

## Section 106 of the National Historic Preservation Act (NHPA)

### What is it?

Section 106 of NHPA, (54 U.S.C. § 306108) was enacted in 1966. It requires that Federal agencies *take into account* the impacts of their proposed actions and decisions on *historic properties* – that is, places that are included in or eligible for the National Register of Historic Places.

### What regulations are followed?

The regulations of the *Advisory Council on Historic Preservation (ACHP)*, at 36 CFR Part 800. (See the ACHP website for more detailed information: <https://www.achp.gov/protecting-historic-properties>)

### What gets reviewed?

Anything a federal agency, such as VA, plans to do, help someone else do, or permit someone else to do, provided it represents *a type of action with the potential to affect historic properties*. This doesn't mean that the agency needs to know there are historic properties to be affected, only that the action be the kind of thing that in theory *can* affect them if they're there – through demolition, earth moving, changes in land use, construction of new buildings, renovation, etc.

### How does it work?

1. The federal agency *initiates consultation* with the State and/or Tribal Historic Preservation Officer (SHPO/THPO), Indian tribes, and other individuals or organizations interested in the agency's planned action (called an *undertaking*) and its possible effects on known or unknown *historic properties*; these people and groups are called *consulting parties*.
2. With the consulting parties, the agency determines the *scope* of what it needs to do to find historic properties and learn how they may be affected. One thing they do is to establish the *area of potential effects (APE)* – the area where the action may affect historic properties.
3. The agency *identifies* historic places and effects within the APE, usually involving surveys and other kinds of studies, in consultation with the consulting parties.
4. The agency determines whether places in the APE are *eligible for the National Register of Historic Places*, following National Park Service (NPS) regulations, in consultation with the SHPO/THPO and other consulting parties.
5. The agency determines whether the proposed action will have *adverse effects* on historic properties, using criteria in the ACHP regulations. If not, it proposes a *determination of no adverse effect* for concurrence by the SHPO/THPO and other consulting parties.
6. If there may be an *adverse effect*, the agency continues to work with the consulting parties to try to find ways to *resolve* the adverse effect. This usually leads to a *Memorandum of Agreement (MOA)*, whose terms the agency makes sure are carried out.
7. If an MOA isn't reached, the ACHP *comments* to the head of the federal agency (Secretary), who *considers the comments* in deciding whether and how to carry out or approve the action, but need not follow them.

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# NHPA Section 106 Process

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