

PART II

CHAPTER 1

**A Summary of Section 106
of the National Historic Preservation Act**

March 2014

Contents

| | |
|--|----------|
| 1-1.0 National Historic Preservation Act | 3 |
| 1-2.0 National Register of Historic Places..... | 3 |
| 1-3.0 Section 106 of the NHPA | 4 |
| References | 5 |

1-1.0 National Historic Preservation Act

When the [National Historic Preservation Act](#) (NHPA) (16 USC 470) was passed in 1966, Congress sought to ensure that impacts of growth and development are considered when federal projects are planned and carried out. This law reflected the nation's growing perception that although modern development is important and necessary, it too often leads to the loss of something that everyone cherishes - the character of our communities and our cultural roots, as expressed in historic properties.

The opening section of NHPA states that "...the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."¹ In the NHPA, Congress stated that it would be the policy of the Federal Government to "...foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony..."²

The NHPA established the [National Register of Historic Places](#) (NRHP), which is administered by the Secretary of the Interior, through the National Park Service (NPS). Items considered for the NRHP include districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture, which possess national, state, or local significance. The Act also provides funding for the State Historic Preservation Officer (SHPO), and staff, to conduct surveys and develop comprehensive preservation planning standards for state programs.

1-2.0 National Register of Historic Places

The NRHP was created by the NHPA, which gives the Secretary of the Interior the responsibility for its maintenance and expansion (through the nomination and listing of historic resources). The NRHP is the official federal record of resources that have been identified as worthy of recognition and preservation. Listing is "honorary," in that it does not require a private property owner to preserve the resource, nor does it prevent the owner from modifying or demolishing the resource if private funds are used. The main types of resources that can be listed in the NRHP include districts, sites, buildings, structures, and objects. In order to be listed, the resource must be significant in American history, architecture, archaeology, engineering, and/or culture and retain sufficient integrity to convey that significance. In terms of recognition, resources can be significant on a national, state, or local level.

In order to be considered an historic property during Section 106 review, a property can either be already listed in the National Register or can be eligible for listing. A property is considered eligible when it meets specific criteria established by the NPS. As a general guideline, a property should be at least 50 years old to be considered a historic property, though cases of exceptional significance can be exempted from the "50 years" rule. More information about the NRHP can be found on the National Park Service website: <http://www.cr.nps.gov/nr/>.

¹ 16 USC 470(b)(2). See Advisory Council on Historic Preservation

, Nation Historic Preservation Act of 1966, as Amended through 2006 [With annotations]. <http://www.achp.gov/docs/nhpa%202008-final.pdf>

² Ibid.

1-3.0 Section 106 of the NHPA

The purpose of Section 106 of the NHPA is to “...achieve a balance between preservation of our nation’s heritage and the development activities that are necessary to maintain and improve our standard of living...”³ As such, Section 106 requires all federal agencies to take into consideration the effect of federally assisted, licensed, or permitted projects on cultural resources that are listed, or eligible for listing in the National Register of Historic Places (NRHP). Section 106 also requires that the Advisory Council on Historic Preservation (ACHP) be afforded an opportunity to comment on such effects. The process for complying with Section 106 is set forth in the implementing regulations of [36 CFR Part 800](#) as amended in 2004.

Section 106 is a procedural law. While a specific outcome is not mandated, the Section 106 process must be followed before the federal agency will approve an undertaking. The key aspect in successfully completing Section 106 is consultation. The NHPA defines consultation as the “...process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them...”⁴ The basic steps in the Section 106 consultation process are listed below and are each discussed more in-depth in subsequent chapters.

- Identify consulting parties and invite them to participate in consultation.
- Establish an area of potential effects (APE).
- Identify historic properties within the APE.
- Evaluate effects on historic properties within the APE.
- Resolve “adverse effects,” if any, on historic properties [this can entail the preparation of a Memorandum of Agreement (MOA)].

The procedures presented in subsequent chapters are not intended to be used as a substitute for the Section 106 regulations or the Section 106 guidance issued by the ACHP. Applicants, consultants, and others responsible for preparing Section 106 documentation for FHWA review should carefully review not only these procedures but also the Section 106 regulations themselves and the related guidance materials on the ACHP's web site. In particular, when questions arise concerning the meaning of particular provisions in the Section 106 regulations, it is important to review the “[Section-by-Section Questions and Answers](#)” in the ACHP's Section 106 User's Guide. In the event of any unintended inconsistencies between these procedures and the Section 106 regulations or the ACHP's guidance, the Section 106 regulations and ACHP guidance will take precedence.

³ SRI Foundation, *Section 106 Principles and Practice*, http://www.srifoundation.org/pdf/WKSHP_2.pdf

⁴ Section 800.16(f). see Advisory Council on Historic Preservation, 36 CFR 800 – Protection of Historic Properties. <http://www.achp.gov/regs-rev04.pdf>

References

Advisory Council on Historic Preservation

2008 Nation Historic Preservation Act of 1966, as Amended through 2006 [With annotations].

Electronic document accessed January, 2014, <http://www.achp.gov/docs/nhpa%202008-final.pdf>

SRI Foundation

n.d. *Section 106 Principles and Practice*. SRI Foundation, Rio Rancho, New Mexico. Electronic document accessed January, 2014, http://www.srifoundation.org/pdf/WKSHP_2.pdf

