



Tools in Your Toolbox: Section 106 Program Alternatives



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Presenters



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Agenda

- 01** Section 106 Overview
- 02** Program Alternatives
- 03** Programmatic Agreements
- 04** Program Comments
- 05** Alternate Procedures
- 06** Exempted Categories
- 07** Standard Treatment

Section 106

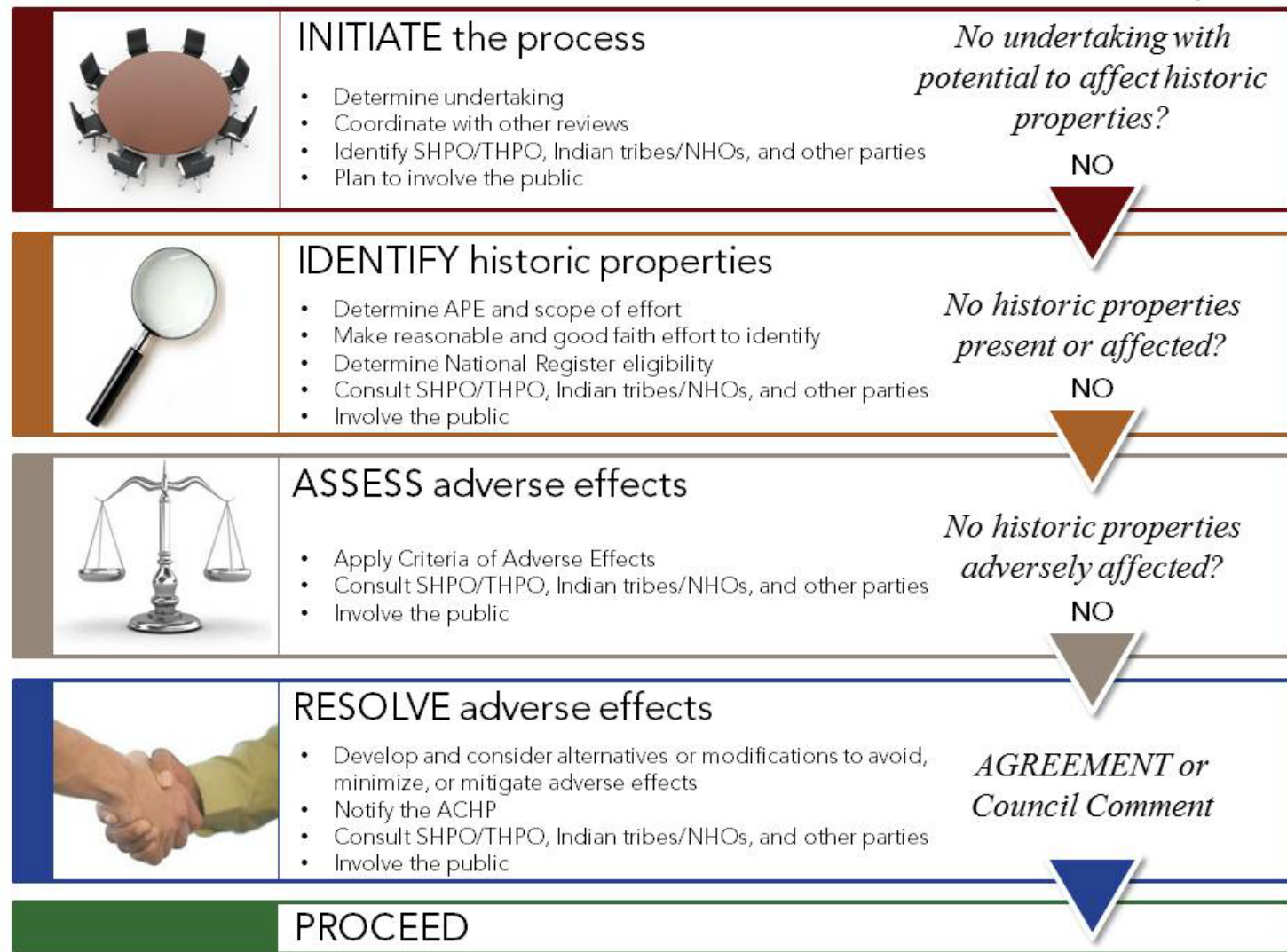
36 CFR § 800.14

- National Historic Preservation Act of 1966
- Federal agencies must consider the effects of their undertakings on historic properties
- 4-step process
- Avoid, minimize, or mitigate adverse effects
- Complete 106 prior to FONSI/ROD



Section 106 Review Process

36 CFR § 800.3-7



CONSULTATION

Memorandum of Agreement

36 CFR § 800.6(c)

PROS of an MOA



Demonstrates Section 106 Compliance

Formal compliance with Section 106.



Flexibility in Mitigation

Tailored and adaptable solutions.



Defined Roles & Responsibilities

Clear duties and timelines.



Predictable Project Delivery

Reduces project uncertainty.



Coordinates with NEPA

Aligns with environmental review.

CONS / LIMITATIONS of an MOA



Time-Consuming to Negotiate

Lengthy consultation process.



Legally Binding Commitments

Strict enforcement required.



Limited Applicability

Valid only for specific undertakings.



Risk of “Check-the-Box” Mitigation

Superficial mitigation measures.



Monitoring & Compliance Burden

Ongoing oversight needed.



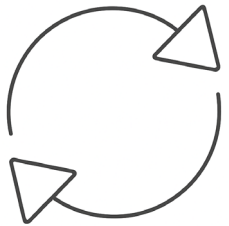
Federal Program Alternatives

36 CFR § 800.14

- Can streamline compliance
- More efficient and effective project reviews
- Allow for delegation of tasks
- Can foster interagency coordination
- Provide a comprehensive framework for managing 106 process



When to consider using a Program Alternative?



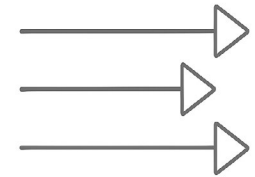
**Repetitive or
routine
undertakings**



**Multiple
undertakings
or program-
level actions**



**Uncertain
impacts from
complex or
phased project**



**Need to
streamline
review process**



Program Alternatives

36 CFR § 800.14



Programmatic Agreement



Program Comment



Alternate Procedures



Exempted Categories



Standard Treatment





Programmatic Agreements

36 CFR § 800.14(b)



- Most common type of Program Alternative
- Allows for advancement of project before effects are fully known
- Effective for:
 - Federal agency programs
 - When effects to historic properties cannot be determined in advance
 - Complex or large projects
 - Multiple undertakings similar in nature/routine management activities
 - Tailoring 106 process to better fit agency decision making process or resource management (e.g. FERC PA and development of an HPMP)

MOA vs Programmatic Agreement



MOA

Undertaking well defined
Effects are *known*
Will adversely affect



Programmatic Agreement

Project plans undetermined
Effects are *unknown*
May adversely affect



Types of Programmatic Agreements

36 CFR § 800.14

Project PA

36 CFR § 800.14(b)(3)

- Can delay final decision on undertaking until agency has more information
- Agency cannot yet determine how an undertaking may affect historic properties
- When the location of historic properties has yet to be determined

Program PA

36 CFR § 800.14(b)(2)

- Creates a 106 process that differs from standard review process for all undertakings under a particular program
- Good for programs with similar or repetitive effects on historic properties
- Can formally delegate Section 106 responsibilities to non-federal parties



Types of Programmatic Agreements

36 CFR § 800.14

Prototype PA

36 CFR § 800.14(b)(4)

- Creates a 106 process that differs from standard review process for all undertakings under a particular program
- Expedite review of routine actions and provide predictability in the treatment of historic properties
- Can be approved by SHPO/THPOs without further ACHP involvement

Program PA

36 CFR § 800.14(b)(2)

- Creates a 106 process that differs from standard review process for all undertakings under a particular program
- Good for programs with similar or repetitive effects on historic properties
- Can formally delegate Section 106 responsibilities to non-federal parties

How to Implement a Programmatic Agreement

1

Identify the
need for a
PA

2

Initiate
Consultation
(SHPO/THPO/
ACHP/Stakeho
lders)

3

Develop
Agreement
Language

4

Execute
the PA

5

Apply the
PA



Program Comments

36 CFR § 800.14(e)



- Allows federal agency to request ACHP review for a category of undertakings, rather than individual undertakings
- Useful for repetitive actions, large inventories of similar historic properties, or programs generating numerous similar undertakings
- Support broader, nationwide planning, placing similar historic properties within a national context rather than isolated project reviews
- The ACHP conducts consultation with SHPOs/THPOs, Indian Tribes, and Native Hawaiian Organizations as part of developing the program comments
- Public participation is carried out by the requesting federal agency, rather than the ACHP



Programmatic Agreement vs Program Comment



Programmatic Agreement
Project plans undetermined
Effects are *unknown*
May adversely affect



Program Comment
Undertaking well defined
Effects are *known*
No effects



Key Characteristics of PAs and PCs

Programmatic Agreement

36 CFR § 800.14(b)

- Negotiated agreement
- Agency-specific
- Can be amended
- Requires upfront consultation
- Often resource-intensive to develop
- Highly defensible for complex projects

Program Comment

36 CFR § 800.14(e)

- Applies broadly
- No individual MOAs or PAs required
- Limited flexibility once issued
- Strong efficiency gains
- Less tailored to unique circumstances

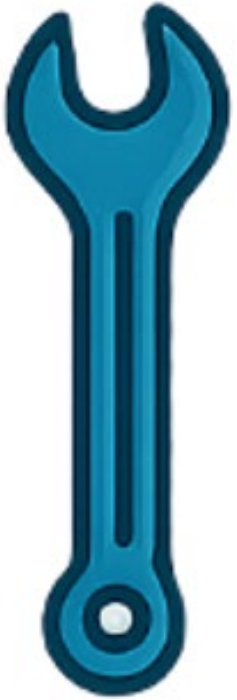


Program Comment Examples

- Program Comment for Actions Affecting Post-1945 Concrete and Steel Bridges (2012)
 - Common Post-1945 Concrete and Steel Bridges
- Program Comment to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way (2018)
 - Rail ROW Program Comment
- Program Comment for Army Warfighting Readiness and Associated Infrastructure (2026)
 - Army Warfighter Program Comment

Alternate Procedures

36 CFR § 800.14(a)



- Infrequently used
- Allows for advancement of project before effects are fully known
- Effective for:
 - Federal agency programs
 - The agency needs a consistent, agency-wide approach rather than project-specific agreements
 - Restructures the Section 106 process itself, rather than resolving effects on a project-by-project basis
 - Does not primarily function to advance projects before effects are known (this is more typical of certain PAs); instead, it establishes an agency-specific process for how effects will be addressed consistently



Exempted Categories

36 CFR § 800.14(c)



- Allows for advancement of project as activities are widely accepted as having no effect
- Effective for:
 - Routine maintenance activities
 - Undertakings within existing rights-of-way or previously reviewed
 - Actions where historic properties are not physically altered



Program Comment vs Exempted Categories



Program Comment
Undertaking well defined
Effects are *known*
No effects



Exempted Categories
Remove from 106 review
Effects are *known*
No effects

Current Exemptions

- Interstate Highway System
- Natural Gas Pipelines
- Electric Vehicle Supply Equipment
- GSA Routine Operations and Maintenance
- Indigenous Knowledge-Informed Activities by Native Hawaiian Organizations



Standard Treatments

36 CFR § 800.14(d)



- Establish agreed-upon treatment methods for specific kinds of resources or effects
- Effective for:
 - Federal agency programs
 - Undertakings where effects to historic properties are well-understood and recurring
 - Appropriate treatment measure already established as a best practice
 - Typically incorporated into MOAs and PAs or findings of no adverse effect
 - Tailoring 106 process to better fit agency decision making process or resource management



Commonalities Between Program Alternatives Under 36 CFR 800.14

1. Tailor the Section 106 Process to an Identified Need
2. Apply to Groups of Undertakings or Repetitive Actions (except a single Project Programmatic Agreement)
3. Are Efficient/Streamline Section 106 Review
4. Developed in Consultation
5. Require ACHP involvement in some capacity
6. Opportunity for Public Input
7. Formalize, Documented and Enforceable Outcomes

How to approach implementing Program Alternatives

1. Identify the Need & Scope– Define recurring Section 106 challenges and confirm a program alternative is appropriate
2. Engage Key Stakeholders Early– Involve SHPOs/THPOs, Tribes, ACHP, and other consulting parties up front
3. Develop the Framework– Draft procedures, roles, applicability, and public involvement measures
4. Secure ACHP Review and Approval– Submit, respond to feedback, and finalize adoption
5. Implement & Monitor– Apply consistently, track outcomes, and adjust as needed





More info on Program Alternatives

[Program Alternatives Chart 2020.pdf](#)



Advisory Council on
Historic Preservation

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NEWS
& EVENTS

SECTION 106
REVIEW PROCESS

PRESERVATION
PROGRAMS & POLICIES

ABOUT
THE ACHP

TRAINING
& RESOURCES

PROGRAM ALTERNATIVES

The Section 106 regulations offer a variety of ways federal agencies may tailor the review process.

HOME



PROGRAM ALTERNATIVES

Questions?

