

**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER'S (SHPO)
SECTION 106 CONSULTATION GUIDELINES FOR
FCC DESIGNEES AND APPLICANTS
REGARDING
CELL TOWER AND OTHER WIRELESS COMMUNICATION FACILITIES**

Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, requires federal agencies to take into account the effects of their undertakings on historic properties before any federal funds are expended and before any federal license, permit or other entitlement is issued. ** Prospective issuance of an FCC license for construction of cell towers and other wireless communication facilities is an "undertaking" subject to Section 106. The procedural requirements for complying with Section 106 are codified in 36 CFR Part 800, Subpart B.

36 CFR Part 800 requires the **FCC to initiate a consultation** with the **State Historic Preservation Officer (SHPO)** regarding a proposed telecommunication facility sitings and allows the FCC to delegate to applicants and their consultants the ability to perform certain steps in the Section 106 review process. For example, the FCC may delegate the ability to initiate the consultation process, prepare specified documentation, and consult with various parties (including SHPO), as indicated in Part 800. However, the FCC can not delegate its obligation to take all actions and make all decisions that the Part 800 regulations define as a "finding" or "determination." This means that consultants and applicants may *recommend* findings and determinations to the FCC about the undertaking's "area of potential effects", the National Register eligibility of properties within the area of potential affects, and findings related to "effect." The SHPO may comment upon the findings and determinations that consultants and applicants recommend to the FCC and the documentation provided in support of the recommended findings and determinations.

SHPO has developed these guidelines to assist FCC designees (applicants and/or their consultants) in preparing Section 106 consultation documents related to cell tower and other wireless facility sitings in California that: (1) satisfy the requirements of 36 CFR Part 800; (2) are tailored to the nature and scope of this type of undertaking; and (3) facilitate efficient and timely completion of the consultation process.

***Compliance with Section 106 of the National Historic Preservation Act is a separate statutory requirement unrelated to any National Environmental Policy Act (NEPA) requirements that may apply.*

HOW AND WHEN DO I "INITIATE CONSULTATION" WITH THE SHPO?

Applicants initiate a consultation by submitting to the SHPO a "Request for SHPO Review of FCC Undertaking." The Request Form and detailed instructions for preparing and submitting the Request Form and necessary documentation are available online at http://www.ohp.parks.ca.gov/default.asp?page_id=22327.

36 CFR § 800.1(c) requires the FCC to initiate Section 106 consultation early in the undertaking's planning so that the SHPO has the opportunity to comment while there is still adequate time to consider a broad range of alternatives for the undertaking. When an applicant begins or completes construction of an undertaking before the consultation process set forth in 36 CFR Part 800 has been satisfactorily concluded, the SHPO's opportunity to comment on the proposed undertaking is

foreclosed. As defined in 36 CFR § 800.9(b), a foreclosure is a serious breach of the Part 800 regulation.

ONCE I SUBMIT A REQUEST TO THE SHPO, HOW LONG WILL I HAVE TO WAIT FOR COMMENTS?

36 CFR Part 800 sets forth a sequence of consultation steps. Several steps require the FCC to make a "finding" or "determination." Where the regulation requires the FCC to consult the SHPO on a finding or determination, the SHPO has 30 days after receipt of the request to comment on **each** finding or determination.

For example,

- 36 CFR § 800.4(a)(1) requires the agency official (FCC) to "*determine* and document the area of potential effects" in consultation with the SHPO [30 days].
- § 800.4(c)(2) requires the agency official to *determine*, in consultation with the SHPO, whether a property meets the National Register criteria [30 days].
- § 800.4(d)(1) allows the SHPO 30 days to comment after receipt of an adequately documented *finding* that there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them.

If the SHPO provides a timely comment on any finding or determination submitted by or on behalf of the FCC or requests additional information, and the FCC or its designee responds to that comment or request, then the SHPO has 30 days following receipt of that response to provide the FCC or designee with further comment on the finding or determination originally submitted. This standard 30-day period for SHPO comment on agency official findings and determinations is established by 36 CFR § 800.3(c)(4). 36 CFR § 800.3(g) provides for an exception to this 30-day pattern through an "expedited consultation". However, an expedited consultation can occur only if the agency official **and** the SHPO agree that it is appropriate.

Note: The SHPO will make every reasonable effort to respond to consultation requests in a timely manner. If you have not received a reply by the 30th day following your submittal of the Request for SHPO Review, please contact the Project Review Unit to verify that your submittal was actually received by SHPO. Do not assume SHPO concurrence and/or conclude that the consultation has been satisfactorily completed simply because 30 days have passed since you anticipate that the SHPO received your submittal.

HOW DO I DETERMINE THE "AREA OF POTENTIAL EFFECTS"?

36 CFR § 800.16(d) defines the area of potential effects (APE) 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 APE is influenced by the environmental setting of the project area as well as the scale and nature of an undertaking. The APE may be different for different kinds of effects caused by the undertaking, i.e., direct, indirect, visual, noise, atmospheric, etc.

- The APE should include the footprint of the proposed facility and all areas involving known or prospective ground disturbance (e.g., improvement or construction of access roads, equipment shelters, utility corridors, fences, storage and laydown areas).
- The APE should also include any areas where a visual effect may occur to an historic property.
- The APE should take into account a facility's potential effect to a view shed that may be an aspect of an historic property's significance or of its setting. Consider topography, vegetation,

and contemporary land uses as well as facility height and design when deciding whether a visual effect may occur and whether that effect may be adverse.

WHAT CONSTITUTES A REASONABLE AND GOOD FAITH EFFORT TO IDENTIFY HISTORIC PROPERTIES FOR UNDERTAKINGS ADDRESSED IN THESE GUIDELINES?

"Historic property" as defined in 36 CFR § 800.16 (l)(1-2) includes any prehistoric or historic district, site, building, structure, or object that is listed in or eligible for the National Register of Historic Places, (NRHP), and may encompass resources that have not yet been identified. Cultural landscapes, archaeological sites, and traditional cultural places may qualify as historic properties. Eligible resources may be significant at the national, state, regional, or local level.

A *reasonable and good faith effort* to identify historic properties should include the following steps:

- Obtain the results of a **records search** from one of the 12 California Historical Resources Information System's (CHRIS) Information Centers (ICs). **Include records search results in the consultation package.**

The IC records search is the most efficient and effective way to learn if previous surveys have been done within the APE. CHRIS archives and manages resource information that has been submitted to the SHPO from various sources. In addition, individual ICs collect regionally-specific information that is not necessarily shared with the SHPO, and staff may have useful unrecorded local knowledge. Although CHRIS maintains a list of properties that are included in the California Register of Historical Resources and in the NRHP, **there is no comprehensive list or database of all properties in California that have received a local, regional or statewide historical designation.** *Note: The online NRHP database does not include eligible or potentially eligible properties.*

Contact information for the twelve Regional Information Centers is available on OHP's website at <http://www.ohp.parks.ca.gov/pages/1054/files/IC%20Roster.pdf> or by following the links for "CHRIS-Info Centers," "IC Roster" at www.ohp.parks.ca.gov.

- Conduct a **visual reconnaissance survey of the APE** to determine if there are historic properties within the APE that may be directly or indirectly affected by the undertaking. Properties may be listed in or potentially eligible for the NRHP either individually or as contributors to the historic character of a larger area or district eligible for or listed in the NRHP. The identification of historic properties often requires specialized knowledge, professional qualifications, and appropriate experience. We strongly recommend that trained professionals with experience in the fields of cultural resources management and historic preservation perform reconnaissance surveys. **Document the results of the survey and explain the survey methodology in a survey report submitted with the consultation request.**
- **Evaluate all buildings and structures 45 years of age or older within the APE** using the NRHP criteria. Because buildings of the requisite age may be eligible for the NRHP for their association with important events or people or for their information value, the significance of a building cannot be determined simply by looking at it. Evaluations should be made by a person who meets the Secretary of the Interior's *Professional Qualification Standards for History, Architectural History, or Historic Architecture*. Building evaluation data should be recorded on the appropriate DPR 523 or NRHP forms. **Include the DPR 523 or NRHP forms with the consultation request.**

- If the CHRIS records search or the reconnaissance survey indicates the project area has a moderate or high sensitivity for archaeological resources, then an **archaeological survey** should be conducted by a person meeting the Secretary of the Interior's *Professional Qualification Standards for Archaeology*. Under certain conditions, sub-surface investigation may be necessary. **Submit a survey report with the consultation request which document the results and explains the survey methodology.**

The Secretary of the Interior's Standards for Professional Qualifications are detailed in 36 CFR Part 61 and are available online at <http://www2.cr.nps.gov/laws/ProfQual83.htm>.

DPR 523 and NRHP forms are available online at http://www.ohp.parks.ca.gov/default.asp?page_id=1069.

WHY DO I NEED TO CONSULT WITH NATIVE AMERICANS AND OTHER INTERESTED PERSONS?

36 CFR Part 800 mandates such consultation. Refer to 36 CFR § 800.2(c)(2)(A-F), 36 CFR § 800.2(d)(1-3), 36 CFR § 800.3(f), 36 CFR § 800.4(a)(4), and to various other sections of the regulations.

WHAT CONSTITUTES A REASONABLE AND GOOD FAITH EFFORT TO CONSULT WITH NATIVE AMERICANS AND OTHER INTERESTED PERSONS?

Actions that represent a *reasonable and good faith effort* to consult with Native Americans and other interested persons are set forth in several places in the regulations, including 36 CFR § 800.2(c)(2) and §800.2(d). SHPO recommends that applicants provide interested parties with detailed project information, including a map of the APE, and a reasonable amount of time to review and comment on the undertaking and its possible effects on properties of importance to them. Because tribal and community groups may meet infrequently and mail may be delayed, it is appropriate to follow a written request for comments with a telephone call or second letter to insure that interested persons have been afforded an adequate opportunity to respond.

A *reasonable and good faith effort* to consult with Native Americans and other interested persons should include the following steps:

- Contact the **Native American Heritage Commission (NAHC)** and request a search of the Sacred Lands File. The NAHC will provide a list of individuals or tribal groups who may have knowledge of cultural resources in the APE or concerns about the potential effects of the proposed project. The NAHC can be reached at 915 Capitol Mall, Room 364, Sacramento, CA 95814, (916) 653-4082, nahc@pacbell.net.
- Contact the **individuals and/or tribal groups** suggested by the NAHC. Allow a minimum of 30 days for a response.
- Contact **other interested parties** such as city and county heritage commissions, landmark boards, historical societies, museums, neighborhood preservations groups, etc. Allow a minimum of 30 days for a response.

WHAT IS THE DIFFERENCE BETWEEN A FINDING OF NO HISTORIC PROPERTIES AFFECTED AND NO ADVERSE EFFECT?

A finding of **no historic properties** affected [36 CFR § 800.4(d)(1)] is appropriate when:

- There are **no** historic properties within the APE;
- or

- There **are** historic properties within the APE **but** the agency official has determined that such properties will not be affected by the undertaking, and documents the reasons for that finding. [Refer to the definition of "effect" given in 36 CFR § 800.16(i)].

Example: a finding of "*no historic properties affected*" may be appropriate when a collocation on a modern high-rise building located next door to a NRHP-listed building will not directly affect the fabric of the historic building and will not visually compromise the historic building's significant features or fabric, or alter the integrity of its setting when that setting is an aspect of the building's significance.

If the agency official finds that there are **historic properties** that may be **affected** by an undertaking [36 CFR § 800.4(d)(2)], the agency official **must** proceed to 36 CFR § 800.5(a) and **assess adverse effects** by applying the "**criteria of adverse effect**" set forth in 36 CFR § 800.5(a)(1). A finding of "**no adverse effect**", pursuant to 36 CFR § 800.5(b), is appropriate when the agency official, having applied the **criteria of adverse effect** to an undertaking addressed in these guidelines, finds that the undertaking's effects do not meet any of these criteria and documents the reasons for that finding.

Example: a finding of "*no adverse effect*" may be appropriate when the undertaking involves the collocation of antennas on a historic building where historic fabric will not be damaged, any physical modifications are minimal and reversible, and neither the antennas nor utility cabinets and connections will be visible from the primary facades.

WHEN DOES THE NATIONWIDE COLLOCATION PROGRAMMATIC AGREEMENT APPLY?

The intent of the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (PA) is to streamline Section 106 review of collocations of antennas on existing towers and other structures. Recognizing that the addition of a small antenna to an existing tower or other structure that is not an historic property should ordinarily have no effect on historic properties, the PA exempts most collocations on existing structures from further Section 106 review.

However, collocations that are to be located within an historic district, on certain historic properties, or in certain other situations may have an adverse effect on historic properties. Consequently, such collocations are not covered by the PA. In such instances, an individual Section 106 consultation pursuant to 36 CFR Part 800 is required.

The complete text of the Nationwide Collocation Programmatic Agreement is available online at <http://wireless.fcc.gov/releases/da010691a.pdf>.

In summary, under the PA, collocations on **non-tower structures** are **exempt from review** if the structure is:

- NOT over 45 years old,
- NOT located in an historic district,
- Located within 250 feet of an historic district but NOT visible to a person on the street within the district,
- NOT a designated National Historic Landmark and not listed in or eligible for listing in the NRHP.

Collocations on **towers** built **before** 16 March 2001 **are exempt from review unless** the collocation will result in a *substantial increase* in the size of the tower, or there is a complaint or unresolved adverse effect pending with the FCC.

Unless the collocation will result in a *substantial increase* in the size of the tower, or there is a complaint or unresolved adverse effect pending with the FCC, collocations on **towers** built **after** 16 March 2001, **are exempted from review** if the Section 106 review process was completed and there was a finding of “no effect” or “no adverse effect.”

Substantial increase in the size of the tower means the mounting of the proposed antenna will:

- Increase the height of the antenna by more than 10% or by the height of one additional antenna array...not to exceed twenty feet;
- Require excavation outside the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site;
- Require more than the standard number of new equipment cabinets, not to exceed four, or more than one new equipment shelter.

WHERE CAN I OBTAIN MORE INFORMATION?

The regulations implementing Section 106 of the NHPA are codified at 36 *CFR Part 800* ("*Protection of Historic Properties*") and are available online at www.achp.gov/regs.html.

The Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* provide technical advice about archaeological and historic preservation activities and methods. They are available from the National Park Service (NPS) and online at www.achp.gov/secstnd.html.

Various NRHP Bulletins provide detailed guidance and technical assistance for researching and evaluating archaeological and historic properties. Historians, archaeologists, and other cultural resource professionals preparing documents for Section 106 reviews should be guided by the standards and practices found in the following:

- [How to Apply the National Register Criteria for Evaluation \(#15\)](#)
- [Researching a Historic Property \(#39\)](#)
- [Guidelines for Evaluating and Registering Archeological Properties](#)
- [Guidelines for Evaluating and Documenting Properties Associated with Significant Persons \(#32\)](#)
- [How to Evaluate and Nominate Designed Historic Landscapes \(#18\)](#)
- [Guidelines for Identifying, Evaluating and Registering Historic Mining Properties \(#42\)](#)
- [Guidelines for Evaluating and Nominating Properties That Have Achieved Significance Within the Past Fifty Years \(#22\)](#)
- [Guidelines for Evaluating and Documenting Traditional Cultural Properties \(#38\)](#)
- [Defining Boundaries for National Register Properties \(with Appendix, Definition of National Register Boundaries for Archeological Properties\)](#)
- [Code of Federal Regulations: 36 CFR Part 60 National Register of Historic Places](#)

The State Historic Preservation Officer's/Office of Historic Preservation's website at www.ohp.parks.ca.gov also contains additional information and links to the National Park Service's Historic Preservation Services website (www2.cr.nps.gov) and the Advisory Council of Historic Preservation's website (www.achp.gov).

SHPO Project Review staff can be reached at 916-653-6624.