

## National Historic Preservation Act (NHPA)

### What is the National Historic Preservation Act?

The National Historic Preservation Act (NHPA) of 1966, as amended, established processes to assess, designate, and protect historic and cultural resources. The NHPA created the Advisory Council on Historic Preservation (ACHP) and authorized it to review Federal agencies' historic preservation programs. The NHPA also directed the Secretary of Interior to establish and maintain the National Register of Historic Places (the National Register). The NHPA created the role of the State Historic Preservation Officer (SHPO) to administer state historic preservation programs and consult with Federal agencies on their proposed actions (known as an undertaking). It also established the Tribal Historic Preservation Officer (THPO) role as a specific SHPO-designated entity with preservation and oversight duties for Federally-recognized Native American tribes.

**Historic property.** A 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.

### What is the evaluation criteria used to determine if a property is eligible for inclusion in the National Register?

Federal agencies, state and local governments, and other consulting parties must use the following criteria (located at 36 CFR Part 60) to evaluate whether a property may be eligible for the National Register:

- 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 is:
  - Associated with significant historic events; or
  - Associated with the lives of persons significant in our past; or
  - Embodies 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

- Yields, or is likely to yield, information important in prehistory or history.

The phrase *eligible for inclusion in the National Register* includes properties that meet the National Register evaluation criteria, and properties that have been formally identified for inclusion on the National Register. Any property considered eligible for National Register inclusion must be treated as historic property under the NHPA.

### What are the major provisions of NHPA regarding Federal real property disposal?

Two key NHPA provisions defining responsibilities in Federal real property disposal are:

- **Section 110** requires each Landholding Agency (LHA) to identify, evaluate, and protect any historic property, and ensure that the historic property within its inventory is managed with consideration for its historic value. When an LHA reports property excess to the General Services Administration (GSA), under Section 110 the LHA is responsible for (1) the identification of historic resources within the Report of Excess (ROE) and (2) the management of those resources until property transfer or conveyance.
- **Section 106** requires each Federal agency to consider the effects of its actions (i.e., "undertakings") on any historic property listed, or eligible for listing, on the National Register. When disposing of Federal real property, GSA is responsible for complying with Section 106 in determining the effects of a proposed disposal undertaking on historic resources. Through consultation with the SHPO/THPO, GSA is responsible for mitigating the potential for adverse effects for each property disposal undertaking. Implementing regulations for Section 106 are located at 36 CFR Part 800.

**Federal undertaking.** Any project, activity or program 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; and those requiring a Federal permit, license or approval that may result in changes in the character or use of historic properties potentially resulting in an adverse effect.

### What are the LHA's NHPA responsibilities under Section 110 when reporting property excess to GSA?

The LHA is responsible for identifying any historical and cultural resources (including archaeological resources) on the subject property with the ROE. The LHA should identify any National Register-eligible or listed historic and cultural resources (including archaeological resources) on a property and should inform GSA whether the property is located within or adjacent to a National Register-listed historic district. The LHA also provides GSA with any Determination of Eligibility for historic resources on the subject property.

When reporting a property excess to GSA, the LHA is only responsible for fulfilling Section 110 requirements and ensuring the protection and maintenance of any historic properties until the property is transferred or conveyed. GSA as the disposal agency will comply with the Section 106 requirements for the property disposal undertaking.

The LHA is also responsible for protecting and maintaining its historic resources under Section 110 until GSA completes the property disposal. The LHA should review its protection and maintenance plan to ensure historic resources will not suffer demolition or neglect during the disposal time frame.

The LHA's compliance with Section 110 provides GSA with a baseline to identify stakeholder outreach needs and sets the stage for GSA's Section 106 consultation. If the LHA requires assistance completing its Section 110 responsibilities with the ROE, GSA may assist the LHA with necessary documentation on a reimbursable basis.

**Determination of Eligibility.** A decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register. A Determination of Eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite.

### What does the Section 106 process entail for Federal real property disposal undertaking?

The Section 106 process consists of four sequential steps. For Federal real property outlease or conveyance actions, the Section 106 process begins when GSA defines its undertaking for a specific property (e.g., public benefit

conveyance or sale). GSA proceeds to evaluate whether there are eligible or listed historic resources in the Area of Potential Effect (APE) and defines whether there could be any adverse effects resulting from the undertaking.

An "adverse effect" is a determination that a Federal undertaking may directly or indirectly alter a historic resource's characteristics in a manner that would diminish the integrity of its location, design, setting, materials, workmanship, feeling, or association. 36 CFR Part 800 includes the "transfer, lease, or sale of the property out of the Federal ownership or control without proper mitigation measures" in its definition of adverse effects. As such, when GSA plans to lease or convey historic property out of Federal ownership or control, GSA initiates consultation with the SHPO/THPO to identify appropriate measures that will mitigate the potential for adverse effects on historic resources. In most instances, GSA receives a letter of "no adverse effect" from the SHPO/THPO that documents that GSA's proposed measures will mitigate the potential for adverse effects. GSA and the SHPO/THPO (and ACHP as needed) will develop a Memorandum of Agreement (MOA) in certain instances where the property's significance necessitates a more detailed agreement.

#### The Section 106 Process

##### 1 Initiate Section 106 Process

- Establish the undertaking (e.g., property disposal).
- Identify the appropriate SHPO/THPO.
- Identify other consulting parties.

##### 2 Identify Historic Properties

- Determine the APE for the undertaking.
- Identify potentially affected historic resources within the APE.

##### 3 Assess Adverse Effects

- Determine if the undertaking has the potential to cause an adverse effect on historic resources.
- Develop mitigation measures to limit the potential for adverse effects through consultation with the SHPO/THPO.

##### 4 Resolve Adverse Effects

- Receive concurrence from the SHPO/THPO on mitigation measures.
- If necessary, develop an MOA to address significant resources.

### How does GSA work with the SHPO/THPO (and the ACHP as needed) to mitigate the potential for adverse effects on historic resources as a result of the property disposal undertaking?

In 36 CFR Part 800, the outlease or conveyance of historic real property out of Federal control or ownership without mitigation measures is identified as an example of an adverse effect. However, the potential for such adverse effects can be mitigated through a range of mechanisms negotiated with the SHPO/THPO (and the ACHP, when applicable). Examples of mitigation measures used when historic property is conveyed out of Federal ownership include photo documentation, deed notices, deed restrictions, or other terms in property transfer or conveyance documents that protect a property's historic features.

### What role does the ACHP play in the Section 106 consultation process for a Federal undertaking?

If a Federal agency and SHPO/THPO disagree during the Section 106 process, the ACHP is generally invited to participate by either the SHPO/THPO or the Federal agency. While there are certain circumstances in which the ACHP may use its authority to comment on proposed Federal undertakings and associated mitigation measures, the SHPO/THPO typically manage these consultation actions. The ACHP's involvement is generally limited to projects requiring conflict resolution or those involving highly significant properties or other unique considerations.

The LHA may also serve as a consulting party, as needed, in the GSA's Section 106 Consultation for a property disposal undertaking. In addition, other parties, such as the grantee, the state or local government, and preservation groups may also serve as consulting parties.

