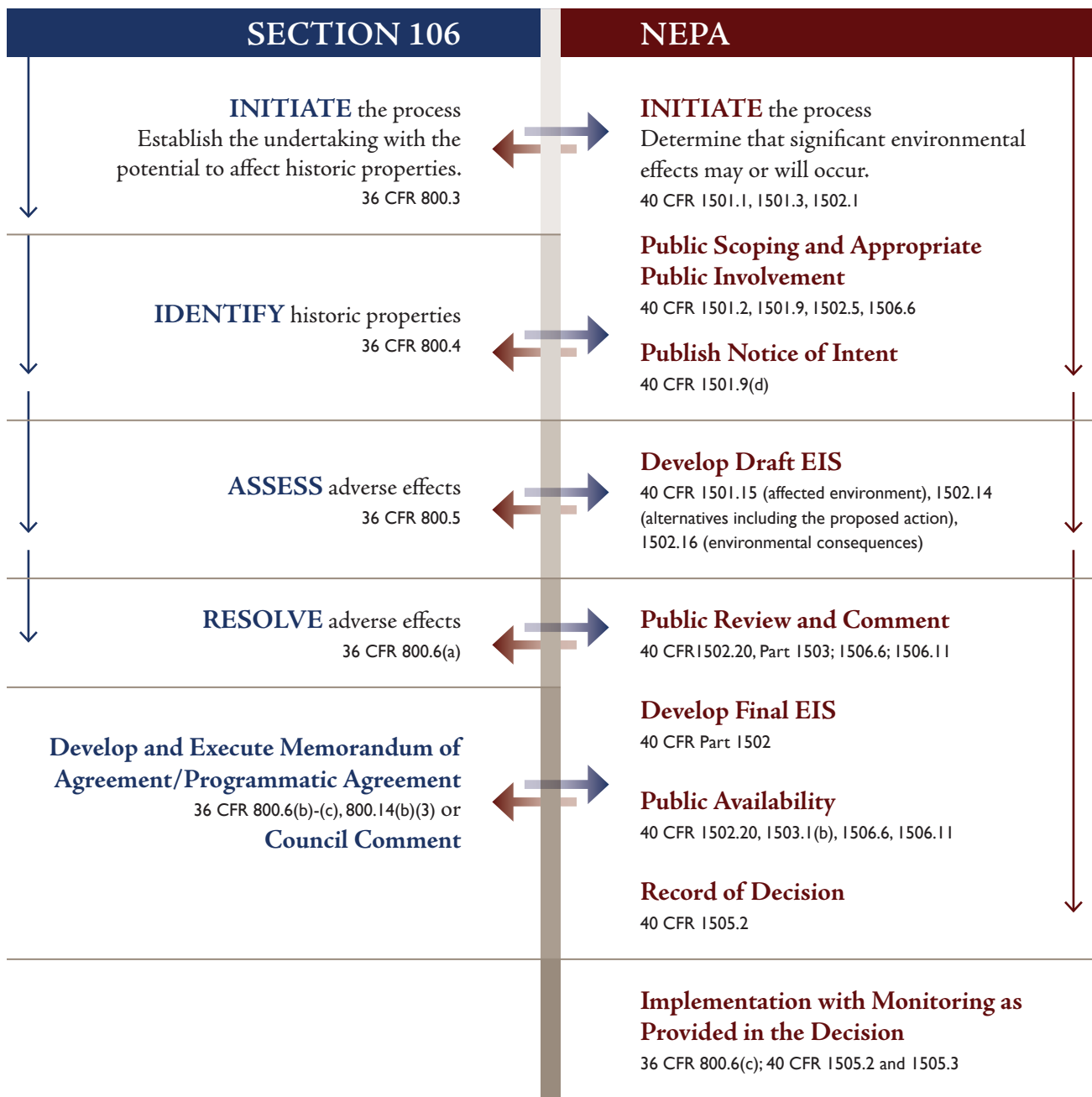




TIMING AND COMMUNICATION

Section 106 and Environmental Impact Statement

The Advisory Council on Historic Preservation (ACHP) is utilizing the opportunity of the Council on Environmental Quality's (CEQ) revised National Environmental Policy Act (NEPA) regulations to review the agencies' joint handbook. In response to immediate questions regarding timing and coordination between Section 106 and NEPA, below is an updated flowchart comparing the two review processes.



DEFINITIONS

The following is an updated list of terms and definitions to assist practitioners in understanding how the two laws line up and where they differ.

SECTION 106	NEPA
<p>Undertaking (36 CFR 800.16(y))</p> <p>A project, activities, 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.</p>	<p>Major Federal Action (40 CFR 1508.1(q))</p> <p>An activity or decision subject to federal control and responsibility subject to the following: (1) Major federal action does not include the following activities or decisions: (i) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; (ii) Activities or decisions that are non-discretionary and made in accordance with the agency’s statutory authority; (iii) Activities or decisions that do not result in final agency action under the Administrative Procedure Act or other statute that also includes a finality requirement; (iv) Judicial or administrative civil or criminal enforcement actions; (v) Funding assistance solely in the form of general revenue sharing funds with no federal agency control over the subsequent use of such funds; (vi) Non-federal projects with minimal federal funding or minimal federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project; and (vii) Loans, loan guarantees, or other forms of financial assistance where the federal agency does not exercise sufficient control and responsibility over the effects of such assistance (for example, action does not include farm ownership and operating loan guarantees by the Farm Service Agency pursuant to 7 U.S.C. 1925 and 1941 through 1949 and business loan guarantees by the Small Business Administration pursuant to 15 U.S.C. 636(a), 636(m), and 695 through 697g). (2) Major federal actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1506.8 of this chapter). (3) Major federal actions tend to fall within one of the following categories: (i) Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, 5 U.S.C. 551 et seq. or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency’s policies which will result in or substantially alter agency programs. (ii) Adoption of formal plans, such as official documents prepared or approved by federal agencies, which prescribe alternative uses of federal resources, upon which future agency actions will be based. (iii) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.</p>
<p>Area of Potential Effects (36 CFR 800.16(d))</p> <p>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.</p>	<p>Affected Environment (40 CFR 1502.15)</p> <p>The EIS shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area.</p>

SECTION 106	NEPA
<p>Effect (36 CFR 800.16(i), 800.5(a)(1))</p> <p>An alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places.</p>	<p>Effect or Impact (40 CFR 1508.1(g))</p> <p>Changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.</p> <p>See also 40 CFR 1508.1(g)(1)-(2)</p>
<p>Consulting Party (36 CFR 800.2)</p> <p>Parties that have consultative roles in the Section 106 process, including State Historic Preservation Officers (SHPOs); Tribal Historic Preservation Officers (THPOs); Indian tribes; Native Hawaiian organizations; representatives of local governments; applicants for federal assistance, permits, licenses, and other approvals; the ACHP; and other individuals and organizations with a demonstrated interest in the undertaking or the affected historic properties.</p>	<p>Cooperating Agency (40 CFR 1501.8(e)) Participating Agency (40 CFR 1501.8(w))</p> <p>Cooperating Agency means any federal agency (and a state, tribal, or local agency with agreement of the lead agency) other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action that may significantly affect the quality of the human environment.</p> <p>Participating Agency means a federal, state, tribal, or local agency participating in an environmental review or authorization of an action.</p>
<p>Consultation (36 CFR 800.16(f))</p> <p>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.</p>	<p>Public Involvement (40 CFR Part 1503, 1506.6)</p> <p>Providing other interested stakeholders and the public with information about the proposed action and its potential impacts, providing opportunities to review draft and final documents, and requesting comments.</p>
<p>Historic Property (36 CFR 800.16(l))</p> <p>Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places. 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.</p>	<p>Cultural Resource (1508.1(g)(1))</p> <p>Effects considered in the NEPA review include ecological, aesthetic, historic, cultural, economic, social, and health effects.</p>
<p>Significance (36 CFR 800.4(c))</p> <p>Used to describe the historic property that has certain character defining features that make it historically significant and therefore eligible for listing in the National Register with the requisite integrity. See National Register of Historic Places eligibility criteria. (40 CFR § 60.4)</p>	<p>Significant Effects (40 CFR 1501.3(b))</p> <p>In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with section 1501.9(e)(1).</p>

SECTION 106	NEPA
<p>Adverse Effect (36 CFR 800.5(a))</p> <p>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.</p> <p>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.</p>	<p>Significant Effects (40 CFR 1501.3(b))</p> <p>In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with section 1501.9(c)(1).</p> <p>Effects (40 CFR 1508.1(g))</p> <p>Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives. (1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. (2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action. (3) An agency’s analysis of effects shall be consistent with this paragraph (g). Cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed.</p>
<p>Mitigation (36 CFR 800.6(a))</p> <p>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 to historic properties.</p> <p>Mitigation is a measure to resolve specific adverse effects to an identified historic property or properties by offsetting such effects.</p>	<p>Mitigation (40 CFR 1508.1(s), 1505.2 and 1505.3)</p> <p>Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes the following: avoiding the impact altogether, minimizing impacts, rectifying the impact, reducing or eliminating the impact, and compensating for the impact.</p>



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