

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

### **Background:**

Per the SHPO MOU that was signed as part of the application process, compliance with 36 CFR 800, Executive Order 11593 and Section 106 of the National Historic Preservation Act of 1966, as amended, is required. The Grantee 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 stands for the State Historic Preservation Officer).

### **Section 106 Process**

Please send items 1-3 below to your OGALS Project Officer. Item 1 and 2 are completed first.

1. Information Center Recommendation
2. Native American Consultation
3. Cover Letter from the Applicant/Grantee to SHPO Summarizing Compliance with Section 106

The following information provides guidance about completing 1 – 3 above.

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

The Grantee must contact their Information Center (IC) appropriate for the project site. To find your IC visit: [www.chrisinfo.org](http://www.chrisinfo.org) and request a records search on the proposed project location. The Grantee must receive a recommendation by the IC. The IC will recommend one of the following:

- A. No further work is necessary.
- OR
- B. An archeological resource survey shall be performed. In this case, the Grantee needs to have a survey done by a qualified professional who meets the Secretary of Interiors standards. The survey will be required as part of the SHPO package.

If the Grantee does not concur with the IC's recommendation:

- The Grantee can provide a letter on their letterhead stating non-concurrence with the IC's recommendation.
- The letter must include a detailed explanation and back up documentation.
- Address the letter to SHPO

#### **2) Native American Consultation**

Native American consultation is required. A list of tribes or Native American individuals interested in the undertaking must be obtained from the Native American Heritage Commission. Letters to tribes or interested Native American individuals are adequate for the initial contact, but must be followed by telephone/e-mail or other reasonable and appropriate attempts to engage responses. These attempts must be included in the report and the response or lack of response noted. Federally-

recognized tribes are considered sovereign nations and may require more formal consultation if they so wish.

### **3) Cover Letter from the Applicant/Grantee to SHPO Summarizing Compliance with Section 106**

SHPO requires a cover letter that includes the following information.

- Use the following sub-headings A - F to format the letter.
- Address the letter to SHPO.

#### *SHPO Letter Subheading A: Professional Qualifications.*

- Identify the employee(s) or contractor(s) of the agency involved in the findings and determinations and describe their qualifications based on the following:

36 CFR 800.2(a) (1), “requires each agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.” The agency may choose to “use the services of applicants, consultants, or designees to prepare information, analyses and recommendations,” but the agency official remains responsible to ensure that findings and determinations meet applicable standards and guidelines.

#### *SHPO Letter Subheading B: Native American Consultation*

- Provide copies of letter and emails, and phone logs, documenting the attempts to obtain a consultation from specific Native American tribes or Native American individuals for the project.
- Report the response or lack of response in the letter to SHPO.

More information from SHPO: Native American consultation is mandatory in most instances, especially when the undertaking involves ground disturbance, and must be current. A list of tribes or Native American individuals interested in the undertaking should be obtained from the Native American Heritage Commission and documentation of consultation with appropriate parties must be submitted. Letters to tribes or interested Native American individuals are adequate for the initial contact, but must be followed by telephone/e-mail or other reasonable and appropriate attempts to engage responses. These must be included in the report and the response or lack of response noted. Federally-recognized tribes are considered sovereign nations and may require more formal consultation if they so wish.

#### *SHPO Letter Subheading C: Project Description.*

Include a project description identifying purpose, acreage, and location. It should include enough detail to fully communicate the action, especially with regard to its potential effects on historic properties.

#### *SHPO Letter Subheading D: Area of Potential Effect (APE).*

In accordance with 36 CFR 800.4(a) (1), the agency shall determine and document the APE. The APE is defined at 36 CFR 800.16(d) as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” In order to sufficiently cover all aspects of the undertaking, APE should include access points and staging areas. If a known historic property is located in the APE, the entire property should be included in the APE. The SHPO consultation package should include:

- 7.5’ USGS map or equivalent with APE clearly outlined
- Narrative description of the APE supporting its sufficiency
- Length, width, and depth of ground disturbance, accounting for vertical APE
- Access points and staging areas (where the ground disturbances take place).

*SHPO Letter Subheading E: Identification Efforts.*

Explain how the following were applicable and completed, or not applicable.

- A literature review must include a recent (not more than 5 years old) Information Center records check, as well as examination of other pertinent material. Architectural surveys should be updated if they are more than 5 years old to ensure the identification efforts reflect the current state of the resources.
- Archaeological survey reports must include the field methodology and a reference to the state and/or Federal standards under which the survey was conducted.
- Resources identified in field inventories completed more than 5 years ago must be re-examined to determine site integrity and project effect.
- If the identification and evaluation efforts will be based upon older surveys, the agency should provide justification for why those results remain valid.

*SHPO Letter Subheading F: Determination of Eligibility (DOE).*

Explain how a determination of eligibility was completed for properties and sites within the Area of Potential Effect (APE).

- The determination of eligibility should demonstrate that all four criteria for National Registry of Historic Places (NRHP) eligibility have been applied and the integrity of the property assessed (this applies to archaeological properties, too).
- The potential for the existence of an eligible historic district should also be addressed.
- The DOE requires State Historic Preservation Office (SHPO) concurrence. However, in some instances and through consultation with the SHPO, the agency may assume that a property or site is

eligible. In any case, the agency must provide a well-presented rationale for the findings.

- If there are no historic properties and sites within the APE, provide a statement in this section of the letter.

### **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 grantees.**

**SHPO will determine the following after reviewing the Section 106 package, and provide a letter of response identifying SHPO’s findings.**

#### **Assessment of Adverse Effects**

- If the SHPO concurs with the agency that no historic properties are present in the APE, then a Finding of No Historic Properties Affected is appropriate.
- If historic properties are present in the Area of Potential Effect, the agency will apply the criteria for adverse effect to assess effects on historic properties. Adverse effects result 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.
- If there is a potential for effects, but the effects will not be adverse, and the SHPO concurs, then a Finding of No Adverse Effect is appropriate.

#### **Resolution of Adverse Effects**

- If the SHPO concurs that the undertaking will adversely affect historic properties (Finding of Adverse Effect), the agency will consider alternatives to avoid adverse effects.
- If the adverse effects cannot be avoided, then the agency will notify the Advisory Council on Historic Preservation of the adverse effects and develop a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) to resolve the adverse effects in consultation with the SHPO and the Advisory Council, should the Council choose to participate.

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