

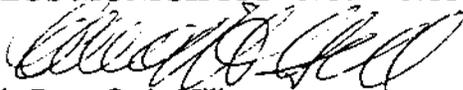


OFICINA DEL COMISIONADO DE ASUNTOS MUNICIPALES

MEMORANDO CIRCULAR 00-07

29 de junio de 2000

**A TODOS LOS ALCALDES Y
DIRECTORES DE PROGRAMAS FEDERALES
DE LOS MUNICIPIOS "NON-ENTITLEMENT"**


Maria Rosa Ortiz Hill
Comisionada

**CUMPLIMIENTO CON LA SECCION 106 DE LA LEY DE PRESERVACION
HISTORICA NACIONAL**

La Sección 800.3 (b) de la reglamentación aplicable bajo la de Ley de Preservación Histórica Nacional de 1966, según enmendada, establece que el Proceso de Revisión de la Sección 106, debe ser coordinado dentro de la Revisión Ambiental requerida bajo la Ley de Política Ambiental (NEPA) para todos los proyectos realizados con fondos del Departamento de Vivienda Federal (HUD).

Con el propósito de que los municipios agilicen el cumplimiento con el Proceso de Revisión requerido en la Sección 106, le acompaño los siguientes documentos:

- "Formulario para la Revisión de la Sección 106" a ser utilizado en la revisión de las actividades subvencionadas con los fondos del Programa CDBG. *El mismo ha sido revisado para agilizar el proceso de revisión de las actividades o proyectos y deberá ser completado para todas las actividades.*
- Breve resumen de la reglamentación aplicable, según publicado por el "Advisory Council on Historic Preservation"
- Criterios de elegibilidad para la inclusión en el Registro Nacional de Preservación Histórica
- Modelo del Aviso de Impacto Ambiental No Significativo e Intención de Liberación de Fondos

De necesitar información o asistencia técnica al respecto, favor de comunicarse con la División de Programas Federales al 754-1600, extensión 295.

FORMULARIO PARA EL
CUMPLIMIENTO CON LA
SECCION 106

**FORMULARIO PARA EL CUMPLIMIENTO DE LA SECCION 106
ACTIVIDADES SUBVENCIONADAS CON FONDOS CDBG**

Parte I. Inicio del Proceso de Revisión

A. Datos de la Actividad

Municipio:	Programa: CDBG
Título de la Actividad:	Num. ID de la Actividad:
Fondos CDBG: <input type="checkbox"/> Solicitados <input type="checkbox"/> Asignados	Otros Fondos Federales Solicitados: Agencia:
Cantidad:	Cantidad:
De existir otros fondos federales indique agencia líder:	

B. Descripción de la Actividad

(Redactar Memorial Explicativo detallado de la actividad donde indique claramente en que consiste la actividad. Clarifique si las actividades a realizarse con fondos federales fueron comenzadas con otros fondos estatales, municipales, legislativos, etc., e incluya una descripción clara de la localización exacta del lugar donde se desarrollara la actividad).

Memorial Explicativo incluido: Si No

C. Determinación del Proyecto

(Según requerido en la Sección 800.3(a) y definido en la Sección 800.16(y))

Constituye esta actividad un proyecto (“undertaking”)? Si No

E. Determinación de Efecto Potencial sobre Propiedades Históricas

(Según requerido en la Sección 800.3 (a) (1))

Tiene el proyecto el potencial de afectar alguna propiedad histórica? Si No

(Si su respuesta es SI, favor pasar a la página 2 de este formulario. De su respuesta ser NO, no se requiere paso adicional en el proceso de revisión, proceda a certificar en el espacio provisto y someta copia del formulario a la OCAM)

El Oficial de la Agencia (Alcalde) ha determinado que este proyecto, según planificado, no tiene el potencial de afectar propiedades históricas.

Firma: Alcalde

Fecha

Proyecto Núm.: _____

Programa: CDBG

Parte II: Planificación e Identificación de Partes Consultantes y/o público en general

A. Indique Oficina Estatal de Preservación Histórica (SHPO) a consultarse,
(según requerido en la Sección 800.3(c))

PRSHPO

B. Indique la planificación utilizada para envolver al público
(según requerido en la Sección 800.3(e), incluya evidencia de los mismos)

- Plan de Participación Ciudadana bajo "NEPA"
- Vistas Públicas
- Avisos, Hojas sueltas
- Otros – Especifique: _____

C. Indique otras partes consultantes e incluya sus comentarios sobre el proyecto
(según requerido en la Sección 800.3(f))

- Centros Culturales
- Oficina de Zona Histórica
- Instituto de Cultura Puertorriqueña
- Individuos u Otras Organizaciones - Especifique: _____

D. Definición del Área de Efectos Potenciales "APE"

Utilizando un cuadrángulo topográfico cartografiado por el "U.S Geological Survey" identifique los límites exactos del proyecto, según requerido en la Sección 800.4(a). Incluya: planos del lugar a escala 1:2000 o plano a mayor escala del solar del proyecto y sus alrededores; Coordenadas Lambert; Fotografías del área del proyecto, planos o dibujos preliminares, plantas, elevaciones y secciones del diseño propuesto; Planos de las condiciones existentes ("as-built") de las estructuras a ser afectadas por el proyecto.

- Incluyo: Cuadrángulo
 Planos o dibujos preliminares
 Fotos
 "as-built"
 Coordenadas Lambert: X: _____ Y: _____

Proyecto Num.: _____

Programa: _____

Parte III. Identificación y Evaluación de Propiedades Históricas**A. Fuentes de Información Revisada**

(Indique con una marca de cotejo su respuesta en las primeras dos columnas e identifique cada una de las fuentes de información utilizadas. La Sección 800.4(b)(1) establece que el Municipio (agencia) deberá demostrar que ha realizado un esfuerzo razonable y de buena fe en la identificación de las propiedades históricas)

Concepto	SI	NO	RNLH	SHPO *	JP	ICP	Otros Estudios o consultas (especifique)
Estructuras Históricas							
Lugares Arqueológicos: - Terreno impactado anteriormente - Requiere evaluación arqueológica							
Distrito Histórico							
Propiedades Culturales Tradicionales							

* La Oficina Estatal de Preservación Histórica (SHPO) deberá ser consultada en la identificación de propiedades históricas.

B. Localización de Estructuras Encontradas

(Incluya en una hoja aparte la localización exacta de cada propiedad encontrada con el trasfondo histórico de la misma)

Información incluida: Si No

C. Fotos de Estructuras Encontradas

(Incluya fotografías tamaño 3 x 5 de todas las estructuras con potencial histórico dentro del área de efecto potencial)

Fotos incluidas: Si No

D. Identificación de Recursos Culturales

Evaluación incluida: Si No

E. Existencia de Propiedades Históricas

(Según requerido en la Sección 800.4 (b), determine si existen propiedades históricas-arqueológicas en el área de efecto potencial)

Propiedades Históricas: Si No

Proyecto Num.: _____

Programa: _____

F. Determinación de elegibilidad al Registro Nacional de Lugares Históricos

(Según requerido en la Sección 800.4 (c))

- La(s) propiedad(es) no es(son) elegible (s) al Registro Nacional de Lugares Históricos
- La(s) propiedad(es) es (son) elegible (s) al Registro Nacional de Lugares Históricos bajo el (los) criterio(s):
- Criterio A Criterio B Criterio C Criterio D

G. Determinación de Efecto sobre Propiedades Históricas

(Según requerido en la Sección 800.4 (d)(1) y (2))

Afectará el proyecto la(s) propiedad(es) histórica(s) antes mencionada(s), según requerido en la Sección 800.4(d)(1)(2)?: Sí No

(Si su respuesta es SÍ, consulte con el Oficial de Preservación Histórica (SHPO), para determinar el efecto sobre la(s) propiedad(es) histórica(s) y considere las medidas de mitigación requeridas para evitar el posible efecto adverso del proyecto.

De su respuesta ser NO, proceda a certificar en el espacio provisto y someta a la Oficina Estatal de Preservación Histórica (SHPO) para su concurrencia.)

H. Certificación del Oficial de la Agencia:

Basado en la revisión realizada, y según requerido en la Sección 800.4(d)(2), el Municipio de
 _____ ***ha determinado que el proyecto, según propuesto,***
no afectará propiedades históricas en el área.

 Firma: Alcalde

 Fecha

SECTION 106 REGULATIONS
USERS GUIDE
REGULATIONS SUMMARY

Advisory Council on Historic Preservation

Section 106 Regulations Users Guide Regulations Summary

Introduction

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by the Council. These regulations, "Protection of Historic Properties" (36 CFR Part 800), became effective June 17, 1999, and are summarized below.

Initiate Section 106 process

The responsible Federal agency first determines whether it has an undertaking that could affect historic properties, which are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. If so, it must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) to consult with during the process. It should also plan to involve the public, and identify other potential consulting parties. If it determines that it has no undertaking, or that its undertaking has no potential to affect historic properties, the agency has no further Section 106 obligations.

Identify historic properties

If the agency's undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria, in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them.

If questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the National Park Service. Section 106 review gives equal consideration to properties that have already been included in the National Register as well as those that meet National Register criteria.

If the agency finds that no historic properties are present or affected, it provides documentation to the SHPO/THPO and, barring any objection in 30 days, proceeds with its undertaking.

If the agency finds that historic properties are present, it proceeds to assess possible adverse effects.

Assess adverse effects

The agency, in consultation with the SHPO/THPO, makes an assessment of adverse effects on the identified historic properties based on criteria found in the Council's regulations.

If they agree that there will be **no adverse effect**, the agency proceeds with the undertaking and any agreed-upon conditions.

If the parties cannot agree or they find that there is an **adverse effect**, the agency begins consultation to identify ways to avoid, minimize, or mitigate adverse effects.

Resolve adverse effects

The agency consults with the SHPO/THPO and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public. The Council may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may agree that no such measures are possible, but that the adverse effects must be accepted in the public interest.

Implementation

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA.

Failure to resolve adverse effects

If consultation proves unproductive, the agency or the SHPO/THPO, or the Council itself, may terminate consultation. If a SHPO terminates consultation, the agency and the Council may conclude an MOA without SHPO involvement. However, if a THPO terminates consultation and the undertaking is on or affecting historic properties on tribal lands, the Council must provide its comments. The agency must submit appropriate documentation to the Council and request the Council's written comments. The agency head must take into account the Council's written comments in deciding how to proceed.

Tribes, Native Hawaiians, and the public

Public involvement is a key ingredient in successful Section 106 consultation, and the views of the public should be solicited and considered throughout the process.

The regulations also place major emphasis on consultation with Indian tribes and Native Hawaiian organizations, in keeping with the 1992 amendments to NHPA. Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the Federal

Government and Indian tribes. Even if an Indian tribe has not been certified by NPS to have a THPO who can act for the SHPO on its lands, it must be consulted about undertakings on or affecting its lands on the same basis and in addition to the SHPO.

SECTION 106 REGULATIONS
USERS GUIDE
REGULATIONS TEXT

Advisory Council on Historic Preservation

Section 106 Regulations Users Guide
Regulations Text

36 CFR Part 800

Protection of Historic Properties

For the reasons discussed in the **preamble**, the Advisory Council on Historic Preservation amends Title 36, Chapter VIII by revising part 800 to read as follows:

Part 800—Protection of Historic Properties

Subpart A—Purposes and Participants

- 800.1 Purposes.
- 800.2 Participants in the section 106 process.

Subpart B—The Section 106 Process

- 800.3 Initiation of the section 106 process.
- 800.4 Identification of historic properties.
- 800.5 Assessment of adverse effects.
- 800.6 Resolution of adverse effects.
- 800.7 Failure to resolve adverse effects.
- 800.8 Coordination with the National Environmental Policy Act.
- 800.9 Council review of section 106 compliance.
- 800.10 Special requirements for protecting National Historic Landmarks.
- 800.11 Documentation standards.
- 800.12 Emergency situations.
- 800.13 Post-review discoveries.

Subpart C—Program Alternatives

- 800.14 Federal agency program alternatives.
- 800.15 Tribal, State and Local Program Alternatives. [Reserved]
- 800.16 Definitions.

Appendix A—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

Authority: 16 U.S.C. 470s.

Subpart A:—Purposes and Participants

Sec. 800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to

accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the Agency Official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the Act.* Section 106 is related to other provisions of the Act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The Agency Official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit Agency Official from conducting or authorizing nondestructive project planning activities before completing compliance with Section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The Agency Official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

Sec. 800.2 Participants in section 106 process.

(a) *Agency Official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The Agency Official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the Agency Official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The Agency Official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the Act requires each Federal 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.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the Agency Official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the Agency Official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The Agency Official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the Agency Official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The Agency Official shall involve the consulting parties described in Sec. 800.2(c)

in findings and determinations made during the section 106 process. The Agency Official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the Agency Official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council*. The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to Agency Officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process*. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the Act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance*. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties*. The following parties have consultative roles in the section 106 process.

(1) *State Historic Preservation Officer*.

(i) The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the Act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with Sec. 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to Sec. 800.3(f)(3).

(2) *Tribal Historic Preservation Officer*.

(i) The Tribal Historic Preservation Officer (THPO) appointed or designated in accordance with the Act is the official representative of an Indian tribe for the purposes of section 106. If an Indian tribe has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(ii) If an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. For the purposes of subpart B of this part, such tribal representative shall be included in the term "THPO."

(3) *Indian tribes and Native Hawaiian organizations*. Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(i) The Agency Official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the Agency

Official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(ii) The Federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part is intended to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(iii) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal government and Indian tribes. The Agency Official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(iv) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the Act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(v) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an Agency Official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The Agency Official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(vi) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act may notify the Agency Official in writing that it is waiving its rights under Sec. 800.6(c)(1) to execute a Memorandum of Agreement.

(4) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the Agency Official for purposes of section 106.

(5) *Applicants for Federal assistance, permits, licenses and other approvals.* An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The Agency Official may authorize an applicant to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the Agency Official. The Agency Official shall notify the SHPO/THPO and other consulting parties when an applicant is so authorized.

(6) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.--*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The Agency Official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties.

the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The Agency Official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the Agency Official to consider in decisionmaking.

(3) *Use of agency procedures.* The Agency Official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B:—The Section 106 Process

Sec. 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The Agency Official shall determine whether the proposed Federal action is an undertaking as defined in Sec. 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking does not have the potential to cause effects on historic properties, the Agency Official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under Sec. 800.14 or a Programmatic Agreement in existence before the effective date of these regulations, the Agency Official shall follow the program alternative.

(b) *Coordinate with other reviews.* The Agency Official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the Agency Official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the Agency Official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The Agency Official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The Agency Official shall then initiate consultation with the appropriate Officer or Officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the Act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the Act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The Agency Official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the Agency Official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the Agency Official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the Agency Official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the Agency Official shall plan for involving the public in the section 106 process. The Agency Official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with Sec. 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the Agency Official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The Agency Official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The Agency Official shall invite any local governments or applicants that are entitled to be consulting parties under Sec. 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The Agency Official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The Agency Official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the Agency Official with the SHPO/THPO and other consulting parties may address multiple steps in Secs. 800.3-800.6 where the Agency Official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in Sec. 800.2(d).

Sec. 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* The Agency Official shall consult with the SHPO/THPO to:

- (1) Determine and document the area of potential effects, as defined in Sec. 800.16(d);
- (2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to Sec. 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The Agency Official should address concerns raised about confidentiality pursuant to Sec. 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under Sec. 800.4(a), and in consultation with the SHPO/THPO and any Indian tribe or native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the Agency Official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The Agency Official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The Agency Official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. *The Secretary's Standards and Guidelines for Identification* provide guidance on this subject. The Agency Official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The Agency Official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process to conduct identification and evaluation efforts. The Agency Official may also defer final identification and evaluation of historic properties if it is specifically provided for in a Memorandum of Agreement executed pursuant to Sec. 800.6, a Programmatic Agreement executed pursuant to Sec. 800.14(b), or the documents used by an Agency Official to comply with the National Environmental Policy Act pursuant to Sec. 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the Agency Official shall proceed with the identification and evaluation of historic properties in accordance with Secs. 800.4(b)(1) and (c).

(c) *Evaluate historic significance.* --

(1) *Apply National Register Criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. 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. The Agency Official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the Agency Official determines any of the National Register Criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the Agency Official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the Agency Official and the

SHPO/THPO do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the Agency Official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*—

(1) *No historic properties affected.* If the Agency Official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in Sec. 800.16(i), the Agency Official shall provide documentation of this finding as set forth in Sec. 800.11(d) to the SHPO/THPO. The Agency Official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the Agency Official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the Agency Official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the Agency Official's finding under Sec. 800.4(d)(1), the Agency Official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with Sec. 800.5.

Sec. 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the Agency Official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The Agency Official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(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.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to Sec. 800.4(b)(2).

(b) *Finding of no adverse effect.* The Agency Official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of Sec. 800.5(a)(1) or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the Agency Official proposes a finding of no adverse effect, the Agency Official shall notify all consulting parties of the finding and provide them with the documentation specified in Sec. 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to Sec. 800.5(c)(3), the Agency Official may proceed if the SHPO/THPO agrees with the finding. The Agency Official shall carry out the undertaking in accordance with Sec. 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.*

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The Agency Official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to Sec. 800.5(c)(3).

(ii) The Agency Official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the Agency Official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to Sec. 800.5(c)(3).

(iii) If the Council on its own initiative so requests within the 30-day review period, the Agency Official shall submit the finding, along with the documentation specified in Sec. 800.11(e), for review pursuant to Sec. 800.5(c)(3). A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to Sec. 800.5(c)(2), the Agency Official shall include the documentation specified in Sec. 800.11(e). The Council shall review the finding and notify the Agency Official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the Agency Official. The Council shall specify the basis for its determination. The Agency Official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of the receipt of the finding, the Agency Official may assume concurrence with the Agency Official's findings and proceed accordingly.

(d) *Results of assessment.--*

(1) *No adverse effect.* The Agency Official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of Sec. 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the Agency Official's responsibilities under section 106 and this part. If the Agency Official will not conduct the undertaking as proposed in the finding, the Agency Official shall reopen consultation under Sec. 800.5(a).

(2) *Adverse effect.* If an adverse effect is found, the Agency Official shall consult further to resolve the adverse effect pursuant to Sec. 800.6.

Sec. 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The Agency Official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The Agency Official shall notify the Council of the adverse effect finding by providing the documentation specified in Sec. 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The Agency Official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A Programmatic Agreement under Sec. 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the Agency Official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the Agency Official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with Sec. 800.6(b)(2). (iv) If the Council does not join the consultation, the Agency Official shall proceed with consultation in accordance with Sec. 800.6(b)(1).

(2) *Involve consulting parties.* In addition to the consulting parties identified under Sec. 800.3(f), the Agency Official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The Agency Official shall invite any individual or organization that will assume a specific role or responsibility in a Memorandum of Agreement to participate as a consulting party.

(3) *Provide documentation.* The Agency Official shall provide to all consulting parties the documentation specified in Sec. 800.11(e), subject to the confidentiality provisions of Sec. 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The Agency Official shall make information available to the public, including the documentation specified in Sec. 800.11(e), subject to the confidentiality provisions of Sec. 800.11(c). The Agency Official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The Agency Official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the Section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of Sec. 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the Act and other authorities may limit the disclosure of information under Secs. 800.6(a)(3) and (4). If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the Agency Official believes that there are other reasons to withhold information, the Agency Official shall comply with Sec. 800.11(c) regarding

the disclosure of such information.

(b) *Resolve adverse effects--*

(1) *Resolution without the Council.*

(i) The Agency Official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The Agency Official may use standard treatments established by the Council under Sec. 800.14(d) as a basis for a Memorandum of Agreement.

(iii) If the Council decides to join the consultation, the Agency Official shall follow Sec. 800.6(b)(2).

(iv) If the Agency Official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official must submit a copy of the executed Memorandum of Agreement, along with the documentation specified in Sec. 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the Agency Official, and the SHPO/THPO fail to agree on the terms of a Memorandum of Agreement, the Agency Official shall request the Council to join the consultation and provide the Council with the documentation set forth in Sec. 800.11(g). If the Council decides to join the consultation, the Agency Official shall proceed in accordance with Sec. 800.6(b)(2). If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with Sec. 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the Agency Official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under Sec. 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the Agency Official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(c) *Memorandum of Agreement.* A Memorandum of Agreement executed and implemented pursuant to this section evidences the Agency Official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. A Memorandum of Agreement executed pursuant to Sec. 800.6(b)(1) that is filed with the Council shall be considered to be an agreement with the Council for the purposes of Section 110(1) of the Act. The Agency Official shall ensure that the undertaking is carried out in accordance with the Memorandum of Agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The Agency Official and the SHPO/THPO are the signatories to a Memorandum of Agreement executed pursuant to Sec. 800.6(b)(1).

(ii) The Agency Official, the SHPO/THPO, and the Council are the signatories to a Memorandum of Agreement executed pursuant to Sec. 800.6(b)(2).

(iii) The Agency Official and the Council are signatories to a Memorandum of Agreement executed pursuant to Sec. 800.7(a)(2).

(2) *Invited signatories.*

(i) The Agency Official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a Memorandum of Agreement concerning such properties.

(ii) The signatories should invite any party that assumes a responsibility under a Memorandum of Agreement to be a signatory.

(iii) The refusal of any party invited to become a signatory to a Memorandum of Agreement pursuant to Sec. 800.6(c)(2)(i) or (ii) does not invalidate the Memorandum of Agreement.

(3) *Concurrence by others.* The Agency Official may invite all consulting parties to concur in the Memorandum of Agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the Memorandum of Agreement does not invalidate the Memorandum of Agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A Memorandum of Agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a Memorandum of Agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the Agency Official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a Memorandum of Agreement cannot be carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The Agency Official shall either execute a Memorandum of Agreement with signatories under Sec. 800.6(c)(1) or request the comments of the Council under Sec. 800.7(a).

(9) *Copies.* The Agency Official shall provide each consulting party with a copy of any Memorandum of Agreement executed pursuant to this subpart.

Sec. 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to Sec. 800.6(b)(2), the Agency Official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the Agency Official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to Sec. 800.7(c) and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the Agency Official and the Council may execute a Memorandum of Agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to Sec. 800.7(c).

(4) If the Council terminates consultation, the Council shall notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of the termination and comment under Sec. 800.7(c). The Council may consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed. The Council shall provide them to the Agency Official when it executes the Memorandum of Agreement.

(c) *Comments by the Council.--*

(1) *Preparation.* The Council shall provide an opportunity for the Agency Official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the Agency Official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under Secs 800.7(a) (1) or (3) or Sec. 800.8(c)(3), or termination by the Council under Sec. 800.6(b)(1)(v) or Sec.

800.7(a)(4), unless otherwise agreed to by the Agency Official.

(3) *Transmittal*. The Council shall provide its comments to the head of the agency requesting comment with copies to the Agency Official, the agency's Federal Preservation Officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment*. The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(1) of the Act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

Sec. 800.8 Coordination with the National Environmental Policy Act.

(a) *General principles.--*

(1) *Early coordination*. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an Environmental Impact Statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party rules*. SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues*. Agency Officials should ensure that preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and an EIS and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA*. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the Agency Official shall proceed with Section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes*. An Agency Official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in Secs. 800.3 through 800.6 if the Agency Official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with section 106*. During preparation of the EA or Draft EIS (DEIS) the Agency Official shall:

(i) Identify consulting parties either pursuant to Sec. 800.3(f) or through NEPA scoping process with

results consistent with Sec. 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of Secs. 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the Agency Official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors.

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.*

(i) The Agency Official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the Agency Official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standards set forth in Sec. 800.8(c)(1) or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the Agency Official receives such an objection, the Agency Official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the Agency Official's referral of an objection under Sec. 800.8(c)(2)(ii), the Council shall notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with Sec. 800.6(b)(2) or seek Council comments in accordance with Sec. 800.7(a), or that it disagrees with the objection, in which case the Agency Official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the Agency Official has found during the preparation of the EA, DEIS or EIS that the effects of the undertaking on historic properties are adverse, the Agency Official shall specify in the FONSI or the ROD the proposed measures to avoid, minimize or mitigate such effects and ensure that the approval of the undertaking is conditioned accordingly. The Agency Official's responsibilities under Section 106 and the procedures in this subpart shall then be satisfied when either the proposed measures have been adopted through a binding commitment on the agency, the applicant or other entities, as appropriate, or the Council has commented and received the response to such comments under Sec. 800.7. Where the NEPA process results in a FONSI, the Agency Official must adopt such a binding commitment through a Memorandum of Agreement drafted in compliance with Sec. 800.6(c). Where the NEPA process results in an EIS, the binding commitment does not have to be in the form of a Memorandum of Agreement drafted in compliance with Sec. 800.6(c).

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the Agency Official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to Sec. 800.8(c)(4)) are carried out, the Agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Secs. 800.3 through 800.6 will be followed as necessary.

Sec. 800.9 Council review of Section 106 compliance.

(a) *Assessment of Agency Official compliance for individual undertakings.* The Council may provide to the Agency Official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The Agency Official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an Agency Official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the Agency Official and the agency's Federal Preservation Officer and allow 30 days for the Agency Official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the Agency Official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.--*

(1) *Agency responsibility.* Section 110(k) of the Act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the Act governs its implementation.

(2) *Consultation with the Council.* When an Agency Official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the Agency Official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the Agency Official's notification, unless otherwise agreed to by the Agency Official, the Council shall provide the Agency Official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The Agency Official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an Agency Official, after consulting with the Council, determines to grant the assistance, the Agency Official shall comply with Secs. 800.3-800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the Section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the Act.

(1) *Information from participants.* Section 203 of the Act authorizes the Council to obtain information

from Federal agencies necessary to conduct evaluation of the Section 106 process. The Agency Official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the Section 106 process.

(2) *Improving the operation of Section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an Agency Official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the procedures in this part, the Council may participate in individual case reviews in a manner and for a period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the Act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

Sec. 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertaking, the Council shall use the process set forth in Secs. 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The Agency Official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under Sec. 800.6.

(c) *Involvement of the Secretary.* The Agency Official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the Act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any Memoranda of Agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

Sec. 800.11 Documentation standards.

(a) *Adequacy of documentation.* The Agency Official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. When an Agency Official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the Agency Official and specify the information needed to meet the standard. At the request of the Agency Official or any of the consulting parties, the Council shall review any disputes

over whether documentation standards are met and provide its views to the Agency Official and the consulting parties.

(b) *Format.* The Agency Official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality--*

(1) *Authority to withhold information.* Section 304 of the Act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the Act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to the criteria above, the Secretary, in consultation with such Federal agency head or official, shall determine whom may have access to the information for the purpose of carrying out the Act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of Indian tribes and Native Hawaiian organizations related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the Section 106 process and may authorize the Agency Official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

- (1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;
- (2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to Sec. 800.4(b); and
- (3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

- (1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- (2) A description of the steps taken to identify historic properties;
- (3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- (4) A description of the undertaking's effects on historic properties.
- (5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
- (6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of Agreement.* When a Memorandum of Agreement is filed with the Council, the documentation shall include any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a Memorandum of Agreement.* Documentation shall include:

- (1) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;
- (2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the Agency Official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and (4) Any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1).

Sec. 800.12 Emergency situations.

(a) *Agency procedures.* The Agency Official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government or the governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of Secs. 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President a tribal government or the governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to Sec. 800.12(a), the Agency Official may comply with section 106 by:

(1) Following a Programmatic Agreement developed pursuant to Sec. 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the Agency Official determines that circumstances do not permit seven days for comment, the Agency Official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the Agency Official for section 106 compliance, Sec. 800.12 (a) and (b) also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the Agency Official shall comply with Secs. 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

Sec. 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.--*

(1) *Using a Programmatic Agreement.* An Agency Official may develop a Programmatic Agreement pursuant to Sec. 800.14(b) to govern the actions to be taken when historic properties are discovered

during the implementation of an undertaking.

(2) *Using agreement documents.* When the Agency Official's identification efforts in accordance with Sec. 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no Programmatic Agreement has been developed pursuant to Sec. 800.13(a)(1), the Agency Official shall include in any finding of no adverse effect or Memorandum of Agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the Agency Official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the Agency Official has completed the section 106 process without establishing a process under Sec. 800.13(a), the Agency Official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the Agency Official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to Sec. 800.6; or

(2) If the Agency Official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archaeological data, the Agency Official may comply with the Archaeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the Agency Official has approved the undertaking and construction has commenced, determine actions that the Agency Official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the actions proposed by the Agency Official to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification and the Agency Official shall take into account their recommendations and carry out appropriate actions. The Agency Official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The Agency Official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of Section 106. The Agency Official shall specify the National Register Criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the Agency Official has completed the section 106 process without establishing a process under Sec. 800.13(a) and construction has commenced, the Agency Official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C:—Program Alternatives

Sec. 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An Agency Official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the Act.

(1) *Development of procedures.* The Agency Official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPOs, as appropriate, and

Indian tribes and Native Hawaiian organizations, as specified in Sec. 800.14(f), in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The Agency Official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the Agency Official and the Agency Official may adopt them as final alternate procedures.

(3) *Notice.* The Agency Official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the Act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic Agreements.* The Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of Programmatic Agreements.* A Programmatic Agreement may be used:

- (i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;
- (ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking
- (iii) When nonfederal parties are delegated major decisionmaking responsibilities;
- (iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or
- (v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing Programmatic Agreements for agency programs--*

(i) *Consultation.* The consultation shall involve, as appropriate, SHPO/ THPOs, the National Conference of State Historic Preservation Officers (NCHSPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the Programmatic Agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Agency Official shall also follow Sec. 800.14(f).

(ii) *Public Participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The Agency Official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The Programmatic Agreement shall take effect when executed by the Council, the Agency Official and the appropriate SHPOs/ THPOs when the Programmatic Agreement concerns a specific region or the President of NCSHPO when NCSHPO has participated in the consultation. A Programmatic Agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the President of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional Programmatic Agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the Act and the SHPO is signatory to the Programmatic Agreement, the THPO assumes the

role of a signatory, including the right to terminate a regional Programmatic Agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The Agency Official shall notify the parties with which it has consulted that a Programmatic Agreement has been executed under this subsection, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) *Terms not carried out or termination.* If the Council determines that the terms of a Programmatic Agreement are not being carried out, or if such an agreement is terminated, the Agency Official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing Programmatic Agreements for complex or multiple undertakings.* Consultation to develop a Programmatic Agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow Sec. 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the Agency Official shall comply with the provisions of subpart B of this part for each individual undertaking.

(c) *Exempted categories.--*

(1) *Criteria for establishing.* An Agency Official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in Sec. 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purpose of the Act.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The Agency Official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Agency Official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in Sec. 800.14(f).

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of Sec. 800.14(c)(1) have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the public. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt. The decision shall be based on the consistency of the exemption with the purposes of the Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the Agency Official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the Agency Official or when the Council determines that the exemption no longer meets the criteria of Sec. 800.14(c)(1). The Council shall notify the Agency Official 30 days before termination becomes effective.

(8) *Notice.* The Agency Official shall publish notice of any approved exemption in the Federal

Register.

(d) *Standard treatments.*—

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category or effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interests. Where an Agency Official has proposed a standard treatment, the Council may request the Agency Official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in Sec. 800.14(f).

(5) *Termination.* The Council may terminate a standard treatment by publication of notice in the Federal Register 30 days before the termination takes effect.

(e) *Program comments.* An Agency Official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under Secs. 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The Agency Official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the Agency Official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standard in subpart A of this part. The Agency Official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in Sec. 800.14(f).

(5) *Council action.* Unless the Council requests additional documentation, notifies the Agency Official that it will decline to comment, or obtains the consent of the Agency Official to extend the period for providing comment, the Council shall comment to the Agency Official within 45 days of the request.

(i) If the Council comments, the Agency Official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the Agency Official shall continue to comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the Agency Official shall comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an Agency Official proposes a program alternative pursuant to Sec. 800.14 (a)-(e), the Agency Official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the Agency Official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the Agency Official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them.

(2) *Results of consultation.* The Agency Official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The Agency Official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

Sec. 800.15 Tribal, State, and Local Program Alternatives. [Reserved]

Sec. 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval* of the expenditure of funds means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause changes 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.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *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. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an Agency Official that effectively precludes the Council from providing comments which the Agency Official can meaningfully consider prior to the approval of

the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of Agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic Agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with Sec. 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the Act. For the purposes of subpart B of this part, the term also includes the designated representative of an Indian tribe that has not formally assumed the SHPO's responsibilities when an undertaking occurs on or affects historic properties on the tribal lands of the Indian tribe. (See Sec. 800.2(c)(2)).

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria For Council Involvement in Reviewing Individual Section 106 Cases

Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

General Policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

Specific Criteria. The Council is likely to enter the section 106 process at the steps specified in the revised regulations when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to Section 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: May 7, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99-12054 Filed 5-17-99; 8:45 am]

NATIONAL REGISTER EVALUATION CRITERIA

Section 106 Regulations Users Guide National Register Evaluation Criteria

National Register criteria for evaluating properties. The criteria applied to evaluate properties (other than areas of the National Park System and National Historic Landmarks) for the National Register are listed below. These criteria are worded in a manner to provide for a wide diversity of resources. The following criteria shall be used in evaluating properties for nomination to the National Register, by the National Park Service (NPS) in reviewing nominations, and for evaluating National Register eligibility of properties.

Guidance in applying the criteria is further discussed in the "How To" publications, Standards & Guidelines sheets, and Keeper's opinions of the National Register. Such materials are available upon request from National Register of Historic Places Publications, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127 (phone: 202-343-5726).

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 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, or 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 significant primarily 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 productive life.

(d) A **cemetery** which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(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. [This exception is described further in NPS's "How To" booklet No. 2, entitled "How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years," available from NPS.]

AVISO SOBRE EFECTO
AMBIENTAL NO
SIGNIFICATIVO...

**AVISO SOBRE EFECTO AMBIENTAL NO SIGNIFICATIVO
E INTENCION DE SOLICITAR LIBERACION DE FONDOS
A TODAS LAS AGENCIAS, GRUPOS Y PERSONAS INTERESADAS**

El Municipio de _____ solicitará a la Oficina del Comisionado de Asuntos Municipales (OCAM), la liberación de los fondos federales asignados al Gobierno de Puerto Rico conforme al Programa de Asignaciones en Bloque a los Estados del Título I de la Ley Vivienda y Desarrollo Comunal de 1974, según enmendada, para el siguiente proyecto.

El Municipio ha determinado que las actividades que conlleva este proyecto no constituyen una acción significativa que amenace la calidad humana o pueda afectar los recursos culturales, históricos o el medio ambiente según las reglamentaciones de la Ley de Política Pública Ambiental Nacional (NEPA) expuesta en la Parte 58 del Título 24 del Código de Reglas Federales. Las actividades no tienen el tamaño, la escala o la intensidad suficiente para requerir la preparación de una Declaración de Impacto Ambiental. La determinación se hizo después de preparar una Evaluación Ambiental, de acuerdo con la reglamentación federal estipulada en la Parte 58 del Título 24 del Código de Reglas Federales.

Un Registro de Evaluación Ambiental ("Environmental Review Record") ha sido preparado por el Municipio el cual documenta la evaluación de las actividades. Aunque no se contemplan realizar Estudios Ambientales adicionales después de liberados los fondos, el Municipio velará por que se cumplan con los estatutos y reglamentos requeridos dentro del Proceso de Revisión Ambiental, expuesto en la Parte 58 del Código de Reglas Federales. El registro contiene la evaluación del impacto del proyecto sobre recursos culturales, históricos y medio ambiente. Dicho documento estará disponible para ser examinado por el público interesado, entre las 8:30 a.m. y 4:00 p.m. en la siguiente dirección:

**Municipio de _____
Oficina de Programas Federales
_____, Puerto Rico**

El Municipio, recibirá y tomará en consideración cualquier comentario o recomendación de cualquier agencia, grupo, o personas interesadas en relación con el proyecto arriba indicado o cualesquiera secciones de este Aviso, sometidas por escrito y no más tarde de quince (15) días calendarios después de la fecha de publicación de este Aviso.

Una vez transcurridos los quince días, el Municipio someterá a la Oficina del Comisionado de Asuntos Municipales (OCAM) la certificación y Solicitud de Liberación de Fondos correspondientes.

El Municipio certificará a la Oficina del Comisionado de Asuntos Municipales que el Municipio y el Hon. _____ en su capacidad oficial como Alcalde, consienten en aceptar la jurisdicción de las cortes federales en caso de iniciarse una acción para hacer cumplir las responsabilidades respecto a evaluaciones, decisiones y acciones ambientales vinculadas directamente con el proyecto. El efecto legal de la certificación es que al esta ser aprobada por la OCAM, el municipio podrá usar los fondos del Programa de Asignaciones en Bloque al Estado y la OCAM habrá satisfecho sus responsabilidades conforme a la Ley Nacional de Política Ambiental de 1969.

Cualquier persona o agencia podrá objetar la solicitud para la liberación de fondos y la certificación sometida a la OCAM por el Municipio de _____. Las objeciones deberán ser enviadas a la siguiente dirección:

**Oficina del Comisionado de Asuntos Municipales
PO Box 70167
San Juan, Puerto Rico 00936**

Las objeciones deben cumplir con las condiciones y procedimientos expuestos en la Sub.-parte "H" de la Parte 58 del Título 24 del Código de Reglas Federales. OCAM considerara objeciones solo si las mismas están basadas en cualquiera de los fundamentos expuestos en las Secciones 58.75 y 58.76 de la referida Sub.-parte "H". Todas las objeciones deberán ser recibidas por la Oficina del Comisionado de Asuntos Municipales dentro de un periodo de 15 días contados a partir de la fecha cuando OCAM reciba del Municipio la solicitud para la liberación de fondos y la certificación correspondiente.

Hon. _____
Alcalde

·
:
·

AVISO DE INTENCION DE
SOLICITAR LIBERACION DE
FONDOS...

**AVISO E INTENCION DE SOLICITAR LIBERACION DE FONDOS
A TODAS LAS AGENCIAS, GRUPOS Y PERSONAS INTERESADAS**

El Municipio de _____ solicitará a la Oficina del Comisionado de Asuntos Municipales (OCAM), dentro de los próximos siete (7) días calendarios que libere los fondos federales, conforme al Programa de Asignaciones en Bloque a los Estados del Título I de la Ley Vivienda y Desarrollo Comunal de 1974, según enmendada, para el siguiente proyecto.

El mismo ha sido considerado categóricamente excluido de cumplir con los requerimientos de la Ley de Política Publica Ambiental Nacional (NEPA), expuesto en la Parte 58 del Título 24 del Código de Reglas Federales.

El Municipio ha preparado un Registro de Evaluación Ambiental ("Environmental Review Record") el cual documenta la evaluación del proyecto. Este registro contiene la evaluación del impacto del proyecto sobre recursos culturales, históricos y medio ambiente. Dicho documento esta disponible para ser examinado por el público interesado, entre las 8:30 a.m. y 4:00 p.m. en la siguiente dirección:

**Municipio de _____
Oficina de Programas Federales
_____, Puerto Rico**

El Municipio esta certificando a la Oficina del Comisionado de Asuntos Municipales que el Municipio y el Hon. _____ en su capacidad oficial como Alcalde, consienten en aceptar la jurisdicción de las cortes federales en caso de iniciarse una acción para hacer cumplir las responsabilidades respecto a evaluaciones, decisiones y acciones ambientales vinculadas directamente con el proyecto. El efecto legal de la certificación es que al esta ser aprobada por la OCAM, el municipio podrá usar los fondos del Programa de Asignaciones en Bloque al Estado y la OCAM habrá satisfecho sus responsabilidades conforme a la Ley Nacional de Política Ambiental de 1969.

Cualquier persona o agencia podrá objetar la solicitud para la liberación de fondos y la certificación sometida a la OCAM por el Municipio de _____. Las objeciones deberán ser enviadas a la siguiente dirección:

**Oficina del Comisionado de Asuntos Municipales
PO Box 70167
San Juan, Puerto Rico 00936**

Las objeciones deben cumplir con las condiciones y procedimientos expuestos en la Sub.-parte "H" de la Parte 58 del Título 24 del Código de Reglas Federales. OCAM considerara objeciones solo si las mismas están basadas en cualquiera de los fundamentos expuestos en las Secciones 58.75 y 58.76 de la referida Sub.-parte "H". Todas las objeciones deberán ser recibidas por la Oficina del Comisionado de Asuntos Municipales dentro de un periodo de 15 días contados a partir de la fecha cuando OCAM reciba del Municipio la solicitud para la liberación de fondos y la certificación correspondiente.

Hon. _____
Alcalde