

Historic Preservation for Washington State

24 CFR Part 58

General requirements	Legislation	Regulation
Protect sites, buildings, and objects with national, state or local historic, cultural and/or archeological significance. Identify effects of project on properties	National Historic Preservation Act, 16 U.S.C. 470(f), section 106	36 CFR Part 800 24 CFR Part 58.5(a)

1. Does the project include new construction; demolition; the acquisition of undeveloped land; or any activity that requires ground disturbance (defined as one cubic foot of disturbed soil)?

- ☐ No: PROCEED to #2.
☒ Yes: PROCEED to #3

2. Does the project include repair, rehabilitation or conversion of existing properties; involve a structure that is MORE than 45 years old, is not in a historic district and has no ground disturbing activities?

- ☐ No: STOP here. The Section 106 Historic Preservation review is complete.
 Record your determination that there is no potential to cause effect, including the age of the existing building and information from the National Register to show that the activity is not in a historic district, on the Statutory Worksheet or Environmental Assessment.
☒ Yes: PROCEED to #3

3. Consult with SHPO or THPO and any tribes or groups that may have an interest in the project to determine if the project is eligible for the National Historic Register.

- You must define and consider the Area of Potential Effect (APE). The APE is the geographic area within which an undertaking may directly or indirectly cause changes in the character or use of historic properties. The APE is influenced by the scale and nature of an undertaking. (36 CFR Part 800.16).
- Determine if there are tribes or groups that have an interest in the historic aspects of the project and invite them to participate in the consultation. For ground disturbing activities, you must make a reasonable and good faith effort to identify Indian tribes that may have an interest. HUD's website lists interested tribes by county: <https://egis.hud.gov/tdat/> It is suggested that you go to the Tribal website or contact the SHPO to make sure contact information is current.
- Consult the State Historic Preservation Officer (SHPO), or if the project is on certain tribal lands, the Tribal Historic Preservation Officer (THPO), with details of the project and project site and your determination if it is eligible for the National Historic Register. SHPO or THPO has 30 days from receipt of a well-documented request of review of your determination. We recommend sending the letter with a return receipt form to document the contact. If they do not respond within the timeframe, or provide a description of additional information needed, you may proceed with the next step of the process based on your finding or consult with the Advisory Council on Historic Preservation (ACHP).

State Historic Preservation Officer contacts: <http://www.nps.gov/nr/shpolist.htm>
 Tribal Historic Preservation Officers contacts: <http://www.nathpo.org/map.html>

Proceed as appropriate based on the Finding:

- ☒ **No Historic Properties Affected:** STOP here. The Section 106 Historic Preservation review is complete. Attach SHPO/THPO concurrence, copies of letters to and from other interested parties and the tribes, and your response to the ERR. If SHPO/THPO did not respond within 30 days, your dated letter documents compliance. Record your determination of no historic properties affected on the Statutory Worksheet or Environmental Assessment.

- ☐ **No Adverse Effect on Historic Property:** STOP here. The Section 106 Historic Preservation review is complete. **Categorically Excluded projects (24 CFR Part 58.35(a)) CANNOT convert to exempt with this determination.**

Attach SHPO/THPO concurrence, copies of letters to and from other interested parties and the tribes, and your response to the ERR. Record your determination of no adverse affect on historic properties on the Statutory Worksheet or Environmental Assessment.

- ☐ **Adverse Effect on Historic Property** Resolve Adverse Effects per 800.6 in consultation with SHPO/THPO, the ACHP if participating, and any consulting parties. The loan or grant may not be approved until adverse effects are resolved according to 800.6 or you have complied with 36 CFR Part 800. **Categorically Excluded projects (24 CFR Part 58.35(a)) CANNOT convert to exempt with this determination.**

Make sure that the resolution is fully documented in your ERR with all SHPO/THPO correspondence, copies of letters to and from other interested parties and the tribes, surveys, MOAs etc.

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Per 36 CFR 800.4 and 36 CFR 800.5, the lead federal agency must consult with the Washington State Historic Preservation Officer (SHPO) and Department of Archaeology and Historic Preservation (DAHP) for each step of the Section 106 process. The U.S. Department of Housing and Urban Development has legally delegated their authority to you, and therefore, you must consult with DAHP. Consultation with DAHP consists of letterhead-to-letterhead exchange of each step, which are as follows:

- ☐ Step 1: Initiate consultation by defining the undertaking. Please provide documentation of your legal delegation from HUD to consult with SHPO and DAHP at this time.
- ☐ Step 2: Definition of the Area of Potential Effects (APE)
- ☐ Step 3: Survey and Methodology
- ☐ Step 4: Determination of Eligibility
- ☐ Step 5: Assessment of Adverse Effects
- ☐ Step 6: Resolution of Adverse Effects

Steps may be consolidated into fewer consultations, but SHPO and DAHP must be afforded an opportunity to consult on each step. DAHP has consolidated Section 106 consultation into three forms.*

1. EZ-1 for ground disturbing activities: a fillable PDF. Download, complete, and send to 106@dahp.wa.gov. May be used to initiate consultation and describe the Undertaking (Step 1), and to define the APE (Step 2).

2. EZ-2 for built environment resources (buildings, structures, sites, objects, districts). Entered directly into WISAARD <https://dahp.wa.gov/project-review/wisaard-system>. May be used to offer a determination of eligibility (Step 4). Depending on the scope of the undertaking, or if cultural resource professionals are already being retained for the undertaking, Historic Property Inventory forms may be requested, in order to ensure the level of identification efforts is commensurate with the undertaking.
3. EZ-3 for resources that have been determined eligible for listing in the National Register of Historic Places or are currently listed in the National Register. A fillable PDF. Download, complete, and send to 106@dahp.wa.gov. May be used only after Step 4 to determine effects on eligible or listed properties.

Please visit their website for more information:

- Section 106: <https://dahp.wa.gov/section106>.
- EZ forms: <https://dahp.wa.gov/project-review/ez-forms>.

Tribal consultation is a separate responsibility from consultation with DAHP. You must determine if there are tribes or groups that have an interest in the historic aspects of the project and invite them to participate in the consultation. HUD's website lists interested tribes by county: <https://egis.hud.gov/tdat/>. It is suggested that you go to the Tribal website, or you may contact DAHP, to inquire about up to date contact information, but DAHP cannot consult with Tribes on your behalf.

*As of 2019, DAHP is rolling out new EZ forms. Please visit their website for any updates.