

## California Office of Historic Preservation

### Detailed Recommendations for Section 106 Consultation Submittals

This document provides guidance for federal agencies consulting with the State Historic Preservation Officer (SHPO) under Section 106 of the [National Historic Preservation Act](#) and its implementing regulations at [36 CFR Part 800](#) (a [summary of the regulations](#) is also available). It explains California-specific preferences for Section 106 submittals, but does not replace other guidance such as National Register Bulletins and Advisory Council on Historic Preservation (ACHP) statements.

#### Section I: General Information About the Undertaking

- Identify if consultation is being initiated for a new undertaking or if continuing consultation on an ongoing undertaking that has had previous Section 106 review. If the latter, provide copies of previous letters to SHPO and responses received if there was a break or lapse in the consultation.

If providing more information related to a submittal already sent to the SHPO, provide the OHP reference number if available.

- Identify if consulting directly under 36 CFR 800 (the regulations implementing Section 106), under a PA or MOA, or if the consultation is being coordinated with the National Environmental Policy Act (NEPA).

If consulting under an agreement document, indicate the document's name and date, and, if applicable, the specific stipulation.

- Provide the name of the undertaking, street address (if applicable), city, and county.

Indicate the name the agency is using to identify the undertaking and its location. Include street address and city if those are applicable to the location. If the undertaking crosses into more than one city and/or county, list all cities and counties associated with the undertaking's location.

- Indicate if the federal agency has begun its review process under the National Environmental Policy Act (NEPA) and whether there are scope and schedule implications for complying with Section 106.

*Note: If there are questions regarding complying with 36 CFR 800.8(c), contact the OHP reviewer assigned to the consulting agency and see [NEPA and NHPA: A Handbook for Integrating NEPA and Section 106](#).*

#### Section II: Contact Information

- Provide the name of the federal agency responsible for the undertaking, and the agency representative's contact information. Include full contact information (i.e., the representative's name, mailing and street addresses, phone number, and email address).

*Note: Every undertaking has a federal funding, licensing, or permitting agency. If you do not know your federal agency or the contact person, contact the party that is requiring you to request Section 106 consultation to obtain this information.*

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- If other federal agencies are involved, explain roles and responsibilities, specifically which Agency will serve as lead for Section 106 compliance and any other consultation those Agencies might have performed.
- If your agency/organization has been delegated responsibility for consultation by a federal agency, provide a letter of delegation from the agency. Obtain this letter *before* initiating consultation with OHP.
- If applicable, provide the state agency name and information regarding the contact person at that agency. Include full contact information (i.e., the representative's name, mailing and street addresses, phone number, and email address).
- If this consultation request is part of a grant program, include the name of the program. For example, Land and Water Conservation Fund (under the National Park Service), Regional Trails Program (under the Federal Highway Administration), etc.
- If different from the contact people referenced above, provide information regarding the contact person for this specific consultation request. Include full contact information (i.e., the representative's name, mailing and street addresses, phone number, and email address).

### Section III: Description of Undertaking and Area of Potential Effects (APE)

- Provide a detailed, narrative Project Description, including project schedule if known. Describe in narrative form all the work that will be undertaken (plans, specifications, environmental documents, etc., are helpful but should be used to supplement, not replace, this description). Be sure to identify the undertaking's purpose (in brief), acreage, and location. Include any information about building removals, rehabilitation, and landscape alterations such as sidewalk or tree removals. The project description should include enough detail to fully communicate the action, especially with regard to its potential effects on historic properties. Include any known information about the anticipated project schedule. It is acceptable to reference specific pages in attached technical reports that provide additional project details, however the narrative that is submitted must contain sufficient enough information to understand the project and its potential to affect historic properties.

*Note: The federal agency is mandated to assess the effects that an undertaking may have on historic properties only. Economic benefits and/or impacts to the natural and social environment are not relevant unless these bear some connection to the effects on historic properties.*

- Provide a Project Location Map depicting where the undertaking is located within the state.
- Provide a narrative APE Description. [36 CFR Part 800.4(a)(1)]

*Note: All federal undertakings have an APE. The APE is defined in 36 CFR 800.16(d) as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may*

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*be different for different kinds of effects caused by the undertaking.” In most instances, the APE is not simply the undertaking’s physical boundaries or right-of-way.*

Include the horizontal and vertical extents of proposed work (including ancillary and support locations such as staging and lay down areas, access routes, borrow and disposal areas, and mitigation parcels), a description of the steps taken to identify the APE, and a justification for the APE boundaries chosen. The APE should also take indirect effects into account (e.g., visual and auditory effects, land use changes, traffic patterns, public access, etc.). The indirect APE should be clearly described. The APE can be modified through consultation as project refinements are made and exact locations and dimensions of all project components become known. It may be prudent to start with a study area early in project planning that is later refined to an APE for consultation with SHPO.

- ❑ Provide an APE Map on a 7.5-minute USGS topographic quad, aerial imagery, or another map showing the APE in appropriate detail and scale. More than one map may be necessary.

Ensure the map(s) clearly outlines the APE and depicts and labels all project elements discussed in the project description. Whatever type of map(s) is submitted, it needs to adequately portray the APE so that the extent of the APE as well as the location of all items discussed in the project description can be clearly understood. Consistency in mapping formats used is highly advisable.

For example,

1. If no properties or resources are present, the project’s APE map should simply be of sufficient scale to document the APE.
2. Or, if properties or resources are present (regardless of their potential significance for the National Register), the project’s APE should be projected on aerial photos and be of sufficient scale (1 inch=200 feet is preferred) and have enough project detail to demonstrate the relationship of historic properties to the APE. This is especially important in order to document a finding of No Historic Properties Affected or a finding of No Adverse Effect. The map(s) should clearly show the APE, the location of all properties discussed, the boundaries of any eligible or listed historic properties, and the boundaries of any protection zones such as Environmentally Sensitive Areas (ESAs), if applicable. If any part of a property may be affected, the APE should encompass the entire property, including the reasonably anticipated or known boundaries of archaeological sites. When dealing with large landscapes, extensive functional systems, large historic districts, or long linear features, please contact the SHPO reviewer for further guidance on level of effort for identification and assessment of effect.

All maps and aerial photographs should include a scale, a North arrow, and clear labels and legend.

If using a USGS map that does not clearly show the name of the USGS quadrangle as well as the Township Number, Range, and Section number(s), include this information. The USGS quadrangle site is [geonames.usgs.gov/pls/gnispublic/f?p=111:1:270765758809663](https://geonames.usgs.gov/pls/gnispublic/f?p=111:1:270765758809663).

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Ensure that lines used are of sufficient weight and color to clearly delineate boundaries of sites from the background map and the APE boundary.

- Request the SHPO's comments** on the adequacy of the APE for the undertaking.

### Section IIIA: Ground-Disturbing Activity

*Note: Ground-disturbing activities include excavation, grading, tree removal and planting, utility installation, etc.*

If the undertaking involves ground-disturbing work:

- Provide a map of an appropriate scale to depict the potential historic properties in relationship to all ground-disturbing activity.

Like with the APE map, this map needs to be of sufficient scale to allow the extent (horizontal and vertical) and location(s) of proposed ground-disturbing activities to be clearly understood.

- Describe, in narrative form, the proposed length, width, and maximum depth of ground-disturbing activity.

For example, "The proposed trench line will be 20 feet long, 3 feet wide, 5 feet deep."

- Describe the current and previous use(s) of the land and any known previous ground disturbances, including depth of disturbance.

If previous ground disturbance is used to determine an absence of archaeological resources in areas subject to project effects (vertical APE), provide supporting evidence for the determination, such as indicating the area has imported landfill, there was prior grading to below depth of project effects or into strata predating prehistoric occupation, etc.

### Section IV: Identification of Historic Properties

*Note: Historic properties are defined at 36 CFR Part 100.16(l)(1) as properties included in or eligible for inclusion in the National Register of Historic Places (NRHP). The agency is responsible for making a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, field investigations, and field surveys. The [California Historical Resources Information System's Information Centers](#) maintain an inventory of listed and previously identified cultural resources; however, simply conducting a records search at one of these centers does not fulfill the responsibility to identify historic properties. The OHP does not conduct research.*

- Describe the archival research conducted in order to identify historic properties. [36 CFR 800.4(a)(2)] Attach evidence of having completed a records search at the appropriate [Regional Information Center\(s\)](#) and provide a summary and analysis of the results of that search that informed the methods used during the identification process. Please note it is

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not necessary to attach copies of all results of the records search except when relying upon those reports to support specific conclusions.

It is recommended that identification efforts include a recent (not more than two years old) CHRIS records search (see [http://ohp.parks.ca.gov/?page\\_id=28066](http://ohp.parks.ca.gov/?page_id=28066) for information on accessing the CHRIS), in addition to research through other sources as appropriate to the undertaking's scale and location (e.g., historic maps and documents). More recent information should be included if there have been major impacts to the landscape in which the undertaking is located (e.g., development, fire, flooding, quarrying, etc.). Justification should be provided for using a records search older than two years. Provide dates of construction for any buildings or structures in the APE.

- Describe Native American consultation conducted and efforts to identify Native American resources. [36 CFR Part 800.4(a)(4)]

Agencies should obtain a list of Native American contacts from the [Native American Heritage Commission](#) (NAHC). To do so, provide the NAHC with an APE and project description, as well as locational information comparable to that discussed in Section III above. The NAHC uses a [Sacred Lands File and Native American Contacts List Request Form](#) for this purpose. It is strongly advised that all contacts identified by the NAHC be included in consultation, regardless of whether the group is federally recognized. [36 CFR 800.2(c)(5)]

Agencies should conduct Tribal consultation prior to initiating the Section 106 review process with the SHPO to ensure that tribal comments are taken into consideration during the review process and to identify properties of religious or cultural significance to tribes.

If a standardized form letter was used to contact multiple parties, only one example of the letter should be attached. Additionally, provide a list of all the groups contacted by the agency. Letters to tribes or interested Native American individuals are adequate for the initial contact, but should be followed by telephone/email or other reasonable and appropriate attempts to engage responses. The submittal should discuss meetings held with tribes and any studies that resulted from consultation or other outcomes. Attach a consultation log if one was prepared.

Summarize responses received and describe the agency's response to all comments. Explain how the Agency incorporated information obtained through the consultation process into determinations and findings.

For more information about consulting with Native American tribes, see the ACHP's [Consultation with Indian Tribes in the Section 106 Review Process: A Handbook](#).

- Describe consultation conducted with other consulting parties (such as representatives of local governments, project applicants, and additional consulting parties) and the public pursuant to 36 CFR Part 800.2(c)(3-5) and Part 800.2(d). Attach copies of correspondence to and from such agencies, organizations, and individuals. [36 CFR Part 800.4(a)(3)]

Summarize responses received and describe the agency's response to all comments. Explain how the Agency incorporated information obtained through the consultation process into determinations and findings.

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- Identify any previously recorded historic properties. [36 CFR Part 800.4(a)(2)] Indicate whether SHPO concurred on previous eligibility determinations and provide copies of that correspondence. If correspondence is not available, provide the date of concurrence, the project name, and the agency who initially evaluated the resource.
- Describe the survey work completed to identify historic properties. [36 CFR Part 800.4(b)(1)] Discuss, for example, any field surveys, excavation, building surveys, etc. Monitoring is not a substitute for making a reasonable level of effort in identification.

Architectural surveys may need to be updated if they are more than five years old to ensure the identification efforts reflect the current state of the resources. Archaeological property surveys less than two years old may require updating if there have been changes to the landscape such as fire, flooding, landslides, etc. All resources should be re-examined to update site integrity and obtain sufficient information to assess project effects.

If the identification and evaluation efforts will be based on older surveys (occurred more than two years ago), the agency should provide justification for why those results remain valid.

Archaeological survey reports must explain the field methodology used and a reference to the state and/or federal standards under which the survey was conducted. Specify whether the survey was a pedestrian surface survey, a windshield survey, etc. Pedestrian surveys should be conducted using transects of 15 meters or less. If this was not possible due to topography or vegetation, discuss what the restrictions were and efforts to facilitate identification. Also include the percentage of surface visibility during the survey. If visibility was poor, discuss actions taken to adapt identification efforts (e.g., raking surface leaves or vegetation at intervals along transects). If an archaeological field-survey was not completed, provide an explanation as to why it was determined unnecessary.

Maps depicting areas surveyed, degree of survey coverage (e.g., intensive, reconnaissance), survey methods and strategies or phases of work are helpful, as are photographs depicting the conditions of the APE at the time of the survey.

- Provide a site location map that depicts the location of all historic properties and isolated finds identified within the APE. The map can be included as a confidential appendix to the main body of a report.
- Apply the “*Criteria for evaluation*” found at 36 CFR 60.4 to evaluate the potential eligibility of identified resources for listing on the NRHP and provide substantive evidence of Determinations of Eligibility (DOEs) for each property evaluated (the DPR 523 form, or an appropriate agency form, may be used to provide this evidence). [36 CFR Part 800.4(c)]

DOEs should demonstrate that all four of the Criteria for Evaluation found at 36 CFR Part 60.4 have been applied in reference to an appropriate historic context and the historic integrity of the property assessed. DOEs should evaluate eligibility of properties within the context of a potential historic district (if applicable), as well as individual eligibility. Submittals should indicate the reason(s) each resource meets or doesn’t meet the criteria and if certain criteria are not applicable to the resource, as well as addressing the seven aspects of integrity found in [National Register Bulletin 15: How to Apply the National](#)

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[Register Criteria for Evaluation](http://www.nps.gov/nr/publications/bulletins/nrb15/) (found at <http://www.nps.gov/nr/publications/bulletins/nrb15/>). For guidance on applying all four NRHP criteria and seven aspects of integrity to archaeological sites, see National Register Bulletin Guidelines for Evaluating and Registering Archaeological Properties (found at <https://www.nps.gov/Nr/publications/bulletins/arch/>).

For new DOEs, SHPO concurrence with the eligibility determinations is required. In some instances and through consultation with the SHPO, a federal agency may assume that a property or site is eligible for the purposes of a single undertaking. Please note, an agency may only assume eligibility if the resource will not be affected by the undertaking. If a resource is assumed eligible for a single undertaking, the resource remains officially unevaluated and may need to be formally evaluated in the future if it will be affected by a new undertaking. The SHPO must still provide concurrence for an agency to assume eligibility of a resource for a single undertaking.

- Each resource should be evaluated in its entirety, even if the undertaking will only have an effect on a portion of the resource. An exception can be made when evaluating individual segments of long linear resources, large landscapes, extensive functional systems, or large historic districts if deemed appropriate in consultation with the SHPO. Physical testing of archaeological sites should focus on areas subject to reasonably foreseeable effects of the undertaking and must be guided by a project- or site-specific research design. Areas of an archaeological site that are unlikely to be affected should not be tested unless compelling reasons to conduct such testing are explained in the technical reports.
- Request the SHPO's comments** on the historic property identification and evaluation work that was completed for the undertaking.
- Request the SHPO's concurrence** on the results of NRHP evaluations (if any).

### Section V: Finding of Effect

- Based on the above information, identify which ONE of the findings of effect applies to this undertaking: No Historic Properties Affected pursuant to 36 CFR Part 800.4(d)(1); No Adverse Effect pursuant to 36 CFR Part 800.5(b); or, Adverse Effect pursuant to 36 CFR Part 800.5(d)(2). Note: Although it is necessary to determine how the undertaking will affect each historic property in the APE, only one finding of effect is made for the undertaking as a whole.
- Provide a justification for the finding of effect by assessing how the undertaking will affect each historic property in the APE, considering direct, indirect, and cumulative effects.
  - To make a finding of No Historic Properties Affected, resources within the APE must have been evaluated and determined to be not eligible (with SHPO concurrence), or effects to historic properties must be completely avoided by the undertaking.
  - To make a finding of No Adverse Effect, an analysis of the undertaking's effects on all historic properties in the APE must be made by applying the criteria of

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adverse effect pursuant to 36 CFR Part 800.5(a)(1) and examples provided at 36 CFR Part 800.5(a)(2). A finding of No Adverse Effect can only be made if the effects to every historic property in the APE are less than adverse. This finding is appropriate when conditions, such as avoidance, protection measures, or monitoring, are imposed to ensure any effects are less than adverse. When the Secretary of the Interior's Standards for the Treatment of Historic Properties are being followed, explain in detail how the project meets all the applicable Standards such that effects are less than adverse.

- For findings of Adverse Effect, an analysis of the undertaking's effects on all historic properties in the APE must be made by applying the criteria of adverse effect pursuant to 36 CFR Part 800.5(a)(1) and examples provided at 36 CFR Part 800.5(a)(2). Adverse effects result when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register. The assessment of effect should explain why and how each historic property will be adversely affected. Explain what avoidance and minimization efforts were considered, which were adopted, and which were found to be infeasible and why.

*Note: Further consultation will be required to resolve adverse effects if the SHPO concurs with a finding of adverse effects. If the undertaking results in an adverse effect, the agency will consult on an agreement document (Memorandum of Agreement or Programmatic Agreement) with consulting parties, including the SHPO and the Advisory Council on Historic Preservation (ACHP), should the ACHP choose to participate. For more information about agreement documents, see the [ACHP's Guidance on Agreement Documents](#).*

The checklist above is specifically focused on documentation to submit for SHPO review of a federal undertaking. For information about the process of consultation under Section 106 of the NHPA, see the following resources:

[Advisory Council on Historic Preservation's Archaeology Guidance](#)

[Section 106 Applicant Toolkit](#)

[Meeting the "Reasonable and Good Faith Identification Standard" in Section 106 Review](#)

[Tribal Consultation: Best Practices for Historic Preservation](#)

[Section 106 Assistance for Users](#) (this page has links to many different types of information, including some of the resources noted above)