

Section 106 of the National Historic Preservation Act



Russell Holter
Department of Archaeology & Historic Preservation
(360) 586-3533

Section 106 is **NOT** New

- NHPA has been law since 1966.
- Number of amendments and iterations in its regulations.
- Most recent update August 5, 2004
- It is a process
- Responsibility of the Federal Agency
- Consultative



National Historic Preservation Act



Lady Bird Johnson

- Established partnerships with States and Tribes or historic preservation
- Establishment of State and Tribal Historic Preservation Offices
- Establishment of the Advisory Council on Historic Preservation
- Created a consultation process on Federal actions
- Established Preservation as an environmental discipline
- Established the National Register of Historic Places

Section 106 An Overview

- Requires substantive technical information and informed decision making.
- Involves a number of parties.
- Over the past 50 years the general evolution of the process has been towards a more consultative process with more parties that address more types of resources.

Undertaking

Means 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 with federal financial assistance; those requiring a federal permit, license, or approval, those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency.



Examples of Undertakings Projects which utilize Federal money

- FERC Licenses, BLM grazing permits,
- FS Timber Sales, recreation developments
- COE permits, dredging, construction projects
- FHWA highway funding projects of State DOT and local government roads
- FDIC applications, and FCC Cell Towers
- HUD, CDBG

Undertakings

Not all undertaking have the potential to affect historic places.

- Social Security payments.
- Student Loans
- Purchase of Pens, etc.



Undertakings that have traditionally been the focus of Section 106.

- Land Altering Activities.
- Capital Financing that alters buildings, the landscape.



Environmental Reviews

Tax Funded Projects or Projects on Public Land⁸



Section 106



GEO 05-05



SEPA

D.I.E.N

DEFINITION

PROJECT

VALUATION

REAGENT

Process Funnel

Capitol Programs & Acquisitions⁸



Treatment Plan: Avoid, minimize, mitigate

Step 1: Define the APE

- Determine Undertaking
- Identify Concerned Parties
- Define Area of Potential Effect (APE)



Action	Product
Initiation of Process	Letters/ Maps

Step 2: Identify Participants

- The Federal Agency or Agencies
- THPO: Tribal Historic Preservation Officer
- SHPO: State Historic Preservation Officer
- Applicant for Funding, License, Permit, etc.
- ACHP: Advisory Council on Historic Preservation.
- Public or Local Government (CLG)

Identify the Sites

- Acquire background and historic information
- Conduct on the ground survey
- Author Report, Inventory forms,
- Consult with parties on findings



Products

- *Open File:*
- *Letters, APE map*
- *Response letters*
- **EXEMPT Documents**
- *Site forms, Reports,*
- *Maps with site locations*
- *DOE forms, reports*

Evaluation of the Significance

- Evaluating the Significance of the sites in the APE.
- Follow Secretary of Interior Standards, and guidelines from the National Register of Historic Places (www.nps.gov)
- Requires the Federal Agency to consult and seek the concurrence of THPO or SHPO
- If disagree, forward to the Keeper of the NR

Step 3: Evaluate Effects

- What are the impacts of the proposed project upon the National Register sites?
- Consult with the parties to determine:
 - *No Historic Properties effected*
 - *No Effect*
 - *No Adverse Effect*
 - *Adverse Effect*



Assessing Effects

- **No Historic Properties Affected:** No historic or cultural resources affected.
- **No Effect:** No change to the NR eligible site.
- **No Adverse Effect:** Will be a change, but not damaging to the qualities that make a resource significance.
- **Adverse Effect:** Where you have an impact that will alter, damage, destroy or change the characteristics that make the property significant and eligible to the National Register.



Step 4: Treatment Plan: MOA

- Memorandum of Agreement (MOA) is a legal document that formalizes the specific actions the Federal Agency will take to avoid, minimize, or mitigate the adverse effect.
- Agency must notify ACHP and invite participation
- Consult with the THPO and/or SHPO



Final Step

- Implement the MOA
- Report back to assure the consulting parties that the terms and conditions of the MOA were met.
- If no agreement notify ACHP for formal ACHP comment to Agency Head.
- If conditions change notify parties of need for amendment.



Areas of Potential Effect (APE)



Russell Holter
Department of Archaeology & Historic Preservation
(360) 586-3533

APE knows no boundary

- If there are direct and indirect effects outside of the project area, then those areas must be included in the APE.
- APE is not limited by a property boundary or right-of-way
- APE may be modified over course of the project to include effects to cultural resources not previously identified
- APE may be three dimensional: Vertical Component

Points to consider when identifying the project APE

- All areas directly or indirectly affected by the undertaking
- Should include all the areas affected by all project alternatives
- Should include temporary work, storage, and equipment lay-down zones



Throughout the consultation process...

Contact and consult with tribes and local government agencies, and interested members of the public about their concerns



Submitting the proposed APE for review

- Cover letter describing the scope of the undertaking, the federal action, the limits of the APE defined, any known cultural resources, and a request for comments
- Relevant Portion of 7.5' USGS quad map
- Other maps that best illustrate and highlight the APE as described

Supporting Material

- Aerial photographs of the site may substitute for an engineer's drawing if the APE is CLEARLY identified and highlighted
- Photographs of known cultural resources
- Correspondence from Tribes
- Maps that show the proximity of the APE to known historic districts where direct or indirect effects may exist



Consultation Time

- Consultation takes as long as necessary to define the APE
- There is no limit specified in Section 106 as to how long this process should take
- It is a matter of SHPO policy to review all APE determinations within 30 days
- Section 106 submittals that come to SHPO with all necessary documentation, takes less time to review



Attachment EZ1 Project Review Worksheet

PROJECT REVIEW SHEET – EZ1
HISTORIC & CULTURAL RESOURCES REVIEW

PROPERTY / CLIENT NAME: _____ FUNDING AGENCY: _____

Project Address:
 Street Name: _____
 Address: _____ Zip: _____ County: _____
 City: _____
 Phone (A): _____
 E-Mail: _____

Funding Agency:
 Organization: _____
 Address: _____
 City: _____ Zip: _____
 Phone: _____

PLEASE DESCRIBE THE TYPE OF WORK TO BE COMPLETED
(Be as detailed as possible to avoid having to provide additional information)

Provide a detailed description of the proposed project.

Describe the existing project site conditions.

Describe the proposed ground disturbing activities.

Project Location

Location: _____ Range: _____ Section: _____
 Address: _____ City: _____ County: _____

Place Map Here

Please be aware that this form may only initiate consultation. For some projects, SHPO may require additional information to complete our review such as plans, specifications, and photographs. An historic property inventory form may need to be completed by a qualified preservation professional.

Attachment EZ3

Building Rehabilitation Worksheet

BUILDING REHABILITATION WORKSHEET – EZ3

PROPERTY / CLIENT NAME: _____ DAMP Log # _____
 ADDRESS: _____
 Name: _____ City: _____
 State: _____ Zip: _____

Funding Agency:
 Manager Name: _____
 Organization: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone: _____

PLEASE DESCRIBE THE TYPE OF WORK TO BE COMPLETED
(Be as detailed as possible to avoid having to provide additional information)

PLEASE CHECK WHICH PARTS ARE PROPOSED FOR WORK AND CIRCLED THE METHOD OF CONSTRUCTION TO BE USED FOR EACH SECTION AND PERSONAL CONDITIONS, PORTIONS OF AREAS OF WORK.

ROOF

INSULATION

WINDOWS AND DOORS

FOUNDATION

GROUND DISTURBING ACTIVITIES

OTHER

Check if there are any ground disturbing activities. If so, please complete a DAMP Attachment Project Worksheet "DZ1" form for the proposed project.

Mail this form to: Department of Archaeology and Historic Preservation - 6 South 1400 East, Suite 1000, Salt Lake City, UT 84143-1000. Phone: 801-538-8543. Website: www.dahp.utah.gov

(Within 30 days DAMP will mail (email) response back to you.)

Please be aware that this form may only initiate consultation. For some projects, SHPO may require additional information to complete our review such as plans, specifications, and photographs. An historic property inventory form may need to be completed by a qualified preservation professional.

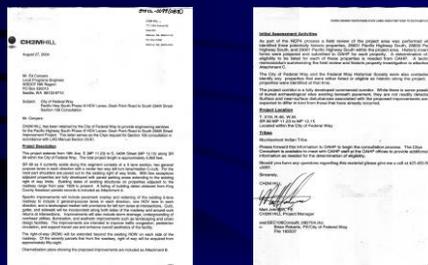
APE Submittal—Case Study

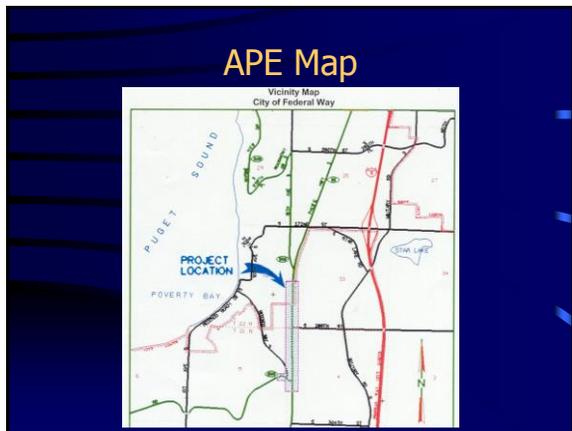
Federal Way
Pacific Highway South HOV
APE

Cover letter



Supporting documentation





National Register of Historic Places & Determination of Eligibility

A photograph of a single-story white house with a prominent red brick chimney and a red roof. The house is set on a green lawn with some trees and shrubs in the background.

Designated Historic Sites

- 1,486 listings on the National Register of Historic Places statewide.
- 189 National Register Historic district listings.
- 436 listings on the Washington Heritage Register of Historic Places statewide.
- 661 Barns on the Washington Heritage Barn Register
- 24 National Historic Landmark listings.

Two photographs: the top one shows a classical building with columns and a pediment; the bottom one shows three people working on a wooden structure outdoors.

National Register of Historic Places Property and Resource Types

- Buildings
- Sites
- Structures
- Objects
- Districts

A collage of six images: a tall tower, a multi-story building, a bridge over water, a house, a person working on a structure, and a group of people.

The Criteria for listing on the National Register

Integrity and Historical significance

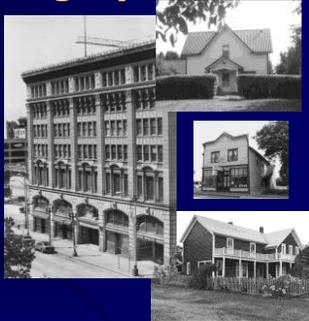
A photograph of a residential street with several houses, trees, and parked cars.

The 50 year rule

A collage of seven images showing various historic buildings and structures, including houses, a gazebo, and a building with a white picket fence.

The qualities of Integrity

- *Location*
- *Design*
- *Setting*
- *Materials*
- *Workmanship*
- *Feeling*
- *Association*



Criterion A

Properties that are associated with events that have made a significant contribution to the broad patterns of our history



Criterion B

Properties that are associated with the lives of persons significant in our past.



Criterion C

Properties that embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components lack individual distinction.



Criterion D

Properties that have yielded, or may be likely to yield, information important to prehistory or history.

