

National Historic Preservation Act (NHPA) Section 106



What does NPHA Section 106 do?



- The **National Historic Preservation Act** (NHPA) Directs Federal Agencies to Consider the Effects of their Actions on Historic Properties.
- **Historic Properties** are: *any prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places.*

NHPA Examples

- Examples include:
 - Traditional Cultural Places
 - Archaeological Sites (including artifact scatters)
 - Bridges, Dams, Docks, Earthworks, etc.
 - Historic Buildings, Roads, Railroads, etc.
 - Burials, whether marked or unmarked.



Purpose of Section 106 Consultation

- NHPA Section 106 Requires **consideration** of Historic Properties
- Decision-Making is **Informed** by **Consultation**
- Federal agencies **must:**
 - "Afford a reasonable opportunity to comment"
 - "Accommodate historic preservation concerns with the needs of Federal undertakings through consultation"



Consulting Parties

- The **Federal On Scene Coordinator (FOSC)** must make reasonable and timely efforts to notify the appropriate parties
 - Send multiple messages (Phone calls, emails, written letters)

Consulting parties

- Federally Recognized Indian tribes and Native Hawaiian Organizations
- State Historic Preservation Officer (SHPO)
- Tribal Historic Preservation Officer (THPO)

Certified Local governments

- Certified interested parties for NHPA stewardship
- Preservation Organizations
- National Park Service, etc.

Advisory Council on Historic Preservation (ACHP)

- Allow opportunity for comments to the public



Trigger for Section 106 Consultation

- When a **federal undertaking** has the potential to affect historic/cultural resources.
- **What is a Federal Undertaking/Action?**
 - Directing an action: (i.e., order hard boom around a vessel)
 - Taking an action: (establish a unified command to conduct pollution response activities)
 - Permitting an action to be taken: (i.e., allow hard boom to be anchored to the sea floor)
 - Spending federal money: (OSLTF, CERCLA, etc)



Consultation for Section 106 is on the effect of response activities
(not the impact of the spill itself)

Section 106 Key Terms

- **State Historic Preservation Officer (SHPO)**- State official who administers the state historic preservation program.
- **Tribal Historic Preservation Officer (THPO)**- Tribal official who carries out SHPO responsibilities on tribal lands.
- **Advisory Council on Historic Preservation (ACHP)**- Independent federal agency that oversees NHPA compliance and provides policy guidance.
- **Historic Property**- Any prehistoric or historic district, site, building, structure, or object listed or eligible for listing
 - **Includes properties of traditional religious or cultural importance to Tribes or Native Hawaiian Organizations.**



California
Office of
Historic
Preservation



Section 106 Key Terms Continued

- **Area of Potential Effects (APE)** -Area where a project may affect historic properties (directly or indirectly).
- **No Adverse Effect-** Project affects a property but does not diminish its historic integrity.
- **Adverse Effect-** Project diminishes characteristics that make the property historic.
- **Direct Effect-** Physical alteration, damage, or removal of the property.
- **Indirect Effect-** Changes to use, setting, or surrounding elements that impact integrity.



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

C
O
N
S
U
L
T
A
T
I
O
N

Historic Property Specialist

Sits in Unified Command,
Environmental Unit or Planning Section

Ensures responsibilities under NHPA
106/97PA are met

Liaise with Operations

Reports to/Advises the FOSC

Benefits of Historic Property Specialist

Advisory Role

- Interpret NHPA 106 Requirements
- Identify Resources at Risk
- Recommend protection strategies
- Communicate concerns

Consultation and Support

- Facilitate consultation with Tribes and interested parties
- Educate responders on cultural resource considerations
- Manage and share cultural resource data

1997 Programmatic Agreement

Section 106 Requirements in Emergency Situations

- An emergency exists when a spill response must occur so quickly that normal Section 106 procedures are not practicable.
- 1997 PA is a nationwide agreement signed by EPA, Coast Guard, ACHP, DOI, and others
- Allows responders to act quickly, while still meeting the substantive requirements of NHPA
- Ensures cultural resources are considered and protected even when rapid response is required



1997 PA in Practice for Tribal Nations

The Federal OSC will consult with the Tribe to verify historic properties and understand potential impacts as soon as life-safety threats are addressed.

Responders must consider ways to avoid or reduce impacts to cultural sites during emergency actions.

If cultural resources are discovered, work stops, the area is protected, and the Tribe is contacted for consultation.

Pre-incident planning with Tribes, including identifying sensitive areas and who to contact during a response.

Site location and cultural information provided by Tribes is kept confidential in accordance with the PA.

Emergency Response Example

- Cuyama River Incident
- March 2020: 6000 gallons crude oil spilled into Cuyama River
- Unified Command: Responsible Party, Santa Barbara County Fire, CA Dept Fish and Wildlife, and EPA
- Santa Ynez Band of Chumash Indians alerted UC of cultural significance and sensitivity to this area.
- UC met substantive NHPA requirements by working with cultural monitors from the tribe during removal activities



Questions

