
This summary, provided by the [National Institute of Standards and Technology \(NIST\)](#), is not intended to replace or supersede the terms of the award. Where information in this guide differs from the terms of an award, the award terms shall prevail. Reference the award document or contact the Program Officer or Grants Specialist listed in the award document for any questions regarding a particular award.

National Historic Preservation Act

The [National Historic Preservation Act \(NHPA\)](#) (54 U.S.C. § 300101 et seq) requires the consideration of historical and cultural resources which may be affected by Federal construction funding. Section 106 (54 U.S.C. § 306108) is a specific provision within the NHPA that outlines the requirements of Federal agencies, such as NIST, in administering Federal construction funding. Section 106 requires NIST to assess and identify the effect(s) of undertakings on historic or eligible historic properties. Under Section 106, NIST must consider various agency and public views and concerns regarding historic preservation.

Upon notice of Congressionally designated federal construction funding, NIST will request project information of the recipient under a formal request for application process. The recipient must identify any effects the award may have on properties included on or eligible for inclusion on the [National Register of Historic Places \(NRHP\)](#).

Under a historic evaluation, the NIST Federal Preservation Officer will determine the appropriate review under Section 106. A complete response by the recipient to the evaluation questions will serve to improve the review process and award schedule.

Any property on the project site or within the project viewshed is relevant to the application and must be considered in the historic evaluation. Under the NHPA, disturbance, demolition, renovation, or construction related to Federal funding, prior to award, is prohibited. No funding may be released until the NHPA process has been completed by the Federal Preservation Officer.

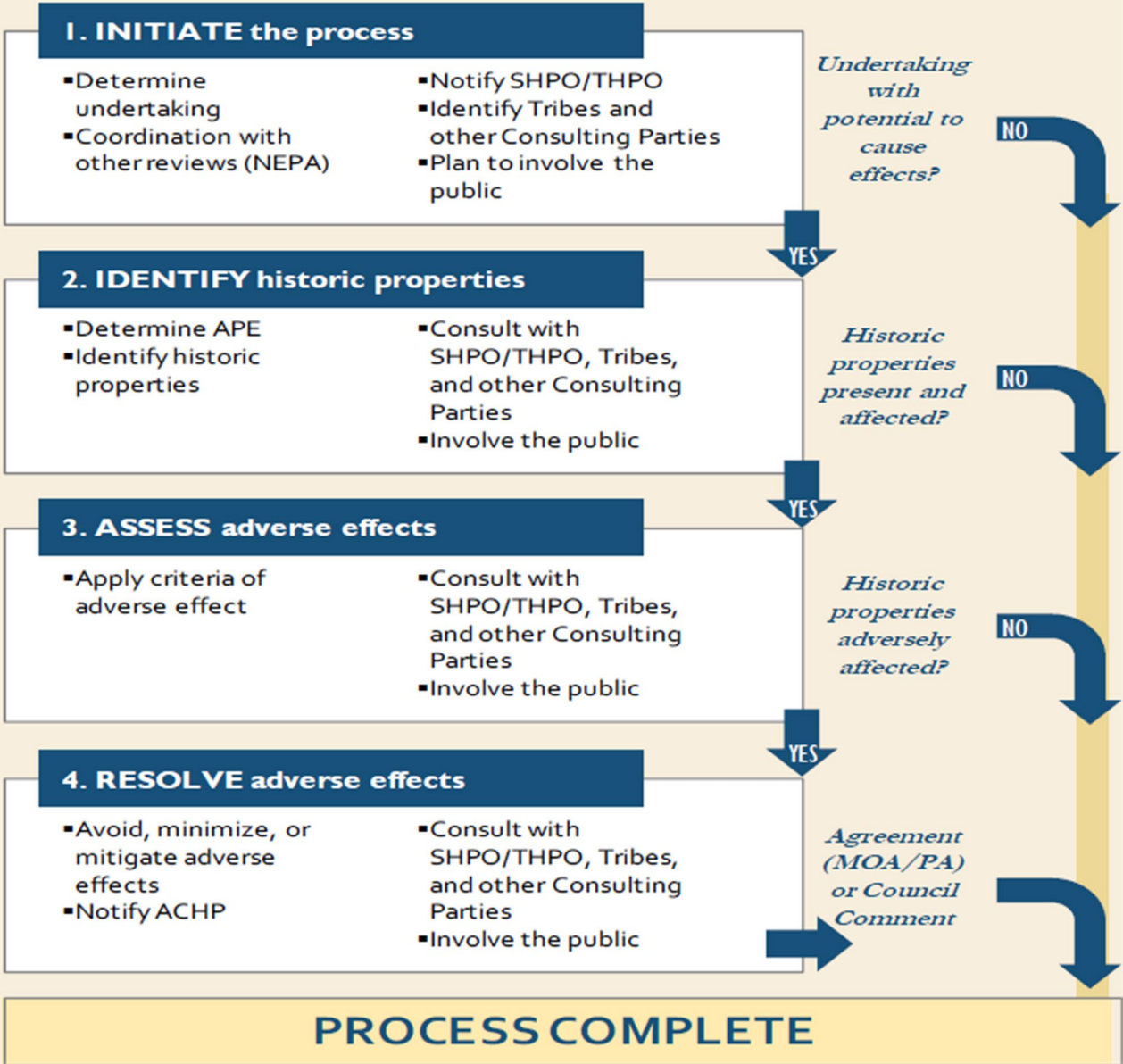
More information on the NHPA and involved parties is available from the Advisory Council on Historic Preservation (ACHP) at [Advisory Council on Historic Preservation \(achp.gov\)](#)

A full explanation of the NHPA process is provided by the Council on Environmental Quality (CEQ) and the ACHP. A handbook is available for download here: [NEPA and NHPA: Handbook for Integrating NEPA and Section 106 Reviews.](#)

Included in the handbook is the flowchart below, depicting the section 106 process to be executed by NIST, as the federal funding agency:

THE SECTION 106 PROCESS

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Frequently Asked Questions

Question: How does the National Historic Preservation Act (NHPA) evaluation process start?

Answer: The process starts with the grant application. In the request for application, NIST includes a set of NHPA centered questions. The recipient responses are used to begin the Section 106 process. The process then follows this flow chart provided on this ACHP link:
<https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106>

Question: What is considered a historic property?

Answer: An initial factor in determining historic eligibility is property age. Any property at or approaching 50 years of age, which is affected by the project, is reviewed. Properties less than 50 years of age may be considered, if exceptionally significant, to be considered eligible for listing. See the National Park Service Bulletin: [Guidelines for Evaluating and Nominating Properties that Have Achieved Significance Within the Past Fifty Years](#). For properties to be eligible for listing, they must also possess integrity of design AND, one or more of the following four criteria: historical, biographical, architectural, and/or archeological potential.

Question: What is the significance of having a historic property on a project?

Answer: NIST, as the funding agency administering federal construction funds, is obligated to consider any action to a property listed in or *eligible* for listing in the National Register. In addition to the project property, NIST is obligated to consider properties within the viewshed of the project.

Question: What does it mean to have a Determination of Eligibility?

Answer: A Determination of Eligibility is a decision by the NIST Federal Preservation Officer that a site, building, structure or object meets the National Register criteria for evaluation, although the property may not be formally listed in the NRHP.

Question: If a property is eligible for the NRHP, does that mean the project is not viable?

Answer: No, the project is often viable as planned. However, eligibility will require the next step in the NHPA process. That is to determine if the project presents the potential for an Adverse Effect to the eligible property by application of certain established design guidelines, called [the Secretary of the Interiors Standards for the Treatment of Historic Properties](#).

Question: What is an Adverse Effect?

Answer: An Adverse Effect upon an eligible property may occur by proposed changes to distinctive architectural characteristics and may occur in many forms. Exterior or interior renovations that change the appearance or historical context of an eligible property may well be deemed an Adverse Effect. Demolition of an eligible or nearby property may also be an adverse effect. Even changing the current viewshed or visibility of the property may present an adverse effect.

Question: How is an Adverse Effect addressed?

Answer: There are measures under the National Historic Protection Act to mitigate or address an adverse effect. Measures may include alternate designs and/or revisions that result in no potential Adverse Effect(s). If design revisions still are likely to yield a finding of Adverse Effect, then mitigation measures are typically devised through a consultation. Mitigation measures may include, but are not limited to, study and documentation of the history surrounding the eligible property, a design modification in the project which honors the historical context of the eligible property, and/or a dedicated location to preserve the history of the eligible property.

Question: Who is involved in evaluating and executing the NHPA for a particular project.

Answer: Three parties are equally involved in the process, the recipient, the State Historic Preservation Officer (SHPO), and the Federal Preservation Officer (FPO).

Question: Who is involved in the Section 106 process?

Answer: The recipient, Federal Preservation Officer (FPO), State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), local government officials, other interested stakeholders, Advisory Council on Historic Preservation (ACHP), the public may be involved but is not considered a consulting party.

Question: Who makes the final decision on the eligibility, adverse effect, and any mitigating actions required of a project?

Answer: The Federal Preservation Officer (FPO) is ultimately responsible for execution of the process required under National Historic Preservation Act (NHPA). However, the FPO is obligated to take many factors into account prior to arriving at a decision. Among those are any public input, the SHPO's opinion, the recipient's perspective and the process taken to arrive at the site location and design. As the resident expert, the SHPO's office is weighed heavily with the project's design intent. Concurrence among all their parties, with public input, is the end goal of any agreement regarding eligibility, adverse effect, and mitigating actions.

Question: How long does the whole process take?

Answer: The answer here is as varied as each project. For a project with no eligible property, the process is complete within weeks of that determination. If a project does involve an eligible property, it may take one or more months for a final design evaluation and subsequent Determination of Effect(s). The purpose of the Section 106 design consultation process is to ensure any planned undertaking has been carefully devised to minimize effects on the affected NRHP or NRHP-eligible property and, therefore, be understood to be an iterative process open to choices, suggestions and revision. In some cases, if both NRHP Eligibility and Adverse Effect appear unavoidable, the site or design may be reconsidered. However, most often, a series of mitigation measures that benefit the public and the preservation communities can be achieved through the negotiation and execution of a Memorandum of Agreement (MOA).

Question: What is a Memorandum of Agreement (MOA)?

Answer: The Memorandum of Agreement (MOA) is a document arrived at among the State Historic Preservation Officer (SHPO), the recipient, and the Federal Preservation Officer (FPO) and interested preservation partners. It addresses the mitigating actions of a potential Adverse Effect(s) upon a listed or an eligible property.

Question: How does the public and other interested parties get involved?

Answer: Upon concurrence of an Adverse Effect to an eligible property, the FPO seeks input from the SHPO and the recipient on interested parties. These include local governments, registered historic districts (Certified Local Governments), Tribal Historic Preservation Officers and others which may have interest in the project.

Question: How does the public know what's going on?

Answer: A Consulting Parties (CP) meeting is held which is open to the public. Also, the parties of potential interest above receive individual invitations to attend the CP meeting. In the meeting the project is explained, and the draft MOA is presented for review and comment. The CP meeting is advertised in the local newspaper and/or conspicuously placed in a prominent location on the recipient's website.

Question: What happens after the Consulting Parties (CP) meeting?

Answer: All comments from then Consulting parties (CP) meeting are taken under consideration, if none or upon resolution, the MOA is executed by the three parties above. The recipient is obligated to execute the provisions of the MOA. NIST is responsible to maintain oversight of the appropriate execution for the life of the MOA which typically follows a mutually agreed upon multi-year period.

Question: How is this related to the National Environmental Protection Act (NEPA)?

Answer: Among the considerations performed to fulfill the NEPA is the NHPA requirement. The NEPA document, typically and documents how NHPA was addressed for the project.

Question: Where can I go for more information?

Answer: In addition to the online resources above, the Program Officer and the NIST Federal Preservation Officer will be available to your project team upon award of your grant.

Acronyms

- ACHP - Advisory Council on Historic Preservation
- CE - Categorical Exclusion
- CEQ - Council on Environmental Quality
- CFR - Code of Federal Regulations
- DOC – Department of Commerce
- EA - Environmental Assessment
- EIS - Environmental Impact Statement
- CATEX - Categorical exclusion
- FONSI - Finding of No Significant Impact
- FPO - Federal Preservation Officer
- MOA - Memorandum of Agreement

- NHPA - National Historic Preservation Act
- NIST – National Institute of Standards and Technology
- NEPA - National Environmental Policy Act
- NOI - Notice of Intent
- PA – Public Announcement
- ROD - Record of Decision
- SHPO - State Historic Preservation Officer
- SOI Stds. – Secretary of the Interior Standards
- THPO – Tribal Historic Preservation Officer