



Preserving America's Heritage

SECTION 106 CHECKLIST FOR DEPARTMENT OF ENERGY OWIP PROJECT

(For States with PROGRAMMATIC AGREEMENT in place)

Step 1: Initiate Section 106 (36 CFR 800.3)

- Determine whether there is an executed Programmatic Agreement (PA) for the state in which the project is proposed. If so, use this PA checklist.
- Review the executed PA to determine if the stipulations include any unique aspects that differ from the prototype PA.
- Identify the undertaking and all its components parts. This includes all federal actions/approvals that are necessary for project implementation.
- Identify other participating federal agencies, and decide whether DOE will act as lead agency. Have agencies document in writing the agreed upon arrangement so that it is understood by all consulting parties.
- Specify the state agency(ies) that is receiving funds from DOE for the undertaking or identify the direct recipient or non-governmental organization.
- Using the executed PA, determine if the undertaking is an exempted activity under the agreement. Exempted activities should be outlined in the Appendices attached to the executed PA. If the undertaking is exempted under the PA, no further review is required under the PA. Be sure the exempted activity(ies) is documented as part of the administrative record.
- Identify the appropriate SHPO/THPO, including those involved in undertakings that may cross jurisdictional boundaries and involve multiple SHPOs and THPOs.

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- Identify Indian tribes and Native Hawaiian organizations that may attach religious and cultural significance to historic properties within the APE(s) and invite them to participate in consultation. Recognize that many tribes now reside at a distance from their ancestral lands and will also need to be notified.
- Identify additional consulting parties that should be invited to participate in consultation per 36 CFR 800.3.
- Identify if the property has been determined to be ineligible for inclusion in the National Register of Historic Places within the last five (5) years from the date the Recipient made its application for DOE financial assistance. If so, no further review is required under the PA unless specifically requested by the SHPO/THPO or ACHP. Document this finding and record for administrative record purposes.
- Determine if the Recipient has an executed and active Section 106 agreement with the SHPO and possibly ACHP per 36 CFR part 800 for a State or local Community Development Block Grants (CDBG) with the SHPO that covers the same undertakings as the DOE grant programs. Is it being actively used for current CDBG Program activities? If this agreement is in place and addresses DOE activities, no separate Section 106 review is needed. Document this determination and include in the administrative record.
- Consider the appropriate scope and outreach necessary to convey project information to the public, taking into account project planning history, historic properties and landscapes in proximity to the project, proposed alteration of lands uses, and possible impacts to the access and use of traditional cultural properties.
- Consider the use of websites and other creative forms of communication to provide ongoing status reports and to solicit public views, as appropriate.

Step 2: Identify and Evaluate Historic Properties (36 CFR 800.4)

- Develop an APE or APEs that reflect the full range of possible effects from the undertaking, including ground disturbance, light, noise, access, construction staging, audible and visual effects, related induced development, and indirect and cumulative effects.
- Coordinate with the SHPO (s) and THPO(s) in defining the APEs and developing the scope of work for surveys required to identify various type of historic properties.
- Employ or contract consultants or contractors that are qualified professionals pursuant to 36 CFR Part 61 for the discipline in which they will carry out studies.

- ❑ If coordinating Section 106 with NEPA review, explicitly reference Section 106 in any project documentation shared with consulting parties, and notify the SHPO(s)/THPO(s) of DOE's intent to coordinate both reviews to address historic preservation issues.
- ❑ When identifying properties eligible for listing in the National Register, review local and state surveys, recently completed Section 106 reviews in proximity of the project, and information maintained by professional organizations such as American Institute of Architects (AIA) and the Society of Historical Archaeology (SHA). Determine whether DOE should use phased identification and evaluation as outlined in 36 CFR Part 800.4(b)(2) due to the complexities of a particular undertaking.
- ❑ Document whether historic properties should be reevaluated given the passage of time or other historic preservation issues.
- ❑ Consult with Indian tribes during the identification and evaluation of historic properties within the APE consistent with the protocols established and the need for DOE to carry out government-to-government consultation.
- ❑ Determine if new archaeological surveys are required. Archaeological surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPO or Indian tribes or NHOs concurrently for review.

Step 3: Assess Adverse Effects (36 CFR 800.5)

When an undertaking is determined to have an effect, DOE is required to complete Steps 3 and 4, as appropriate. DOE should make arrangements to involve all consulting parties during these steps of the Section 106 review.

- ❑ Apply the criteria of effect outlined in 36 CFR Part 800.16 and criteria of Adverse Effect in 36 CFR Section 800.5(a)(1) to each property within the APE determined to be listed or eligible for listing in the National Register.
- ❑ Evaluate direct effects and indirect and cumulative effects that take into account long-term reasonably foreseen alterations of historic properties.
- ❑ Be specific about how project activities may adversely affect the characteristics that qualify a historic property for the National Register.
- ❑ Coordinate with the SHPO to determine if an undertaking may be designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic*

Properties (36 CFR Part 68, July 12, 1995 *Federal Register*)(Standards). If so, undertaking will not be subject to further Section 106 review.

- Coordinate with the SHPO to make an effort to expedite reviews through a finding of “No Adverse Effect with conditions,” when there is concurrence that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If this is not possible, then continue through the process to resolve adverse effects.
- Should any of the consulting parties object to the determination of No Adverse Effect, the undertaking should be further discussed with the objecting party(ies) or referred to the ACHP for its review.
- Should all consulting parties concur with the determination of No Adverse Effect, DOE should document the files and the Section 106 review is completed.
- If any one property is determined to be Adversely Effected, the undertaking in its entirety must be coordinated as an Adverse Effect and a Standard Mitigation Agreement, Memorandum of Agreement or Project based Programmatic Agreement developed. DOE may need to consult directly with Indian tribes on a government-to-government basis to discuss effects or projects on properties of religious and cultural significance if tribes so request.
- Where multiple historic properties may be adversely affected, specify the applicable criterion of adverse effect for each property.
- Don’t focus on mitigation while assessing effects. Document efforts to consider alternatives to avoid or minimize adverse effects.

Step 4: Resolve Adverse Effects (36 CFR 800.6)

- Continue to coordinate with the SHPO, and Indian tribes or NHOs, appropriate, to resolve adverse effects.
- DOE should be notified by the Recipient of the consultation involving the resolution of the adverse effect, and will participate through its designated representative.
- Determine if the standard stipulations included in the prototype Programmatic Agreement (Attachment A) may be used to resolve the adverse effect. Or, coordinate with the SHPO, or if the undertaking warrants it, use an alternate Programmatic Agreement (PA) due to the complexity of the project activity, to resolve the adverse effect.

- ❑ Determine if consultation can be coordinated to be concluded in 45-days or less to avoid the loss of funding. If not, and the consultation extend beyond this period, DOE shall formally invite the Advisory Council on Historic Preservation (ACHP) to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within 7-days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.
- ❑ Invite the ACHP to participate if DOE feels its participation is warranted, an NHL is involved or a Project based PA is required. The ACHP will decide within 7 days whether is will participate based on the criteria set forth in Appendix A of its regulations.
- ❑ DOE should prepare a schedule with milestones to manage the consultation to resolve adverse effects. If the undertaking is complex, has widespread opposition in the community, or is otherwise considered a high profile project, consider the use of a facilitator to manage the Section 106 consultation.
- ❑ Determine if on-site meetings and site visits are warranted, and provide all consulting parties with a proposed consultation schedule. Be sensitive to the needs of consulting parties when scheduling meetings or proposing teleconferences.
- ❑ Provide all consulting parties with an analysis of alternatives, including a summary or how each alternative affects historic properties. Respond to all comments provided by consulting parties and follow up to consulting party requests for additional information and recommendations for ways to avoid, minimize, or mitigate adverse effects.
- ❑ DOE should maintain a summary of major historic preservation issues that were raised during consultation and the resolutions reached. If multiple drafts of MOA or PAs are prepared, keep copies of all as part of the administrative record.
- ❑ Be sensitive to the desires of Indian tribes for confidentiality during the discussion of effects to any historic properties of religious and cultural significance to them.
- ❑ When drafting the MOA or PA that was negotiated among consulting parties, be certain to clarify the signatories, the roles anticipated for other consulting parties, and the need for any appendices.
- ❑ When the MOA/PA is finalized, file a copy of the signed MOA/PA with ACHP and make it available for public review before approving the undertaking.

- DOE should ensure that the undertaking is implemented in accordance with the terms outlined in the signed MOA/PA.

Other:

- Encourage early coordination with SHPO(s)/THPO(s), Indian tribes, and the ACHP.
- Keep good written records that summarize all major decisions and Section 106-related findings and determinations, particularly those regarding historic preservation issues raised by consulting parties.
- Keep consulting parties informed when there may be project delays or DOE has decided to withdraw its funding from an undertaking.
- Inform grant recipients and sub-recipients about the requirements of Section 106 and 110(k) of the National Historic Preservation Act and applicable DOE policies and directives that are related to the coordination of historic preservation reviews.
- Use terms consistently and in keeping with regulatory definitions.
- Look for opportunities to attend or conduct Section 16 training, for direct recipients and sub-recipients, especially if and when a PA has been negotiated and executed for use.

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