

West Virginia Division of Culture and History State Historic Preservation Office

- A Review of Our Activities
- “Section 106” review



The National Historic Preservation Act of 1966, as amended

- established state historic preservation offices
- created the National Register of Historic Places
- requires federal agencies to take into account effects to historic resources before a project begins
- created historic preservation fund
- created Advisory Council on Historic Preservation




SHPO programs

- WV Historic Preservation Plan
- Historic Property/Archeological Site Inventories
- The National Register of Historic Places
- Cemetery Survey
- “Section 106” review process
- Planning and Education
- Certified Local Government/Historic Landmark Commissions
- Historic Residential/Commercial Tax Credits
- Survey and Planning & Development Grants

Section 106 Review Process

Requirements of the
National Historic
Preservation Act of
1966, as amended



Federal Agencies responsibilities under NHPA

- Section 110
 - Created comprehensive Federal agency preservation programs.
 - Consider historic properties and affirmative stewardship of federally owned historic properties.
- Section 106
 - Created agency accountability for effects of Federal undertakings on historic properties.

36 CFR Part 800: Protection of Historic Properties

- Regulations which establishes the process that Federal agencies must follow in order to take into account the effects of their undertakings on historic resources and allows the Advisory Council on Historic Preservation an opportunity to comment.

For Federal Agencies

- Section 106 is an agency responsibility
- If project involves multiple agencies one will be designated as lead
- Applicants and contractors can be involved, but the agency must ensure that the latter meets necessary professional standards (36 CFR 61)

Coordinating with other reviews

- Regulations encourage coordination with other environmental laws such as
 - National Environmental Policy Act (NEPA)
 - Archaeological and Historic Preservation Act (AHPA)
 - Archaeological Resource Protection Act (ARPA)
 - American Indian Religious Freedom Act (AIRFA)
 - Native American Graves Protection and Repatriation Act (NAGPRA).
- Compliance with one or more of the other statutes does NOT substitute for compliance with 36 CFR Part 800.

Consulting Parties

- State Historic Preservation Officer (SHPO)
- Tribal Historic Preservation Officer (THPO)
- Local governments
- The applicant
- Property owners
- Interested persons or organizations

Section 106 is a 4 step process

- Step 1: Initiation of the Section 106 process
- Step 2: Identification of historic properties
- Step 3: Assessment of adverse effects
- Step 4: Resolution of adverse effects

STEP 1: Initiation of Review Process

Confirm that there is an undertaking.

Identify correct parties to consult, including the SHPO and other organizations.

Involve the public through notice or other format

Identify other consulting parties.

STOP if there is no undertaking and no potential to cause effects.

Continue to STEP 2 if the undertaking MIGHT affect historic properties.

Determine the Area of Potential Effects (APE)

- APE: 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 APE is influenced by scale and nature of the undertaking and may vary for different kinds of effects.

Step 2: Identifying historic properties

- Determine if there are any properties listed in or eligible for the National Register of Historic Places.
- Agency **must make a reasonable effort** to carry out appropriate identification efforts.
- Can be a
 - Building (house, barn)
 - Structure (bridge, canal, dam, train)
 - Site (battlefield, trail, landscape, remains of prehistoric village)
 - Object (sculpture, monuments, fountain, mile markers)
 - District (concentration of any of the above, residential areas, rural villages, large farm, linked ceremonial sites)

National Register Criteria

- Significant for at least one of the following
 - A events;
 - B people;
 - C design/construction;
 - D data potential
- Has physical integrity of location, setting, design materials, workmanship, feeling and association

Concluding the identification and evaluation step

- Agency must document formal finding if historic properties will be affected.
- No historic properties affected – SHPO agrees, process finished.
- Historic properties affected – process continues.

Step 3: Assessment of adverse effects

- If the undertaking will alter the qualities that make the property eligible for the NR and diminish the integrity of a property.
- Can be direct or indirect effect.
- If the project “may” cause a change it is treated as a potential adverse effect.
- Must consider all qualifying aspects of a property.

What types of activity are considered adverse?

- Physical destruction or damage from an undertaking
- Alteration of the property including work done to preserve a property not done to the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (in Appendix).
- Removal of the property .
- Changes in historic purpose and use.
- Changes in the property's setting.
- Introduction of visual, atmospheric or audible elements.
- Neglect of a property.
- Transfer, lease, or sale out of Federal ownership without adequate restrictions or conditions to ensure long-term preservation of the property.

STEP 4: Resolution of Adverse Effects

Agency must invite ACHP to participate

Agency consults with SHPO and other consulting parties to seek ways to avoid the adverse effect

Agency determines appropriate steps to mitigate adverse effect

Memorandum of Agreement concludes process.

W/O MOA, Advisory Council provides final comments.

Memorandum of Agreement (MOA)

Usual result of a finding of Adverse Effect.

Involves consideration of alternative ways to avoid unnecessary damage to properties or ways to minimize or mitigate unavoidable damage.

Outlines plan for mitigation of the adverse effect.

Project begins

- When review process is completed:
 - After final SHPO correspondence or....
 - After final ACHP correspondence or.....
 - After MOA is signed by all required parties.

State Review Process

- required by WV Code 29-1-8
 - “the purposes and duties of the historic preservation section are to....review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state”
- Steps outlined in 82 CSR 2

For More Information



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