

# VA CULTURAL RESOURCE MANAGEMENT CHECKLIST **PART ONE: COMPLIANCE** WITH CULTURAL RESOURCE MANAGEMENT LEGAL REQUIREMENTS IN GENERAL

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# WELCOME TO THE VA CULTURAL RESOURCE MANAGEMENT CHECKLIST, PART ONE: COMPLIANCE WITH CULTURAL RESOURCE LEGAL REQUIREMENTS IN GENERAL

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This checklist is designed to help you, as a VA official, employee, partner or contractor, make sure that the projects or other actions you are planning or carrying out are in compliance with the federal laws, rules, and regulations designed to protect cultural resources – that is, aspects of the environment to which people ascribe some kind of historical, architectural, archaeological, or other cultural value.

The checklist is interactive. Clicking on a highlighted word or button will take you to relevant information, or guide you in doing what needs to be done to (a) ensure that your project is in compliance with the law, and (b) in documenting that compliance.

To begin, please click on the term below that best describes the work you are doing or actions that you are considering.

## (a) Veterans Health Administration

1. [Master Planning](#)
2. [Major Construction Project.](#)
3. [Minor Construction Project.](#)
4. [Clinical-Specific Initiative \(CSI\) Project](#)
5. [Miscellaneous and non-recurring maintenance \(including Mini-Minor Project\).](#)
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12. [State Veterans Home Grants administration.](#)
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## (b) National Cemetery Administration

1. [Master Planning.](#)
2. [Major Construction Project.](#)
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### **(c) Veterans Benefits Administration**

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5. [Leasing to another party.](#)
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9. [Ongoing Facility Management.](#)
10. [Mortgage loan guarantees.](#)
11. [Managing property held as the result of foreclosure.](#)

### **(d) Other activities**

1. [Management of archaeological materials.](#)
2. [Management of artwork, craft products, and architectural artifacts.](#)
3. [Management of furnishings, equipment, and technology.](#)
4. [Management of archives and records.](#)
5. [Management of memorials and monuments](#)
6. [Management of memorabilia and ephemera.](#)

# How VA Activities and Cultural Resource Legal Requirements Interact

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*This page outlines how different kinds of VA activities relate to the various cultural resource legal requirements.*

## Master Planning

*Master Planning* for the development and/or ongoing management of a facility defines how land, buildings, and other resources will be used, so it defines the future of whatever cultural resources may exist on or around the facility to which a plan pertains, as well as the future of the facility's overall environment.

To avoid unknowingly committing the environment or its cultural resources to destruction or damage, master planning must be carried out in compliance with the National Environmental Policy Act ([NEPA](#)) and with [Section 106](#) of the National Historic Preservation Act (NHPA). Depending on the specific character of the facility and the people who live in or use it, master planning may be an important context in which to address some or all of the other cultural resource management legal authorities – such as:

- [Section 110](#) of NHPA in the context of facility planning.
- [Section 111](#) of NHPA where outleasing is under consideration or VA buildings are underutilized.
- The Religious Freedom Restoration Act ([GdInsRFRA](#)) and sometimes the American Indian Religious Freedom Act ([AIRFA](#)) and [Executive Order 13007](#) where the religious concerns of veterans, neighbors, Indian tribes, or other groups may be affected.
- The Archaeological and Historic Preservation Act ([AHPA](#)) and often the Archaeological Resources Protection Act ([ARPA](#)) and Native American Graves Protection and Repatriation Act ([NAGPRA](#)) where graves, Native American cultural items, or archaeological, historical, or scientific data are involved.
- [Executive Order 12898](#) if the cultural (or other environmental) interests of low income or minority communities may be affected.
- The Federal Records Act ([FRA](#)) where historical (or other) records must be managed.
- The Abandoned Shipwrecks Act ([ASA](#)) and/or Sunken Military Craft Act ([SMCA](#)) where underwater lands are the subjects of management.

Compliance with these laws during master planning can also greatly simplify and streamline the process of compliance with them on specific projects that are consistent with the completed plan. In some cases, addressing cultural resource management requirements at the master planning level may eliminate the need to do so on specific projects that are consistent with an approved plan.



#### Practical implications

Any contract for master planning should include a requirement for environmental impact analysis including consideration of cultural resources. Alternatively, and perhaps preferably in terms of gaining an objective analysis, a separate contract can be awarded for review of the impacts of a master plan's alternatives.

Contractors preparing master plans, or separately assessing the impacts of plan alternatives, should demonstrate understanding of the applicable legal requirements.

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### Major Construction Projects

*Major Construction Projects* typically cause substantial changes in land and/or buildings, and may have extensive visual, socioeconomic, and other effects. As a result, such projects require compliance with the National Environmental Policy Act ([NEPA](#)), with [Section 106](#) of the National Historic Preservation Act (NHPA), and other cultural resource management legal authorities like [RFRA](#), [NAGPRA](#), and [AHPA](#) where they are relevant.

If the proposed major construction project is consistent with an approved master plan during whose development these laws have been addressed in accordance with the relevant regulations, compliance with the laws in planning the major construction project may be greatly simplified or even made unnecessary.

#### Practical implications

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when developing schematic designs and concept papers – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors preparing plans for major construction projects, or assessing the environmental impacts of such projects, should demonstrate understanding of the applicable legal requirements.

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## Minor Construction Projects

*Minor Construction Projects*, despite their “minor” character, may change the character of buildings, dig into the ground, and otherwise change the environment, so they must be planned in compliance with the National Environmental Policy Act ([NEPA](#)), with [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases with other cultural resource management legal authorities like NAGPRA and AHPA. Often, however, the process of compliance with the cultural resource management laws for a minor construction project is relatively quick and easy, because of their relatively low-impact character. If the proposed minor construction project is consistent with an approved master plan during whose development these laws have been addressed in accordance with the relevant regulations, compliance with the laws in planning the minor construction project may be greatly simplified or even made unnecessary.

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### Practical implications

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when developing schematic designs and concept papers – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors preparing plans for minor construction projects, or assessing the environmental impacts of such projects, should demonstrate understanding of the applicable legal requirements.

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## Clinical-Specific Initiative (CSI) Projects

*Clinical-Specific Initiative (CSI) Projects* may change the character of buildings, dig into the ground, and otherwise change the environment, so they must be planned in compliance with the National Environmental Policy Act ([NEPA](#)), with Section 106 of the National Historic Preservation Act ([NHPA](#)), and in some cases with other cultural resource management legal authorities. Because the impacts of CSI projects tend to be limited, however, the process of compliance with the cultural resource management laws can be relatively quick and easy. If the proposed project is consistent with an approved master plan during whose development the cultural resource laws have been addressed in accordance with the relevant regulations, compliance with the laws in planning the CSI project may be greatly simplified or even made unnecessary.

### Practical implications

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when developing

schematic designs and concept papers – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors preparing plans for CSI projects, or assessing the environmental impacts of such projects, should demonstrate understanding of the applicable legal requirements.



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## **Miscellaneous and non-recurring maintenance**

*Miscellaneous and non-recurring maintenance (including Mini-Minor Projects)* must be in compliance with the National Environmental Policy Act ([NEPA](#)). Such compliance can often be achieved simply under VA's procedures for categorically excluding low-impacts from extensive NEPA review. Where a miscellaneous or non-recurring maintenance project may alter the character of land or buildings, compliance is required with [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases with other cultural resource management legal authorities regardless of whether it is categorically excluded from extensive NEPA review. If the project is consistent with an approved master plan during whose development these laws have been addressed in accordance with the relevant regulations, compliance with the laws in planning the project may be greatly simplified or even made unnecessary.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when developing initial plans and proposals for miscellaneous or non-recurrent maintenance projects – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors preparing plans for miscellaneous and non-recurring maintenance projects, or assessing the environmental impacts of such projects, should demonstrate understanding of the applicable legal requirements.

## **Leasing By VA From Another Party**

*Leasing from another party* may be an early step in a process of change in a property's use or character, so it has the potential to affect cultural resources. Accordingly, a leasing action requires review under the National Environmental Policy Act ([NEPA](#)), [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases other cultural resource management legal authorities. Often such review is carried out in connection with the underlying VA activity that requires the lease, or on an overarching [master plan](#), but if this has not happened, then it is important to initiate NEPA and NHPA review on the leasing action, to avoid investing too much before the effects of the proposed use are known.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when considering leasing from another party – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors assessing the environmental impacts of leasing actions should demonstrate understanding of the applicable legal requirements.

## **Leasing To Another Party By VA**

***Leasing to another party.*** Outleasing puts someone else, usually a non-federal agency, into the role of managing the outleased property. The lessee's use and management of the property may have impacts on cultural resources, so review is needed under the National Environmental Policy Act ([NEPA](#)), [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases other cultural resource management legal authorities.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when beginning to consider outleasing VA-controlled property – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors assessing the environmental impacts of outleasing should demonstrate understanding of the applicable legal requirements.

## **Real Property Acquisition**

***Real Property Acquisition*** through purchase, acceptance of a gift, or other means may begin a process of change in a property's use or character, so it has the potential to affect cultural resources. Acquisition of land requires review under the National Environmental Policy Act ([NEPA](#)), [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases other cultural resource management legal authorities. Often such review is carried out in connection with the underlying VA activity that requires acquisition of the property, or on an overarching master plan, but if this has not happened, then it is important to complete review on the acquisition action itself, to avoid investing too much before the effects of the proposed use are known.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when beginning to consider any real property acquisition – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was

completed that requires further consideration. Contractors assessing the environmental impacts of real property acquisition should demonstrate understanding of the applicable legal requirements.

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## **Real Property Disposal**

*Real Property Disposal* removes the controls imposed by most of the federal environmental and cultural resource laws, so disposal actions must be planned in compliance with the National Environmental Policy Act ([NEPA](#)), with [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases with other cultural resource management legal authorities. Often, compliance with the cultural resource requirements is handled by the General Services Administration (GSA), but if not, then VA is responsible for addressing such requirements.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when beginning to consider disposing of real property – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Contractors assessing the environmental impacts of real property disposal should demonstrate understanding of the applicable legal requirements.

## **Demolition**

*Demolishing a building or structure* obviously affects it, and its visual and social environment, so proposed demolitions must be reviewed in accordance with the National Environmental Policy Act ([NEPA](#)), with [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases with other cultural resource management legal authorities. Demolition is often part of a construction or land use project that itself requires review under such authorities, but if this is not the case, or if review has not yet been completed on the project that requires the demolition, then review under NEPA and Section 106 must be completed, and other cultural resource legal requirements considered, before a decision about demolition is made.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when considering demolition of any building – unless you are certain that these requirements have been thoroughly addressed during master planning and that nothing has changed since master planning was completed that requires further consideration. Note that buildings and structures may be eligible for the [National Register of Historic Places](#), and hence eligible for consideration under [Section 106](#) and [other sections](#) of NHPA, even if no one has formally determined them so. As a general rule, any building or structure that

is 45 years old or older, or that is part of a designed complex of buildings or structures of approximately this age, should be considered as possibly eligible for the Register. In rare cases, younger buildings and structures may be eligible because of their exemplary architectural or aesthetic qualities or their association with important historical events, including events in the history of VA and the contributions of veterans to American history. When in doubt, it is wise to assume that a building or structure may be eligible, and initiate review; if it is not eligible, review under [Section 106](#) can be speedily completed.



## Ongoing Facility Management

*Ongoing Facility Management* can affect cultural resources in a wide variety of ways, and the [effects](#) may be difficult to detect because of their gradual, cumulative character. This complicates compliance with laws like the National Environmental Policy Act ([NEPA](#)) and [Section 106](#) of the National Historic Preservation Act (NHPA), but these and other cultural resource management legal authorities nevertheless apply to ongoing facility management, and need somehow to be addressed.

### Practical implications

[Master planning](#) is usually the context in which the effects of ongoing facility management on cultural resources can be most efficiently addressed. If the cultural resource legal requirements have not been addressed in master planning, then facility managers need to be alert to the possibility that even a seemingly innocuous action may have impacts that, when discovered, can cause serious project delays and greatly increase costs. When in doubt about whether a project or proposal could have effects on cultural resources, it is wise to initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#).

## Grants

*Grants* to state hospital and cemetery administrations, homeless providers, and others often fund actions that can affect cultural resources in the same ways that VA major, minor, and other projects do. Since these actions are assisted by VA, VA must comply with the National Environmental Policy Act ([NEPA](#)), [Section 106](#) of the National Historic Preservation Act (NHPA), and other cultural resource management legal authorities when considering issuing such a grant. By and large, the recipients of such grants are not responsible for complying with laws like NEPA and Section 106, but VA is.

### Practical implications

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when considering awarding a grant. Ideally, such consideration should take place on a broad, programmatic basis, addressing the likely impacts of a whole grant program, but if it does not, then the laws must be complied with on a grant-by-grant basis. It is critical that compliance with NEPA, Section 106, and other

applicable legal requirements be documented before the decision is made to award a grant. Grantees and applicants for grants should be made aware, before they submit an application if possible, that they may be expected to assist VA in carrying out its NEPA and Section 106 responsibilities. Section 110(g) of NHPA authorizes agencies to require grant applicants and recipients to fund work needed to achieve compliance with Section 106.



## **Enhanced-Use Asset and Enterprise Development**

*Enhanced-use - asset and enterprise development* are cooperative ventures in which both VA's actions and the actions of cooperating lessees and developers can affect cultural resources, so such developments must be planned in compliance with the National Environmental Policy Act ([NEPA](#)), with [Section 106](#) of the National Historic Preservation Act (NHPA), and in some cases with other cultural resource management legal authorities.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when beginning to consider a cooperative development venture, whether proposed by VA or by another party – unless you are certain that these requirements have been thoroughly addressed during master planning or in some other context, and that nothing has changed in the time since the time they were addressed that requires further consideration. Contractors designing or assessing the environmental impacts of enhanced-use-asset and enterprise development projects should demonstrate understanding of the applicable legal requirements.

## **Donated Commemorative Works and Memorials**

*Donated Commemorative Works and Memorials* are often included in or eligible for the [National Register of Historic Places](#), and often are culturally significant to local communities, veterans groups, and others. If accepting the donation of such a property will not change its character or use, or its environment, compliance with the cultural resource laws may not be necessary, but it may nevertheless be wise to initiate review under [Section 106](#) of NHPA. This review may reveal issues that VA should consider before accepting the proffered donation. If accepting the donation may result in changes to the property's character, use, or environment, then review under [NEPA](#), [Section 106](#) of NHPA, and possibly other cultural resource authorities is required.

### **Practical implications**

Initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#), when considering

acceptance of donated real property – unless you are certain that accepting the donation will not result in any changes to the property, its environment, or its use.



## **Managing Property Held as the Result of Foreclosure**

When VBA acquires control of a piece of real property as the result of foreclosure on a guaranteed loan, VA is responsible for managing the property in a manner that respects whatever cultural value it may have. [Section 110](#) of NHPA provides direction in how any [historic properties](#) that may be present should be managed. VA is also responsible for complying with [NEPA](#), [Section 106](#) of NHPA, and other cultural resource management legal authorities where applicable when it proposes to change the property or [dispose](#) of it.

### **Practical implications**

Become familiar with the requirements of [Section 110](#) of NHPA, and with the guidelines for its implementation issued by the National Park Service. Before disposing of a property held through foreclosure, or changing it in a way that might alter its character, initiate review under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#).

## **Managing Archaeological Materials**

VA controls certain collections of archaeological material – that is, artifacts and other items resulting from archaeological studies carried out on VA-controlled land, and the notes, photographs, maps, and other documentation associated with them. The Archaeological Resources Protection Act ([ARPA](#)) and other legal authorities require that these be retained in federal ownership, though other parties (e.g. museums, universities) can manage them for VA provided their facilities and personnel meet standards set forth by the National Park Service in regulations issued pursuant to [ARPA](#). Archaeological material that meets the definition of “Native American cultural items” under the Native American Graves Protection Act ([NAGPRA](#)) and its regulations are not kept in federal ownership, but must be repatriated to culturally affiliated Indian tribes and Native Hawaiian groups.

### **Practical implications**

For assistance in managing archaeological collections and material in accordance with ARPA, NAGPRA, and the relevant federal regulations and guidelines, please contact the [Historic Preservation Office](#), [CFM](#).

## Managing Artwork, Craft Products, Architectural Material



No specific law or regulation governs how VA manages artwork, the products of craftsmanship, and architectural material under its control, but such material sometimes is retained and managed under a memorandum of agreement ([MOA](#)) or programmatic agreement ([PA](#)) prepared after [consultation](#) under [Section 106](#) of the National Historic Preservation Act (NHPA). Where this is the case, the material must be managed in accordance with the MOA's or PA's terms. Where there is no MOA or PA, this kind of cultural material remains government property and must be managed in a manner that respects historic, cultural, artistic, and architectural values it represents. Disposing of such material may require compliance with the National Environmental Policy Act ([NEPA](#)). If such materials are associated with places included in or eligible for the [National Register of Historic Places](#), their disposal must be reviewed under [Section 106](#) of NHPA.

### Practical implications

For assistance in managing artwork, craft products and architectural artifacts where Section 106 of NHPA may be relevant directly or indirectly, please contact the [Historic Preservation Office, CFM](#).

*Managing furnishings, equipment, and technology.* Furniture, medical and other equipment, and other examples of technology owned or controlled by VA may have historical and educational value; it is, of course, also federal government property and must be managed as such. Disposing of such material may require compliance with the National Environmental Policy Act ([NEPA](#)). If such materials are associated with places included in or eligible for the [National Register of Historic Places](#), their disposal must be reviewed under [Section 106](#) of NHPA.

### Practical implications

For assistance in managing furnishings, equipment, and technology where Section 106 of NHPA may be relevant directly or indirectly, please contact the [Historic Preservation Office, CFM](#).

## Managing Archives and Records

Management of federal records is the subject of extensive regulations under the Federal Records Act ([FRA](#)); VA's FRA procedures are found in VA Directive 6300 and Handbook 6300. Some historical, archaeological, and architectural records must be preserved in perpetuity under Sections [110\(b\)](#) and [112\(a\)\(2\)](#) of the National Historic Preservation Act ([NHPA](#)). Disposing of archival and record material may require compliance with the National Environmental Policy Act ([NEPA](#)). If records or archives are associated with places included in or eligible for the National Register of Historic Places, their disposal must be reviewed under [Section 106](#) of NHPA.

### Practical implications

Contact the Assistant Secretary for Information and Technology (005), at 202/461-6911 for assistance with records management under FRA. For assistance in managing archives and records where Section 106 and/or 112 of NHPA may be relevant directly or indirectly, please contact the [Historic Preservation Office, CFM](#).



## **Managing Memorials and Monuments**

Memorials and monuments that constitute pieces of real property may be eligible for inclusion in the National Register of Historic Places and must be managed in accordance with Sections 106 and 110 of the National Historic Preservation Act (NHPA). Altering or disposing of such properties must be reviewed under the National Environmental Policy Act ([NEPA](#)) and [Section 106](#) of NHPA. Portable memorials and monuments are typically not eligible for the National Register but there are occasional exceptions to this rule. When in doubt, please contact the [Historic Preservation Office, CFM](#).

### **Practical implications**

[Master planning](#) is usually the context in which to ensure the careful management of historically important memorials and monuments. Where some change to a memorial or monument is proposed, and the cultural resource legal requirements have not been addressed in master planning, then the proposed change should be reviewed under [NEPA](#) and [Section 106](#), and consider the relevance of other cultural resource requirements like those of [RFRA](#), [NAGPRA](#), [AHPA](#) and [Executive Order 12898](#). Portable memorials and monuments ) are usually managed in the same manner as [memorabilia and ephemera](#).

## **Managing Memorabilia and Ephemera**

Memorabilia and ephemera owned or controlled by VA may have historical and educational value, and are government property. Disposing of such material may require compliance with the National Environmental Policy Act ([NEPA](#)) and where records are involved, with the Federal Records Act ([FRA](#)). If such materials are associated with places included in or eligible for the [National Register of Historic Places](#), their disposal must be reviewed under [Section 106](#) of NHPA.

### **Practical implications**

There is little specific guidance in the cultural resource legal authorities on how to manage memorabilia and ephemera, but it ought to be remembered that today's ephemera may be tomorrow's priceless historical treasure. The [Historic Preservation Office, CFM](#) is available to advise about the management of such items.

## **Loan Guarantees**

When VA guarantees a mortgage loan, it makes it possible for a veteran to acquire and control a piece of property. We all understand this to be a good thing, and indeed central to VA's mission, but VA is

nonetheless obligated by laws like [NEPA](#) and [Section 106](#) of NHPA to consider what impacts it may have on the environment, including cultural resources. A particular veteran may, for instance, renovate the old home he or she acquires in a manner that damages its historic architectural qualities, not with malicious intent but simply because he or she is unaware of its significance and of the professionally approved methods for rehabilitating such buildings.



### **Practical implications**

It would be virtually impossible for VA to carry out the standard requirements of the NEPA and Section 106 regulations on every loan guarantee action, and traditionally, VA has made no effort to do so. VA remains responsible for addressing the requirements of these laws, but has not yet devised systems for doing so.

# Checklist for Compliance with Cultural Resource Legal Requirements

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## Introduction

VA employees and contractors can use this checklist to determine the likelihood that a given cultural resource legal requirement applies to a project or other activity, and to access guidance on how to comply with requirements that are relevant. Legal authorities are listed in alphabetical order.

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## American Indian Religious Freedom Act (AIRFA)

Based on judicial interpretation, this law requires federal agencies to consult with Indian tribes and Native Hawaiian groups about agency actions that might interfere with their religious practices, and to make efforts to avoid or minimize such interference (See also [Religious Freedom Restoration Act \(RFRA\)](#) and [Executive Order 13007](#)).

When does VA have to comply? [Early in project planning](#), answer the following questions:

- Does what we're considering involve disturbing the ground? \_\_\_Yes \_\_\_No

If the answer is "yes," there is the possibility of encountering graves or otherwise disturbing an aspect of the environment that tribes consider spiritually significant. Contact any tribes that have been involved with the site, or that have traditional cultural ties to the area, and consult with them about any concerns they may have. This [consultation](#) should be coordinated with consultation under [NAGPRA](#) and [Section 106](#) of NHPA, and follow the direction set forth in [VA Directive 8603](#).

If the answer is "no"....

- Is there any other way our project might interfere with tribal religious practices ([examples](#))? \_\_\_Yes \_\_\_No

If the answer to this question is "yes," contact any tribes you or others think may be concerned, and consult about any concerns they may have.

If the answer is "no," you probably don't need to worry further about this law's requirements.

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## Archaeological and Historic Preservation Act (AHPA).

This law actually requires attention to “significant scientific, prehistorical, or archaeological” data, which in theory can include historical documents, information on historic architecture, paleontological data, and even geological and botanical data, but the overall language of the law focuses on archaeological data.



When does VA have to comply? [Early in project planning](#), answer the following questions:

- Does what we’re considering involve disturbing the ground? \_\_\_Yes \_\_\_No

If the answer is “yes,” consider doing a [study](#), and coordinate compliance with [NEPA](#), [NAGPRA](#), and [Section 106](#) of NHPA.

If the answer is “no,” you probably don’t need to worry about this law’s requirements, EXCEPT...

- Does what we’re considering involve any other activity that could destroy significant historical, scientific, or archaeological data ([examples](#))

If the answer is “yes,” consider doing a [study](#), and coordinate compliance with [NEPA](#), [NAGPRA](#), and [Section 106](#) of NHPA.

If the answer is “no,” you probably need to do nothing else to comply with this law.

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## Archaeological Resources Protection Act (ARPA)

ARPA primarily controls the actions of non-government agencies operating on federal and tribal land, but it establishes certain standards that a federal agency must attend to when carrying out archaeological work on such lands.

When does VA have to comply? [Early in project planning](#), answer the following questions:

- Does what we’re considering involve disturbing the ground on federal or Indian tribal land? \_\_\_Yes \_\_\_No

If the answer is “no,” then ARPA does not apply.

If the answer is “yes,” then ask:

Are we planning to do archaeological work (e.g. testing or excavation to recover data)? ([CAUTION!](#))

If the answer is “no,” then ARPA is not relevant.

If the answer is “yes,” then make sure the work will be done in accordance with ARPA’s requirements, by making sure the entity doing the work holds a properly issued ARPA permit or by designing the contract for such work in a manner consistent with ARPA requirements. For assistance with ARPA permitting and designing contracts consistent with ARPA requirements, please contact the VA [Historic Preservation Office, CFM](#).



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## **Abandoned Shipwrecks Act (ASA)**

This law deals with wrecks on the bottoms of lakes, rivers, bays, and the ocean under U.S. territorial waters. For the most part, states regulate access to and treatment of such wrecks under the law.

**When does VA have to comply?** [Early in project planning](#), answer the following question:

- Are we doing anything that will disturb the bottom of a water body?

If the answer is “no,” then the ASA is not relevant.

If the answer is “yes,” then consider the possibility of impacts on shipwrecks as part of review under [Section 106](#) of NHPA, taking into account the relevant state’s shipwreck management procedures. Consult the U.S. Naval History and Heritage Command’s [Underwater Archaeology Branch](#) in the event the wreck of a commissioned Naval vessel or aircraft is involved. Another law, the **Sunken Military Craft Act (SMCA)**, stipulates U.S. ownership of such craft; the Navy regulates access to them.

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## **Executive Order 12898 (Environmental Justice)**

This executive order directs agencies to take steps to avoid and minimize disproportionate adverse effects on minority groups and low income populations.

**When does VA have to comply?** [Early in project planning](#), answer the following questions:

- Is our project likely to change any aspect of the environment (air, water, land, buildings, natural resources)?

If the answer is “no,” then the project will have no environmental impacts relevant to a low income or minority group or anyone else, and environmental justice is not an issue.

If the answer is “yes,” then ask:

- Do any low income or minority groups live or work in or near, use, or otherwise value the potentially affected environment? (See [Guidelines](#)).

If the answer to this question is “no,” then environmental justice should not be a concern.

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If the answer to this question is “yes,” then you should ascertain what groups are likely to be concerned and involve them in project review under [NEPA](#) and, as applicable, [Section 106](#) of NHPA and other project review laws. (See [Guidelines](#))

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## **Executive Order 13007 (Indian Sacred Sites)**

This executive order directs agencies to avoid or minimize physical impacts on, and avoid interfering with tribal use of, Indian tribal sacred sites on federal or tribal land. See also [AIRFA](#) and [RFRA](#).

**When does VA have to comply?** [Early in project planning](#), answer the following question:

- Is our project likely to disturb the ground, buildings, vegetation, or other aspects of federal or Indian tribal land, or may it affect access to such land?

If the answer is “no,” then this executive order imposes no requirements on VA.

If the answer is “yes,” then be sure to seek tribal involvement in project review under [NEPA](#) and [Section 106](#) of NHPA, and consider carefully any concerns a tribe may raise about impacts on sacred sites as the tribe defines them. Follow the direction set forth in [VA Directive 8603](#). *Note that though consultation under Executive Order 13007 should be coordinated with Section 106 review, it is an independent authority, so tribes must be consulted regardless of whether their sacred sites are eligible for the [National Register of Historic Places](#).*

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## **Executive Order 13287: Preserve America**

This executive order requires high-level attention to historic preservation concerns by VA and other agencies, and imposes an annual reporting requirement, but does not directly affect the review of projects. Please cooperate with the [Historic Preservation Office, CFM](#) in its preparation of annual reports under this executive order.

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## **Federal Records Act (FRA)**

This law governs how federal agencies manage their records, for historical purposes among others.

**When does VA have to comply?** VA has to comply with FRA in the management of all records, regardless of their historic or cultural value. See VA Directive 6300 and Handbook 6300 for direction.

## National Environmental Policy Act (NEPA)

NEPA establishes national environmental policies, and requires review of the environmental impacts of projects and decisions. In a project context, compliance with NEPA is achieved in one of three ways:

1. By identifying the project or decision as [categorically excluded](#) and making sure there are no [extraordinary circumstances](#) requiring special consideration.
2. By conducting an [environmental assessment](#) resulting in a [finding of no significant impact](#) on the project or decision.
3. By preparing an [environmental impact statement](#), considering the findings of this statement in deciding whether and how to proceed with the project or decision, and issuing a [record of decision](#).

Impacts on [cultural resources](#) – that is, those aspects of the environment to which people ascribe cultural value of some kind – should be part of any analysis prepared in compliance with NEPA. Such impacts may comprise extraordinary circumstances requiring further review of a categorically excluded project, and they should also be carefully considered in environmental assessments and environmental impact statements.

Be sure to coordinate NEPA compliance and compliance with [Section 106](#) of NHPA, [NAGPRA](#), [AIRFA](#), [RFRA](#), [AHPA](#), [Executive Order 12898](#), and other cultural resource legal authorities as applicable.

The Council on Environmental Quality ([CEQ](#)) in the Executive Office of the President oversees and is the rulemaking body under NEPA.

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## National Historic Preservation Act (NHPA), Section 106

This law and its implementing regulations (36 CFR 800) define how agencies are to identify and address their impacts on [historic properties](#) – that is, places included in or eligible for the [National Register of Historic Places](#).

The Advisory Council on Historic Preservation ([ACHP](#)) oversees and is the rulemaking body for Section 106.

Section 106 review is carried out in [consultation](#) with State Historic Preservation Officers ([SHPOs](#)), Tribal Historic Preservation Officers ([THPOs](#)), local governments, and other interested parties, including interested members of the public.

- **When does VA have to comply?** [Early in project planning](#), answer the following question:

- Does our project represent a kind of action that has the potential to affect [historic properties](#)? ([Guidelines](#)) \_\_\_\_ Yes \_\_\_\_ No

If the answer is “no,” there is no need to comply with Section 106.

If the answer is “yes,” then [initiate review under Section 106](#).

If you’re not sure of the answer, get advice from the [Historic Preservation Office, CFM](#).

Be sure to coordinate Section 106 compliance and compliance with [NEPA](#), as well as with [NAGPRA](#), [AIRFA](#), [RFRA](#), [AHPA](#), [Executive Order 12898](#), relevant provisions of NHPA [Section 110](#) and [Section 111](#), and other cultural resource legal authorities as applicable.

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## National Historic Preservation Act (NHPA), Section 110

This section of the law has many subsections, which relate to VA planning and project management in different ways.

- Its requirement to identify and manage [historic properties](#) under agency jurisdiction and control (Section 110(a)) should be addressed in [master plans](#) and similar overall planning programs.
- Its requirement to give priority to using [historic properties](#) for agency purposes (Section 110(a)) should be addressed in [master plans](#) and also in the consideration of alternatives under [NEPA](#) and [Section 106](#) of NHPA.
- Its requirement to encourage the preservation of non-federally owned [historic properties](#) (Section 110(a)) should be met in the context of [planning](#) and [Section 106](#) compliance by consulting with neighbors and local governments and by being sensitive to VA’s impacts on non-VA owned properties;
- Its requirement to consult with others interested in [historic properties](#) in carrying out programs (Section 110(a)) should be met during the development and implementation of [plans](#) and in the context of NHPA [Section 106](#) review.
- Its requirement to record [historic properties](#) (Section 110(b)) should be met whenever [Section 106](#) review leads the conclusion that a [historic property](#) must be damaged or destroyed.;
- Its requirement to have a qualified and responsible Federal Preservation Officer (Section 110(c)) is met by the [Historic Preservation Office](#), CFM.
- Its requirement to conduct activities in manners consistent with the purposes of NHPA (Section 110(d)) should be met in the course of [planning](#) and [Section 106](#) review.
- Its requirement to give special consideration to protecting [National Historic Landmarks](#) (Section 110(f)) is addressed in the context of [Section](#)

[106](#) review by involving the [ACHP](#) and National Park Service.

- Its requirement to discourage [anticipatory destruction](#) of [historic properties](#) (Section 110(k) is somewhat complicated; see [discussion](#). In essence, VA must not assist a party who has destroyed or damaged a [historic property](#) to avoid the complications of review under [Section 106](#), unless VA determines that extenuating circumstances exist.
- Its requirement to [document](#) agency responses to ACHP comments (Section 110(l)) is met in those rare instances in which an agreement is not reached under [Section 106](#), and the ACHP comments to the Secretary. Contact the [Historic Preservation Office, CFM](#) for help if you anticipate the possibility of failure to reach agreement under Section 106.

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## National Historic Preservation Act (NHPA), Section 111

Section 111 of NHPA directs agencies to make [historic properties](#) that are not needed by the agency available to others for [adaptive use](#), via lease, exchange, or other mechanism, and permits agencies to retain the proceeds from such transactions.

**When does VA have to comply?** Facilities Managers and National Cemetery Directors should consider [adaptive use](#) whenever a building or structure is no longer needed for VA purposes, and should identify parties that may be willing to manage them in ways that will preserve their significance. [Adaptive use](#) should also be considered during [Section 106](#) review of management impacts on historic buildings and structures. **Caution:** Complete [Section 106](#) review of any proposal to transfer a [historic property](#) to a non-VA use, or to change its use in ways that may affect it.

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## National Historic Preservation Act (NHPA), Section 112

Section 112 of NHPA directs agencies to use qualified personnel to carry out historic preservation activities, and charges the Office of Personnel Management (OPM) and Department of the Interior (DOI) to promulgate standards in [consultation](#) with relevant professional groups. Neither OPM nor DOI has carried out this duty since Section 112 was enacted in 1992, but a version of professional qualifications standards promulgated by DOI in the 1980s is used for informal guidance by agencies. Section 112 also requires that records of historic preservation work conducted by agencies be cared for and maintained in perpetuity.

**When does VA have to comply?** Professional qualifications and performance standards should be addressed when developing position

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descriptions and performance review criteria for personnel doing historic preservation related work, and when preparing requests for proposals and contracts. Records and other data produced by historic preservation-related activities such as architectural recordation and archaeological excavation should be maintained in perpetuity. For assistance, please contact the VA [Historic Preservation Office, CFM](#).

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## **Native American Graves Protection and Repatriation Act (NAGPRA)**

This law relates primarily to the repatriation of Native American cultural items held in museum collections and by federal agencies. Repatriation by VA is the responsibility of the [Historic Preservation Office, CFM](#), but Section 3 of the law imposes responsibilities on project planners and facilities managers as well.

**When does VA have to comply?** Answer the following question:

- Does what we're considering involve disturbing the ground on federal or tribal land?  
\_\_\_Yes \_\_\_No

If the answer is "no," you don't need to worry about this law's requirements.

If the answer is "yes," then either:

- (a) Contact any tribe(s) or Native Hawaiian group(s) that has lived in or used the vicinity of the project, in accordance with [VA Directive 8603](#), and develop a [plan of action in consultation](#) with them, concerning how to treat any Native American cultural items that may be discovered; or
- (b) Undertake a [study](#) to determine whether it is likely that Native American cultural items will be disturbed; if they will, develop a [plan of action in consultation](#) with concerned tribes and implement it as the project goes forward.

In either case, be sure to coordinate compliance with [NEPA](#) and [Section 106](#) of NHPA.

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## **Religious Freedom Restoration Act (RFRA)**

This relatively recent (2006) law requires federal agencies to avoid substantially burdening a person's practice of religion unless doing so furthers a compelling government interest and is the least burdensome way of meeting that interest. (See also [American Indian Religious Freedom Act \(AIRFA\)](#) and [Executive Order 13007](#)).

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**When does VA have to comply?** [Early in project planning](#), answer the following questions:

- Does what we're considering involve changing a church, synagogue, mosque, or other place used for religious purposes, or its environs? \_\_\_Yes \_\_\_No

If the answer is "yes," there is obviously the danger of burdening the religious practices of those who worship there. Consult with the congregation that uses the location to find ways to avoid such burdens. Coordinate compliance with [NEPA](#) and [Section 106](#) of NHPA.

If the answer is "no," ask:

- Does what we're considering involve earthmoving? \_\_\_Yes \_\_\_No

If the answer is "yes," there is the possibility of encountering graves or otherwise disturbing an aspect of the environment that tribes or other groups consider spiritually significant. Contact any tribes, ethnic communities, or local religious communities that have been involved with the site, or that have traditional cultural ties to the area, and consult about any concerns they may have. This [consultation](#) should be coordinated with [consultation](#) under [Section 106](#) of NHPA, and with [NAGPRA](#) and [AIRFA](#) if Native American graves or spiritual places are concerned.

If the answer is "no"....

- Is there any other way our project might interfere with anyone's religious practices ([examples](#))? \_\_\_Yes \_\_\_No

If the answer to this question is "yes," contact any groups or individuals that you or others think may be concerned, and consult about any concerns they may have. Coordinate compliance with [NEPA](#) and [Section 106](#) of NHPA.

If the answer is "no," you probably don't need to worry further about this law's requirements.

## Sunken Military Craft Act (SMCA)

This law protects the wrecks of U.S. military ships, other watercraft and aircraft. It asserts U.S. control of such wrecks, and prohibits their disturbance by any person not holding a permit from the military service responsible for the wrecked craft (in most cases, the U.S. Navy).

When does VA have to comply? [Early in project planning](#), answer the following question:

- Are we doing anything that will disturb the bottom of a water body?

If the answer is "no," then the SMCA is not relevant.

If the answer is "yes," then as you conduct review under [NEPA](#), [ASA](#), and [Section 106](#) of NHPA, determine whether any military wrecks are present in the area(s) potentially affected by the

project. Consult the U.S. Naval History and Heritage Command's [Underwater Archaeology Branch](#) both for information on known wrecks and for assistance in complying with SMCA.

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# Guidelines for Deciding Whether a Project Must Be Reviewed Under Section 106 of the National Historic Preservation Act

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There are two tests that a project, program, or other federal action must meet in order to be reviewed under Section 106.

1. It must be proposed by or on behalf of a federal agency, or with a request for federal assistance or a federal permit. **All VA projects and activities meet this test.**
2. It must represent a type of action that has the potential to affect [historic properties](#). This **excludes** many routine types of VA work, including most administrative activities, but it includes **virtually any action that may directly or indirectly alter land, land use, buildings, or structures.**

Note that “type of action that has the potential to affect [historic properties](#)” does NOT mean “specific action known to affect particular historic properties.” In other words, the fact that we may not know whether any historic properties will be affected is irrelevant to whether the project requires review. The question is, “is this project the kind of work that would affect historic properties if any such properties exist in the area it will affect?” Finding out whether such properties exist is an important early step in the Section 106 review process.

Types of action typically found to have the potential to affect [historic properties](#) include (but are not limited to):

- Demolition or alteration of [buildings](#), [structures](#), and [designed landforms](#) (whether or not they are known or thought to be historic).
- Disturbance of the ground (whether or not the ground is known to contain [archaeological sites](#), graves, or other historic material)
- Removal of trees and other major changes to vegetation (because the [landscape](#), or the land, may be historically sensitive).
- Changing land or building use (because the land or the [building](#) may be historic, and changing its use will affect it).
- Changing traffic patterns (which can introduce noise, change the character of a neighborhood, or cause economic change in an area that might be historically significant).
- Altering the social, economic, ethnic, or other character of a neighborhood or rural area (whether or not the area currently is known or thought to be historically significant).

- Altering stream flow, vegetative cover, or animal populations (which can change the character of a [landscape](#) that may be historically significant).



# VA CULTURAL RESOURCE MANAGEMENT CHECKLIST **PART TWO:** PROJECT REVIEW FOR IMPACTS ON HISTORIC PROPERTIES

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# WELCOME TO THE VA CULTURAL RESOURCE MANAGEMENT CHECKLIST, **PART TWO: PROJECT REVIEW FOR IMPACTS ON HISTORIC PROPERTIES**

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Every VA employee and contractor engaged in project planning (e.g., Project Manager, Capital Asset Manager, Facility Engineer) is responsible for making sure that projects they plan are reviewed for their impacts on [cultural resources](#). Over a dozen federal laws and executive orders, and many more regulations, are directly relevant to managing impacts on various kinds of cultural resources.

Click [here](#) to review these legal authorities.

Click [here](#) to review how the different authorities relate to different VA actions

Because [Section 106](#) of the National Historic Preservation Act (NHPA) has the most organized step-by-step procedures, this checklist is organized around [Section 106](#)'s process of project review. Alerts regarding other cultural resource management legal requirements are provided on relevant pages. [Section 106](#) is a process involving a series of steps, outlined below with alerts to consider other cultural resource legal requirements where appropriate.

Click [here](#) to determine whether your project requires review under **Section 106**.

## Get Started (Initiate)

(Note: Start [EARLY](#) in planning ANY action that will change a building or disturb the ground. An early start will give you the widest range of options in consultation about the project, and minimize delays.)

- 1\_\_\_ Compiled [Project Description](#)
- 2\_\_\_ Contacted [SHPO and/or THPO](#) (See [Letter Template A](#)).
- 3\_\_\_ Identified and contacted other [consulting parties](#) (See [Letter Template A](#)).
- 4\_\_\_ Established methods for [involving the public](#)
- 5\_\_\_ Initiated coordination with [NEPA](#)
1. When done, go on to [Identifying Historic Properties](#)

**Remember: No construction or earthmoving can begin before Section 106 review is completed.**

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## Identify Affected Historic Properties (and Other Cultural Resources)

1. Do you need to [identify](#) potentially affected historic properties? Yes\_\_\_ No\_\_\_  
(See [guidelines](#) for help in deciding. If "Yes," consider line 2 and proceed to line 3. If "No," consider line 2)
2. Should you identify other types of cultural resources? Yes\_\_\_ No\_\_\_  
(See [general cultural resource checklist](#) for help in deciding. If "Yes," consider in developing [scope](#) of identification work (line 3). If "No," document rationale and proceed with Section 106 review (line 3)
3. [Scope](#) of identification work established and documented\_\_\_
4. Identification work [Complete](#) \_\_\_
5. Coordinated with [NEPA](#)\_\_\_
6. When done, go on to [Assess Effects](#)

## Assess Effects

2. Historic property/properties affected? Yes\_\_\_ [No](#)\_\_\_  
(If "Yes," go on to question 2. If "[No](#)," prepare and send a letter or letters modeled on [Letter Template B](#). Sign and file a copy of the letter and this checklist with project documents .
3. Is the effect [adverse](#)? Yes\_\_\_ No\_\_\_ **No if specified [conditions](#) are met\_\_\_**.  
(If "Yes," consider line 3 and on to question 5. If "No," prepare and send a letter or letters modeled on [Letter Template E](#) with supporting documentation. Sign it sign and file a copy of the letter, responses to it, this checklist, and supporting documentation with project documents UNLESS there are adverse responses to your letter that cannot be resolved; if this happens, go on to Line 5). (If "No if specific conditions are met," prepare and send a letter modeled on [Letter Template F](#) with supporting documentation including conditions agreed to; sign and file a copy of this checklist with project documents UNLESS there are adverse responses to your letter that cannot be resolved; if this happens, go on to Line 5).
4. Other types of cultural resource affected (not associated with historic properties)?  
Yes\_\_\_ No\_\_\_ (See [general cultural resources checklist](#) for help in deciding)
5. Coordinated with [NEPA](#)\_\_\_
6. When done, go on to [Resolve Adverse Effects](#)

**Remember: No construction or earthmoving can begin before Section 106 review is completed.**

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### **Resolve Adverse Effects (Resolve and Implement)**

1. Memorandum of Agreement ([MOA](#)) or Programmatic Agreement ([PA](#)) negotiated\_\_\_\_
2. MOA/PA signed? **Yes**\_\_\_\_ **No**\_\_\_\_  
(If "No," contact the [Historic Preservation Office, CFM](#) for assistance)
3. Coordinated with [NEPA](#)\_\_\_\_\_
4. MOA/PA terms [integrated](#) into plans, specifications, etc.\_\_\_\_
5. Completion of MOA/PA terms verified and [documented](#)\_\_\_\_\_

***Remember:* No construction or earthmoving can begin before Section 106 review is completed.**

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# Section 106?

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Section 106 of the [National Historic Preservation Act](#) of 1966, as amended, requires that all federal agencies take into account the effects of their projects and other actions on [historic properties](#) – that is, places [eligible](#) for or included in the [National Register of Historic Places](#). The reason for this account-taking is to seek ways to accommodate public interests in preserving such places, while carrying out agency missions.

VA and other federal agencies fulfill their responsibilities under Section 106 by following regulations issued by the [Advisory Council on Historic Preservation](#). These regulations lay out a standard process for determining whether a project may affect historic properties, what the effects are, and what alternatives there may be for resolving any effects that are adverse, or damaging. The regulations are at 36 CFR 800 – that is, Title 36, Part 800, of the Code of Federal Regulations. They have the force of law, and must be complied with by federal agencies.

The usual steps in Section 106 review, as laid out in the regulations, are as follows:

- **[Initiate review](#):** Decide whether a proposed action needs review, and if so start doing it. This usually involves consulting State and Tribal Historic Preservation Officers ([SHPO/THPO](#)) and other [interested parties](#), as well as deciding how to involve the public and coordinating with such other review authorities as the National Environmental Policy Act ([NEPA](#)). **It is imperative that review under both Section 106 and NEPA get underway very early in project planning, and that SHPOs/THPOs and other interested parties be consulted throughout the process.**
- **[Identify historic properties](#):** Determine what work is needed to identify [historic properties](#) that may be affected, and then carry out this work. Often this involves surveys to find historic [buildings](#), [landscapes](#), [archaeological sites](#), and other kinds of historic properties. It is often necessary to [evaluate](#) places to determine whether they are [eligible](#) for the National Register.
- **[Determine effects](#):** Applying criteria found in the regulations, decide whether identified historic properties will be affected by the project, and if so, whether the effects will be [adverse](#).
- **[Resolve adverse effect](#):** Consult further to explore alternatives and ways to mitigate any adverse effects of the project. This [consultation](#) leads either to a [memorandum of agreement](#) whose terms VA makes sure are implemented, or to a final advisory comment to the Secretary by the [Advisory Council on Historic Preservation](#). The Secretary must consider this comment and explain VA's response to it, though VA need not follow the [Advisory Council's](#) advice.

The regulations also spell out several alternative ways to accomplish the purposes of Section 106, which agencies may adopt with the agreement of the [Advisory Council](#) and others.

**Section 106 is not the only cultural resource legal authority. Click [here](#) to review others.**

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# How Early is “Early in Planning?”

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“Early in planning” in the case of major, minor, minor miscellaneous, and non-recurring maintenance projects, means prior to contract award for working drawings, or prior to the beginning of in-house work on such drawings.

“Early in planning” in the case of land acquisition for a hospital, cemetery, or other facility or installation, means when VA begins considering such acquisition, before acceptance of custody and accountability for federal lands, or acceptance of an offer to donate or contract for purchase of non-federal lands.

**Rule of Thumb:** Initiate Section 106 review when you have a general idea about what needs to be done, but when you have plenty of time to consider alternative ways of doing it.

Initiation of Section 106 review should be coordinated with the beginning of review under the [National Environmental Policy Act](#). NOTE: ACTIONS THAT ARE [CATEGORICALLY EXCLUDED](#) FROM NEPA REVIEW ARE NOT CATEGORICALLY EXCLUDED FROM SECTION 106 REVIEW. However, impacts on historic properties may be regarded as “[extraordinary circumstances](#)” that trigger further NEPA review of an otherwise categorically excluded action.

# Describing the Project

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In compiling a project description to share with others in Section 106 review, try to balance completeness with concision, and think about what those you're sharing the information with are likely to want to know. Don't swamp them with page after page of detailed engineering data unless they ask for it, but do give them enough to help them understand what you're proposing. Generally, the consulting parties under Section 106 are interested in finding out:

- Where the project may be located, both in a written description and on a map and/or airphoto. Be sure to provide both a general location map (e.g., a portion of a standard USGS quadrangle with the project location or locations marked) and a specific map showing the shape and dimensions of the project sites or areas. Provide locations of all alternative sites being considered.
- What the project is. What's proposed, its purpose, the need for it, and what alternative means of addressing the purpose and need are being considered.
- What the project will look like, using conceptual plans, sketches, elevations, etc.
- What activities will be involved in doing the project. For instance, will utilities have to be brought in from elsewhere? Will there need to be access roads? Will it involve major construction, a small addition, minor renovation for an existing building?
- What impacts you think it might have – again considering all alternatives – on the project site and its surroundings. Consider physical impacts, visual impacts, auditory impacts, socioeconomic impacts, etc. This shouldn't be an exhaustive analysis at this point – just your initial thoughts about likely impacts.

# Contacting SHPOs and THPOs

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Contact information for all State Historic Preservation Officers ([SHPOs](#)) is at <http://www.ncshpo.org/stateinfo/olist/fulllist.htm> . Contact information on Tribal Historic Preservation Officers ([THPOs](#)) is at <http://www.nathpo.org/map.html> . These lists are usually kept fairly up to date, but it's wise to double-check; Tribal HPOs particularly change often.

**The SHPO** is responsible for coordinating a range of historic preservation activities in his or her state, on behalf of the state government. The SHPO is not responsible for:

- Telling you whether your project will affect historic resources (he or she probably doesn't know);
- Telling you whether your project's effects on historic resources are acceptable (he or she may or may not have an opinion, but that's what it is – an opinion);
- Specifying requirements for identification, documentation, or management of historic resources (though again, he or she may have an opinion that should be given due respect); or
- "Clearing" your project.

**The SHPO** is responsible for consulting with you and advising you about how to comply with Section 106, as well as about relevant state laws and regulations. He or she can probably also help you identify other interested parties who should be consulted.

**The THPO's** responsibilities are assigned by the Tribal Council, and in many cases THPOs have taken over SHPO responsibilities within the boundaries of their tribes' reservations. A THPO may also be an important person to consult about tribal concerns beyond the reservation boundaries – for instance, in a tribe's former homeland.

# Involving Other Consulting Parties

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Other parties (besides the [SHPO](#) and/or [THPO](#)) who ought to be consulted during Section 106 review include anyone who may be interested in your project and its effects on historic resources. Any group or individual may become a [consulting party](#), but typically, such parties include:

- Indian tribes (with or without Tribal Historic Preservation Officers<sup>1</sup>);
- Local governments and government agencies;
- Potentially affected property owners;
- Neighborhood and community groups;
- Professional organizations and academic institutions; and
- National, state, and local citizen's groups interested in environmental protection, historic preservation, planning, property rights, and similar issues.

The SHPO and/or THPO may be able to help you identify and contact other potential consulting parties.

If you are carrying out scoping and/or public participation under [NEPA](#), this should be coordinated with identifying and contacting potential consulting parties for Section 106 purposes. Make sure that NEPA public notices, press releases, and other devices used to elicit public comments or public involvement asks about any interest in historic, cultural, archaeological or architectural matters, and invites interested parties to participate in [consultation](#).

Be sure to keep a record of your efforts to identify and contact potential consulting parties, and their results, with contact information for future reference.

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<sup>1</sup> Tribes may have special rights under treaties and laws like the American Indian Religious Freedom Act, and federally recognized tribes have sovereign governments that must be consulted in what is referred to as a "government-to-government" fashion. The federal government has a special trust or fiduciary responsibility to protect the interests of tribes. See [VA Directive 8603](#) for VA policy and procedures for consultation with tribal governments.

# Involving the Public

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Because the public, in all its diversity, has interests in historic places, it's vital that VA provide every opportunity for the public to participate in Section 106 review, including meetings, negotiations, review of documents, field inspections, etc. In organizing and carrying out review activities, be sure to:

1. Inform the public of what is planned;
2. Solicit from the public any concerns they may have about the project's impacts on historic places – including places they value that VA may not know about.
3. Invite interested people to participate in Section 106 [consultation](#).

In whatever media you use to notify the public of the project under the [National Environmental Policy Act](#) or other legal authorities (public notices, newspaper articles, press releases, websites) you should let people know that if they have concerns about historic preservation issues, they are invited to express them and can become involved in Section 106 review. Try to put yourself in the place of a member of the public who is concerned about something he or she thinks is historic, or part of their culture, and think about how you would want the federal government to communicate with *you*. Then try to show the same consideration to whoever may be concerned about your project.

If there are low-income groups or minorities who may be affected by the project, make special efforts to involve them as required by [Executive Order 12898](#). This may involve adjusting meeting schedules, translating documents, having interpreters on hand during meetings, and making other adjustments to overcome cultural, linguistic, and economic barriers to their participation.

If Indian tribes are involved, make sure that [consultation](#) with them respects the special trust relationship that the federal government bears toward tribes, and that consultation is conducted on a government-to-government basis. See [VA Directive 8603](#) for VA policy and procedures for government-to-government consultation.

Make sure you keep a record of what you do to involve the public. Often the State Historic Preservation Officer, the Advisory Council on Historic Preservation, and other participants in Section 106 review will want to know.

# Do You Need To Identify Historic Properties?

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1. Except under certain unusual [conditions](#), you need to identify historic properties (that is, determine whether any such properties will be affected) if your project is likely to make any changes in a building, in landscaping, or in the visual or auditory qualities of a place, or if it will make major changes in the way the place is used.
2. A “historic property” is any district, site, structure, building, or object that is included in or eligible for inclusion in the [National Register of Historic Places](#).
3. A place can be eligible for the [National Register](#) without anyone even knowing about it, because a place is eligible if it meets specified criteria, even if no one has ever applied those criteria. It’s very much like saying that a building is or is not structurally sound. It may or may not really be structurally sound; we can’t know whether it’s structurally sound until we’ve examined it and made whatever tests are determined by experts to be necessary. In the same way, a place may or may not meet the National Register’s eligibility criteria; we have to make appropriate studies to determine whether it does or does not.
4. All VA National Cemeteries are regarded as eligible for the [National Register](#), but a cemetery may also contain other places – for example, [archaeological sites](#) – that are eligible by themselves, and these very likely have never been recorded. There also may be other historic properties outside the cemetery boundary that could be affected by a project inside the cemetery (for example, constructing a large building that will be visible from outside, or installing new utilities running from outside to inside the cemetery). In planning a project at such a cemetery, we know that there is a historic property (the cemetery) involved, but we don’t know whether there are other historic properties that may be affected by an action.
5. Many VA facilities were determined eligible or ineligible for the [National Register](#) in the 1980s. **These determinations cannot be taken as authoritative today.** Most were made solely on architectural grounds, and places can be eligible for many reasons besides their architectural qualities. Further, the passage of time and changing concepts of significance require us to revisit old determinations of eligibility and ineligibility. Places that were determined to not be eligible twenty years ago may now meet the eligibility criteria, perhaps because important events have occurred in association with them, or because research has revealed new things about the period or style they represent.
6. The [Section 106 regulations](#) require that decisions about whether and how to identify historic properties must be made in [consultation](#) with the relevant [SHPO](#) or [THPO](#). You may also need to consult [other parties](#), such as veterans groups, local historical societies, local governments, and Indian tribes or other groups.
7. In planning your identification work, be sure also to [consider relevant cultural resource requirements](#) other than Section 106; this will increase efficiency and minimize confusion in completing your overall environmental impact assessment and project planning.

# Circumstances Under Which Identification of Historic Properties is NOT Necessary

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1. Identification of [historic properties](#) is not necessary where all areas subject to direct and indirect effect by the project (including physical, visual, auditory, social, and other effects) have been thoroughly examined in accordance with the Secretary of the Interior's [Standards and Guidelines for Identification of Historic Properties](#) and VA has found, based on this examination, that **there are no historic properties present.** Note: if such an examination occurred more than five years before the time you begin Section 106 review of your project, please coordinate with the [Historic Preservation Office, CFM](#) and make sure the results are up to date.
2. Identification of [historic properties](#) is not necessary where you determine, and the [Historic Preservation Office, CFM](#) concurs, that all historic properties that might be affected **have already been identified** (usually as the result of prior historic property surveys and other studies). In this case, [Section 106](#) review can proceed based on the information already in hand.

## Warnings:

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1. Remember that historic properties may be [buildings](#), groups of buildings, other kinds of [structures](#), [landscapes](#), [archaeological sites](#), battlefields, roads, trails, and a variety of other kinds of place. A study that identifies only buildings, or only archaeological sites, may have missed other kinds of properties, whose late discovery can cause project delays.
2. Even if you are certain that there are no historic properties present, or that you are fully informed about the area's historic properties, if outside experts, Indian tribes, local governments, or members of the public say that historic properties will be affected, you should investigate, in case something has been missed by previous studies.
3. Remember that VA needs to consider your project's potential impacts of all kinds – its direct impacts, its indirect impacts, and its contribution to patterns of [cumulative impact](#). Making sure that the construction site or other direct impact area has no historic properties does not guarantee that there will not be indirect or even direct impacts beyond the project site.
4. Remember that even if no historic properties will be affected, other kinds of [cultural resources](#) may be, and may require consideration under [NEPA and other laws](#).

# Establishing the Scope of Historic Property Identification Work

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The scope of work necessary to identify historic properties that may be affected by a project largely depends on two factors:

1. What is already known, suspected, or generally believed about the history, prehistory, culture, and historic properties of the area that may be affected; and
2. The nature of the project, and its likely effects on the environment.

For example, if you are planning the rehabilitation of a building's interior spaces, you probably will not need to worry about looking for historic properties outside the building – except if your interior work requires exterior work as well, such as exterior lighting or HVAC, or underground utilities (which can affect archaeological sites). If you're planning a major expansion on a hospital or cemetery, you will probably need much more extensive identification work.

**Pitfalls:** Some common mistakes made in scoping historic property identification include:

1. Assuming that identification has already been completed, so all that's needed is to check the [National Register of Historic Places](#) or the [State Historic Preservation Officer's](#) files. VA has funded a good deal of historic property identification work, but it is a rare VA facility that has been thoroughly studied for all kinds of historic properties. And if your project will have effects beyond the facility's boundaries, there may be unidentified historic properties there, as well.
2. Assuming that the identification work done at a facility is complete and up-to-date. Often a VA facility, or selected buildings on a VA campus, have been nominated to and placed on the [National Register of Historic Places](#). All VA cemeteries are regarded as eligible for the [National Register](#). But this does not necessarily mean that everything of historic, archaeological, architectural or cultural significance has been documented. For example, though buildings on a facility may have been nominated to and listed in the [National Register](#), often the archaeology of the facility remains unknown. Cemeteries, though regarded as eligible for the [National Register](#), have not necessarily been thoroughly studied.
3. Assuming that the [State Historic Preservation Officer](#) (SHPO) can prescribe what should be done. The SHPO is an important and knowledgeable source of information and advice, but it is not the SHPO's duty to prescribe what kinds of identification work VA should do. Many SHPOs will prescribe identification standards, but SHPOs have limited time to devote to examining your project plans and deciding what standards to suggest, so sometimes they will prescribe more or less work than you really need, or the wrong kinds of work.

Scoping must be done in [consultation](#) with the SHPO or Tribal Historic Preservation Officer, and with other interested parties (veterans' and citizens' groups, local government, Indian tribes, neighbors, etc.), and should include close consideration of professional standards in historic preservation, archaeology, and other fields; the [Secretary of the Interior's Standards for Identification of Historic Properties](#) is a good starting point.

Scoping historic property identification should be closely coordinated with scoping other environmental impact studies that may be done under the [National Environmental Policy Act](#) and [other legal authorities](#). The [interested public](#) should have reasonable opportunities to participate in scoping.

Scoping usually includes:

1. Defining the [area of potential effects](#) (APE) of the project – that is, the area or areas where it has the potential to affect historic properties, even if no properties have yet been recorded. Remember that all kinds of effects have to be considered – direct, indirect, and cumulative effects, physical effects, visual effects, auditory effects, social and economic effects, etc.
2. Doing background research to find out what is already known about the [APE's](#) history, archaeology, architecture, engineering, and culture, and to determine what [historic properties](#) (if any) have already been recorded there.
3. Consulting with the [SHPO](#) or [Tribal Historic Preservation Officer](#) and other knowledgeable parties to tap their knowledge and get their opinions about what may be found in the APE.
4. Drafting a scope of work based on the above.
5. Finalizing the scope of work and using it to procure the services needed to carry out its terms.
6. In establishing the scope of work, be sure also to consider [relevant cultural resource requirements other than Section 106](#) that can be addressed in the course of historic property identification. Coordinated consideration of all types of cultural resources will increase efficiency and cost-effectiveness.

# Completing Historic Property Identification

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**Doing the work:** Once you have developed a scope of work for identification of historic properties, you need to make sure the work is performed. This is usually done by a contractor. Be sure that your contractor is qualified to carry out the scope of work you have defined. The contractor should have staff representing the professional disciplines relevant to the kinds of properties that may exist in the area, and they should either have prior experience in the area or experience that is demonstrably relevant to the area. The contractor should clearly understand the scope of work and what it requires, and should understand the project plan, its timetable, VA's legal and planning requirements, and the plans and schedules for other studies being conducted (e.g., structural analyses, soils studies, etc.). The work should be closely coordinated with any environmental impact analyses being carried out, and information from the historic property identification work should be fed into the environmental impact studies and reports. The scope of work and contract terms should be flexible enough to allow the contractor and VA contracting officer to respond efficiently to the discovery of new information and changing circumstances.

The identification work should have one of the following results, or a combination of results.

## **Possibility 1: No historic properties will be affected.**

**Finding:** You have completed a well-planned study seeking historic properties subject to effect and find that there are no historic properties in the area of potential effects ([APE](#)) – or that there are historic properties, but they will not be affected directly, indirectly, or cumulatively.

**What to do:** Document the study and its results and provide this information to the State and/or Tribal Historic Preservation Officer ([SHPO/THPO](#)) and other parties with whom you are consulting. Cover the documentation with a letter modeled on [Letter Template B](#) providing VA's determination that no historic properties are subject to effect. If the SHPO/THPO concurs in VA's determination or does not respond within thirty days of his or her receipt of this letter, and the [Advisory Council on Historic Preservation](#) does not intervene, Section 106 review is complete.

You do not need to notify the Advisory Council, but other consulting parties may object to your determination and cause the Advisory Council to intervene, in which case you will have to explain your findings and the Advisory Council itself may then object to the Secretary. For this reason, as well as for the sake of courtesy and good planning, it is wise to respond directly to any objections raised by consulting parties or the public, and try to resolve them before finalizing a determination. If any Indian tribes are involved, be sure to notify the appropriate tribal representative ([THPO](#) or other specified contact point, or tribal government head) and provide opportunities to respond.

Be sure to report the results of your historic property identification work in your environmental impact studies.

Some cultural resources subject to effect may have to be considered under [cultural resource requirements](#) other than Section 106, even if there are no historic properties involved; be sure you consider this possibility and address impacts on such resources if they exist.

**Possibility 2: Only known National Register or eligible properties will be affected.**

**Finding:** A property or properties already included in the [National Register](#), or previously determined to be eligible for the National Register, will be affected by the project. No other properties that might be historically, architecturally, culturally, or otherwise significant will be affected.

**What to do:** Proceed to the [next step](#).

**Possibility 3: Properties whose eligibility for the National Register is unknown will be affected.**

**Finding:** In addition to any properties already included in the National Register, or known to be eligible for the Register, your identification work has revealed buildings, sites, structures, neighborhoods, or other places that may be eligible for the Register but have not been evaluated.

**What to do:** Either [treat the property or properties as eligible](#) or [determine eligibility/ineligibility](#).

# Treating a Property as Eligible for the National Register

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The Section 106 regulations allow an agency and [SHPO](#) or [THPO](#) (SHPO/THPO) to agree to treat a property as eligible for the National Register of Historic Places for purposes of Section 106 review, without any specified kinds of documentation or analysis. This can often save a great deal of time and trouble. It is particularly helpful where one or more of the following situations exists:

- A property is obviously significant, and no serious questions exist about why or how it is significant (for example, a major building designed by a well-known architect that has figured importantly in the life of a community).
- There is no serious controversy about the property's significance, and it would be very troublesome or costly to carry out the studies needed to determine just how and why it is significant (for example, a probable archaeological site buried under standing buildings).
- The property has some significance, but no one wants to preserve it (for example, a building that represents an architecturally interesting style or type, but that none of the consulting parties thinks is worth preserving, or that has deteriorated to a point at which it cannot be preserved).
- The property is very extensive (for example, a huge [landscape](#) that has cultural or historical significance, where the project's [area of potential effect](#) occupies only a small part of the property).
- There are bodies of information about the property that must be kept confidential (for example, a place that an Indian tribe or Native Hawaiian group regards as spiritually powerful and secret, or an [archaeological site](#) that would be vandalized if information were revealed about it to the public).

If there is controversy about the significance of the property, then it is not usually feasible simply to regard it as eligible, because it is necessary to both resolve the controversy and to create an administrative record that justifies the decision that is reached. This is done by formally [determining eligibility or ineligibility](#). In such a case, it is necessary to perform some kind of analysis to determine eligibility, and to document the analysis and its results. How much analysis and documentation, and what kinds, depend on what the consulting parties agree to, however.

If VA and an [SHPO/THPO](#) agree to treat a property or properties as eligible for the National Register with little documentation, it is wise to record this agreement somehow in order to maintain an administrative record. In such an agreement or elsewhere, it is also a good idea to indicate what aspects of the property you agree make it significant, since impacts on such aspects of the property will have to be addressed at the next step in the process. [Letter Template C](#) is a template for a letter recording such an agreement.

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# Determining Eligibility/Ineligibility for the National Register of Historic Places

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## Why Do It?

If a property is included in or [eligible](#) for the [National Register of Historic Places](#), then impacts on it have to be considered under [Section 106](#) of the National Historic Preservation Act ([NHPA](#)). If it is not eligible, then impacts do not have to be considered under Section 106, though they may still have to be addressed under the National Environmental Policy Act ([NEPA](#)) or some [other federal, state, tribal or local legal authority](#).

Nomination to the National Register takes time and money, so many places that are eligible for the National Register have never been nominated. When a VA project will affect a place that might be [eligible](#), but whose eligibility is not known, it is evaluated with reference to [criteria](#) published by the National Park Service – unless the consulting parties under Section 106 agree to [treat it as eligible](#) without detailed evaluation. Evaluation lets VA know whether it needs to consider its effects on the property's historic, architectural, cultural, or archaeological qualities by carrying out the remainder of the Section 106 review process.

## Who Does It?

Determining eligibility/ineligibility is VA's responsibility, unless another federal agency (such as the Corps of Engineers in some construction projects, or a federal land management agency in the case of a land transfer) assumes this responsibility. Determining eligibility is not the responsibility of the State or Tribal Historic Preservation Officer ([SHPO/THPO](#)), though the SHPO/THPO must be consulted and concur in most determinations, and his or her opinion should be respected. In most cases the documentation supporting a determination of eligibility or ineligibility is prepared by contractors in history, architectural history, archaeology, and other disciplines, but VA is formally responsible for it, and for the determination itself.

## How Is It Done?

In most cases, VA sends data about the property to the [SHPO/THPO](#), and states an opinion as to whether the property is eligible or ineligible. The documentation should also spell out the rationale for VA's determination, with reference to the National Register criteria. [Letter Template D](#) is a template for the letter covering such documentation. Copies of the documentation should be provided to [other consulting parties](#), and their opinions should be solicited and considered.

There are four possible outcomes to the evaluation process on each property:

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- **VA and the SHPO/THPO agree** that the property is [eligible](#) for the National Register. In this case, VA goes on to the next step in the Section 106 process.
- **VA and the SHPO/THPO agree** that a property is not eligible for the National Register. In this case – assuming there is not an objection that must be resolved (See below) – Section 106 review can be ended with respect to the property in question – though the process may continue with reference to other properties that are or may be eligible.
- **VA and the SHPO/THPO agree** that a property is eligible or not eligible for the National Register, and someone disagrees. The disagreeing party can ask the [Advisory Council on Historic Preservation](#) and/or the [Keeper of the National Register](#) to request that VA submit the matter to the [Keeper](#) for a formal determination of eligibility. If the [Advisory Council](#) or the [Keeper](#) so request, then VA must seek the [Keeper](#)'s determination. The [Keeper](#)'s determination is final.
- **VA and the SHPO/THPO disagree** about eligibility/ineligibility, and cannot resolve the disagreement through [consultation](#). In this case VA must submit documentation to the [Keeper](#) and request a formal determination of eligibility. The [Keeper](#)'s determination is final.

### **Caution!**

**Arguments over the eligibility of properties for the National Register can be time consuming and costly.** If the [SHPO/THPO](#) or anyone else thinks that a property is significant, it is often wisest and most efficient to find that the property is eligible for the [National Register](#), so that Section 106 review can continue to its conclusion. **Remember that the law does not require that historic properties be preserved in every case – only that their preservation be given fair consideration, in accordance with the [Section 106](#) regulations.** Agreeing that a property is eligible for the Register does not mean that VA must preserve it; it only means that preservation and other ways of mitigating impacts on the property must be considered as VA proceeds to the next step in Section 106 review.

# Determining a Project's Effects on Historic Properties

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## Why Determine Effects?

If there are [historic properties](#) – that is, places included in or eligible for the National Register of Historic Places – in the area of potential effects ([APE](#)) of your project, and your project will change them, their use, or their environment in some way, the [Section 106](#) regulations require that VA determine whether the project's effects on them will be adverse. Adverse effects generally require more [consultation](#) than effects that are not adverse.

## Who Determines?

As usual under Section 106, the responsibility to make the determination rests with the responsible federal agency, in this case VA. The determination must be made in [consultation](#) with the State or Tribal Historic Preservation Officer ([SHPO/THPO](#)) and other consulting parties.

## What Makes an Effect Adverse?

The regulations say that an effect is adverse if it [may](#) (note the allowance for uncertainty) alter characteristics of a property that make the property eligible for the [National Register of Historic Places](#), in a way that diminishes the property's integrity. The regulations go on to provide a series of examples of adverse effect. This basic standard, and its accompanying examples, are referred to as the "[criteria of adverse effect](#)." These are the criteria that VA must use, in [consultation](#) with the [SHPO/THPO](#) and [others](#), to decide whether the effect will be adverse.

## Something to Remember

It's important to remember that there is nothing unlawful about having adverse effects on historic properties. The regulations simply require that VA make reasonable efforts to resolve adverse effects, in consultation with the SHPO/THPO and other interested parties.

## What if the Criteria Aren't Met?

If the [Criteria of Adverse Effect](#) aren't met – that is, the project will not diminish the integrity of a historic property, directly or indirectly or as part of a pattern of cumulative adverse effect – then you can send a letter modeled on [Letter Template E](#) to the SHPO/THPO and the other consulting parties. This is referred to as a "[no adverse effect determination](#)." If there is no objection to your determination within thirty days, check "No" on the checklist, file it with supporting documentation in your project files, and you are finished with Section 106 review – PROVIDED VA carries out any

[commitments](#) it has made to the SHPO/THPO and others about actions it will take to keep adverse effect from happening.

**What If There Will Be an Adverse Effect?**

If the [Criteria of Adverse Effect](#) are met – if the project will diminish the property’s integrity – or if the SHPO/THPO objects to a determination of no adverse effect and the objection cannot be resolved, then go on to the [next step](#) in Section 106 review.



# The “Criteria of Adverse Effect,” from 36 CFR 800.5(a)

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- (1) *Criteria of 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.
- (2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:
  - (i) Physical destruction of or damage to all or part of the property;
  - (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;
  - (iii) Removal of the property from its historic location;
  - (iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
  - (v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
  - (vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
  - (vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

# National Register Criteria for Evaluation (From 36 CFR 60.4)

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## Criteria for Evaluation

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A.** That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B.** That are associated with the lives of persons significant in our past; or
- C.** 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 may lack individual distinction; or
- D.** That have yielded or may be likely to yield, information important in prehistory or history.

## Criteria Considerations

Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a.** A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- b.** A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- c.** A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or
- d.** A cemetery which derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

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- e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- g. A property achieving significance within the past 50 years if it is of exceptional importance.

# Commitments Commonly Made to Avoid Adverse Effect on Historic Properties

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When VA (or any other agency) determines that an action will have [no adverse effect](#) on a historic property, it is often necessary to attach conditions to the determination. This may occur through VA's own initiative, or in response to a request or objection from the [SHPO](#) or another [consulting party](#). In essence, VA says to the State or Tribal Historic Preservation Officer ([SHPO/THPO](#)) and other [consulting parties](#): "We promise to carry out our work in accordance with the following conditions, and we think that if we do so, we will not have any adverse effects on historic properties." If the SHPO/THPO agrees, and the [Advisory Council on Historic Preservation](#) does not intervene, then VA is finished with Section 106 review, PROVIDED IT CARRIES OUT THE AGREED-UPON CONDITIONS. A determination with conditions is naturally referred to as a [conditional no adverse effect determination](#).

Some common conditions are:

- Restoring or rehabilitating a building or buildings following the [Secretary of the Interior's Standards for Historic Preservation Projects](#) and applicable guidelines;
- Submitting plans and specifications to the [SHPO/THPO](#) or another specified party for review at various stages of development;
- Monitoring earthmoving in case [archaeological sites](#) or graves are found (Note: this sort of condition can be used only where no such sites or graves have actually been identified in the area where earthmoving will occur; it is a fail-safe mechanism in case something has been missed. It can also be used when earthmoving will be done near an identified archaeological site or cemetery, but not actually in the site or cemetery's defined boundaries);
- Conducting the project in accordance with project-specific standards (for example: "the project will be built following Alternative Yellow in the Environmental Impact Assessment," or "Fire suppressant sprinkler heads will be built into the crown molding in an unobtrusive manner;" and
- Developing and implementing a historic preservation plan for a building, site, or facility.

## ***Things to Remember***

- To justify a "no adverse effect" determination, a condition must **actually keep adverse effects from happening**. It cannot allow destructive actions to occur. For instance, we cannot say that demolishing a building or digging up a cemetery will not have an adverse effect on it, no matter what kinds of conditions we attach.

- The condition must **actually be carried out**, so it is vital to make sure that it is reflected in plans, specifications, scopes of work and contracts, and that the project is monitored to verify that the condition is being met.



# Negotiating a Memorandum of Agreement under Section 106

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## Important Points to Remember

A [Memorandum of Agreement](#) (MOA) is a negotiated document. Negotiate with the State or Tribal Historic Preservation Officer ([SHPO/THPO](#)), other [consulting parties](#), and sometimes the [Advisory Council on Historic Preservation](#) to seek agreement.

- The MOA governs how impacts on historic properties will be resolved. It is a binding agreement whose terms must be carried out. VA is primarily responsible for ensuring that the terms of MOAs it negotiates are implemented.
- An MOA can stipulate anything the consulting parties agree on, as long as it is legal.
- Unlike the conditions on a "[no adverse effect](#)" determination, the terms of an MOA do not have to eliminate adverse effect. They simply articulate what has been agreed to do about such an effect – which may range from redesigning a project to avoid or reduce the effect, to accepting the effect in the public interest.
- Most MOAs provide for things like:
  - Project design to minimize impacts;
  - Planting vegetative screens and buffers;
  - Rehabilitation of buildings following prescribed standards;
  - Archaeological, historical, or architectural documentation;
- The usual format for an MOA has a title, "whereas clauses" that present background data (Where, when, who), stipulations that outline what will be done and how, and signature blocks for the signing parties.
- Make sure the right people are involved in negotiating the MOA – notably those who will have roles in deciding whether and how the action(s) to which it pertains will be carried out, and those responsible for funding decisions.
- MOAs are typically signed by VA, an [SHPO/THPO](#), and sometimes other [consulting parties](#) (local governments, veterans groups, concerned citizens, etc.). Occasionally the [Advisory Council on Historic Preservation](#) also signs.

## **Model Formats and Standard Stipulations For MOAs**

Model formats and standard stipulations for MOAs can be found at <http://www.npi.org/tools.html>, provided by the National Preservation Institute, a non-profit historic preservation organization. These models should not be followed slavishly, but they can be helpful beginning points, suitable for adaptation when building an MOA.

# Negotiating a Programmatic Agreement under Section 106

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## Important Points to Remember

- A [Programmatic Agreement](#) (PA), like a [Memorandum of Agreement](#) (MOA) is a negotiated document. Negotiate with the State or Tribal Historic Preservation Officer ([SHPO/THPO](#)) and other [consulting parties](#). VA must also invite the [Advisory Council on Historic Preservation](#) (ACHP) to participate in consultation on a PA, though the ACHP is not obligated to take part.
- There is no legal requirement for a PA, as opposed to an MOA. A PA is a convenience for VA and other federal agencies when we are carrying out multiple actions with relatively routine kinds of effects on historic properties. A good example is management of a cemetery, where there may be frequent relatively routine effects on historic properties (e.g., through excavating graves in archaeological sites, or maintaining historic buildings or landscaping).
- A PA eliminates the need for standard Section 106 consultation on actions it covers, and the need for the specific determinations ([eligibility for the National Register](#), [No Adverse Effect](#), etc.) and Memoranda of Agreement that standard Section 106 review entails. However, a PA imposes its own requirements, which may be harder to implement than the standard Section 106 procedures.
- The utility of a PA lies in being able to tailor Section 106 compliance to the kinds of properties, effects, and management system relevant to a particular program or administrative situation.
- Most PAs provide for things like:
  - Exempting some kinds of low-impact actions from review;
  - Handling some kinds of review in-house without involving the SHPO or another outside expert;
  - Routinely applying particular management standards, such as the Secretary of the Interior's [Standards for Rehabilitation](#);
  - Routinely assuming that specified kinds of property are [eligible for the National Register](#); and
  - Specifying how consultation and public participation will be done within a facility's planning processes.

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- Make sure that whoever will be responsible for implementing the PA – for instance, the (hospital or cemetery director) – is involved in or at least aware that it is being negotiated, and is prepared to make sure the PA is carried out.
- A PA has a format much like that of an MOA has a title, “whereas clauses” that present background data (where, when, who), stipulations that outline what will be done and how, and signature blocks for the signing parties.
- MOAs are typically signed by VA, an SHPO or THPO, the ACHP, and sometimes other interested parties (local governments, veterans groups, concerned citizens, etc.).
- **Model Formats and Standard Stipulations for PAs**

Model formats and standard stipulations for PAs can be found at <http://www.npi.org/tools.html>, provided by the National Preservation Institute, a non-profit historic preservation organization. These models should not be followed slavishly, but they can be helpful beginning points, suitable for adaptation when building an PA.

# Implementing an Agreement Under Section 106

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- A Memorandum of Agreement ([MOA](#)), Programmatic Agreement ([PA](#)) or [Conditional No Adverse Effect](#) determination is a binding agreement. VA must carry out its terms – or if something makes this impossible, VA must renegotiate them.
- Think about implementation while you're negotiating. Make sure you don't agree to something that VA cannot do.
- Make sure that the right people are involved in the negotiation – notably, whoever will make final decisions about the design of a project, or approve its funding.
- Implementing a Section 106 agreement usually involves:
  - Making sure the agreement is reflected in decision documents, such as lease agreements, grant awards, policy changes, legislative proposals, approvals of major, minor, minor miscellaneous delegated, and non-recurring maintenance projects, and land transfer documents;
  - Making sure the agreement is reflected in the document that concludes review under [NEPA](#), such as a Finding of No Significant Impact ([FONSI](#)) or Record of Decision ([ROD](#));
  - Making sure the agreement is reflected in scopes of work, contracts, plans, and specifications;
  - Anticipating and providing for adjustments that may be needed as the project proceeds (for example, to address discoveries of previously undocumented historic properties, graves, archaeological sites, etc.);
  - Monitoring progress of the action(s) to which the agreement relates, and any changes to the project design or specifications, to make sure that the terms of the agreement are carried out ;
  - Documenting that the terms of the agreement have been carried out; this is typically done in the project files and often with letters to the [SHPO](#) or [THPO](#) and/or other [consulting parties](#) (See [Letter Template G](#) for a template).

# Coordination with NEPA

## Index

VA projects and other actions must be consistent with the national environmental protection policies established by Congress in the National Environmental Policy Act ([NEPA](#)). NEPA and Section 106 of [NHPA](#) are totally separate laws, but it is important to coordinate compliance with them – both for the sake of efficiency and to make sure that VA carries out the requirements of both.

Compliance with NEPA on a given project or decision is achieved in three ways:

4. By identifying the project or decision as [categorically excluded](#) and making sure there are no [extraordinary circumstances](#) requiring special consideration.
5. By conducting an [environmental assessment](#) (EA) resulting in a [finding of no significant impact](#) (FONSI) on the project or decision.
6. By preparing an [environmental impact statement](#) (EIS), considering the findings of this statement in deciding whether and how to proceed with the project or decision, and issuing a [record of decision](#) (ROD).

Compliance with [Section 106](#) should be coordinated with review under NEPA, regardless of the way NEPA review is carried out. Generally, try to coordinate NEPA and Section 106 review as follows:

**Getting started:** Initiate review under both Section 106 and NEPA at the same time, [early in planning](#); that is:

- When you begin a review of a [categorically excluded](#) action for [extraordinary circumstances](#). Impacts on [historic properties](#) may be such a circumstance, but even if it is not, Section 106 must be complied with.
- When you begin to determine the scope of an [EA](#).
- When you determine the purpose of and need for a project that will be the subject of an [EIS](#), and start considering the scope of the EIS.

**Identify** historic properties that may be affected –

- During review of a [categorically excluded](#) action for [extraordinary circumstances](#).
- During research, analysis, and preparation of a draft [EA](#).
- During research, analysis, and preparation of a draft [EIS](#).

**Assess** effects on historic properties –

- During review of a [categorically excluded action](#) for [extraordinary circumstances](#), and consider whether the effects are such that an [EA](#) or [EIS](#) may be necessary. Coordinate [consultation](#) and

[public involvement](#). Cross-reference Section 106 determinations of “[no historic properties subject to effect](#),” “[no adverse effect](#),” and “[adverse effect](#)” and documentation of NEPA extraordinary circumstance review.

- During preparation of a draft [EA](#), and refine during finalization. Consider effects on [historic properties](#) and [other cultural resources](#) in deciding whether to issue a [FONSI](#) or prepare an [EIS](#). Coordinate [consultation](#) and [public involvement](#). Cross-reference EA with Section 106 determinations of “[no historic properties subject to effect](#),” “[no adverse effect](#),” and “[adverse effect](#)”. Reflect the terms of any [conditional no adverse effect](#) determination in the [FONSI](#) if one is issued.
- During preparation of a draft [EIS](#), and refine during finalization. Coordinate [consultation](#) and [public involvement](#). Cross-reference EIS with Section 106 determinations of “[no historic properties subject to effect](#),” “[no adverse effect](#),” and “[adverse effect](#)”.

[Resolve](#) adverse effects on historic properties through further consultation and establishment of memoranda of agreement –

- When deciding whether a normally [categorically excluded](#) action under NEPA requires more review.
- When finalizing an [EA](#) and deciding whether a [FONSI](#) is appropriate. Reflect the terms of any [MOA](#) in the [FONSI](#), if one is issued.
- Finalize any [MOA](#) or [conditional no adverse effect determination](#) through [consultation](#) during public comment on, and while finalizing, an [EIS](#). Reflect the terms of any [MOA](#) in the [ROD](#).

[Implement](#) the terms of any [conditional no adverse effect](#) determination and/or any [MOA](#) once the decision has been made to proceed with the proposed action or an alternative to it.

## Letter Template A: Template for a Letter Initiating Contact with a State or Tribal Historic Preservation Officer

A rectangular button with a light green background and a dark green border. The word "Index" is written in blue, underlined text in the center.

*Send to State and/or Tribal Historic Preservation Officer, with copies or equivalent letters to other interested parties*

**Note: This is only an example. Modify as needed.**

Dear (State/Tribal Historic Preservation Officer)

The Department of Veterans Affairs is considering (describe what is under consideration, for example, “adding a new wing to the XYZ Veterans Hospital,” or “acquiring additional land for the ABC National Cemetery”). We are beginning work to explore the possible environmental impacts of this proposed action under the National Environmental Policy Act (NEPA), and to determine what effects it may have on historic sites, districts, structures, buildings, or objects under Section 106 of the National Historic Preservation Act (NHPA).

As we initiate this work we would like to consult with you to identify any concerns you may have, and to seek your advice about how best to identify and address our potential effects on historic places. Attached for your reference and use is a brief outline of the purpose of and need for the proposed action, and of the alternative ways of addressing this purpose and need that we have identified in planning to date.

We would appreciate any advice you wish to give us regarding how to proceed in identifying the potential effects of this project on historic places, and an indication of whether and how you would like to be consulted further as planning proceeds. We would be happy to meet with you at your convenience to discuss this action and how best to proceed.

If there you have any questions or other matters you need to discuss, or to arrange a meeting, please contact (**specify contact person with phone and email**). Thank you for your cooperation and assistance; we look forward to working with you..

Sincerely yours,

(Attach/enclose statement of purpose and need, any conceptual plans for the project, any discussion of alternatives to be considered, map showing location(s) of proposed project and alternatives, any other documents you think will help make the proposed action understandable)

## Letter Template B: Template for a Letter Finding “No Historic Properties Subject to Effect”



*Send to State and/or Tribal Historic Preservation Officer, with copies or equivalent letters to other interested parties*

**Note: This is only an example. Modify as needed.**

Dear (State/Tribal Historic Preservation Officer)

As you know from our (specify – conversations during scoping and identification, letters, emails, etc.), the Department of Veterans Affairs has been seeking to determine whether any historic properties might be affected by our (name of project). We have now concluded that no such properties will be affected. (Elaborate here if needed: for example, “As you know, the Largebrown Building, which is probably eligible for inclusion in the National Register of Historic Places, lies within the project’s area of potential effects, but we have determined, in consultation with Abe Lincoln of your staff, that our project will not alter any characteristics that make it eligible, and hence will not affect it.”)

Attached for your reference and use (unless you have already supplied some or all of the items listed, in which case remind them that you have) are a current description of the project and a report describing our efforts to identify historic properties and discussing our rationale for believing that no such properties will be affected.

In accordance with 36 CFR 800.4(d)(1)(i), we would appreciate receiving any comments in response to this letter within thirty (30) days. If you need more time please let us know. If there are any questions or other matters to discuss, please contact (specify contact person with phone and email). Thank you for your cooperation.

Sincerely yours,

(Attach/enclose relevant documents referred to in text)



## Letter Template D: Template for Cover Letter, Determining Eligibility or Ineligibility for the National Register

[Index](#)

*Send to State and/or Tribal Historic Preservation Officer, with copies or equivalent letters to other interested parties*

Dear (SHPO/THPO)

As you will recall, the Department of Veterans Affairs (VA) is considering **(name and brief description of project)**. We are reviewing the possible impacts of this project on historic properties in consultation with your office and others. We have now completed our effort to identify historic properties in the project's area of potential effects (APE). A report of our identification work is enclosed, entitled **(Title, author, date of report)**.

As you can see, there **(is/are) (one/several/[number]) property(ies)** in the APE that our consultants have studied in order to make recommendations about **(its/their)** eligibility or ineligibility for the National Register of Historic Places. Based on their analyses, we propose that **(state your determination(s), for example, "Building 777 is eligible for the National Register under National Register Criterion C as an example of the standardized architectural plans employed by the Veterans Bureau in the early 20<sup>th</sup> century;" "archaeological site 79-48-54, though once significant as a remnant of the early 19<sup>th</sup> century linen industry, has lost integrity through massive erosion, and is not eligible for the National Register")**.

Please let us know whether you concur in our determination, and advise us of any other comments, questions, or objections you may have. As you know, 36 CFR 800.5(c) gives you thirty days to respond to this request, and we would appreciate a response within that time, but if you require more time, or would like to discuss the report or the project, please contact **(name of contact)** at **(telephone, email)**.

By copy of this letter, we are advising **(names of other consulting parties)** of our determination, and inviting them to advise both your office and VA of any concerns or comments they may have.

Sincerely,

## Letter Template E: Template for a Letter Finding “No Adverse Effect”

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*Send to State and/or Tribal Historic Preservation Officer, with copies or equivalent letters to other interested parties*

**Note: This is only an example. Modify as needed.**

Dear (SHPO/THPO)

As you know from our (specify – conversations during scoping and identification, letters, emails, etc.), the Department of Veterans Affairs has been seeking to determine whether any historic properties might be affected by our (name of project). We have now concluded our studies and find that (property name or description) will be affected by the project. However, we also find that the project’s effects on this property will not be adverse. Following is our reasoning:

**(Explain here how you have considered effects on the property, with reference to the Criteria of Adverse Effect.)**

Attached for your reference and use (unless you have already supplied some or all of the items listed, in which case remind them that you have) are a current description of the project and a report describing our efforts to identify historic properties and discussing our rationale for believing that no such properties will be adversely affected.

In accordance with 36 CFR 800.5(c)(1), we would appreciate receiving any comments in response to this letter within thirty (30) days. If you need more time please let us know. If there are any questions or other matters to discuss, please contact (specify contact person with phone and email). Thank you for your cooperation.

Sincerely yours,

# Letter Template F: Template for a Letter Finding “No Adverse Effect” Based on Implementing Conditions



***Send to State and/or Tribal Historic Preservation Officer, with copies or equivalent letters to other interested parties***

**Note: This is only an example. Modify as needed.**

Dear (SHPO/THPO)

As you know from our (specify – conversations during scoping and identification, letters, emails, etc.), the Department of Veterans Affairs has been seeking to determine whether any historic properties might be affected by our (name of project). We have now concluded our studies and find that (property name or description) will be affected by the project. However, we also find that the project’s effects on this property will not be adverse, provided we implement certain conditions. Following is our reasoning:

**(Explain here how you have considered effects on the property, with reference to the Criteria of Adverse Effect.)**

Attached for your reference and use (unless you have already supplied some or all of the items listed, in which case remind them that you have) are a current description of the project and a report describing our efforts to identify historic properties and discussing our rationale for believing that no such properties will be adversely affected provided we carry out the conditions outlined in Section (specify) of the report.

In accordance with 36 CFR 800.5(c)(1), we would appreciate receiving any comments in response to this letter within thirty (30) days. If you agree with our determination, or if we do not hear from you within thirty days, it is our intention to proceed with the project, imposing the conditions through (specify – for example, including the conditions in plans and specifications, or in contract scopes of work).

If you need more time please let us know. If there are any questions or other matters to discuss, please contact (specify contact person with phone and email). Thank you for your cooperation.

Sincerely yours,

# Letter Template G: Template for a Letter Reporting Completion of an Agreement's Terms

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*Send to State and/or Tribal Historic Preservation Officer, with copies or equivalent letters to other interested parties*

**Note: This is only an example. Modify as needed.**

Dear (SHPO/THPO)

As you know, the Department of Veterans Affairs has been working to implement the terms of our (conditional "no adverse effect" determination/memorandum of agreement/programmatic agreement) on the (name of project). I am happy to report that this work has now been completed. The following actions have been accomplished:

(List: For example, "rehabilitation of Building Seventeen in accordance with the Secretary of the Interior's Standards for Rehabilitation;" "archaeological data recovery at site 59ABC29," etc.).

Enclosed for your reference (is/are the following), produced as a result of the work carried out per our agreement:

(list: completion reports, archaeological reports, architectural documentation, etc.)

It has been a pleasure working with you on this project. We appreciate your assistance in carrying out VA's responsibilities under Section 106 of the National Historic Preservation Act. If you would like to discuss the enclosed material or discuss anything else with us, please contact (specify contact person with phone and email).

Sincerely yours,

# VA CULTURAL RESOURCE MANAGEMENT CHECKLIST PART THREE: SUPPORTING AND REFERENCE PAGES

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## [General Index](#)

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\(Supporting/Reference  
Pages\)](#)

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[Adaptive use historic properties](#)

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[Historic properties: what are they?](#)

[How early is early?](#)

[NEPA terminology](#)

[National Register of Historic Places](#)

[Plan of Action \(NAGPRA\)](#)

[Model Scope of Work](#)

[Tribal consultation: VA Dir. 8603](#)

[Contacts](#)

# Definitions

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## **Adverse Effect**

Under the [National Historic Preservation Act](#) Section 106 regulations, an adverse effect on a [historic property](#) is anything that may alter the characteristics that make the property [eligible](#) for the [National Register of Historic Places](#), in a way that diminishes the property's integrity. Examples include destruction or serious alteration of the property, changes in its use or setting that are out of character with it, introduction of intrusive visual, audible, or other elements, neglect leading to deterioration, and transfer out of federal ownership.

## **Advisory Council on Historic Preservation (ACHP)**

The ACHP oversees compliance with Section 106 of the [National Historic Preservation Act](#) by all federal agencies. The ACHP is an independent federal agency made up of two parts. The Advisory Council itself is a 20-member group of presidential appointees, agency heads, experts and citizens named in the National Historic Preservation Act. The staff comprises about forty to fifty historic preservation specialists and support staff, based in Washington DC. The ACHP is the rulemaking body for Section 106, and advises agencies and others about how to interpret and implement its regulations. It occasionally becomes involved in Section 106 cases. If a Section 106 case involving adverse effects on a historic property is not resolved through an agreement, the ACHP comments to the agency head (in our case, to the Secretary), who must consider and respond to the comment, though he or she need not follow the ACHP's recommendations. See [www.achp.gov](http://www.achp.gov).

## **Archaeological Data**

Information significant in understanding the past through archaeological research. Includes both the physical things (soil strata, artifacts, trash dumps, ruins, bones) studied by archaeologists and the information contained in such things and in relations among them.

## **Archaeological and Historic Preservation Act (AHPA)**

Also known as the Archaeological Data Protection Act, this cultural resource law requires federal agencies to protect or recover archaeological, historical, and scientific data that are subject to effect by their projects, or by projects they assist or permit.

## **Archaeological Resource**

Under the Archaeological Resources Protection Act ([ARPA](#)), anything on federal or Indian tribal land that is 100 years old or older and of archaeological interest – that is, useful in archaeological research. This can include ancient living sites, burial places, graves, artifacts, architectural remains, even trash dumps and their contents. The term is commonly used without specific reference to ARPA to refer to things of archaeological interest on any land, and of any age.

## **Area(s) of Potential Effects (APE)**

Under the [NHPA Section 106](#) regulations, the area of potential effects, or APE, is the area or areas in which an undertaking may have direct, indirect, or cumulative effects on historic properties, if any such properties are found to exist there. The APE is defined prospectively during scoping; the analyst projects where different kinds of effects may occur (for example, physical effects, visual effects, and the long-term effects of changing land use) and sketches these areas on a map. These generally defined areas are where one then searches for historic properties that may be affected.

### **Building**

As used in historic preservation, a building is a structure designed to house people or activities.

### **Categorical Exclusion**

Under [NEPA](#), VA can exclude specified categories of action from detailed environmental impact assessment, provided that no “[extraordinary circumstances](#)” exist that require further review. Such actions are referred to as “categorical exclusions.” VA categorical exclusions are listed at 38 CFR 26.6(b). A project that is categorically excluded under NEPA is **NOT** automatically excluded from review under [Section 106](#) of [NHPA](#) or any other law; it still must be reviewed, in the same way as a project requiring an environmental assessment ([EA](#)) or environmental impact statement ([EIS](#)). Impacts on historic properties may or may not be “extraordinary circumstances” requiring preparation of an EA or EIS, depending on the significance of the property and the character of the impact.

### **Consultation**

*According to the Section 106 regulations –*

*[Consultation](#) means 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.*

Note the key terms; agencies are to “seek” the views of others. They are to “discuss” them, and “consider them, where feasible “seeking agreement” with those who hold such views. In other words, consultation is a back-and-forth negotiating process designed to reach agreement, though agreement is not always actually reached.

### **Consulting Parties**

In the language of the [NHPA Section 106](#) regulations, consulting parties are those who consult to identify [historic properties](#), determine whether such properties will be adversely affected, and if so to resolve such adverse effects, usually through a [memorandum of agreement](#). Consulting parties in a VA case always include VA and one or more [State](#) or [Tribal Historic Preservation Officers](#). Local governments, property owners, Indian tribes, and literally anyone else with interests in or concerns about a [historic property](#), an area, or a project may also be consulting parties, and occasionally the [Advisory Council on Historic Preservation](#) participates in [consultation](#).

### **Cultural Resource**

“Cultural resource” is a term used by different people and agencies to mean different things, but generally it means elements of the human environment to which people ascribe some kind of historical, archaeological, architectural, spiritual, or other cultural value. The term includes “[historic properties](#)” as defined by the [National Historic Preservation Act](#), “[archaeological resources](#)” as defined by the [Archaeological Resources Protection Act](#), and Native American cultural items as defined by the [Native American Graves Protection and Repatriation Act](#), as well as historically and archaeologically sensitive artifacts, documents and data, Native American and other spiritual places and practices, traditional ways of life, stories, songs, artwork, culturally valued natural resources, and a community’s accustomed ways of life. Some types of cultural resource (e.g. historic properties) are the subjects of special-purpose legislation; others are not, but nevertheless have to be considered as part of environmental impact assessment under the National Environmental Policy Act ([NEPA](#)).

### **District**

As used in historic preservation, a district is a collection of [buildings, sites, structures, objects, landscape features](#), and/or other aspects of the physical environment that collectively make up a historically, architecturally, archaeologically, or culturally significant entity, even though its individual components may not be particularly significant in themselves.

### **Eligible for Inclusion in the National Register**

A place that is eligible for inclusion in the [National Register](#) meets criteria published by the National Park Service at 36 CFR 60.4. See <http://www.achp.gov/nrcriteria.html>.

### **Environmental Assessment (EA)**

Under [NEPA](#), an environmental assessment (EA) is performed to determine whether a proposed project is likely to have significant impacts on the quality of the human environment. If so, it is necessary to prepare an environmental impact statement ([EIS](#)) and consider the impacts it documents as decisions are made about the project. If the EA shows that significant impacts will not occur, VA can issue a “finding of no significant impact” ([FONSI](#)) and proceed with its decision making. An EA should be a brief but thorough analysis of the environmental impacts of the action and alternatives to it, and should be reviewed by appropriate experts and the public.



### **Environmental Impact Statement (EIS)**

Under [NEPA](#), an environmental impact statement (EIS) is prepared to document and analyze the environmental impacts of federal actions that are likely to have significant impacts. An EIS must also analyze the impacts of alternative ways of achieving the action’s purposes. The results of the EIS are considered by VA in deciding whether and how to carry out the project or an alternative. The results of decision making are documented in a record of decision ([ROD](#)).

### **Extraordinary circumstances**

Under [NEPA](#), projects that are categorically excluded from detailed review must be briefly examined or screened to make sure that no “extraordinary circumstances” exist that might require more review. Extraordinary circumstances are unusual situations that make a normally benign activity pose some kind of possible threat to the environment. For example, routine groundskeeping is ordinarily categorically

excluded from NEPA review, but if a given groundskeeping action (say, replacing turf in a cemetery) might threaten an endangered species (say, a worm that lives in the turf) or disturb a historic property (e.g., an [archaeological site](#) lying under the turf), then further review – usually an [environmental assessment](#) – may be necessary. So, it is necessary to consider each categorically excluded action to make sure that no such extraordinary circumstances exist.

### **Finding of No Significant Impact (FONSI)**

Under [NEPA](#), a FONSI documents that an environmental assessment ([EA](#)) has been performed and shown that a proposed action will not have significant impacts on the quality of the human environment.

### **Historic Property (or Historic Resource)**

According to the [National Historic Preservation Act](#), an historic property or resource is any [district, site, building, structure](#) or [object](#) included in or [eligible](#) for the [National Register of Historic Places](#).

### **Keeper of the National Register**

The Keeper of the [National Register](#) is a National Park Service official who oversees the staff that maintains the National Register, reviews nominations of properties to the Register, and makes formal determinations of eligibility for inclusion in the Register.

### **Landscape/Landform, Cultural**

A cultural landscape is a relatively expansive piece of land to which people ascribe some sort of cultural or historic significance – for example, a battlefield, a valley containing traditional farmsteads, or a natural area ascribed cultural or spiritual significance by an Indian tribe. Such a landscape often shows physical evidence of cultural activities (e.g. barns and fields in an agricultural landscape), but it may also be entirely natural, or contain only buried evidence invisible from the ground surface. Plants and animals are often important contributing elements of such a landscape. A smaller parcel of land – for instance, a small area containing a rock outcropping associated with local traditions – may be referred to as a cultural landform.

### **Landscape/Landform, Designed**

A designed landscape is a relatively expansive piece of land that has been deliberately manipulated to serve some human purpose – for example, a park or parkway, or a parade ground. It may or may not include smaller [sites](#), or [buildings, structures](#), or [objects](#) like fountains or statuary. A smaller piece of designed land, such as the parcel surrounding a monument, may be referred to as a landform.

### **Memorandum of Agreement (MOA)**

Under the [National Historic Preservation Act](#) Section 106 regulations, MOAs are negotiated to resolve the [adverse effects](#) of a project on one or more [historic properties](#). The MOA is a formal document, signed by VA and other [consulting parties](#), that commits VA and sometimes others to taking specific actions designed to avoid, reduce, mitigate, or compensate for [adverse effects](#).

### **National Environmental Policy Act (NEPA)**

Enacted in 1969, [NEPA](#) sets forth national policy favoring protection of the human environment, defined as the natural and physical environment and the relationships of humans to that environment. Section 102 of NEPA requires federal agencies to prepare (and implicitly, consider in decision making) detailed statements of the environmental impacts of any major action significantly affecting the quality of the human environment. Regulations issued by the Council on Environmental Quality (CEQ) in the Executive Office of the President (40 CFR 1500-1508) detail how these “environmental impact statements” ([EIS](#)) are to be prepared, circulated, finalized and used, as well as how to determine which projects require preparation of an EIS. VA procedures for compliance with NEPA are at 38 CFR 26. Some VA actions are [categorically excluded](#) from much review under NEPA, but still must be reviewed under Section 106. Other VA actions require environmental assessments ([EAs](#)) or environmental impact statements ([EIS](#)), which must be coordinated with Section 106 review.

### **National Historic Landmark (NHL)**

NHLs are places that the Secretary of the Interior (through the National Park Service), acting under the authority of the Historic Sites Act of 1935, has designated as such, based on their significance in interpreting and commemorating the Nation’s history. NHLs are often referred to colloquially as “nationally significant historic properties.” They are automatically included in the [National Register](#).

### **National Historic Preservation Act (NHPA)**

NHPA was enacted in 1966 and has been amended many times since then. It created the [National Register of Historic Places](#), provided federal funding (through the National Park Service) for [State Historic Preservation Officers](#), and today also provides for [Tribal Historic Preservation Officers](#), Certified Local Government historic preservation grant programs, and a variety of other initiatives and directives implementing a national policy favoring protection of [historic properties](#). At [Section 106](#), NHPA requires agencies like VA to take into account the effects of their actions on [historic properties](#), and at [Section 110](#) the statute prescribes broad stewardship responsibilities for federal agencies toward such properties. Agencies comply with [Section 106](#) by following regulations issued by the [Advisory Council on Historic Preservation](#) (ACHP) (36 CFR 800) as well as their own internal guidelines.

### **National Register of Historic Places**

The National Register is a list of documented places (and in some cases things like aircraft and ships) that have been formally determined by the National Park Service to be significant in national, state, tribal, or local history. The list is maintained by the National Park Service, though the places included in it may be owned and managed by federal, state, and local government agencies, Indian tribes, Native Hawaiian groups, other organizations and institutions, and individuals. Places are listed on the National Register through a process of nomination, either by federal agencies or through [State](#) or [Tribal Historic Preservation Officers](#). Places are usually categorized as [districts](#), [sites](#), [buildings](#), [structures](#), or [objects](#), but these categories can overlap, and include a wide range of place-types. For example, expansive [cultural landscapes](#) and [designed landscapes](#) may be included in the National Register, sometimes as sites, sometimes as districts, sometimes associated with buildings or structures. VA is responsible for managing both places listed in the National Register and those [eligible for inclusion](#) but not yet listed.

## **No Adverse Effect Determination**

When VA (or any other federal agency) considers the possible effects of an action (for instance, renovation of a [building](#), or excavating a utility trench) on [historic properties](#), it applies criteria of [adverse effect](#) found in the regulations implementing [Section 106](#) of the [National Historic Preservation Act](#). If the actions effects do not meet the criteria – which generally depends on whether the action will change anything about the property that makes it eligible for the [National Register](#) – then the agency makes and documents a determination of “No Adverse Effect,” in consultation with the State or Tribal Historic Preservation Officer ([SHPO/THPO](#)) and other [consulting parties](#). If there is no objection to this determination that cannot be resolved, the agency has completed [Section 106](#) review with respect to the specific action and property involved. If the action will have an [adverse effect](#), the agency goes on to try to negotiate a [memorandum of agreement](#) with the other [consulting parties](#).

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## **No Adverse Effect Determination, Conditional**

Sometimes VA (or another agency) will reach agreement with a State or Tribal Historic Preservation Officer ([SHPO/THPO](#)) and other [consulting parties](#) that an action will have no adverse effect on [historic properties](#) PROVIDED specified conditions are met. This agreement is usually memorialized in an exchange of letters (See [Letter Template F](#) for an example). The conditions agreed upon must be sufficient to ensure that, within reason, adverse effect will be avoided. It is VA's responsibility to implement the conditions or ensure that they are implemented.

## **Object**

As the term is used by the [National Register of Historic Places](#), an object is a small-scale construction, often primarily artistic in nature – such as a sculpture, monument, or fountain.

## **Programmatic Agreement (PA)**

Under the [NHPA Section 106](#) regulations, a programmatic agreement (PA) is an agreement about how to handle a whole agency program, or the ongoing management of an installation, in lieu of performing standard Section 106 review on each of the individual actions that make up the program, or each individual action carried out in the course of installation management. Where a PA is in place, its terms are followed, rather than those of the Section 106 regulations. PAs are negotiated among federal agencies, [SHPOs](#) and [THPOs](#), and other [consulting parties](#), and the [ACHP](#) must always be invited to participate in negotiation.

## **Record of Decision (ROD)**

Under [NEPA](#), a ROD documents whether VA has decided to proceed with a proposed action or with an alternative. It also documents that the environmental impacts of the action have been considered through preparation of an environmental impact statement ([EIS](#)), how these impacts have been considered, what the environmentally preferable alternative is, and the rationale for choosing the alternative that will be carried out. The ROD also identifies measures to be carried out to mitigate impacts, and discusses whether all feasible such measures have been adopted (and if not, why not).

## **Secretary of the Interior's Standards for Identification**

These standards, found at [http://www.nps.gov/history/local-law/arch\\_stnds\\_2.htm](http://www.nps.gov/history/local-law/arch_stnds_2.htm), are designed to assist federal agencies and others design and structure their efforts to identify [historic properties](#) – that is, places that are included in, or may be eligible for inclusion in, the [National Register of Historic Places](#). It is often useful to include reference to them in scopes of work when contracting for identification work.

### **Secretary of the Interior's Standards for Rehabilitation**

These are one of four sets of standards for the treatment of [historic properties](#) issued by the National Park Service on behalf of the Secretary of the Interior. The other standards are for “preservation” (maintenance), restoration, and reconstruction. The Secretary’s Standards for Rehabilitation are widely used to guide the renovation of historic or simply older buildings and structures so as to respect their historic and architectural qualities. The National Park Service has published extensive guidance in how to apply the Standards. See <http://www.nps.gov/hps/tps/tax/rhb/index.htm>.



### **Site**

As used in historic preservation, a site is a location associated with some event or set or pattern of events, or otherwise ascribed historical, cultural, archaeological, or other significance, regardless of its association with [buildings](#), [structures](#), [objects](#), or [districts](#).

### **Site, Archaeological**

An archaeological site is a location known or thought to contain information significant in history or prehistory; that is, a place that is of interest to archaeologists for research purposes.

### **State Historic Preservation Officer (SHPO)**

The SHPO is a state official, appointed by the governor, who oversees a variety of programs funded in part by the National Park Service under the [National Historic Preservation Act](#). There are fifty-nine SHPOs – one in each state and one each for the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and several Pacific Island nations in free association with the United States. The SHPO must be consulted at various steps in Section 106 review, and generally provides advice to federal agencies and others in historic preservation matters.

### **Structure**

As used in historic preservation, a structure is a facility built by human beings and not necessarily used to house people or activities (which would make it a [building](#)). Examples of structures that are not regarded as buildings are bridges, wells, sewers, segments of highways, railroad cars, aircraft, and watercraft.

### ***Tribal Historic Preservation Officer (THPO)***

The THPO has essentially the same duties as a [State Historic Preservation Officer](#) (SHPO), within the exterior boundaries of a reservation controlled by his or her tribe. Some THPOs have executed agreements with the National Park Service under which they are consulted in lieu of the [SHPO](#) on section 106 cases.



# Examples of Activities That Can Destroy Historical, Scientific, or Archaeological Data

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- Abandoning a laboratory (may cause loss of scientific, historical data in notebooks, files, etc.)
- Demolishing an old [building](#) (historical documents, artifacts are sometimes left in crawl spaces, attics, basements, inside walls; historically significant furnishings, wall coverings, graffiti may be present). Ground will probably be disturbed, possibly disrupting [archaeological](#) data. Building itself may contain data about construction methods, sources of supplies, etc.
- Ground disturbance through [demolition](#), construction, landscaping, utility work (may disrupt archaeological, paleontological data).
- Actions that cause erosion, slumping, landslides, and other changes in the landscape, often at some distance from where the actions themselves take place (may disrupt archaeological, paleontological data).

# Examples of Activities That Can Interfere With Religious Practices

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- Demolishing or altering a [building](#) used for religious purposes (including traditional tribal spiritual activities).
- Changing a [landscape](#) that is used for religious purposes, or ascribed spiritual significance by a group (e.g., a sacred hill, grove, spring, mountain, or other place, a marked or unmarked graveyard).
- Building something in the line of sight from or to a place (e.g. a mountain, a high bluff) that is ascribed spiritual significance by a group.
- Polluting, removing, or otherwise changing natural resources (e.g. water, some minerals) that are ascribed spiritual significance by a Native American or other group.
- Changing land use or traffic patterns in ways that complicate a group's religious activities.
- Ground disturbance through demolition, construction, landscaping, utility work (may disrupt graves and other places ascribed spiritual significance).

# Examples of Cultural Resource Studies

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The kind of study you may need to do to ascertain a project's effects on [cultural resources](#) depends largely on the kind of project proposed and the kinds of cultural resources that may be affected.

The need for a study or studies should be assessed in consultation with knowledgeable parties inside and outside VA. If impacts on [historic properties](#) under Section 106 of NHPA are an issue, then the State and/or Tribal Historic Preservation Officer ([SHPO/THPO](#)) must be consulted, along with other interested parties. Indian tribes must be consulted under [Section 106](#), [NAGPRA](#), and other authorities. Other interested or knowledgeable groups and individuals should be consulted as needed, or if they request.

Studies needed often include, but are not limited to:

- Studies of the society, culture, perceptions and values of affected communities.
- Research into the history of a [building](#), [site](#), or area.
- Studies of a [building](#)'s, [structure](#)'s or area's architectural or engineering history.
- Archaeological surveys and test excavations.
- Characterization of [cultural landscape](#) features and viewsheds.
- Studies of how people use an area.

Cultural resource studies should be carried out under the supervision of qualified people, though unskilled people or people without specific training can fill many roles on most study teams. Click below for an example of a scope of work for cultural resource services in connection with project planning – but please understand that it is only a hypothetical example; any real world scope of work needs to be tailored to the actual needs of the project, the planning team, the area where effects may take place, and the kinds of resources and issues that may be involved.

[Model SOW](#)

# CAUTION!

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Archaeological excavations should never be undertaken without first complying with [Section 106](#) of [NHPA](#) and with [NAGPRA](#), unless:

- (a) The excavations are limited tests carried out to identify or evaluate archaeological sites or to determine effects on them as part of the Section 106 review process, and have been coordinated with the [State Historic Preservation Officer](#) or [Tribal Historic Preservation Officer](#) and other interested individuals and groups, including culturally affiliated tribes;
- (b) The excavations are limited tests carried out as part of general surveys done in compliance with [Section 110\(a\)\(2\)](#) of NHPA, in consultation with the [State Historic Preservation Officer](#) or [Tribal Historic Preservation Officer](#) and other interested individuals and groups, including culturally affiliated tribes; or
- (c) The excavations are carried out for research purposes by non-federal scholars without any federal funding or permit except a permit issued pursuant to the Archaeological Resource Protection Act ([ARPA](#)). Such excavations are excluded by law (ARPA) from the requirement for [Section 106](#) review, but compliance with [NAGPRA](#) is required.

# NAGPRA Plan of Action

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According to the Native American Graves Protection and Repatriation Act ([NAGPRA](#)) regulations (43 CFR 10), a plan of action for the management of discovered Native American cultural items (including graves) must document:

- (1) The kinds of objects to be considered as cultural items as defined in 43 CFR Sec. 10.2 (b);
- (2) The specific information used to determine custody of items pursuant to 43 CFR Sec. 10.6;
- (3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
- (4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;
- (5) The kinds of analysis planned for each kind of object;
- (6) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;
- (7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;
- (8) The nature of reports to be prepared; and
- (9) The planned disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following 43 CFR Sec. 10.6.

# Agreements Under Section 106 of the National Historic Preservation Act

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The regulations implementing [Section 106](#) of the [National Historic Preservation Act](#) (NHPA) provide for two kinds of agreements, whose negotiation and implementation evidence an agency's compliance with the law:

**[Memorandum of Agreement \(MOA\)](#)**. Where review under Section 106 reveals that one or more [historic properties](#) (that is, places included in or eligible for the [National Register of Historic Places](#)) may be adversely affected by a VA project or activity, the consulting parties (VA, the [State](#) or [Tribal Historic Preservation Officer](#), other [interested parties](#), sometimes the [Advisory Council on Historic Preservation](#)) ordinarily negotiate and execute an [MOA](#) stipulating what will be done to reduce, mitigate, or avoid the adversity. The terms of the [MOA](#) must then be carried out as the project or activity goes forward.

**[Programmatic Agreement \(PA\)](#)**. A [PA](#) memorializes agreement among VA, one or more [State](#) or [Tribal Historic Preservation Officers](#), the [Advisory Council on Historic Preservation](#), and sometimes [other parties](#) to substitute a specially designed process of project review for the one ordinarily followed under the Advisory Council's [Section 106](#) regulations.

**NOTE:** It is NOT necessary to negotiate both kinds of agreements on a single project. [MOAs](#) are used to document agreement on how to resolve the adverse effects of a specific project or similar action. [PAs](#) are more general, applying to whole programs, multiple projects, facilities management, or very large projects where the "standard" Section 106 review process cannot be realistically carried out. [PA's](#) normally spell out alternative processes of review, which typically do not involve [MOAs](#).

# Anticipatory Destruction

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“Anticipatory destruction” or “anticipatory demolition” is a term used by historic preservation authorities. It means destroying something that may be historic to avoid the trouble and expense of maintaining it or considering its preservation under [Section 106](#) of the [National Historic Preservation Act](#) (NHPA). Here are some hypothetical examples of anticipatory destruction:

- Somewhere on your Medical Facility or National Cemetery stands an old [building](#) for which you have no use. It’s an attractive nuisance, perhaps a fire hazard, a liability. If it is eligible for the [National Register of Historic Places](#) (something you may not know if you haven’t funded a study of the building), then under [Section 111](#) of NHPA, VA is required to consider making the building available to others for adaptive use. Under [Section 106](#), if it’s eligible, VA is required to consider alternatives to its demolition, in consultation with the [State Historic Preservation Officer](#) and others. Rather than going through all this procedure for a building you don’t want to keep anyway, you demolish it.
- You’re considering a grant to assist a state veterans agency improve a state medical facility. Anticipating that VA will have to evaluate the facility’s [buildings](#) for [National Register](#) eligibility, and if they’re eligible will have to consult about alternatives under [Section 106](#), the state guts a building that it wants to modernize using grant assistance, taking out all its old, energy-inefficient windows and removing all its interior woodwork.
- You need to expand the National Cemetery you administer, and the local government has offered to donate some vacant land next door. You know that there’s some kind of [archaeological site](#) on the property – perhaps an old Indian village or a mill site. It may turn out to be eligible for the [National Register](#), and you’ll have to negotiate about its preservation under [Section 106](#) before digging graves in it. But you go ahead and accept the donation and begin carrying out burials on the site.

All these are examples of anticipatory destruction. However justified one may feel about any one of them, they all contravene the intent, and specific requirements, of the [National Historic Preservation Act](#). In simplest terms, [Section 106](#) of NHPA requires that the impacts of damaging or destroying a historic place be considered BEFORE taking the damaging or destructive action, not AFTERWARDS. [Section 110\(k\)](#) of NHPA speaks explicitly to cases like the one above involving a grant to a state:

*Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106 of this Act, has intentionally significantly adversely affected a [historic property](#) to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the (Advisory) Council (on Historic Preservation), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.*

So in the case of the hypothetical state grant, VA is effectively prohibited from making the grant unless and until it determines, after consultation, that there are some kind of extenuating circumstances justifying doing so despite the state agency's action.

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Of course, in each of the above cases, you or the state could claim ignorance: you didn't know the property was historic; you didn't intend to circumvent the law. But the [Section 106](#) regulations provide for finding out whether [historic properties](#) are involved in federal undertakings, as an early step in the review process; if you didn't do that, then you haven't complied with the law.

# What is a “historic property?”

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The National Historic Preservation Act ([NHPA](#), at Section 301[5]) defines “historic property” to mean:

*Any prehistoric or historic [district](#), [site](#), [building](#), [structure](#), or [object](#) included in, or eligible for inclusion on the [National Register](#), including artifacts, records, and material remains related to such a property or resource.*

It is important to remember that the law says “[eligible](#) for inclusion on the [National Register](#),” not “determined eligible for inclusion.” In other words, a property is historic if it meets the [criteria for eligibility](#), regardless of whether anyone has [determined](#) that it meets these criteria.

To understand this distinction, consider the analogy of a veteran suffering from post-traumatic stress disorder (PTSD). Does the veteran develop PTSD only when a VA physician diagnoses it, or does the veteran HAVE PTSD that the physician is able, through skilled examination, to recognize? Obviously the latter. The same principle applies to historic properties. A property may meet the [National Register’s criteria](#) before it is “diagnosed” as doing so.

The practical effect of this principle is that – just as we cannot assume that a veteran is healthy until he or she has been examined – we cannot assume that a given building, group of buildings, site, or landscape is not eligible for the [National Register](#) until we have examined it and applied the [National Register criteria](#) to it. For this reason, the NHPA [Section 106](#) regulations require that agencies determine the eligibility of potentially affected properties at an early stage in [Section 106](#) review.

And just as PTSD may or may not manifest itself or be recognized at the time a veteran returns from war, but become evident as the veteran ages or diagnostic methods and concepts change, so the significance we ascribe to a property may change over time. For this reason, the NHPA [Section 106](#) regulations (at 36 CFR 800.4(c)) caution that:

*The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible.*

There are no hard-and-fast standards for how often a place ought to be reevaluated, but as a rule of thumb, if its eligibility has not been considered in the last ten to fifteen years, reevaluation is probably a good idea.

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# National Register of Historic Places

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The National Register is a list of documented places (and in some cases things like aircraft and ships) that have been formally determined by the National Park Service to be significant in national, state, tribal, or local history. The list is maintained by the National Park Service, though the places included in it may be owned and managed by federal, state, and local government agencies, Indian tribes, Native Hawaiian groups, other organizations and institutions, and individuals. Places are listed on the National Register through a process of nomination, either by federal agencies or through [State](#) or [Tribal Historic Preservation Officers](#). Places are usually categorized as [districts](#), [sites](#), [buildings](#), [structures](#), or [objects](#), but these categories can overlap, and include a wide range of place-types. For example, expansive [cultural landscapes](#) and [designed landscapes](#) may be included in the National Register, sometimes as sites, sometimes as districts, sometimes associated with buildings or structures. VA is responsible for managing both places listed in the National Register and those [eligible for inclusion](#) but not yet listed.

# Cumulative Effects

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The [NEPA](#) regulations (at 40 CFR 1508.7) define cumulative effect or impact as:

*The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

Here are two hypothetical examples:

- A VMC was established a century ago on the edge of a small town. Over the decades, the town's economic base has changed from agriculture to light industry, the population has quintupled, and the quiet road in front of the VMC has become a strip featuring auto dealerships, restaurants, repair shops and small shopping malls. The VMC now proposes to add a 200-bed primary care hospital and a residential rehabilitation facility designed to serve a three-state region. In considering the impacts of this proposed change on the cultural environment, we will need to examine not only its direct effects (what will be changed on-site, at the time the project is constructed and put into use) and its indirect effects (will it, for example, stimulate the development of privately funded doctors' offices and clinics along the fronting road?), but also how it will contribute to the overall pattern of change in the town and area. How is the socioeconomic character of the neighborhood changing, how is it projected to change, and how will addition of a large primary care and regional outpatient facility contribute to this change? How do the people of the town perceive the effects of change on their ways of life, and do they think the new VA facility will contribute positively or negatively to such effects? How has the visual character of the area changed over the last century, how is it projected to change, and how will the new VA facility contribute to or alter the pattern of change?
- A National Cemetery was established at the end of World War II in a river valley that at the time was mostly given over to agriculture. The valley was and is rich in archaeological sites representing thousands of years of history and prehistory. Indian tribes living as much as 500 miles away trace their cultural ancestry to the area. The National Cemetery now needs to expand, and any expansion is likely to require use of land containing archaeological remains. In considering the impacts of the proposed expansion on the cultural environment, we will need to examine not only its direct effects (what specific archaeological sites will be impacted, and how?) and its indirect effects (will it, for example, cause a dairy ranch now operating on the adjacent parcel to relocate, destroying or damaging archaeological sites and changing the character of the area to which it moves?), but also how it will contribute to the ongoing patterns of archaeological site destruction and preservation. How has past use of the area (by the National Cemetery, by agriculture, by other activities) affected the overall inventory of archaeological sites in the area, and the cultural integrity of the landscape in the eyes of tribes

and others? What effects can be reasonably projected into the future? How will expanding the National Cemetery, or not doing so, contribute to these patterns of change?



# How Early is “Early in Planning?”

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“Early in planning” in the case of [major](#), [minor](#), [minor miscellaneous](#) projects, and [non-recurring maintenance](#) projects, means *prior to contract award for working drawings, or prior to the beginning of in-house work on such drawings.*

“Early in planning” in the case of land acquisition for a hospital, cemetery, or other facility or installation, means when VA begins considering such acquisition, before acceptance of custody and accountability for federal lands, or acceptance of an offer to donate or contract for purchase of non-federal lands.

**Rule of Thumb:** Initiate cultural resource review when you have a general idea about what needs to be done, but **when you have plenty of time to consider alternative ways of doing it.**

Initiation of review under Section 106 of NHPA and other cultural resource laws should be coordinated with the beginning of review under the [National Environmental Policy Act](#). NOTE: ACTIONS THAT ARE [CATEGORICALLY EXCLUDED](#) FROM NEPA REVIEW ARE NOT CATEGORICALLY EXCLUDED FROM REVIEW UNDER OTHER CULTURAL RESOURCE LEGAL AUTHORITIES. Impacts on cultural resources may or may not be regarded as “[extraordinary circumstances](#)” that trigger further NEPA review of an otherwise categorically excluded action, depending on the significance of the resource and the magnitude of the impact.

# Contacts

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## **VA Federal Preservation Officer (FPO)**

VA's Federal Preservation Officer as of June, 2009 is:

Ms. Kathleen Schamel  
Federal Preservation Officer  
Office of Construction & Facilities Management (00CFM2)  
Department of Veterans Affairs  
811 Vermont Avenue, NW  
Washington, DC 20420  
Phone: 202.461-8254  
Fax: 202.565.4560  
E-mail: [kathleen.schamel2@va.gov](mailto:kathleen.schamel2@va.gov)

## **Advisory Council on Historic Preservation**

Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 803  
Old Post Office Building  
Washington, DC 20004  
Phone: (202) 606-8503  
E-mail: [achp@achp.gov](mailto:achp@achp.gov)  
Web site: [www.achp.gov](http://www.achp.gov)

## **State Historic Preservation Officers**

For SHPO contacts, see <http://www.ncshpo.org/find/index.htm>

## **Tribal Historic Preservation Officers**

For THPO contacts, see <http://www.nathpo.org/map.html>

## **Council on Environmental Quality**

See <http://www.whitehouse.gov/administration/eop/ceq/>

## **Naval Historical Center (For U.S. Naval ship and aircraft wrecks)**

Robert S. Neyland, Ph.D.  
Head, Underwater Archaeology Branch  
Naval History and Heritage Command

Department of the Navy  
805 Kidder Breese St, SE  
Washington Navy Yard  
Washington, D.C. 20374-5060  
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# Determining Whether Minority or Low Income Groups May Be Affected by a VA Action

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Abstracted from *Environmental Justice Guidance Under the National Environmental Policy Act*. Council on Environmental Quality, 1997; see [http://www.lm.doe.gov/env\\_justice/pdf/justice.pdf](http://www.lm.doe.gov/env_justice/pdf/justice.pdf)

- Consider the human composition of the affected area, to determine whether minority populations, low-income populations, or Indian tribes are present.
  - Minority populations should be identified where either: (a) the minority population of the affected area exceeds 50 percent or (b) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis. "Minority," refers to individuals who are members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander, Black, not of Hispanic origin; or Hispanic.
  - Low income populations should be identified with reference to the annual statistical poverty thresholds from the BOC Current Population Reports, Series P-60 on Income and Poverty.
  - Consider not only permanent resident populations, but also geographically dispersed or transient individuals (such as migrant workers or Native Americans).
- In assessing whether there may be disproportionately high and adverse... effects on environmental justice populations, consider not only direct impacts on the health and environmental quality of low income populations and minority populations, but indirect, multiple, and cumulative effects as well, including effects that are not within the agency's control or subject to agency discretion.
- Recognize that the cultural, social, occupational, historical, and economic characteristics of a low income community or a minority community may amplify the environmental effects of an action. Such a population may be more sensitive to such effects, and less resilient in adapting to them, than another community.
- Implement effective public participation strategies that seek to overcome linguistic, cultural, institutional, geographic and other barriers to meaningful participation, and that include active outreach.
- Assure early and meaningful community representation in the process of NEPA analysis and review, recognizing that there may be diverse constituencies within a given community and seeking complete representation.
- Where Indian tribes may be involved, make sure that interactions with tribes are consistent with the government-to-government relationship between the U.S. and

tribal governments, the U.S. government's trust responsibility to tribes, and any pertinent treaty rights.



# NEPA Terminology

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## **Categorical Exclusion**

Under [NEPA](#), VA can exclude specified categories of action from detailed environmental impact assessment, provided no “[extraordinary circumstances](#)” exist that require further review. Such actions are referred to as “categorical exclusions.” VA categorical exclusions are listed at 38 CFR 26.6(b). A project that is categorically excluded under NEPA is **NOT** automatically excluded from review under [Section 106](#); it still must be reviewed, in the same way as a project requiring an environmental assessment ([EA](#)) or environmental impact statement ([EIS](#)). Impacts on [historic properties](#) may or may not be “extraordinary circumstances” requiring preparation of an EA or EIS, depending on the significance of the property and the character of the impact.

## **Environmental Assessment (EA)**

Under [NEPA](#), an environmental assessment (EA) is performed to determine whether a proposed project is likely to have significant impacts on the quality of the human environment. If such impacts are likely, it is necessary to prepare an environmental impact statement ([EIS](#)) and consider the impacts it documents as decisions are made about the project. If the EA shows that significant impacts will not occur, VA can issue a “finding of no significant impact” ([FONSI](#)) and proceed with its decision making. An EA should be a brief but thorough analysis of the environmental impacts of the action and alternatives to it, and should be reviewed by appropriate experts and the public.

## **Environmental Impact Statement (EIS)**

Under [NEPA](#), an environmental impact statement ([EIS](#)) is prepared to document and analyze the environmental impacts of federal actions that are likely to have significant impacts. An EIS must also analyze the impacts of alternative ways of achieving the action’s purposes. The results of the EIS are considered by VA in deciding whether and how to carry out the project or an alternative. The results of decision making are documented in a record of decision ([ROD](#)).

## **Extraordinary circumstances**

Under [NEPA](#), projects that are categorically excluded from detailed review must be briefly examined or screened to make sure that no “extraordinary circumstances” exist that might require more review. Extraordinary circumstances are unusual situations that make a normally benign activity pose some kind of possible threat to the environment. For example, routine groundskeeping is ordinarily categorically excluded from NEPA review, but if a given groundskeeping action (say, replacing turf in a cemetery) might threaten an endangered species (say, a worm that lives in the turf) or disturb a [historic property](#) (e.g., an archaeological site lying under the turf), then further review – usually an [environmental assessment](#) – may be necessary. So, it is necessary to consider each categorically excluded action to make sure that no such extraordinary circumstances exist.

## **Finding of No Significant Impact (FONSI)**

Under [NEPA](#), a FONSI documents that an environmental assessment ([EA](#)) has been performed and shown that a proposed action will not have

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significant impacts on the quality of the human environment.

**Record of Decision (ROD)**

Under [NEPA](#), a ROD documents whether VA has decided to proceed with a proposed action or with an alternative. It also documents that the environmental impacts of the action have been considered through preparation of an environmental impact statement ([EIS](#)), how these impacts have been considered, what the environmentally preferable alternative is, and the rationale for choosing the alternative that will be carried out. The ROD also identifies measures to be carried out to mitigate impacts, and discusses whether all feasible such measures have been adopted (and if not, why not).

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# Adaptive Use

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When a [historic property](#) (in practical terms, usually a historic [building](#) or other [structure](#)) is maintained in a manner that preserves its essential character but put to a use that is different from the one it was designed to serve or has traditionally served, it is said to have been put into “adaptive use.” The National Historic Preservation Act ([NHPA](#)) encourages adaptive use, and in fact at [Section 111](#) requires that federal agencies seek adaptive use by others for [historic properties](#) they no longer need for their own purposes.

Department of Veterans Affairs

Washington, DC 20420



Transmittal Sheet

January 5, 2007

**CONSULTATION AND VISITATION  
WITH AMERICAN INDIAN AND ALASKAN NATIVES**

**1. REASON FOR ISSUE:** To establish a directive regarding government-to-government relationships, consultations, and visitation policy between the Department of Veterans Affairs (VA) and American Indian and Alaska Native tribal governments.

**2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This directive sets forth the policies and procedures to be used by VA's staff when contacting or contacted by American Indian and Alaska Native tribal governments.

**3. RESPONSIBLE OFFICE:** Office of Intergovernmental Affairs (075)

**4. RESCISSIONS:** This directive supersedes the Deputy Secretary's October 19, 2004, "Official Visits to Native American Tribal Nations."

**CERTIFIED BY:**

/S/

Robert T. Howard

Assistant Secretary for

Information and Technology

**BY DIRECTION OF THE SECRETARY**

**OF VETERANS AFFAIRS**

/S/

Lisette M. Mondello

Assistant Secretary for

Public and Intergovernmental Affairs

Distribution: Electronic Only

**CONSULTATION AND VISITATION  
WITH AMERICAN INDIAN AND ALASKAN NATIVES**

**1. PURPOSE:** This directive contains policy regarding government-to-government relationships, consultations, and visitations between VA and American Indian and Alaska Native tribal governments. It provides procedures to be followed when contacted or initiating a contact to American Indian, and for Alaska Native tribal governments.

**2. POLICY:**

a. VA will implement and follow a government-to-government relationship between VA offices

and officials and tribal governments. That relationship will include notification to tribal management of proposed official visits to tribal lands; consultation with tribal governments on proposed VA policies, consultations in good faith, early and often with tribal governments prior to any actions that may have the potential to significantly affect tribal resources, rights or lands. Tribes are acknowledged as entities that maintain the right to self-government and exercise inherent sovereign powers over their members and territory.

(1) When formulating and implementing policies that have tribal implications, VA will encourage tribes to develop their own policies to achieve program objectives; and, where possible, VA will defer to Indian tribes to establish standards. In respect to Federal statutes and regulations administered by Indian tribal governments, VA shall grant maximum administrative discretion possible.

(2) When there is a question whether to establish Federal standards, VA will consult with tribal officials as to the need for Federal standards and explore any alternatives that would otherwise preserve the prerogatives and authority of Indian tribes. VA will collaborate with tribal officials and tribal staff to ensure that VA's benefits, services and health care are made highly accessible to veteran tribal members.

(3) VA officials will coordinate with the Deputy Assistant Secretary for the Office of Intergovernmental Affairs and consult with the Center for Minority Veterans and VA facilities (Veterans Health Administration, Veterans Benefits Administration and National Cemetery Administration) nearest to the tribal nation prior to an initial visit to tribal lands for official business or initial consultation with tribal government officials concerning a proposed VA policy or concerning an action that may have the potential to significantly affect tribal resources, rights or lands. Thereafter, the Office of Intergovernmental Affairs will continue in an advisory role.

(4) This policy is based upon the Constitution of the United States, treaties, statutes, court decisions, executive orders and memoranda, and VA's long-standing relationships with tribal governments. The policy is enacted pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," and previous and subsequent executive orders and government memoranda, and White House Memorandum of September 23,

2004, "Government-to-Government Relationship with Tribal Governments." This policy shall not be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of any American Indian tribes, or to preempt, modify or limit the exercise of such rights.

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**b. PRINCIPLES:** GOVERNMENT-TO-GOVERNMENT RELATIONS AND [CONSULTATION. VA](#) seeks to build stable and enduring relationships with tribes by:

- (1) Communicating with tribes on a government-to-government basis in recognition of their sovereignty.
- (2) Requiring that communications address tribal concerns between tribes and VA offices and facilities.
- (3) Assessing through consultation, the effect of proposed VA actions that may have potential to significantly affect tribal rights and prerogatives.
- (4) Removing to the extent possible, procedural or regulatory impediments to VA working directly and effectively with tribes on activities that may affect tribal rights and prerogatives.
- (5) Coordinating with other federal agencies, in consultation with tribes, to minimize duplicative interactions with tribes or requests for information or actions from tribes.
- (6) Ensuring that the Department fully and often consults and communicates with tribal governments on issues important to the tribe through a process of government-to-government dialogue. Consultation with tribes requires that VA officials recognize that whenever VA actions may have potential to significantly affect protected tribal resources, tribal rights or Indian lands, VA will provide the affected tribes with an early opportunity to participate in the decision-making process.
- (7) Providing timely notice to, and consulting with, tribal governments prior to taking any actions that may have the potential to significantly affect protected tribal resources, rights or lands.
- (8) Consulting in good faith early and often in any decision-making processes that affect may significantly affect tribes, their rights or lands.
- (9) Developing and maintaining effective communication, coordination and cooperation with tribes, especially at the tribal leadership level.

**3. RESPONSIBILITIES:** The Deputy Assistant Secretary for Intergovernmental Affairs is designated as the Department's primary point-of-contact for implementation of this policy, and to coordinate VA's relationships with tribal governments and other tribal entities. The Deputy Assistant Secretary for Intergovernmental Affairs shall represent the Secretary in interactions with those groups; and will serve as the liaison on these matters between VA and other Federal agencies, American Indian/Native Alaskan-related organizations, and private industry.

#### **4. REFERENCE:**

- a. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- b. White House Memorandum of September 23, 2004, Government to Government Relationships with Tribal Governments

# Model Scope of Work for General Cultural Resources Assistance in Project Planning

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Date: XXXX

## CULTURAL RESOURCES SERVICES FOR THE

\*\*\*Facility or Project Name\*\*\*

\*\*\*City, County, State\*\*\*

### I. Project Description:

The Department of Veterans Affairs (VA) requires assistance in identifying cultural resources potentially affected by the \*\*\*Name of project, or "ongoing management of the (name of facility)\*\*\*. "Cultural resources" include historic properties as defined in the National Historic Preservation Act of 1966 (NHPA), archaeological resources as defined in the Archaeological Resources Protection Act (ARPA), Native American Cultural Items as defined pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), historical, archaeological and scientific data as defined pursuant to the Archaeological and Historic Preservation Act of 1974 (AHPA), historical documents, records, and artifacts, and any other cultural or historical values unique to the geographic area potentially affected by the \*\*\*action/project/facility\*\*\*; information about such resources is needed in order to assist VA in measuring the significance of environmental impacts under Section 102(c) of the National Environmental Policy Act (NEPA; see 40 CFR 1508.27), Section 106 of the National Historic Preservation Act (NHPA; see 36 CFR 800) and related legal authorities.

### II. Scope of Work:

The contractor will:

- Assist VA in establishing the scope of studies necessary to meet VA's obligations under the above-cited statutes and associated regulations and executive orders, including:
  - Consultation with State and Tribal Historic Preservation Officers (SHPO/THPO) and other interested parties, including but not limited to (specify if known);
  - Designing and assisting in public involvement activities;
  - Identification of an area or areas of potential effect within which studies will be carried out;
  - Conduct of initial background research into the history, prehistory, environment and sociocultural character of such area or areas; and
  - Preparation of a work plan for the conduct of necessary studies.
- Upon approval of the work plan by VA after consultation with the SHPO/THPO and other interested parties (if any), implement the work plan.

- Upon completion of the work specified in the work plan, prepare a prefinal report which fully discusses the methods employed, work conducted, results, conclusions, and recommendations, together with a list of parties consulted and parties who the contractor believes should be given the opportunity to review and comment on the prefinal report, including contact information.
- Submit the prefinal report to VA in electronic form in Microsoft Word (97-2003 version) format.
- Upon receipt of comments on the prefinal report from VA and any other commenting parties, respond to all comments and prepare a final report.
- Submit the final report to VA in electronic form in Microsoft Word (97-2003 version) format.

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