



NPS Nationwide Programmatic Agreement National Guidance Document



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Note to Readers

This guidance document is intended for use by multiple audiences: park and regional staff; cultural resources, facilities maintenance, and natural resources staff; superintendents and park managers; and others wishing to learn more about using the 2008 NPS Nationwide Programmatic Agreement (PA) and compliance with Section 106 of the National Historic Preservation Act.

Where the Nationwide PA and Section 106 intersect with other cultural resource programs, concepts, or NPS policy documents (e.g., the National Register of Historic Places, *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, *NPS Management Policies*), brief information is provided; however, this document is not intended to replace technical information about cultural resources management in general. Please also note that this document generally uses language and terms that are used in the PA, which may differ from terminology commonly used in other NPS systems and processes (e.g., the PA uses the term “Cultural Resources Team rather than “Interdisciplinary Team”).

While this guidance is intended to be read as a stand-alone document, it isn't the only source of information about Section 106 compliance. A wide range of publications, websites, and training courses related to Section 106 are available through the NPS, the Advisory Council on Historic Preservation (ACHP), and private organizations. We also encourage you to explore the ACHP website at www.achp.gov for further information about the Section 106 process and to find links to training for Section 106 practitioners. Another excellent source of information is the Section 106 page on the NPS Common Learning Portal at <https://mylearning.nps.gov/library-resources/section106/>.



Please keep in mind that Section 106 is fundamentally about communication and planning, and that the process works best when it is initiated early *and* when the right subject matter experts are at the table from the very beginning of planning for a project. We want to emphasize that the examples of activities given in the PA (such as preservation maintenance activities) are not exhaustive and that activities of a similar size, scale, and scope may also be covered under the PA. However, before deciding, it will be important for the Superintendent to engage the right people with the right qualifications in the discussion to make a common-sense decision. Talking with your colleagues who work with and are involved in Section 106 can be a valuable way to learn more about the process; it also makes for better overall project development and execution. Be willing to reach out to park and regional Section 106 Coordinators, facility specialists and managers, planners, and other resource management professionals as early as possible during the planning stages of a project. Likewise, talking with staff at State Historic Preservation Offices, Tribal Historic Preservation Offices, other Federal agencies, and the ACHP is another way to gain valuable knowledge and obtain advice, particularly when dealing with complex situations.

Finally, the best way to learn about Section 106 is through actual case work. No training course or guidance document can prepare you for all of the eventualities that may be encountered during compliance with Section 106.

Best wishes to you as you use the NPS Nationwide PA.



Introduction

Section 106 of the National Historic Preservation Act (NHPA), 54 USC § 306108 establishes a process for review of Federal undertakings for effects on historic properties and requires Federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve. More specifically, Section 106 requires Federal agency heads to take into account effects of their proposed undertakings on historic properties (which are defined as properties eligible for listing or listed in the National Register of Historic Places) prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license. Section 106 also requires Federal agency heads to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment.

While it does not mandate preservation, Section 106 is related to other NHPA provisions designed to further national historic preservation policy goals. For example, Section 110 sets out responsibilities intended to ensure that preservation is integrated into agency programs. In the National Park Service (NPS), each park is responsible for complying with Section 106.

The ACHP's implementing regulations for Section 106 of the NHPA, "Protection of Historic Properties" (36 CFR Part 800) allow Federal agencies to develop Programmatic Agreements to govern implementation of "routine management activities." In 2008, the NPS entered into a Nationwide Programmatic Agreement (PA) with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO). The PA addresses NPS compliance with Section 106 of NHPA including its consultation with State Historic Preservation Officers, Federally recognized Indian tribes, Native Hawaiian organizations, and the ACHP. It is important to note that no Indian tribes have signed the PA; the application of the PA to tribal consultation is discussed in greater detail in the "Consultation" section.

Pursuant to the PA, each Park Superintendent serves as the responsible agency official for the purposes of Section 106 compliance for their park. The Superintendent works with the park's Section 106 Coordinator and the park's Cultural Resource Management (CRM) Team to fulfill the PA's requirements.

Key provisions of the PA include:

- The PA requires each Park Superintendent to designate a Section 106 Coordinator and a CRM Team who meet appropriate professional qualifications, and ensure that the Park Superintendent, Section 106 Coordinator and CRM Team receive periodic training in Section 106 compliance.
- The PA provides parks with an efficient method to streamline the Section 106 process for 16 activities when certain conditions are met (the Streamlined Review Process); the PA also directs parks to use the Standard Review Process for activities that do not meet the criteria for using the Streamlined Review Process.
- The PA establishes a process for consultation with State Historic Preservation Officers (SHPOs), Federally recognized Indian tribes and Tribal Historic Preservation Officers (THPOs) for projects on and off tribal lands, Native Hawaiian organizations, local governments, applicants for Federal assistance, and the public.
- The PA requires parks, Regional Offices, and NPS Centers to share with SHPOs, THPOs, Federally recognized Indian tribes, and Native Hawaiian organizations historic property data generated through NPS compliance with Section 110 of NHPA.
- The PA encourages parks to develop consultation protocols and agreements with tribal governments and organizations.

The PA also requires Superintendents to report annually to SHPOs and THPOs on undertakings reviewed using the Streamlined Review Process, and to report to SHPOs, THPOs, Indian tribes, and NPS Regional Directors biennially on park implementation of the PA. Regional directors also must report to the NPS Director on implementation of the PA in their regions. The NPS must also report biennially to the ACHP. Additionally, the PA requires the Associate Director, Cultural Resources Partnerships and Science, in cooperation with the regions and parks, to issue guidance and ensure that periodic training occurs for those involved in Section 106 including Superintendents, Park Section 106 Coordinators, and professionals on CRM Teams.

Since 2009, the NPS Washington Area Service Office (WASO) has provided national guidance to parks and regions on how to effectively use the 2008 Nationwide PA. This document is an enhancement of earlier written guidance and is intended to assist users (including superintendents and facility maintenance and cultural resource staff) in understanding and applying the 2008 Nationwide PA in a consistent manner and with clear language. In its electronic format it also has quick links to key concepts and to other web-based materials.

This document supersedes the previous national guidance provided in the 2009 PA Toolkit. It is intended to be used by multiple audiences: park and regional staff; cultural resources and natural resources staff; superintendents and park managers; and others wishing to learn more about using the NPS Nationwide PA.

Purpose

The ACHP Regulations that implement Section 106 of the National Historic Preservation Act, “Protection of Historic Properties” (36 CFR Part 800), allow Federal agencies to develop Programmatic Agreements to govern implementation of “routine management activities.” The NPS Nationwide Programmatic Agreement was signed on November 14, 2008 to provide coordination between the NPS, the ACHP, and the NCSHPO, by establishing a “program of compliance” for routine NPS park operations and maintenance undertakings that will pose no adverse effects on historic properties.

The PA requires the NPS to issue guidance. This guidance supersedes the previous guidance included in the 2009 PA Toolkit and provides information to NPS staff on using the PA during reviews in parks, as well as on using the Standard Review Process detailed in 36 CFR §§ 800.3 through 800.6 of the ACHP Regulations, which is also referenced in Stipulation IV of the PA. For the purposes of using the PA and this guidance, the Standard Review Process refers to the procedures set forth in the ACHP’s Section 106 Regulations, found in 36 CFR Part 800. The Standard Review Process must be used for all undertakings that do not meet the criteria for the Streamlined Review Process or if there is no park or project-specific PA or another applicable program alternative.

While reading this guidance, keep in mind that there is more than one way to address Section 106 responsibilities, including but not limited to:

- following the Standard Review Process that is described in Stipulation IV of the PA; Section 106 Regulations;
- following the Streamlined Review Process that is described in Stipulation III of the PA; or
- developing and using a project- or Park-specific programmatic agreement or memorandum of agreement.

Goals

This PA guidance aims to:

- familiarize NPS staff, particularly Superintendents, resource managers, CRM discipline specialists, and Facility Managers with the Nationwide PA and Section 106;
- clarify and provide specific guidance on key aspects of the requirements and provisions of the PA;
- link the PA with preservation law;
- link the PA with other applicable and related NPS policies;
- provide a centralized location for professional guidance on implementation of the PA; and
- fulfill and maintain the PA requirement which states that the Associate Director for Cultural Resources, Partnerships, and Science, in cooperation with the regions and the parks, is responsible for issuing guidance.

What to Know to Get Started with Section 106

In order to effectively follow the requirements of Section 106, it is necessary to understand some key concepts:

Undertakings

From a Section 106 perspective, park management consists of a continuum of activities known as “undertakings,” which are defined in the NHPA and the ACHP’s Section 106 Regulations as: “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” (54 USC § 300320; 36 CFR § 800.16(y)). In short, if the action can only occur because of Federal involvement, it is likely an undertaking.

The threshold for requiring compliance with Section 106 is when an agency proposes to carry out, license, permit, or fund an undertaking that is the type of activity with the potential to affect historic properties, assuming historic properties are present.

The Type of Activity that Has the Potential to Cause Effects on Historic Properties

Many undertakings require a Section 106 review, though some do not. The ACHP’s Section 106 Regulations, 36 CFR Part 800, state that for an undertaking to be subject to Section 106 review, it must meet two criteria:

1. It must be an undertaking, as defined above.
2. It must be a “type of activity” that has “the potential to cause effects on historic properties, assuming such historic properties were present.”

The Type of Activity: What the Section 106 Regulations Say



According to 36 CFR § 800.3(a):

“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.”

Exit Point from Section 106 Compliance: Not an Undertaking that Has the Potential to Cause Effects (or Not an Undertaking)



Question: Am I now done with Section 106 compliance?

Answer: In determining whether or not an undertaking is subject to Section 106 review, the Park Section 106 Coordinator and the Park CRM Team will make recommendations to the Superintendent regarding the appropriate course of action under the NPS 2008 PA.

The Superintendent, with assistance from the Park Section 106 Coordinator and Park CRM Team, may determine that the project is not the type of activity that has the potential to cause effects on historic properties, assuming such historic properties were present. In such situations the NPS has no further responsibilities for reviewing that project under Section 106. The park staff should document this determination in its administrative records and in the Planning, Environment and Public Comment (PEPC) system.

Not the Type of Activity that Has the Potential to Cause Effects on Historic Properties

Some undertakings are not the type of activities that have the potential to cause effects on historic properties. These include things like changing filters in furnaces, cleaning rain gutters and downspouts, changing lightbulbs, and similar activities that occur with regularity and frequency. This authority exists in the Section 106 Regulations and decisions about whether or not an activity is the type that has the potential to affect a historic property should be a collaborative and interdisciplinary discussion by park staff involving the Park Section 106 Coordinator, Facility Manager, and Park Superintendent, at a minimum.¹

The Park Section 106 Coordinator provides day-to-day staff support for Section 106 activities and serves as a liaison among park personnel, the NPS Regional Office, NPS Centers, and others involved in undertakings. The coordinator makes recommendations to the Superintendent regarding the appropriate course of action under this PA, including whether a project constitutes a Section 106 undertaking.

Park leadership and appropriate cultural resource and facilities maintenance subject matter experts should engage in a collaborative conversation and come to a common-sense agreement as to whether a specific activity is not something that has the potential to cause effects on historic properties and therefore does not trigger a Section 106 review. Such decisions should be documented according to the park's standard operating procedures (e.g., memo to the file) and entered into PEPC.

Exit Point: Not the Type of Activity with the Potential to Cause Effects



Question: Am I now done with Section 106 compliance?

Answer: Once the relevant park staff has collaboratively determined that the undertaking is not a type of activity with the potential to cause effects on historic properties, and documented that determination, compliance with Section 106 is concluded. Please note that this decision is internal to NPS but should be documented as part of the administrative record and entered into PEPC.

1. In deciding whether an activity has the potential to cause effects, it will be critical that decision-makers *not* apply this judgement to activities that clearly *have* the potential to affect historic properties. If an agency official fails to complete a Section 106 review prior to approving an undertaking, the agency may have foreclosed the ACHP's opportunity to comment on the undertaking (see 36 CFR § 800.9(b)). If the ACHP makes this determination, it provides comments directly to the head of the agency regarding recommendations to resolve any adverse effects and prevent such procedural errors in the future. The agency may also be subject to legal challenge.

Question: What happens if I do have a type of activity with the potential to cause effects?



Answer: Further Section 106 compliance becomes necessary when park staff determine that a proposed undertaking *IS* a type of activity that has the potential to cause effects on historic properties, assuming such historic properties are present.

Proposed undertakings that are the type of activities to cause effects range from road construction to rehabilitation of a historic structure, to an archeological survey of a coastline, and more. Virtually any activity that involves work on, in, or around any historic property requires some level of Section 106 review.

Stipulation III.C. of the PA lists a number of specific activities that NPS has already formally determined are the types of activities that have the potential to cause effects on historic properties, assuming such properties are present.

What to Know about NPS Section 106 Roles and Responsibilities - the Basics



- The PA outlines NPS roles, qualifications, and responsibilities for implementation.
- Superintendents are the responsible agency officials. They maintain relationships with SHPOs and THPOs and designate a Park Section 106 Coordinator.
- The Park Section 106 Coordinator, in collaboration with the Park CRM Team, makes recommendations to the Superintendent on the appropriate use of the PA.

NPS Roles

The PA specifies that the Superintendent, Park Section 106 Coordinator, and CRM Team play integral roles in the Section 106 process as decision-makers, parties in consultation, and as stewards and disseminators of communications and documentation. However, park Facility Managers also need to be involved in project planning efforts, given that their proposed projects may trigger Section 106 review. Other NPS cultural resource management subject matter experts such as archeologists, architects, curators, historians, landscape architects, ethnographers, and others may also provide advice and assistance. Regional Section 106 Coordinators and WASO Cultural Resources program leads are also valuable players in providing guidance and technical assistance to parks. Lastly, Facility Managers and cultural resources subject matter experts need to work together at the project formulation stage to facilitate a smooth and timely Section 106 process.

NPS Responsibilities

The PA sets forth a range of requirements NPS must meet. Stipulation II.E.1 of the PA states that the NPS is responsible for the identification of historic properties:

the parks implement a program to identify, evaluate, and, when appropriate, nominate historic properties to the National Register of Historic Places. . . . Research and testing of all types of historic properties for purposes of identification and evaluation must be limited to the minimum necessary to obtain the required inventory and evaluative information.

Stipulation I.A.5 of the PA states “Superintendents are the responsible agency officials . . . for the purposes of Section 106 compliance and the implementation of this PA.” As the “responsible agency official,” the Superintendent is responsible for all Section 106 compliance in the park and is legally accountable.

The best way to avoid any errors during the compliance process is for the Superintendent to be sure that all the compliance team members are communicating with one another: the Facility Manager, the Natural Resources Manager, the Cultural Resources Manager, the Park Section 106 Coordinator, Indian tribes, the Tribal Historic Preservation Office, and the State Historic Preservation Office. This communication must be documented in writing as part of the administrative record and entered into PEPC to demonstrate the park’s compliance with Section 106.

Superintendents are also required to consult with SHPOs, THPOs, and Indian tribes to designate a Park Section 106 Coordinator and a CRM Team that meets the necessary qualifications, and to provide for early coordination and training for staff.

The Park Section 106 Coordinator provides regular staff support and serves as a point of contact. As explained in Section I.A.6 of the PA, the Park Section 106 Coordinator also “makes recommendations to the Superintendent regarding the appropriate course of action under this PA, including whether a project constitutes a Section 106 undertaking.” Moreover, Section III.B.1 of the PA provides that “the Park Section 106 Coordinator, in consultation with appropriate members of the CRM Team, determines whether the proposed undertaking is an activity listed as an undertaking eligible for streamlined review.” Given that the Park Section 106 Coordinator is vital to implementation of the PA, careful consideration needs to go into the selection of this person. The CRM Team provides “expertise and technical advice to the Park Section 106 Coordinator for purposes of Section 106 compliance and implementation of this PA.”

Caution: Responsible Agency Official



As the “responsible agency official,” the Superintendent is responsible for all Section 106 compliance in their park. The Superintendent is held accountable for any mistakes that occur during their watch. The best way to avoid any errors during the Section 106 compliance process is for the Superintendent to be sure that all the compliance partners are communicating with one another: the Facility Manager, Cultural Resources Manager, Park 106 Coordinator, Tribal Partners, and SHPO. This communication must be entered into PEPC to demonstrate the park’s compliance with Section 106.

Qualifications

What to Know About Professional Qualifications: the Basics



Park Section 106 Coordinator: The Superintendent is responsible for designating at least one person to act as the Park Section 106 Coordinator for the park, and if possible should choose the Section 106 Coordinator from the park staff; however, the Park Section 106 Coordinator could reside in other NPS parks, NPS archeological and preservation centers, or the NPS Regional Office. The Section 106 Coordinator must have an appropriate combination of professional training and/or experience to carry out the responsibilities of the position and must be an NPS employee.

CRM Team: The Superintendent must designate a CRM Team to fulfill and implement the requirements of the PA. Members must be subject matter experts appropriate to the resource types found in the park. The number of individuals on the CRM Team may vary from park to park as needed to represent all disciplines appropriate to the park's resources. For example, an undertaking involving a historic building must have a historical architect on the CRM Team. Typical CRM Teams often include a historical architect, a historical landscape architect, an archeologist, a cultural anthropologist, a historian, and a museum curator. Members may include park staff or staff of other parks, NPS Regional Offices, NPS Centers, Federally recognized Indian tribes or Native Hawaiian organizations, or others from the public or private sector.

Qualification Standards: The PA requires agency personnel or contractors who participate on the Park's CRM Team to meet either the qualification standards established in Appendix E to NPS-28, which references the Office of Personnel Management (OPM) Personnel Qualifications Standards, or the Professional Qualification Standards in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*. These qualification standards define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. These two sets of standards are often referenced in contracts or in park-specific agreements.

Further information about professional qualifications can be found at:

- <https://www.nps.gov/articles/sec-standards-prof-quals.htm>
- https://www.nps.gov/parkhistory/online_books/nps28/28appene.htm

Finding Qualified CRM Team Members



When Superintendents are seeking qualified CRM Team members, they can consult with regional cultural resource managers, resource stewardship advisory committees, Regional Cultural Resource staff, the Regional Section 106 Coordinators, and/or WASO staff for recommendations. The Regional Section 106 Coordinator's involvement in serving on the CRM Team is mandatory only when the CRM Team does not have a subject matter expert appropriate to the resource types found in the park. CRM Team members who represent Federally recognized Indian tribes and other traditionally associated peoples may include traditional cultural authorities, elders, and/or others experienced in the preservation of tribal culture. The 2006 *NPS Management Policies* defines traditionally associated peoples as: social/cultural entities such as tribes, communities, and kinship units, as well as park neighbors, traditional residents, and former residents who remain attached to a park area despite having relocated, are “traditionally associated” with a particular park when: 1) the entity regards park resources as essential to its development and continued identity as a culturally distinct people; 2) the association has endured for at least two generations (40 years); and 3) the association began prior to establishment of the park.

Multi-disciplinary reviews of proposed undertakings are recommended, but not all disciplines must be represented on the CRM Team for each proposed undertaking depending on which types of cultural resources may be affected. ***Importantly, the PA states that subject matter experts on CRM Teams must be appropriate to the resource types found in the park.***

All CRM Team members, including those from the public or private sector who are not representing a Federally recognized Indian tribe, must meet either the OPM Personnel Qualifications Standards or the Professional Qualification Standards in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.

Training

The PA specifies that park staff, including Superintendents, must demonstrate periodic training in Section 106. Superintendents are required to report on training that they and their staff receive as part of their biennial reports. Training in Section 106 may be obtained through the DOI Talent, the NPS Common Learning Portal, the ACHP, SHPOs/THPOs, Indian tribes, Native Hawaiian organizations, other Federal or state agencies, and the private sector.

Check with your Regional Section 106 Coordinator about training opportunities in your region or through the ACHP or other organizations or consultants who also offer Section 106 training.

Caution: Additional Training Requirements



Since September 22, 2016, when the “Strengthening our Stewardship of Cultural Resources: Next Steps” memo from the Deputy Director of Operations was issued to Regional Directors, the training requirement was further enhanced by specifying that:

- All first-time Superintendents and Facility Managers must attend an NPS-approved Section 106 class. This requirement must be met during their first year on the job.
- The training must then be renewed every five years.

Be sure to confirm with your Regional Section 106 Coordinator which trainings meet the training requirements for Superintendents and Facility Managers, as not all Section 106 trainings available fulfill this requirement.

After meeting this training requirement, it is good practice for Superintendents and Facility Managers to also complete two additional Section 106 training hours every two years.

Area of Potential Effects

Defining the Area of Potential Effects (APE) is a crucial step in both the Standard and Streamlined Review Processes. The APE is defined as “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.” The APE may include discontinuous areas such as areas for project staging or for borrow areas.

Identifying Historic Properties

A historic property is defined in the ACHP’s Section 106 Regulations as “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.” The ACHP’s Section 106 Regulations further clarify that the term “historic property” includes “artifacts, records, and remains that are related to and located within such properties” as well as “properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the National Register criteria.” The ACHP’s Section 106 Regulations further explain that 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. A property does not have to be formally nominated to or listed in the National Register to be eligible (see 36 CFR § 800.16(l)).

The agency is required to 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.”

When performing Section 106 compliance, the agency needs to “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 APE.”

The Secretary’s Standards and Guidelines for Identification provide further guidance on the subject, as does the ACHP guidance in “Meeting the Reasonable and Good Faith Identification Standard in Section 106 Review.”

In order to use the Streamlined Review Process set forth in the PA, the Superintendent and the Park Section 106 Coordinator must ensure that they have identified all historic properties, in consultation with the SHPO/THPO, Indian tribes, or Native Hawaiian organizations, within the Area of Potential Effects (APE) for the proposed undertaking.

The ACHP's Section 106 Regulations set forth a process for making "consensus" determinations of eligibility, and this process is often used for the PA. The process requires written concurrence with NPS's eligibility determination, by the SHPO/THPO. If the park staff determine the National Register criteria are met and the SHPO/THPO agrees in writing, the property shall be considered eligible for the National Register for Section 106 purposes.²

If the agency official determines the criteria are not met and the SHPO/THPO agrees in writing, the property is considered not eligible. If the agency official and the SHPO/THPO do not agree, talk to your Regional 106 Coordinator. Correspondence and forms associated with this effort are an important part of the agency's administrative record and should be uploaded into PEPC.

Need to Know: Consensus Determinations of Eligibility



Section 106 sets forth a process for making "consensus" determinations of eligibility, and this process is often used for the PA. The process requires written "concurrence" with NPS eligibility determination, by the SHPO/THPO. If the agency official determines that the National Register criteria are met and the SHPO/THPO agrees in writing, the property shall be considered eligible for listing in the National Register for Section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees in writing, the property is considered not eligible. If the agency official and the SHPO/THPO do not agree, talk to your Regional 106 Coordinator. Correspondence and forms associated with this effort are an important part of the agency's administrative record and should be uploaded into PEPC.

2. A consensus determination of eligibility is not the only way to determine whether a property is historic. The process for formally nominating properties to the National Register is described here: <https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm>.

Minimum Necessary Documentation

The PA states, “research and testing of all types of historic properties for purposes of identification and evaluation” must be completed, and “*must be limited to the minimum necessary to obtain the required inventory and evaluative information*” as determined by the Park Section 106 Coordinator and the CRM Team.

What do we mean by minimum necessary documentation?



How do we figure out what is the minimum necessary level of documentation needed? Well, it depends on the type of property. For a historic building or structure, a consensus determination of eligibility would need to include dates of construction and alterations (if any); name of builder and/or architect (if known); a physical description of the historic building; and a statement of why the property is or is not significant. For a consensus determination of eligibility, the statement of significance usually would be 1 1/2 to 5 pages, possibly longer if the property is associated with a historic event (National Register Criterion A, 36 CFR Part 63 https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf), is a large or complex property, or has numerous alterations that have diminished some or many of its seven aspects of integrity (location, setting, design, materials, workmanship, feeling, and association). In short, the length of the written information will greatly depend on the specific property being evaluated and park managers should work with their park’s CRM Team, Section 106 Coordinator, and SHPO/THPO to determine what level of documentation is needed to effectively inform the consultation process.

In accordance with recommendations by the Park Section 106 Coordinator and the CRM Team (as well as the Regional Section 106 Coordinator, as appropriate), the NPS has determined that this documentation may include:

- For Historic Structures:
 - A Consensus Determination of Eligibility (CDOE) or documentation similar to a Federal historic preservation tax credit program “Part One” form.
- For Cultural Landscapes and Associated Landscape Features:
 - A Consensus Determination of Eligibility (CDOE).
- For Archeological Resources:
 - An Archeology Overview and Assessment (AOA) which may include determinations of eligibility; a SHPO-reviewed memorandum/preliminary findings/final report for non-invasive and/or subsurface investigations; and/or an ethnographic resources inventory.

Such documentation should identify the character-defining features (summarized in text and/or depicted in drawings, maps, or pictures) that contribute to the historic property's eligibility for listing in the National Register and the criteria under which it is significant and evaluate the property's integrity.

Caution: Historic Property Identification When a Federally Recognized Tribe Has Not Signed the PA



Because no Federally recognized tribes have signed the PA to date, parks must consult with associated tribes or Native Hawaiian organizations regarding any identified ethnographic resources regardless of whether those resources are formally determined as eligible for listing in the National Register of Historic Places.

Approved Treatment Plan

For certain undertakings eligible for streamlined review the NPS has determined that an “approved treatment plan” is one that is developed for the Park Superintendent in accordance with recommendations by the Park Section 106 Coordinator and the CRM Team (as well as the Regional Section 106 Coordinator, as appropriate). This documentation may include but is not limited to:

- For Historic Structures:
 - A Historic Structures Report (HSR).
- For Cultural Landscapes:
 - A Cultural Landscape Report (CLR).
- For Archeological Resources:
 - A SHPO-reviewed memorandum, findings, or report from a phase-II non-invasive or subsurface survey and/or treatment recommendations for ethnographic resources developed in consultation with the appropriate Indian tribe(s) or other traditionally associated peoples.

Such plans provide guidance on measures for stabilization and treatment of the character-defining features (summarized in text and/or depicted in drawings, maps, or pictures); include written approval of the plan by the Park Superintendent, the Regional Manager of Cultural Resources Programs, Associate Regional Director of Cultural Resources, or the Regional Director; and may also include review comments provided by the SHPO/THPO.

HSRs and CLRs are the NPS’s primary baseline documents for guiding treatment and use of historic structures and cultural landscapes. These reports provide recommendations for appropriate stewardship consistent with the significance, condition, and compatible future use in accordance with the *Secretary of the Interior’s Standards for Treatment of Historic Properties*. However, ***not every building or landscape requires a traditional full-scale HSR or CLR, and there are other forms of documentation that can meet the Streamlined Review criteria.*** NPS is developing guidance for historic property project documentation to assist park managers in making decisions about what information is needed to proceed with responsible treatment of historic structures and landscapes. For further information about Approved Treatment Plans, talk with the appropriate CR specialist(s) on your park’s CR Team.

Understanding an Approved Treatment Plan and the Streamlined Process



Use of an approved treatment plan to implement an undertaking is one way to meet some of the requirements for using the Streamlined Review Process. But if you are using the approved treatment plan for the Streamlined Review Process you must follow the approved treatment plan. Any deviation from the plan will require that undertaking to be reviewed under the Standard Review Process.

What do I do if I don’t have an approved treatment plan?



Work with your park’s cultural resources specialists and project lead to determine if other historic property identification documentation and treatment recommendations previously reviewed by the SHPO would qualify as an approved treatment plan.

Other Documentation to Substitute

In order to use the PA's Streamlined Review Process when an "approved treatment plan" does not exist for one of the 16 PA-listed activities, which mention an approved treatment plans in its eligibility criteria, the Park Superintendent must ensure that other documentation is completed to substitute for an approved treatment plan.

This other documentation, completed in accordance with recommendations by the Park Section 106 Coordinator and the CRM Team (as well as the Regional Section 106 Coordinator, as appropriate), is an administrative record of dialogue and detailed comments on the proposed undertaking's design details, materials specifications, scopes of work, use of qualified personnel, etc., from the appropriate NPS or NPS-contracted subject matter expert.

TO SUMMARIZE:

- Park staff use the *Secretary of the Interior's Standards and Guidelines for Evaluation* and applies the National Register criteria to properties within the proposed APE.
- Park staff do this in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties.
- If park staff determine any of the National Register criteria are met and the SHPO/THPO agrees in writing, the property is considered eligible for listing in the National Register.
- If park staff determine the criteria are not met and the SHPO/THPO agrees in writing, the property shall be considered not eligible for listing in the National Register.
- If park staff and the SHPO/THPO do not agree about the eligibility of the property, or if the ACHP or the Secretary of the Interior so request, the park shall obtain a determination of eligibility from the Keeper of the National Register.
- If an Indian tribe or Native Hawaiian organization that attaches religious and/or cultural significance to a property off tribal lands disagrees with park determinations, the tribe may ask the ACHP to request that the park to obtain a formal determination of eligibility from the Keeper of the National Register.

All correspondence and forms associated with Section 106 compliance (either Streamlined or Standard Review) constitute an important part of the park's administrative record for the undertaking and should be retained to demonstrate compliance.

Caution: Reevaluate Properties



The ACHP’s Section 106 Regulations advise Federal agencies that the “passage of time, changing perceptions of significance, or incomplete prior evaluations” may require the park to reevaluate properties previously determined eligible or ineligible. Also, park staff must 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.”

Caution: Sufficient Documentation



Notably, the ACHP’s Section 106 Regulations state, “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” (36 CFR § 800.11(a)).

National Historic Landmarks

Sections 110(a)(2)(B) and 110(f) of the NHPA require that Federal agencies exercise a higher standard of care when considering undertakings that may directly and adversely affect National Historic Landmarks (NHLs) (54 USC §§ 306102(b)(2), 306107). Agencies are required to notify the Secretary of the Interior of any consultation when there may be an adverse effect to an NHL (36 CFR § 800.10(c)). However, the Secretary’s role is delegated to Regional NPS NHL program staff, so in situations where an undertaking may adversely affect an NHL, park staff consults with the Regional NHL Coordinator and not directly with the Secretary.

The Streamlined Review Process may be used when working with NHLs, but in order to ensure that the undertaking will not have an adverse effect on NHLs, the Regional NHL Coordinator should be involved in the internal review process. Also, if you are ever in doubt about whether or not the project may have an adverse effect on an NHL, consult with your regional NHL coordinator early.

As the PA’s Streamlined Review Process is only to be used for undertakings that do not adversely affect historic properties, that criterion is underscored when an undertaking involves an NHL. If the criteria in PA Section III.A are met, the review of proposed undertakings that may affect a designated NHL may follow the Streamlined Review Process. However, if preliminary planning activities indicate that a proposed undertaking may adversely affect an NHL, the Streamlined Review Process cannot be used.

Consultation

What to Know About Consultation: The Basics



Consultation is at the heart of Section 106. Consulting parties help the NPS identify historic properties and make informed decisions about potential effects to them. Consulting parties include SHPO, THPO, Indian tribes, and Native Hawaiian organizations, representatives from local governments, and applicants for Federal assistance, permits, licenses, or other approvals. There may be others in differing circumstances. It is the NPS's responsibility to identify appropriate consulting parties and invite them to participate in the process at the earliest stages of planning.

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

Consultation is an ongoing conversation with all consulting parties and should include long-term planning as well as individual projects.

Consultation is a process and not an event.

Note that Indian tribes were invited to sign the PA, but none did. Therefore, activities involving properties on tribal land will need to follow the Standard Review Process. Activities involving properties not on tribal land but of significance to tribes may follow the Streamlined Review Process with respect to consultation with the SHPO but will need to follow the Standard Review Process with respect to the tribe.

Taking into account the effects of an undertaking on historic properties includes meaningful consultation, which is defined in the ACHP's Section 106 Regulations as "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)).

When planning for a Section 106 review, it is important to remember that "the Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning" (36 CFR § 800.1(a)).

Consulting Parties

The ACHP developed the Section 106 Regulations to help Federal agencies make informed management decisions about historic properties that may be affected by their undertakings. These regulations set forth a list of the parties that may be able to provide information to Federal agencies about historic properties, and which therefore may have consultative roles in the process:

- the SHPO or THPO;
- Indian tribes or Native Hawaiian organizations;
- representatives of local governments; and
- applicants for Federal assistance, permits, licenses, or other approvals.

Among the consulting parties with which park staff may consult are traditionally associated peoples. The 2006 *NPS Management Policies* define traditionally associated peoples as:

social/cultural entities such as tribes, communities, and kinship units, as well as park neighbors, traditional residents, and former residents who remain attached to a park area despite having relocated, are “traditionally associated” with a particular park when (1) the entity regards park resources as essential to its development and continued identity as a culturally distinct people; (2) the association has endured for at least two generations (40 years); and (3) the association began prior to establishment of the park.

For further information about traditionally associated peoples, please see the 2006 *NPS Management Policies*.

It is the NPS’s responsibility to identify consulting parties and invite them to participate in the Section 106 process as part of project planning. Ongoing consultation throughout a project helps the NPS make informed management decisions about historic properties that may be affected by undertakings.

The Superintendent is responsible for consultation with the appropriate Federally recognized tribes, THPOs, or Native Hawaiian organizations that are known to have ancestral lands within park boundaries, have an interest in historic properties within park boundaries, or have lands or interest in lands adjacent to the park. It will be important to stay up to date about the park’s tribal contacts, as they frequently change depending on changes in tribal leadership.

Note: The PA only takes effect on tribal lands when a designated representative of the tribe is a signatory to the PA. To date, no tribes have signed the PA. Therefore, when activities are planned that involve tribes or present-day tribal land, consultation with the affected tribe(s) is necessary. Undertakings that would affect historic properties on tribal lands will need to follow the Standard Review Process. Undertakings that would affect properties of significance to Indian tribes but that are not on tribal lands may follow the Streamlined Review Process with respect to consultation with the SHPO, but will need to follow the Standard Review Process with respect to the tribe.

During the Standard Review Process, the SHPO/THPO is consulted throughout the entire process. As the Streamlined Review Process is primarily internal to the NPS, the SHPO/THPO receives an annual report of the projects that were completed under the Streamlined Review Process and are invited to a biennial meeting to consult on the implementation of the PA. Though no THPOs have signed the PA, they should receive and be party to any relevant consultation with the SHPO, including biennial meetings.

Other individuals and organizations may participate as consulting parties if they have a legal or economic relation to or concern about the historic properties affected by the undertaking. In certain circumstances, typically when there are adverse effects on historic properties, the ACHP may choose to participate in the process.

Need to Know: Documentation for the ACHP



When NPS assesses adverse effects and makes a finding that an undertaking may affect historic properties, the ACHP's Section 106 Regulations require that NPS notify the ACHP in writing, with certain information. This documentation must 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 (36 CFR § 800.11(e)).

Consultation should include broad efforts to maintain ongoing communication with all tribal, public, and private entities that are interested in or affected by the park's activities.

The PA, Tribes, and Tribal Lands

The unique provisions regarding tribal lands are important to know. Tribal lands are defined by the ACHP's Section 106 Regulations as "all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities."

When a park is located partly or wholly within the boundaries of tribal lands, any undertaking that may occur on or affect historic properties on those tribal lands requires the park to follow the Standard Review Process set forth in ACHP's Section 106 Regulations. The Streamlined Review Process cannot be used for undertakings with the potential to affect historic properties on or to be located on tribal lands.

Consulting on Properties with Religious and Cultural Significance to Federally Recognized Tribes

Consultation with Federally recognized Indian tribes takes place at the Superintendent level. Consultation is initiated during planning and prior to undertaking an activity, program, or project that may affect historic properties with religious and cultural significance to Federally recognized Indian tribes. Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR § 800.16(1)) are historic properties. Several things to keep in mind:

- A written invitation to consult initiates formal consultation.
- The Superintendent signs park correspondence to tribes, tribal cultural resource coordinators/representatives, and THPOs for the purposes of consultation under 36 CFR 800.
- Direct written correspondence to the tribal government head, Chief, Governor, Council President, and/or Chairman. It can be very helpful to send copies (including a scan of the signed letter sent via e-mail) to any tribal cultural resource person(s), the THPO, or administrative staff that the tribe has requested.
- Copies of any documents intended for review during face-to-face consultation should be provided in advance of the consultation meetings. A summary should be developed following each of the face-to-face consultation meetings.
- Follow up hard-copy mailings with a fax and/or phone call to make sure materials are received.

Regardless of tribal participation in face-to-face meetings, correspondence and accompanying enclosures related to the meetings should be sent to each potentially interested tribe.

Involve All Consulting Parties Early



Involving all consulting parties early in the process builds trust, uses the process the way it was intended (to seek consensus rather than “rubber-stamping” a decision), and ensures a multidisciplinary approach to the project or plan. But, most importantly, working together early ensures that decisions are made using all the tools and talents available to park staff, making for better decisions about the best possible options for protecting the park’s historic resources. Early involvement also helps everyone who has an interest in the project understand how and why decisions were made and all the factors that went into making those decisions. Ultimately, early consultation helps avoid headaches, problems, delays, and detours as Section 106 review of the project proceeds.

Public Participation in Section 106

All Federal agencies are responsible for developing a plan to involve the public “in a manner that reflects the nature and complexity of the undertaking” and “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.” For more information about confidentiality concerns, see related ACHP guidance as well as NHPA Section 304.

Parks are required to use the NPS PEPC system for public involvement and to meet public outreach requirements. Other examples of public outreach include newspaper articles, reports being made available in libraries, and uploading notices about available reports to local online messaging boards.

Common examples of what constitutes the public include but are not limited to:

- neighboring or local residents and local businesses;
- local or associated organizations such as local or state historic preservation advocacy groups, recreational organizations, park “friends” groups, or park concessioners;
- individuals or groups who regularly use park resources; and
- groups that represent affiliated areas, cooperating organizations, and gateway communities.

Navigating the Section 106 Process

The Two Review Processes in the PA



The PA sets forth two review processes available to parks for completing Section 106 compliance: Standard Review and Streamlined Review. To qualify for the Streamlined Review Process, the proposed undertaking must meet all the criteria for Streamlined Review. All proposed undertakings that do not meet the criteria for the Streamlined Review Process must use the Standard Review Process.

Key Concepts to Keep in Mind During Any Section 106 Review

- Superintendents are responsible for their park's Section 106 compliance, as outlined in the Nationwide PA and in 36 CFR Part 800;
- The Park Section 106 Coordinator provides day-to-day staff support during all decision-making during either the Standard Review Process and/or the Streamlined Review Process, coordinates with the CRM Team, and makes recommendations to the Superintendent;
- Parks are required to use PEPC to track and document their compliance activities;
- Not every undertaking is required to go through all four steps of the Standard Review Process;
- If NPS determines, in consultation, that its undertaking will result in adverse effects, the park must notify the ACHP of this finding and determine if the ACHP will participate in consultation to resolve adverse effects;
- Resolution of adverse effects often results in a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA), which describes how the park will address the adverse effects;
- Whether or not the ACHP chooses to formally participate in the consultation to resolve adverse effects, a copy of the Agreement document must be provided to the Regional Section 106 Coordinator and the ACHP; and
- Section 106 Compliance may also be satisfied through park- or project-specific PAs.

The following sections outline how to determine which process to use and how to then complete the Section 106 review.

The Standard Review Process

Need to Know: Standard Review Process



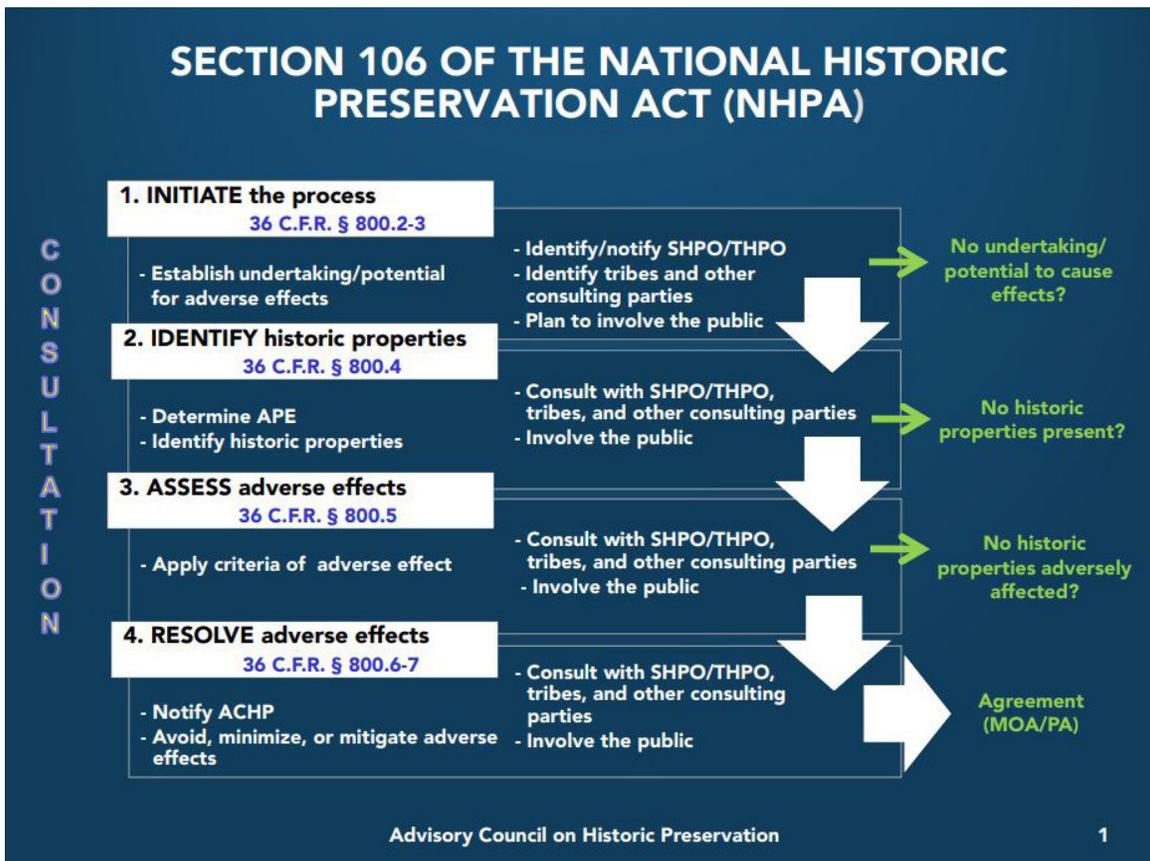
Step 1: Initiate the process. This is the beginning of the consultation process.

Step 2: Identify and document Area of Potential Effects (APE), then consult to determine whether historic properties are present in the APE.

Step 3: In consultation, apply the criteria of adverse effect and determine the effects on historic properties within the APE.

Step 4: If adverse effects are found, continue consultation to identify ways to avoid, minimize, or mitigate them, and document their resolution through a memorandum of agreement or programmatic agreement.

For further information, see the ACHP's Section 106 flowchart.



The Standard Review Process is described in the ACHP's Section 106 Regulations at 36 CFR § 800.3 through § 800.6. The Standard Review Process may involve as few as two steps (i.e., if no historic properties are present or affected) or as many as four steps (if an adverse effect on historic properties was resolved through an MOA or PA), depending on the undertaking.

Prior to beginning compliance with Section 106, the Park Section 106 Coordinator, CRM Team, Facility Manager, and Superintendent will first work to answer the question, "is this activity the type that has the potential to affect historic properties, assuming they're present?" If the activity is the type that has the potential to affect historic properties and the Streamlined Review Process cannot be applied because the criteria listed in the PA are not met, then park staff begin the Standard Review Process, which may include one or more of the following steps:

Step 1: Initiate the Process. This is the beginning of formal consultation with the other participants.

After park staff have made a determination that the undertaking has the potential to affect historic properties and that it will use the Standard Review process, park staff begin Step 1. In this step, park staff should identify consulting parties, including the SHPO/THPO and other interested parties, and begin drafting a plan for how to involve the public (36 CFR § 800.3).

Step 2: Identify Historic Properties. The Area of Potential Effects (APE) is identified and documented and consultation with the other participants is done to determine if historic properties are present in the APE (36 CFR § 800.4).

In this step, park staff investigate whether historic properties are present. Park staff define the APE and identifies historic properties in consultation with the SHPO/THPO, Indian tribes, and other consulting parties. If the NPS finds that there are no historic properties present or that there are historic properties present, but the undertaking will not have an effect on them, and the SHPO/THPO agree, document the findings in PEPC and the Section 106 process is complete.

During Step 2, the Facility Manager, Park Section 106 Coordinator and CRM Team determine and document the APE and consult to identify historic properties within the APE. The Facility Manager or other park staff may need to be involved.

If park staff find that there are no historic properties present or that there are historic properties present but the undertaking will have no effect on them, park staff must provide documentation of this finding to the SHPO/THPO. Park staff shall also notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available to the public prior to approving the undertaking. All documentation must also be included in PEPC. Unless park staff receive objections from the SHPO/THPO within thirty (30) days, then Section 106 compliance is complete.

If park staff receive an objection from the SHPO/THPO, the staff must work to resolve that dispute or refer the dispute to the ACHP for its advisory opinion. If park staff refer the dispute to the ACHP, then the dispute must be resolved through ACHP referral and park response. If an adverse effect is found, then park staff must then move to Step 3 of the process.

Step 3: Assess Adverse Effects. In consultation with the SHPO/THPO, Indian tribes or Native Hawaiian organizations, and other consulting parties, park staff apply the criteria of adverse effect to determine if the undertaking's effects on historic properties are adverse or not adverse by applying the criteria of adverse effect (36 CFR § 800.5(a)).

As stated in the ACHP's Section 106 Regulations:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property . . . 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 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 (36 CFR § 800.5(a)(1)).

The ACHP's Section 106 Regulations also provide examples of various types of adverse effects.

Park staff may determine that there is no adverse effect as the undertaking is proposed, or the staff may modify the undertaking or impose conditions to avoid an adverse effect. Once park staff have notified the SHPO/THPO and all consulting parties, and if park staff receive no objections from those parties, the findings are documented in PEPC, the Section 106 compliance is complete, and park staff exit the process. If park staff determine that there will be an adverse effect on a historic property, or receive an objection, the staff must work to resolve that dispute or refer the dispute to the ACHP for its advisory opinion. If park staff refer the dispute to the ACHP, then the dispute must be resolved through an ACHP referral and park response. If an adverse effect is found, then park staff proceed to Step 4.

When making a finding of no adverse effect or adverse effect in Step 3, the ACHP's Section 106 Regulations (36 CFR § 800.11(e)) require that the following information be included:

- A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- A description of the steps taken to identify historic properties;
- A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- A description of the undertaking's effects on historic properties;
- 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 copies or summaries of any views provided by the park CRM Team, consulting parties and the public.

Step 4: Resolve Adverse Effect. While rarely needed, Step 4 applies when NPS finds that a proposed undertaking may adversely affect historic properties, cannot reach a no adverse effect finding, or a consulting party objects to a proposed no adverse effect finding. In such cases, the undertakings' adverse effects will need to be resolved (36 CFR § 800.6).

During Step 4, park staff first notify the ACHP of its adverse effect finding and the ACHP determines if the ACHP will participate in the consultation process to resolve adverse effects. Then park staff begin to work with the consulting parties to consider any additional project modifications or other alternative to avoid, minimize, or mitigate adverse effects.

Typically, a Memorandum of Agreement (MOA) is developed to document how the park plans to resolve adverse effects through avoidance, minimization, and/or mitigation measures. Once all of the consulting parties agree to the MOA language and the signatories (the NPS, the SHPO, THPO, and the ACHP, if it is participating) have signed the agreement, park staff file the MOA with the ACHP. The MOA should also be submitted to the Regional Section 106 Coordinator and uploaded to PEPC.

Exit Point: When am I finished with the Standard Review Process?



Depending on the outcome of the Standard Review Process, you may not be required to complete every step of the Standard Review Process. For example, if you determine in consultation with the SHPO/THPO and other consulting parties that your undertaking will have no adverse effect on historic properties, there is no need to proceed from Step 3 to Step 4. Similarly, if the participants concur with you that there no historic properties are present or that present properties won't be affected, there is no need to proceed from Step 2 to Step 3. In either case, once you document your findings and receive concurrence from the other participants, Section 106 compliance is completed.

Most standard Section 106 reviews are completed by Step 3; it is the rare consultation that requires completion of Step 4, which usually involves development and execution of an MOA resolving adverse effects on historic properties. However, keep in mind that fulfillment of an agreement's stipulations will continue beyond signing the document.

Question: What happens if park staff are unable to resolve adverse effects in consultation with the other participants?



Answer: For situations in which there is a failure to resolve adverse effects, both 36 CFR § 800.7 of the ACHP's Section 106 Regulations and Stipulation X of the Nationwide PA provide additional procedural provisions for completing the review process and moving forward with the undertaking.

Documenting Findings

Adequately documenting all of the findings that park staff make during the Standard Review Process and sharing them with consulting parties and the public is important to include in the administrative record. Remember, your documentation should include:

- A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- A description of the steps taken to identify historic properties;
- A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- A description of the undertaking's effects on historic properties;
- 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
- Copies or summaries of any views provided by the Park CRM Team, consulting parties and the public.

The Streamlined Review Process

Need to Know: What to Know About the Streamlined Review Process



The Streamlined Review Process offers an alternative to the Standard Review Process. To use the Streamlined Process there are three criteria that need to be met.

1. The project must be an eligible activity. The PA provides a variety of examples, but this is not an exhaustive list and other activities that are comparable in size, scope and scape may qualify. The Park Superintendent and Section 106 Coordinator should work together to determine whether an activity is eligible for streamlined review.
2. Historic Properties in the APE must have been identified with SHPO concurrence; and
3. The undertaking has been determined to have No Adverse Effect.

If the criteria are met and documented in PEPC, no further consultation is needed unless the SHPO/THPO, Federally recognized Indian tribe, Native Hawaiian organization, or the ACHP request it.

Remember that the Streamlined Review Process cannot be used for undertakings on tribal land or for undertakings involving properties of significance to tribes and therefore requiring tribal consultation.

The Streamlined Review Process outlined in Stipulation III of the PA offers an alternative to the Standard Review Process, but can only be used if all the following criteria are met:

- The proposed undertaking must be an eligible activity listed in the PA. The PA provides a variety of examples, but this is not an exhaustive list and other activities that are comparable in size, scope and scale may qualify. The Park Superintendent and Section 106 Coordinator should work together to determine whether an activity is eligible for streamlined review.
- All properties within the APE must have previously been evaluated for eligibility in the National Register of Historic Places and the SHPO/THPO must have concurred with the eligibility determination. Such determinations and the concurrence must be in writing, for the purposes of the park's administrative record.
- Identification and evaluation of historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations must be based on

prior consultation with those entities.

- As stated in the PA: “the Section 106 Coordinator, in consultation with appropriate members of the CRM Team, must have reviewed the project and certified that the effects of the proposed undertaking on historic properties on or eligible for the National Register will not be adverse, based on the adverse effect criteria in the ACHP’s Section 106 Regulations (36 CFR § 800.5(a)(1)). The Effect Finding must be “No Historic Properties Affected” or “No Adverse Effect.”

If a proposed undertaking meets all the criteria, as demonstrated in the documentation, the Streamlined Review Process applies, and no further consultation is necessary unless the SHPO/THPO, Federally recognized Indian tribe, Native Hawaiian organization, or ACHP requests it.

If park staff review the proposed undertaking through the Streamlined Review Process, the above-mentioned determinations, concurrence, and certification are critical to the park’s administrative record and must be documented in writing and entered into PEPC.

Specifically, the Park Section 106 Coordinator needs to provide:

- A statement on why the proposed undertaking qualifies as a streamlined activity. A variety of examples are listed in the PA, but *this is not an exhaustive list and for certain types of activities listed in the PA, other activities “comparable in size, scope, and impact” may qualify.*
- A map and/or diagram of the APE, including the location, number, and significance of historic properties within the APE, as identified by the Park Section 106 Coordinator in consultation with the appropriate members of the CRM Team.
- Correspondence and reports on the evaluation of the historic properties within the APE for National Register eligibility, and the SHPO/THPO concurrence.
- Memos and comments on the Park Section 106 Coordinator’s and CRM Team’s evaluation of the anticipated effect of the proposed undertaking on historic properties concluding in a “no historic properties affected” or a “no adverse effect” determination.
- The signature of the Park Superintendent on the Assessment of Effect form (electronic signatures are acceptable).

The PA states that this documentation effort occurs via the NPS “Assessment of Actions having an Effect on Cultural Resources” form or another appropriate format. Since January 1, 2017, the use of PEPC to track and document Section 106 compliance has been mandatory.

The PA also requires the Park Section 106 Coordinator to “permanently retain” this documentation for review by consulting parties and to enter the documentation into PEPC to facilitate the preparation of the annual report.

Inadvertent Discoveries

Stipulation VI (“Inadvertent Discoveries”) of the PA requires that if “historic properties are inadvertently encountered during an undertaking for which review has been previously completed, or through other events such as erosion or animal activity, the Superintendent will notify the SHPO/THPO, Federally recognized Indian tribe(s), or Native Hawaiian organization, as appropriate, within 48 hours, or as soon as reasonably possible. The Superintendent, park Section 106 Coordinator, and the appropriate members of the CRM Team will make reasonable efforts to avoid, minimize, or mitigate adverse effects on those historic properties while consulting with the SHPO/THPO, Federally recognized Indian tribe(s), and/or Native Hawaiian organizations.

If human remains or other cultural material are inadvertently encountered, the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA) may apply. Keep in mind that NAGPRA and the ARPA are laws that are independent of the NHPA and with which the NPS must also comply. In order to ensure compliance with these laws, work must stop immediately in the area of the discovery. The Superintendent must ensure that any human remains are left in place, not exposed, and remain protected.

Below is a recommended but general process to follow after an inadvertent discovery. Refer to state and local laws as well as regional policies and agreements to tailor the process to your circumstances.

- Suspend work as needed to avoid further direct effects on the historic property. The Superintendent will make reasonable efforts to avoid or minimize harm to the resource until the requirements under the PA are completed.
- The Superintendent, in consultation with the Park Section 106 Coordinator and appropriate members of the CRM Team, will make a preliminary determination if the inadvertent discovery includes human remains.
- The Superintendent will notify the SHPO/THPO, Federally recognized Indian tribes, Native Hawaiian organizations, and others as appropriate within 48 hours of the discovery or the soonest possible time, and protect burials in situ until compliance with all applicable laws has been completed.
- The Superintendent will ensure that a field evaluation is conducted by a qualified professional of the appropriate discipline within 48 hours of notification or at the soonest possible time.
- The qualified professional will identify the historic property, evaluate its condition, and document it in writing, photographs, and/or drawings, as needed. Artifactual material recovered in the process, except for those believed to fall under the provisions of NAGPRA, will be accessioned into the park collection for curation.

- If the resource discovered is believed to be a property of traditional religious and cultural importance, the Superintendent will notify the appropriate parties at the soonest possible time and offer to conduct a subsequent field evaluation with their participation. The Superintendent should also notify the Regional Ethnographer and the Regional Section 106 Coordinator at this time.
- If Native American human remains or cultural materials are present, then the requirements of NAGPRA must be met. The Superintendent will comply with NAGPRA and ARPA.

Emergencies

There may be situations in which park staff would propose an emergency undertaking to preserve life and property as an essential and immediate response to a disaster or emergency as determined by the superintendent, or one that is declared by the President, a tribal government, or the Governor of a state. The PA defines emergency actions as follows:

“Emergency actions are those actions deemed necessary by the Superintendent 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.”

In such situations, park staff could follow an existing agreement, which includes provisions for dealing with historic properties in emergency situations.

You should note that emergency actions are only those actions required to resolve the emergency at that time and they are limited to undertakings that will be started within thirty (30) days after the emergency has been declared. Such emergency actions will be consistent with the NPS Environmental Safeguards Plan for All Hazards Emergencies and any other approved service-wide emergency response plans.

Importantly, the ACHP’s Section 106 Regulations state that a Federal agency may request an extension of the period of applicability from the ACHP prior to the expiration of the initial thirty (30) days. It is critical for agencies to keep track of their schedules and, in a timely fashion, request an extension from the ACHP in writing.

Notably, “immediate rescue and salvage operations conducted to preserve life or property” are exempt from Section 106 compliance. The ACHP has provided additional information on those exempt activities emergencies as well as disaster response and recovery.

Other Agreements

Develop Park-Specific Programmatic Agreements



As stipulated in Section IX.A of the PA, “Superintendents are encouraged to evaluate their park’s programs and discuss with SHPOs/THPOs, Federally recognized Indian Tribes, Native Hawaiian organizations, and/or the ACHP, ways to develop supplemental programmatic agreements for park undertakings that would otherwise require numerous individual requests for comments.”

Keep in mind that, in accordance with its regulations, the ACHP must be provided an opportunity to formally participate in such consultations (36 § 800.14(b)(2)).

An advantage of a park-specific PA is that it gives park staff the flexibility to expand the list of Streamlined Activities included in the Nationwide PA. Park-specific agreements may be specific to a project, plan, or park activity, or may set forth specific consultation protocols between the park and a specific group, state, or local government. Superintendents should involve the Regional Section 106 Coordinator and NPS Deputy FPO in their development. Development of any park-specific PA requires the Superintendent to follow the process in 36 CFR § 800.14(b). Upon completion of the PA, the Superintendent will need to provide an informational copy of all agreements to the Regional Section 106 Coordinator, the ACHP, and to the appropriate SHPO/THPO. The NPS Deputy FPO and WASO Section 106 Program Manager should also receive a copy of all agreements.

As described earlier, following the standard review process referenced in the Nationwide PA, park staff may develop an MOA with consulting parties to resolve adverse effects. Another option to resolving adverse effects is the use of a project-specific Programmatic Agreement. Prior to development of either agreement document, the ACHP’s Section 106 Regulations require the park to notify the ACHP of the adverse effects finding with appropriate documentation in order for the ACHP to determine if it will participate in the consultation to resolve adverse effects.

Working with PEPC

PEPC is an online collaborative tool to facilitate conservation planning, environmental impact analysis, and informed decision-making. PEPC supports NPS project planning, compliance tracking, comment analysis, and response, as well as public communication efforts. *Note: Since 2017, it has been a requirement for all parks to document their compliance in PEPC. If you need training, search the Common Learning Portal for upcoming classes.*

PEPC is designed for:

- NPS employees and contractors involved in project creation and tracking, planning, cultural and natural compliance, site visits, documentation, comment coding, and/or responding to comments.
- Park Superintendents and Regional Directors to view detail and summary reports of planned projects and funding status, compliance status of active projects, and trends in public comments.
- Interested and affected members of the public, including internal and external agency contacts, to access and comment on notices, updates, documents, and policies throughout the planning process.

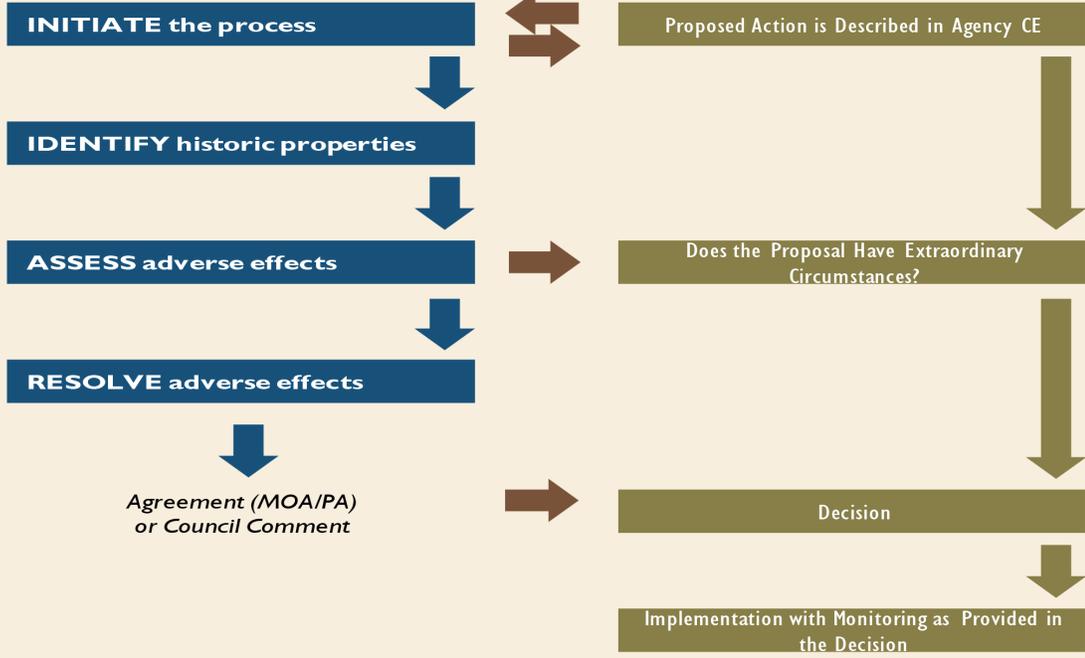
The NEPA and NHPA

The ACHP's Section 106 Regulations encourage parks to coordinate Section 106 and NEPA compliance reviews simultaneously to avoid duplication of public involvement efforts and other requirements common to both statutes. The ACHP in cooperation with the White House Council on Environmental Quality developed *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106*.

The 2017 NPS requirement to enter Section 106 projects into PEPC also provides an excellent opportunity to coordinate Section 106 and NEPA compliance. The use of PEPC allows for consistent project information to be internally shared and tracked and for a consistent and possibly joint public involvement process.

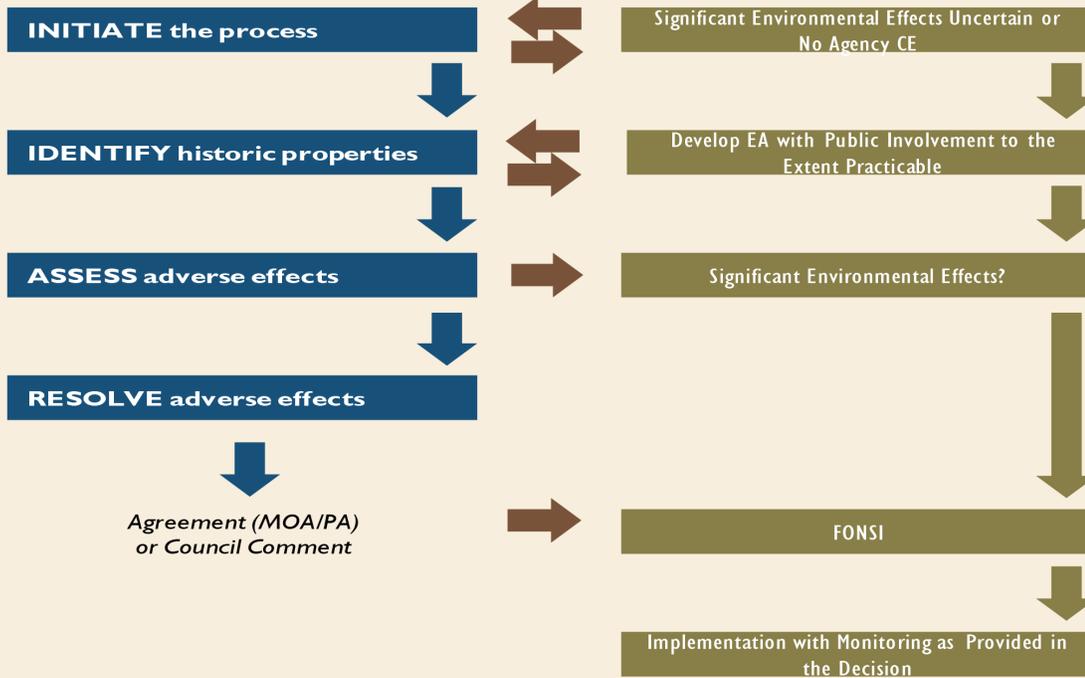
TIMING AND COMMUNICATION SECTION 106 AND CE

CONSULTATION



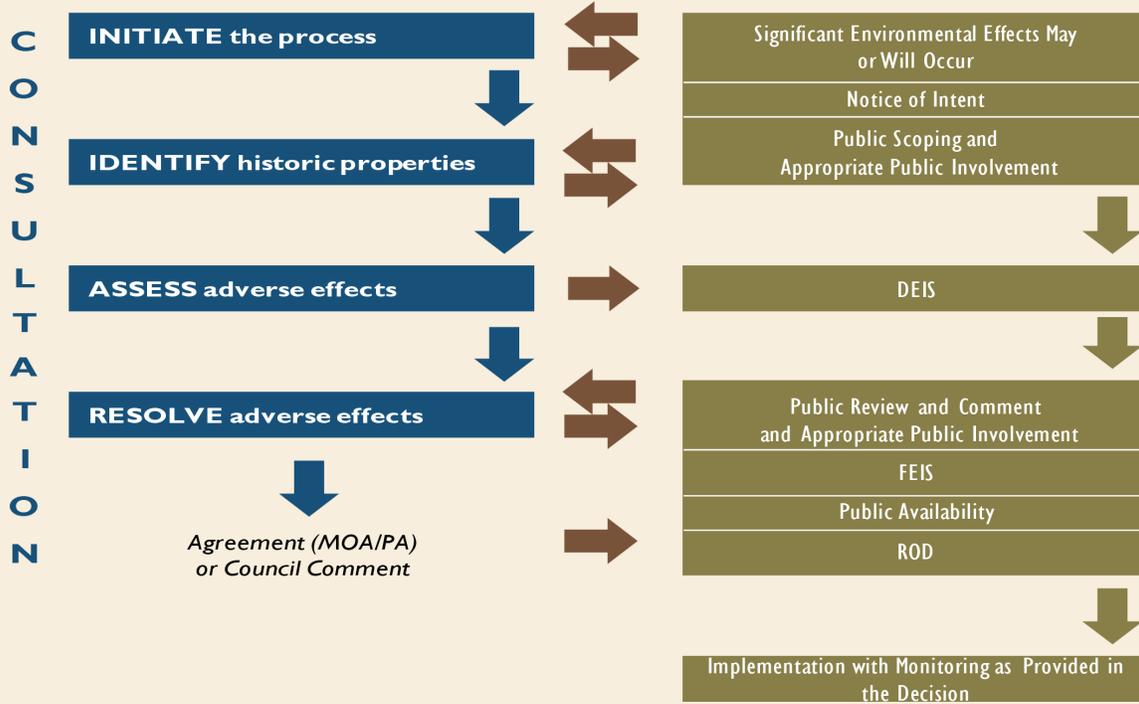
SECTION 106 AND EA

CONSULTATION



Note these graphics present generic depictions of the two review processes.

TIMING AND COMMUNICATION SECTION 106 AND EIS



Note these graphics present generic depictions of the two review processes.

Council on Environmental Quality and Advisory Council on Historic Preservation, NEPA and NHPA:
A Handbook for Integrating NEPA and Section 106, Washington, DC: 2013

PA Reporting Requirements

On a biennial basis, Park Superintendents invite the SHPO/THPOs and other appropriate consulting parties to a review meeting to discuss the implementation of the PA. Parties to the biennial meetings will discuss overall performance under the PA and how to improve coordination.

Superintendents report biennially to the Regional Director on the status of their use of the PA including streamlined review data, training completed and basic data demonstrating compliance with the provisions of the PA.

The PA requires Regional Directors to report biennially to the NPS Director and the ACHP on implementation of the PA. Regional reports should be submitted within six months following the receipt of the park biennial reports by the Regional Director. These regional reports will be used by WASO to inform meetings between the signatories to the PA, which may occur as needed.

Annually, Park Section 106 Coordinators prepare a report of all the undertakings reviewed under the Streamlined Review Process and submit it to the SHPO/THPO.

The September 22, 2016 “Strengthening our Stewardship of Cultural Resources: Next Steps” memo from the Deputy Director of Operations to the Regional Directors requires that effective January 1, 2017, tracking and reporting Section 106 review must be done using the NPS PEPC system.

Glossary

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 (36 CFR § 800.5(a)(1)).

APPROVED TREATMENT PLAN:

An approved treatment plan is one that is developed for the Park Superintendent in accordance with recommendations by the Park Section 106 Coordinator and the CRM Team (as well as the Regional Section 106 Coordinator, as appropriate). Examples of approved treatment plans may include but are not limited to a Historic Structures Report (HSR); a Landscape Preservation Management Plan (LPMP); or a SHPO-reviewed park memorandum, finding, or report from a Phase II non-invasive or subsurface survey and/or treatment recommendations for ethnographic resources developed in consultation with the appropriate tribe(s). Such plans provide guidance on measures for stabilization and treatment of the character-defining features; have received written approval of the plan by the Park Superintendent, the Regional Manager of Cultural Resources Programs, Associate Regional Director of Cultural Resources, or the Regional Director; and may also include review comments provided by the SHPO/THPO.

ARCHEOLOGICAL DATA RECOVERY:

This term refers to a data recovery through professional archeological investigations and documentation of significant cultural resource materials and data in lieu of in-place resource preservation (NPS-28, p. 180). Put another way, it refers to all the techniques and approaches (excavation, remote sensing, etc.) that an agency might employ to capture the full range of significant information contained in an archeological site. Except for rare and special instances, the NPS only undertakes archeological data recovery when sites are threatened with destruction from either natural or human agencies. Data recovery always requires the Section 106 Standard Review Process.

ARCHEOLOGICAL MONITORING:

Archeological monitoring refers to the observation of ground-disturbing activities for the purpose of identifying possible archeological deposits, features, or objects that may be uncovered or otherwise affected by the activity.

ARCHEOLOGICAL RESOURCE:

This term refers to any material remains or physical evidence of past human life or activities that are of archeological interest, including the record of the effects of human activities on the environment. An archeological resource is capable of revealing scientific or humanistic information through archeological research (2006 *NPS Management Policies*).

ARCHEOLOGICAL TESTING:

This term refers to limited subsurface archeological exploration, through systematic, controlled excavation; it is one of the primary methods used to inventory and document archeological resources. Archeological testing allows for the identification and documentation of salient site characteristics and boundaries, and is used to gather data necessary to evaluate site condition/integrity and assess site significance. Subsurface testing, in the form of systematic, controlled excavation should be part of a legitimate program of inventory and evaluation with the aim of capturing information needed for site management.

AREA OF POTENTIAL EFFECTS (APE):

This term refers to 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 (36 CFR § 800.16(d)).

CERTIFIED LOCAL GOVERNMENT:

This term refers to a local government with a local historic preservation program that has been certified pursuant to Section 101(c) of the National Historic Preservation Act (54 USC §§ 302502-03).

CHARACTER-DEFINING:

A prominent or distinctive aspect, quality, or characteristic of a historic property that contributes significantly to its physical character. Structures, objects, vegetation, spatial relationships, views, furnishings, decorative details, and materials may be such features (NPS-28: Cultural Resource Management Guideline).

CONSENSUS DETERMINATION OF ELIGIBILITY (CDOE):

A Federal agency determination of National Register eligibility made during Section 106 consultation and with agreement by the appropriate SHPO or THPO for 106 purposes that a property is or is not eligible for listing in the National Register with the concurrence of the SHPO or THPO (36 CFR § 800.4(c)(2)). CDOEs are often used in Section 106 review to help satisfy Step 2 of the Standard Review Process. The advantage of the CDOE is that it provides eligibility determinations without having to go through the formal Keeper determination process.

CONSULTATION:

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 of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs* pursuant to the National Historic Preservation Act provide further guidance on consultation (36 CFR § 800.16(f)).

CULTURAL LANDSCAPE:

A geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or exhibiting other cultural or aesthetic values. There are four non-mutually exclusive types of cultural landscapes: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes (2006 *NPS Management Policies*). A cultural landscape may or may not be eligible for listing in or listed in the National Register as a historic site or district. If it is not eligible for listing in or listed in the National Register, it is not considered as a historic property for Section 106 purposes. Cultural landscapes are listed in the National Register as a historic site or district and are considered historic properties for Section 106 purposes. Cultural landscapes categorized by the NPS as historic designed landscapes, vernacular landscapes, or historic sites are eligible for the National Register. Ethnographic landscapes may be eligible for listing as Traditional Cultural Places. They may also be ineligible but are still recognized as cultural resources.

CULTURAL RESOURCE:

An aspect of a cultural system that is valued by or significantly representative of a culture or that contains significant information about a culture. A cultural resource may be a tangible entity or a cultural practice. Tangible cultural resources are categorized as districts, sites, buildings, structures, and objects, which may or may not be eligible for listing in or listed in the National Register of Historic Places, and as archeological resources, cultural landscapes, structures, museum objects, and ethnographic resources for NPS management purposes (2006 *NPS Management Policies*).

CULTURAL RESOURCES INVENTORY SYSTEM (CRIS):

An online database managed by the NPS that stores Section 110 baseline documentation of four types of national park cultural resources: archeological resources, ethnographic resources, cultural landscapes, and historic structures. For access to CRIS, see: [User Accounts \(sharepoint.com\)](#).

CULTURAL RESOURCE MANAGEMENT (CRM):

The range of activities aimed at understanding, preserving, and providing for the enjoyment of cultural resources. It includes research related to cultural resources, planning for actions affecting them, and stewardship of them in the context of overall park operations. It also includes support for the appreciation and perpetuation of related cultural practices, as appropriate (*NPS-28: Cultural Resource Management Guideline*).

CUMULATIVE EFFECTS:

Effects on historic properties that result from the incremental effects of actions over time. Cumulative effects can result from individually minor but collectively significant actions.

EFFECT:

The alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places (36 CFR 800.16(i)).

EMERGENCY ACTIONS:

Actions identified by the Superintendent as a necessary and immediate response to a disaster or emergency, or those proposed in response to an emergency declared by the President, a tribal government, or the Governor of a state; or another such threat to life or property. Emergency actions comprise only those actions required to resolve the emergency at the time and they are limited to undertakings that will be started within thirty (30) days after the emergency has been declared.

FEDERAL PRESERVATION OFFICER (FPO):

The qualified Federal official responsible for coordinating activities under the National Historic Preservation Act (Section 110(c)).

HISTORIC PROPERTY:

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 (36 CFR § 800.16(1)).

INADVERTENT DISCOVERIES:

Unexpected findings of cultural resources that may or may not be historic properties eligible for listing in the National Register, including human remains, burial goods, and objects of tribal patrimony. They may be recovered during an undertaking for which review has been previously conducted and completed under Stipulation III and Stipulation IV of the Programmatic Agreement. Inadvertent discoveries may also occur as a result of events such as erosion or animal activity.

INDIAN OR AMERICAN INDIAN TRIBE:

A Federally recognized 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 USC § 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 (36 CFR § 800.16(m)).

IN-KIND:

In the same manner or same material with something equal in substance having a similar or identical effect.

INTEGRITY:

The authenticity of a property's historic identity, as evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period; and/or the extent to which a property retains its historic appearance.

LOCAL GOVERNMENT:

A city, county, parish, township, municipality, borough, or other general-purpose political subdivision of a state (36 CFR § 800.16(n)).

NATIONAL HISTORIC LANDMARK (NHL):

Nationally significant historic places designated by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States (*NPS-28: Cultural Resource Management Guideline*).

NATIONAL REGISTER OF HISTORIC PLACES (NATIONAL REGISTER):

The comprehensive list of districts, sites, buildings, structures, and objects of national, regional, state, and local significance in American history, architecture, archeology, engineering, and culture kept by the NPS under authority of the National Historic Preservation Act of 1966 (*NPS-28: Cultural Resource Management Guidelines*).

NATIONWIDE PROGRAMMATIC AGREEMENT (NATIONWIDE PA):

The Nationwide Programmatic Agreement is an agreement executed in 2008 between the NPS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. It establishes an alternative program for compliance with Section 106 of the National Historic Preservation Act for certain park operations, management, and administration activities when certain specific criteria are met.

NATIVE HAWAIIAN:

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 (36 CFR § 800.16(s)(2)).

NATIVE HAWAIIAN ORGANIZATION (NHO):

Any organization that 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 culturally significant to Native Hawaiians (36 CFR § 800.16(s)(1)).

PARK:

A unit of the National Park System designated as a national park, national monument, national preserve, national reserve, national lakeshore, national seashore, national river, national trail, national historic site, international historic site, national military park, national battlefield, national historical park, national recreation area, national memorial, national parkway, and other stewardship lands under NPS management.

PRESERVATION:

The act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses on the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project (*Secretary of the Interior's Standards for the Treatment of Historic Properties*).

PREVIOUSLY DISTURBED:

Refers to past direct, indirect, and cumulative disturbances within the area of potential effects (APE) for an undertaking (see definition for “undertaking”). The disturbances within an area’s surface dimensions, alignment, and depth must have been documented by a qualified archeologist prior to the project under review.

RECONSTRUCTION:

The act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location (*Secretary of the Interior's Standards for the Treatment of Historic Properties*).

REHABILITATION:

The process of returning a property to a state of utility, through repair or alteration, that makes possible an efficient contemporary use while preserving those portions and features of the property that are significant to its historic, architectural, and cultural values (*Secretary of the Interior's Standards for the Treatment of Historic Properties*).

RESTORATION:

The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project (*Secretary of the Interior's Standards for the Treatment of Historic Properties*).

SALVAGE:

Recovery, protection, and reuse of elements of a historic property.

STANDARD REVIEW PROCESS:

The Standard Review Process refers to the procedures set forth in the ACHP's Section 106 Regulations, found at 36 CFR Part 800. The Standard Review Process must be used for all undertakings that do not meet the criteria for the Streamlined Review Process or if there is no park or project-specific PA nor another applicable program alternative.

STATE HISTORIC PRESERVATION OFFICER (SHPO):

The official appointed or designated pursuant to Section 101(b)(1) of the NHPA to administer the state historic preservation program or a representative designated to act for the State Historic Preservation Officer (36 CFR § 800.16 (v)).

STREAMLINED REVIEW PROCESS:

The Streamlined Review Process, detailed in the Nationwide PA, is an expedited review for designated undertakings that meet established criteria in this Section 106 program alternative. It is led by the Park Section 106 Coordinator, appropriate members of the Cultural Resource Management Team, and the Superintendent. The process requires no further review by the ACHP or the SHPO but does require certain documentation and reporting.

TRADITIONALLY ASSOCIATED PEOPLES:

Social/cultural group or people such as tribes, communities, and kinship units, as well as park neighbors, traditional residents, and former residents who remain attached to a park area despite having relocated, are “traditionally associated” with a particular park when 1) the entity regards park resources as essential to its development and continued identity as a culturally distinct people; 2) the association has endured for at least two generations (40 years); and 3) the association began prior to establishment of the park (2006 *NPS Management Policies*).

TREATMENT:

Cultural resources are subject to several basic treatments, including: 1) preservation in their existing states; 2) rehabilitation to serve contemporary uses, consistent with their integrity and character; and 3) restoration to earlier appearances by the removal of later additions and replacement of missing elements. Decisions regarding which treatments will best ensure the preservation and public enjoyment of particular cultural resources will be reached through the planning and compliance process (2006 *NPS Management Practices*, 5.3.5).

TRIBAL HISTORIC PRESERVATION OFFICER (THPO):

The tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance who has assumed the responsibilities of the State Historic Preservation Officer for purposes of Section 106 compliance on tribal lands in accordance with Section 101(d)(2) of the National Historic Act (see also 36 CFR § 800.16(w) of the Section 106 regulations). Also may serve as an authority on ancestral land claims within Federal boundaries and as a consulting party where ancestral lands are identified under *NPS Management Policies*.

TRIBAL LANDS:

All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities (36 CFR § 800.16(x)).

UNDERTAKING:

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 (36 CFR § 800.16(y)).

Frequently Asked Questions

HOW LONG DOES A SECTION 106 REVIEW TAKE?

The length of time will greatly vary and depends on the type of undertaking is being proposed. Compliance with Section 106 for some undertakings may require as little as a few weeks while other projects, particularly complex ones, may require several months. Another factor is whether the undertaking could have an adverse effect on historic properties or if the project is controversial.

I'M A PROJECT LEADER. WHAT CAN I DO AS A PROJECT LEADER TO HELP WITH FACILITATING THE SECTION 106 REVIEW OF MY PROJECT?"

Any information that you can provide about the project (including plans, specifications, maps, description of how work will be implemented, and documentation related to previous work) to your park's Section 106 Coordinator can be of tremendous benefit. Such information should be provided to the CRM Team as soon as possible. Ideally, the conversation should have taken place prior to submission of your project into any funding stream, so that compliance needs can be identified and advance research can be completed in time for the funding to be released. Also, should the proposed undertaking change, keeping the Park Section 106 Coordinator informed about changes in order for the Park Section 106 Coordinator to determine if compliance or consultation needs to change can be especially helpful.

DOES PARK STAFF HAVE DISCRETION IN THE STREAMLINED REVIEW PROCESS OF THE NATIONWIDE PA?

Yes. The PA is flexible to meet specific park needs as outlined in PA Stipulation III.D. The list of activities eligible for streamlined review can be amended and new ones adopted pursuant to the process outlined in the PA. To do so, park staff might:

- Review all of the activities in PA III.C and amend or add to them in consultation with the SHPO at your earliest convenience, through development of a separate PA.
- Coordinate all national park units in the state to adopt the same amendments/additions to expedite consultation with the SHPO.
- Choose an NPS employee to be a PA coordinator in your state. The individual could keep track of recommended amendments/additions to streamlined reviews, accomplished through development of separate PAs, and consider updating the PA statewide instead of park-by-park, and arrange a statewide biennial meeting with the SHPO and all the parks. The meeting could save time for the SHPO (one meeting instead of several) and allow park staff to understand how each park uses the PA.

CAN I USE THE STREAMLINED REVIEW PROCESS WHEN THE UNDERTAKING COULD ADVERSELY AFFECT A HISTORIC PROPERTY?

No. Only use the process when preliminary planning results in a finding of no historic properties affected or no adverse effect. The regular Section 106 process, known as the Standard Review Process, applies when an undertaking cannot be reviewed through the Streamlined Review Process because it does not meet the Streamlined Review criteria found in Stipulation III.A. of the Nationwide PA.

CAN I USE THE STREAMLINED REVIEW PROCESS WHEN THE UNDERTAKING MAY AFFECT HISTORIC PROPERTIES ON CURRENT TRIBAL LANDS?

If the tribe is not a signatory to the PA or to a park-specific agreement (see Nationwide PA Stipulation II.2.4), then streamlined review may not be used when the undertaking may affect a historic property on tribal lands. In such cases, the Standard Review Process must be followed. Undertakings affecting historic properties of significance to tribes that are not on tribal lands also need to follow the Standard Review Process for consultation with the affected tribe(s), though the Streamlined Review Process may be followed for consultation with the SHPO.

SHOULD PARK STAFF ALSO CONSIDER COORDINATING WITH OR INFORMING THE REGIONAL SECTION 106 COORDINATOR?

In certain regions, park staff are required to coordinate with their Regional Section 106 Coordinators, while in other regions such coordination is encouraged or recommended. But even if your park is not required to coordinate with your Regional Section 106 Coordinator, keep in mind that the Regional Coordinator can help answer questions that you may have about Section 106 compliance. The Regional Coordinators are there to help de-mystify Section 106!

WHAT ARE THE PA'S REPORTING REQUIREMENTS?

The Nationwide PA requires parks to report annually to the SHPO and/or THPO on projects that were reviewed using the Streamlined Review Process (PA Stipulation III.B.5.d). Every two years, each park must compile the information reported to the SHPO and/or THPO in a report submitted to the Regional Director. The report should include information on completed staff training and basic data demonstrating compliance with the provisions of the PA. Regional Directors will consolidate the reports into a single report for the Director, a copy of which is also provided to the ACHP.

WHEN MAY I NOT USE THE STREAMLINED REVIEW PROCESS?

In situations where all three of the Criteria for Using the Streamlined Review Process (see Stipulation III.A.) have not been met.

WHAT IS A CONSENSUS DETERMINATION OF ELIGIBILITY (CDOE)? IS THERE A FORM I SHOULD USE FOR PREPARING A CDOE?

The ACHP's Section 106 Regulations set forth a process for making "consensus" determinations of eligibility, and NPS often uses this process. These regulations do not specify a CDOE form, but many SHPOs do require Federal agencies to use a state form. Check with the appropriate SHPO to determine what level of information it will need to review a CDOE. Also, the process used in consulting about a CDOE requires NPS to obtain the SHPO/THPO's agreement in writing with NPS eligibility determinations. If the NPS agency official determines that the National Register criteria are met and the SHPO/THPO agrees in writing, 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 in writing, the property is considered not eligible. If the agency official and the SHPO/THPO do not agree, talk with your Regional Section 106 Coordinator. Correspondence and forms associated with this effort are an important part of the agency's administrative record and should be uploaded into PEPC.

AREN'T THE PA'S REPORTING REQUIREMENTS A LOT OF ADDITIONAL WORK FOR THE PARKS?

The reporting requirements aim to make the park accountable to all of the PA signatories and ensure communication between the NPS and other consulting parties. Since 2017, it has been a requirement for parks to use the PEPC system to track and document Section 106 compliance activities. PEPC allows parks to submit the project information into a reporting format that requires little effort from the system user. See the template NHPA Annual/Biennial Report under the Reports tab of PEPC. Satisfying the reporting requirements is easier than consulting on every individual project.

HOW OFTEN DOES THE PA REQUIRE SUPERINTENDENTS TO MEET WITH THEIR SHPO(S)?

Park Superintendents meet with their SHPO on a biennial basis through the Biennial Review and Monitoring Meeting, which should also include Federally recognized tribal/THPO or Native Hawaiian organization representatives, as appropriate. During this meeting, you should bring your list of undertakings for which the PA's Streamlined Review Process was used.

WHAT ARE THE STAFFING REQUIREMENTS AT THE PARK?

In order to fulfill the requirements of the PA, the Superintendent must designate a Section 106 Coordinator and a Cultural Resource Management (CRM) Team for the park. The Park Section 106 Coordinator provides day-to-day staff support for Section 106 compliance activities and serves as a liaison between park personnel, the NPS Regional Office, NPS Centers, and others involved in undertakings. The Park Section 106 Coordinator determines whether a project constitutes a Section 106 undertaking and, in consultation with the CRM Team, makes recommendations to the Superintendent regarding the appropriate course of action under the PA. The CRM Team provides expertise and technical advice to the Superintendent and the Park Section 106 Coordinator for purposes of Section 106 compliance and implementation of the PA. CRM Team members may be on the park staff or in other parks, or from NPS Regional Offices, NPS Centers, Federally recognized Indian tribes, Native Hawaiian organizations, or elsewhere in the public or private sector. See Stipulation I for more information about CRM Team qualifications.

WHAT ARE THE TRAINING REQUIREMENTS IN THE PA AND HOW CAN I MEET THEM?

The 2008 PA requires park staff to receive periodic training on Section 106 compliance issues and the provisions of the PA. Superintendents are required to demonstrate that they and their staff have completed training during their biennial review and monitoring meetings. See Stipulation I for more information about training.

WHERE CAN I GET HELP WITH SECTION 106 ISSUES OR IMPLEMENTATION OF THE PA IF I NEED IT?

Each region has a Regional Section 106 Coordinator who works with park staff and other NPS offices to provide support for Section 106 compliance and implementation of the PA. The Regional Section 106 Coordinators provide guidance materials and technical assistance for implementing the PA and assist park staff in meeting the training, reporting, and consultation requirements of the PA.

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As the nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historic places; and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

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