



INTRODUCTION



National Historic Preservation Act &
Section 106

National Historic Preservation Act 1966 (NHPA)

- Established Federal Policy to:
 - Foster productive harmony between modern society and historic resources
 - Provide preservation leadership
 - Administer historic resources in spirit of stewardship
 - Assist preservation efforts of state and local governments, Tribes, and the public
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Federal Agency Responsibilities Under NHPA

- Section 106
 - Creates agency accountability for effects of Federal undertakings on historic properties
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Federal Agency Responsibilities Under NHPA

- Section 110
 - Requires creation of comprehensive Federal agency historic preservation program
 - Mandates consideration of historic properties and affirmative Federal stewardship
 - Requires that preservation of properties not under jurisdiction or control of the agency, but subject to be potentially affected by agency undertakings, are given full consideration in planning (Sect. 110(a)(2)(C))
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Section 106

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of any expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, **take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.** The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Requirements of Section 106

- Prior to taking any action on an undertaking, agencies must:
 - Take into account effects on historic properties
 - Afford the Advisory Council on Historic Preservation a reasonable opportunity to comment
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Four Steps of Section 106 Review

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

- **Federal agencies**
 - **Advisory Council on Historic Preservation**
 - **Consulting Parties – SHPO, project proponent, etc.**
 - **Public**
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Definition of Undertaking

- Project, activity, or program under direct or indirect jurisdiction of a Federal agency
 - Includes activities that:
 - are carried out by or on behalf of agencies
 - receive Federal funds
 - require a Federal permit, license, or approval
 - are regulated under delegated programs
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Confidentiality

- Agency must withhold information on historic properties if it determines that release would:
 - cause a significant invasion in privacy
 - risk harm to a historic property
 - impede use of a traditional cultural property
 - Agencies may withhold information on undertakings to protect privacy of affected parties
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Determining Area of Potential Effect (APE) and Scope of Effort

- Area of Potential Effect
 - Consultation with SHPO required in determining APE
 - Specific requirement to gather info from Indian tribes ... for identifying properties of religious and cultural significance (on or off tribal lands)
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National Register Properties

- Property Types:
 - Buildings
 - Structures
 - Objects
 - Sites
 - Districts
 - National, State, or local significance
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National Register Criteria

- A. Association with events
 - B. Association with important people
 - C. Distinctive design /construction
 - distinctive construction characteristics
 - work of a master
 - artistic value
 - a distinguishable entity
 - D. Data potential
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Integrity

- Properties must have integrity of (as appropriate):
 - Location
 - Setting
 - Design
 - Materials
 - Workmanship
 - Feeling and association
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Determining Eligibility

- Consensus determination process between Agency and SHPO/THPO
 - Agency must consult, but agreement not required, with Indian tribes ... off tribal lands
 - These groups may ask the Council to request a formal determination
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Alternative Procedures

- An agency official may develop procedures to implement Section 106 and substitute them for all or part of the procedures if they are consistent with the Council's regulations [800.14(a)]
 - BLM developed a National Programmatic Agreement with Advisory Council and National Council of SHPOs (1997).
 - Wyoming BLM has a Protocol with Wyoming SHPO for implementation of National PA (1998).
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Sources of Information

-<http://www.achp.gov/pubs.html>

-<http://www.cr.nps.gov/nr/publications/>

-<http://wyoshpo.state.wy.us/>

-<http://www.wy.blm.gov/cultural>
