

## **SECTION 106 INSTRUCTIONS NATIONAL HISTORIC PRESERVATION ACT of 1966**

### **Background**

As stated in the Land and Water Conservation Fund Application Guide, compliance with 36 CFR 800, Executive Order 11593 and Section 106 of the National Historic Preservation Act of 1966, as amended, is required. The Applicant must complete the following process to document that Section 106 compliance has been met. Section 106 documentation cannot be older than 5 years from the date submitted to SHPO for approval. (SHPO refers to the State Historic Preservation Office). Section 106 should be completed early in the project planning process, and must be completed before any ground disturbance/construction. Previous agencies have found it efficient to work on Section 106 concurrently with CEQA and Federal environmental analysis. SHPO's contact for LWCF grants is listed at the end of these instructions.

### **Section 106 Process**

**The Applicant will complete steps 1-4 below:**

1. Obtain Information Center Recommendation
2. Obtain Native American Consultation
3. Write a Cover Letter from the Applicant addressed to SHPO Summarizing Compliance with Section 106. This is done after steps 1-2 above.
4. Send 1-3 above as a "SHPO Section 106 Package" to the OGALS Project Officer.
5. The OGALS Project Officer will make a copy and send 1-3 above to SHPO.

**The following information provides guidance about completing 1 – 4 above.**

#### **1) Information Center (IC) Recommendation:**

IC's provide archeological and historical resources information, on a fee-for-service basis, to local governments and individuals with responsibilities under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the California Environmental Quality Act (CEQA), as well as to the general public. To obtain an Information Center recommendation, the Applicant must contact its Information Center (IC) based on the County of the project site.

To obtain IC contact information by County:

- Go to [www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)
- Select the "CHRIS / ICs" link.
- Click on "Informational Centers"
- A list will appear with contacts, by County.
- Ask the County contact for a "records search" based on the proposed project location, and for a "recommendation" based on Section 106 requirements.

The IC will recommend one of the following:

- A. That no further work is necessary.

OR

B. That an archeological resource survey shall be performed by a “qualified professional” who meets the Secretary of Interior’s standards found here:

[http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)

- A list of “qualified professionals” is available here: [www.chrisinfo.org](http://www.chrisinfo.org)
- Read the disclaimer language on top of [www.chrisinfo.org](http://www.chrisinfo.org)
- If an archeological resource survey is required, it will need to become part of the “SHPO Section 106 Package”.

There may be situations where an Applicant does not concur with the IC’s recommendation. If so, the Applicant should use the following process:

- Clarify the scope and conditions of the project with the IC. If additional clarification is provided, the IC may change the recommendation.
- If the IC will not change the recommendation, contact SHPO and provide a letter on the Applicant’s letterhead addressed to SHPO.
- In the letter to SHPO, state the non-concurrence with the IC’s recommendation.
- Include a detailed explanation and back up documentation.
- Ask SHPO for guidance.

## 2) Native American Consultation:

Native American consultation is required. Federally-recognized tribes are considered sovereign nations and may require formal consultation if they so wish.

Applicants should follow these steps:

- Obtain a list of tribes or Native American individuals for the project area from the Native American Heritage Commission (NAHC) by doing the following:
  - First call the NAHC’s new main phone number at (916) 373-3710.
  - When you call, identify the County of the project.
  - Ask for the NAHC’s contact information and email for the specific County of the project.
  - Then, send the NAHC’s county contact an email request for a NAHC letter and list of all Native American contacts for the project area
- After obtaining the NAHC’s list of tribal contacts for the project area, use the following 45 day notification process:
  - For each tribal contact on the NAHC list, send a letter describing the project scope, area of potential effects, and project mapping. In addition, the letter must allow the individual an opportunity to comment. *Note if the area of potential effects has already been disturbed or excavated at the same or a deeper depth as the proposed PROJECT when sending your request.*
  - Also send an email attaching the letter, and call the tribal contact advising the contact of the letter, within a few days of sending the letter.

- If there are no responses after 10-15 business days, follow up by another email and phone call.
  - If there are no responses after an additional 10 working days, send a final email and phone call.
  - Use a chart to track and report the recipient and date for each attempt, contact method used, any responses, or lack of responses.
  - A total of 45-days is considered a “reasonable” time period allowed for a response.
- Applicant will send the following items to OGALS as required:
    - a. Copy of the request email sent to the NAHC.
    - b. Copy of the letter received from the NAHC including the list of all Native American contacts.
    - c. Chart documenting each Native American contact, method(s), date(s) contacted, and whether a response was received.
    - d. Copies of all emails and letters sent to each tribal contact on the NAHC list. Also include all responses received.

**After obtaining the IC’s recommendation, and the Native American Consultation, the Applicant will prepare the following cover letter.**

**3) Write a Cover Letter from the Applicant addressed to SHPO Summarizing Compliance with Section 106 using the “Report and Content Template for Section 106 Consultations.”**

### **SHPO Section 106 Package Summary**

**Send 1-3 below to your OGALS Project Officer. 1-3 is explained above in more detail. 1-3 is the “SHPO Section 106 Package”**

1. Cover letter addressed to SHPO that includes subheading A through F explained above.
2. IC letter stating the IC’s recommendation AND, if applicable, include the Historical/Cultural resource survey (see 1 above)
3. Proof of Native American Consultation (see 2 above)

**OGALS will send the Section 106 package to SHPO. OGALS acts as a liaison between SHPO and Applicants.**

**Once SHPO reviews and concurs with the project in writing, the Section 106 federal requirement is met.**

The SHPO contact for grants administered through OGALS is:

Jeff W. Brooke  
Associate State Archaeologist  
Office of Historic Preservation (OHP)  
Review and Compliance Unit (RACU)  
1725 23rd Street, Suite 100  
Sacramento, CA 95816

Office: (916) 445-7003  
FAX: (916) 445-7053  
[Jeff.Brooke@parks.ca.gov](mailto:Jeff.Brooke@parks.ca.gov)