

A Brief Overview of Section 106 of the National Historic Preservation Act

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National Historic Preservation Act of 1966



The National Historic Preservation Act sets forth national policy, a broad philosophy, and a framework for decision making.

The Legal Framework: Federal Preservation Responsibilities

Section 106 requires that all federal agencies consider historic properties as part of their decision-making and calls for an advisory review of all federal undertakings

What is Section 106?

- *The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be,*

- *take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation...a reasonable opportunity to comment*

What is Section 106?

The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation... commencing at the early stages of project planning.

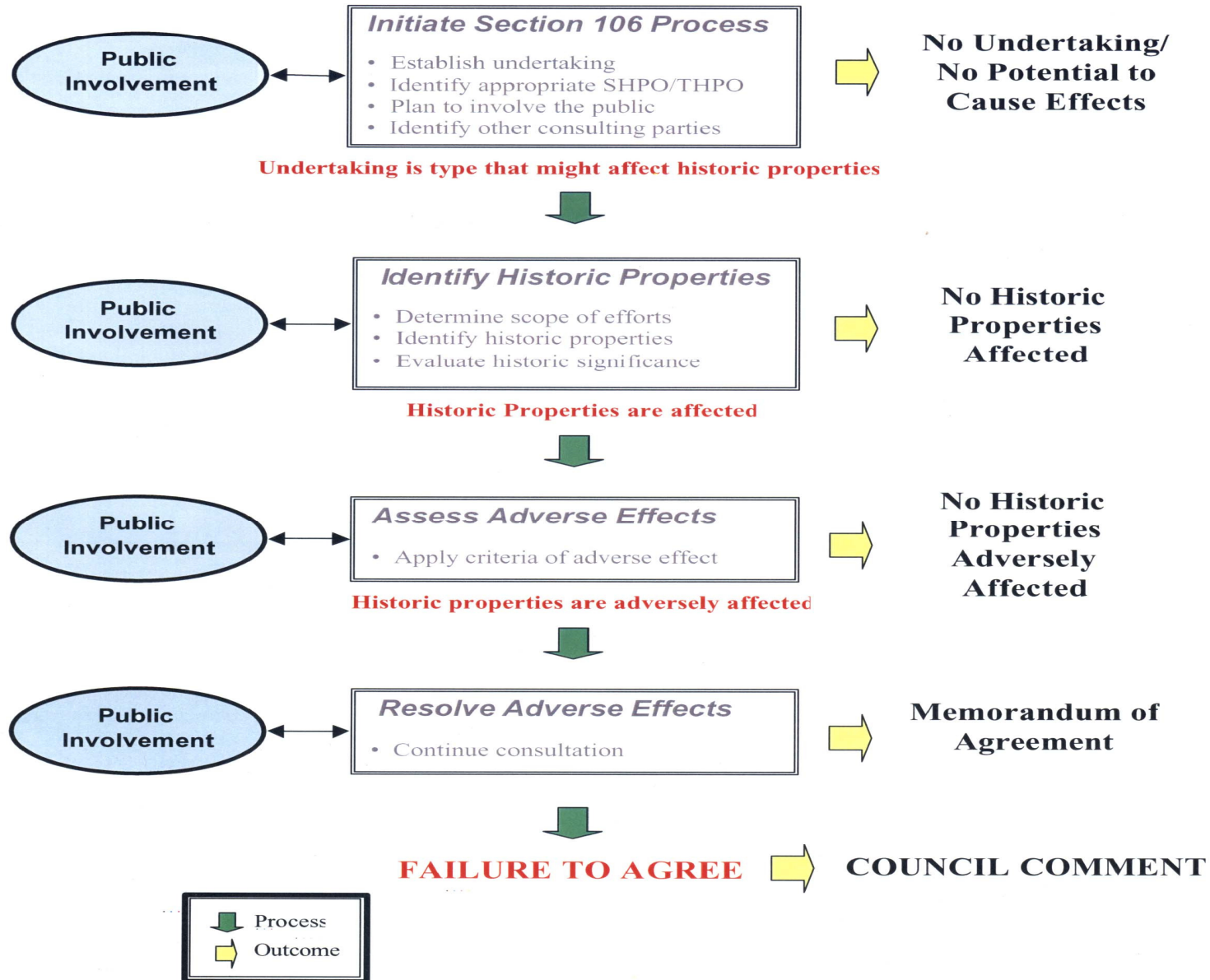
36 CFR 800.1(a)



Section 106 is a process of consultation



THE SECTION 106 PROCESS



Consultation!

- ***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.

36 CFR 800.16(f)

Who Are the Consulting Parties?

- Federal Agency
- Other Federal Agencies
- State Historic Preservation Officer (SHPO)
- Tribal Historic Preservation Officer (THPO) if applicable
- Federally-recognized tribes
- Local government
- Applicants for federal funds, licenses, or permits
- Other stakeholders
- Public
- Advisory Council on Historic Preservation

Multiple Agencies

If more than one agency is involved in an undertaking, some or all of the agencies may designate a lead Federal agency

Those who do not designate a lead Federal agency remain individually responsible for compliance with Section 106

36 CFR 800.2(c)

Multiple Agencies

Caveats:

Document a decision to defer to the lead federal agency
(and copy SHPO)

Pay close attention to lead agency's consultation

Consultation with Indian Tribes

NHPA Amended in 1992

Historic properties of religious and cultural significance to an Indian tribe may be located on ancestral, aboriginal, or ceded lands of that tribe.

What is required:

a reasonable and good faith effort to identify Indian tribes that attach such significance but may now live at great distances from the project.

The Federal agency may invite state recognized or non-recognized groups to participate in consultation based on a demonstrated interest in the undertaking's effects on historic properties.

Plan to involve the public

- Existing Agency procedures may be used if adequate

Agency outreach to the public should also consider:

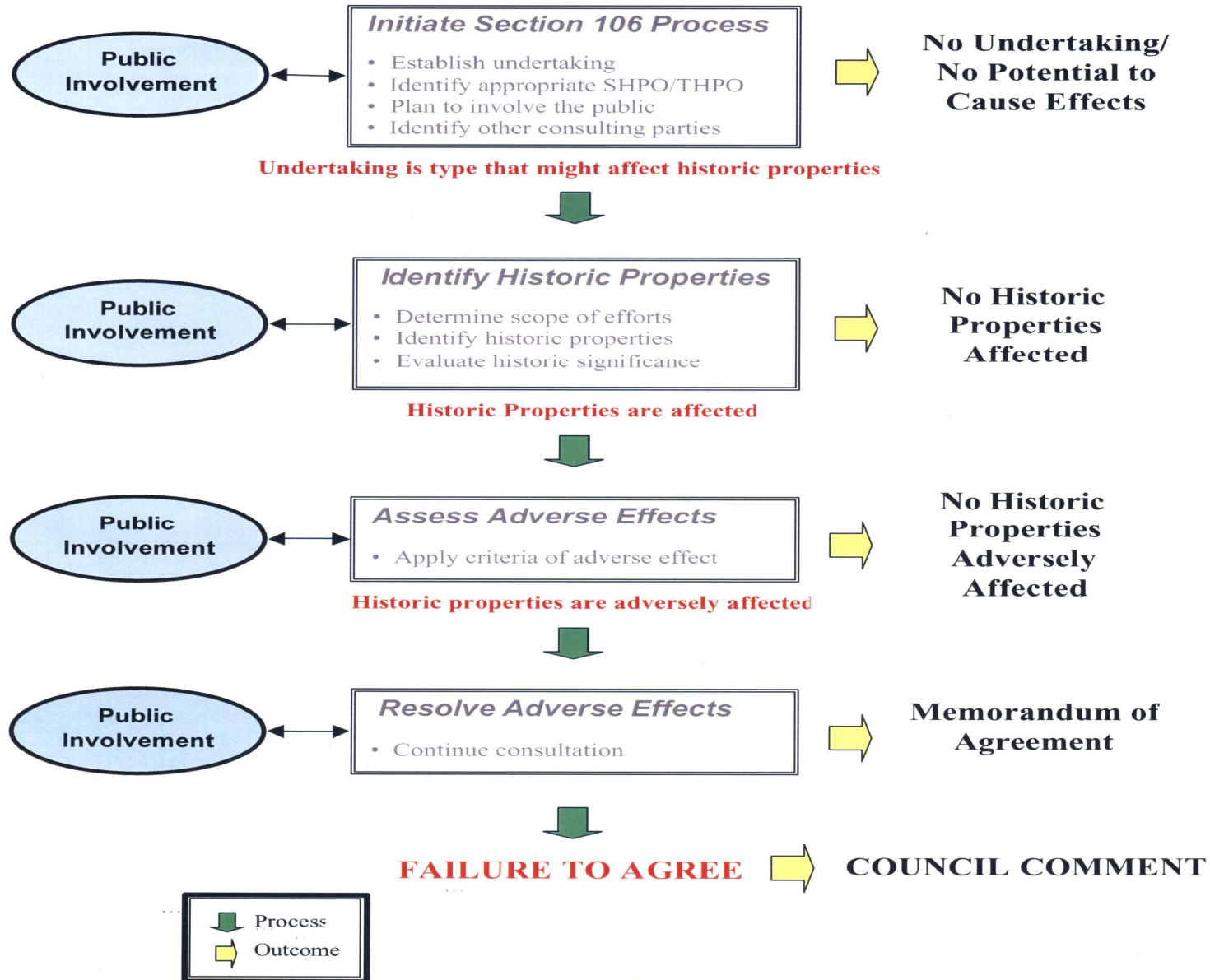
- nature and complexity of the undertaking and effects;
- relationship of Federal involvement to the undertaking;
- likely public interest.

Consultation

Remember:

- Consultation is not just with the SHPO

THE SECTION 106 PROCESS



Identifying Historic Properties

What makes a property *historic*?

For the purposes of Section 106, historic properties are defined as any prehistoric or historic site, district, building, structure or object *listed* on or *eligible* for listing on the National Register of Historic Places.

The National Register of Historic Places

- The official list of buildings, structures, sites, objects and districts that embody the “historical and cultural foundations of the nation.”
- Maintained by the National Park Service
- Includes places of local, state and national significance
- Properties may not be listed over the objections of a majority of private property owners

The Criteria for Evaluation

A. Association with an event or pattern of events

Robert Russa Moton High School, Farmville



The Criteria for Evaluation

- B. Associated with a person significant in our past
Patsy Cline House, Winchester



The Criteria for Evaluation

C. Distinctive architecture or the work of a master

Larkey-East Cabin, Scott County



The Criteria for Evaluation

D. Information Potential (Archaeological Sites)

Artifacts from Werowocomoco, Gloucester County



Identifying Historic Properties

Every project has an APE

No, not this type of APE.

An area of potential effects



Identifying Historic Properties

The APE is defined in 36 CFR Part 800.16 as the:

“geographic area or areas within which an undertaking may directly or indirectly cause changes 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.”

Identifying Historic Properties

What do I need to consider when determining the APE?

- direct physical effects



Identifying Historic Properties

What do I need to consider when determining the APE?

- 1. Visual effects. Consider the area(s) within which an undertaking will be visible.
- 2. Audible effects. Consider the area(s) within which the project's noise, if any, could be heard.
- 3. Sociocultural effects. Consider the area(s) within which the project may cause changes in land use, traffic, public access, etc.
- 4. Indirect or secondary effects. Consider how the project may affect the area's future.

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Identifying Historic Properties

- When determining the APE, it *is not necessary* to know whether any historic properties exist. . . anywhere.
- Before you can decide *what* an undertaking may affect, you must first decide *where* to look.

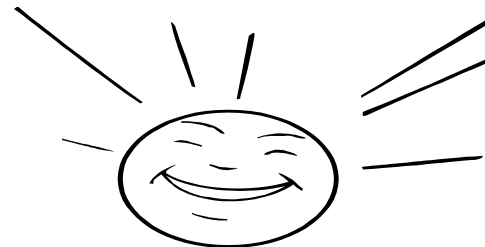
Identifying Historic Properties

The identification process ends when the Federal Agency, SHPO and other consulting parties agree that:

- No historic properties **exist** within the APE;
- The project will not affect any such properties.



The Agency makes a determination of **No Historic Properties Affected**



Assess Adverse Effects

- Historic properties are present and the undertaking may affect (alter, damage, or destroy) those characteristics that render the properties historic.
- Continue consultation

Assess Adverse Effects

What do you do when historic properties are affected?

- notify all consulting parties
- invite their views on the effects
- assess adverse effects, if any, in accordance with 36 CFR Part 800.5.

Assess Adverse Effects

When historic properties will be affected.....

Agency must consider:

- both direct and indirect effects;
- reasonably foreseeable effects (cumulative, later in time, or at a distance); and,
- all qualifying characteristics of the property.

Apply the Criteria of Adverse Effect

Criterion of Adverse Effect

Adverse effect if:

may alter, directly or indirectly, ... characteristics ... that qualify the property for ... the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Assess Adverse Effects

The agency official may propose a No Adverse Effect finding when - in consultation with the SHPO/THPO:

- criteria of adverse effect are not met
- undertaking is modified
- conditions are imposed
 - 、 e.g. review of plans by SHPO to ensure undertaking will meet the *Standards*

Assess Adverse Effects

Finding of No Adverse Effect

Examples

- Demolition of a non-contributing building in an historic district.
- A rehabilitation project that meets the Secretary of the Interior's *Standards for the Treatment of Historic Properties*.
- Measures to avoid an archaeological site



Apply Criteria of Adverse Effect

- Simple Avoidance may not be avoidance



Examples of Direct Effects

- Physical destruction of or damage.
- Alteration of the property, including rehabilitation that is not consistent with the Secretary of Interior's *Standards for the Treatment of Historic Properties*.
- Removal of the property from its historic setting.
- Neglect

Adverse Effects



Data recovery on an archaeological site is defined as an adverse effect

Adverse Effects

Introduction of

visual

atmospheric

audible

elements that diminish a property's integrity.

Resolve Adverse Effects

The Federal Agency must:

- Contact the ACHP and afford it an opportunity to consult.
- Continue to consult with SHPO and other consulting parties.
- Make documentation available to the public

Assess Adverse Effects

- Visual Effects Difficult to Evaluate
- Often incremental
- Cannot be easily measured
- Subjective
- Requires more in depth evaluation

Assess Adverse Effects

Questions to Ask

- What makes the resource significant?
- What characteristics are important?
- Is there still historic integrity?
- How will visibility change understanding of the resource?
- How will visibility change one's experience of the resource?

Resolve Adverse Effects

Consultation should result in an agreement

An **Memorandum of Agreement (MOA)** is a legal document signed by all parties that explains under what circumstances the adverse effect has occurred and lays out the means by which the federal agency plans to mitigate that adverse effect.

Special Circumstances

Intentional Adverse Effects by Applicants

Agency responsibility.

Section 110(k) of the NHPA 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.

RCD Staff Directory

[Home](#) > [DRC Homepage](#) > Staff Directory

Review & Compliance Division (RCD)

Staff Directory

If you are interested in:	Contact:
General guidance on Section 106 review process	Roger Kirchen
Cell Tower Projects	Chris Novelli
Corps of Engineers Permits	Greg LaBudde
Department of Defense Projects	Marc Holma
FDIC / OCC	Roger Kirchen
HUD / CDBG Projects	Roger Kirchen
National Park Service Projects	Ethel Eaton
Transportation Enhancement (TEA-21) Projects	Roger Kirchen
USDA / Rural Development Projects	Roger Kirchen
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FTA Projects	Roger Kirchen
State EIR (Department of Environmental Quality) Process	Roger Kirchen
State University Projects	Roger Kirchen
State-Owned Buildings - Demolition of	Roger Kirchen
Permits for Archaeological Investigations on State Land	Roger Kirchen
Permits for Archaeological Removal of Human Remains	Joanna Wilson Green
Protection of Burials	Joanna Wilson Green

Important Links for Review & Compliance

[RCD homepage](#)

[ePIX](#)

[Federal Project Review](#)

[State Project Review](#)

[Technical Assistance](#)

[Cell Tower Review](#)

[Permits](#)

[Laws & Regulations](#)

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[DHR Official Survey Manual \(PDF\)](#)

For a more complete listing of staff contact information, visit the DHR [staff directory](#).

For more information, see this [Master List of DHR staff contacts for state and federal agencies](#).

Updated: 4/18/18

Program Alternatives – 36 CFR § 800.14

Allows federal agencies to streamline the Section 106 process by tailoring the process to the agency's programs and decision-making process.